

Key Takeaways—Education and School Board Law Webinar Vol. 12 (DEI)

The following are key takeaways from CALN’s Education and School Board Law webinar on **February 25, 2026**. The session offered an update on the current state of DEI one year after President Trump returned to office.

Please note: These summaries can provide you with helpful information, but they do not and are not intended to constitute legal advice or create an attorney-client relationship. Instead, they are for general informational purposes only. You are encouraged to contact your board attorney, or to hire a personal attorney, to obtain advice with respect to legal matters.

Legal vs. Illegal “DEI”

- Legal Activity: non-race or sex conscious activity, like making everyone feel welcomed, providing everyone an equal opportunity, or teaching about different cultures and religions
- Illegal DEI: race- or sex-conscious activity, like treating people differently based on race/sex, requiring equal outcomes across races/sexes, or interfering with participation/benefits based on race/sex
- Whether a DEI program is prohibited will depend on whether it is deemed to discriminate on basis of sex or race (it’s not illegal by its name!). What matters is *what is occurring*.

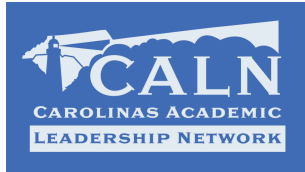
Legal Protections and Precedent

- Equal Protection Clause: “No state shall... deny to any person within its jurisdiction the equal protection of the laws.”
- Title VI: “No person in the United States shall, on the ground of race, color, national origin, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- Title IX: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”
- *Students For Fair Admissions (SFFA) v. Harvard* (2023): Equal Protection Clause and Title VI prohibit discrimination on basis of race, color, national origin. Preferences given to some races is necessarily discrimination on the basis of race for the others. Universities giving racial preference to some students in order to achieve a diverse student body is not lawful.

Actions Taken After *SFFA v. Harvard*

EO 14173 – Ending Illegal Discrimination and Restoring Merit Based Opportunity

- Sec. 2: executive departments and agencies were ordered to terminate all illegal and discriminatory preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements. All recipients of



federal dollars required to comply with SFFA

Dear Colleague Letter: February 14, 2025

- In response to EO 14173, the Department of Education issued a “Dear Colleague” letter interpreting the new regulation that said that discrimination on basis of race, color, and national origin is illegal *and morally reprehensible*. It called out American educational institutions for engaging in this practice, and toxically indoctrinating students that America was built upon systemic and structural racism. It also accused them of smuggling racial stereotypes and explicit race-consciousness under the banner of DEI.
- Agencies and public schools were given 14 days to demonstrate compliance with the Executive Order.
- The letter also argued that DEI programs:
 - Frequently preference certain racial groups
 - Teach students that certain racial groups bear unique moral burdens that others do not
 - Stigmatize students according to crude racial stereotypes
- The letter concluded that under Supreme Court precedent, all racial balancing, diversity, social justice, or equity is illegal

The other side said “See You in Court”

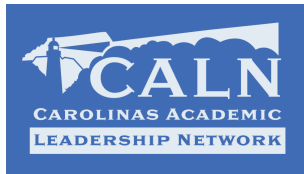
- The Dear Colleague letter was found unlawful and unenforceable by US District Court for the District of Maryland because it made new law and was not issued in accordance with APA. It was also found to run afoul of the First Amendment’s Free Speech Clause and the Due Process Clause as applied to the states through the Fourteenth Amendment.
- The Trump Admin filed a notice of appeal to US Court of Appeals, but dismissed it on January 21, 2026. Therefore, the Dear Colleague letter now will not be enforced.
- District Court of Maryland enjoined EO 14173, but the 4th Circuit found EO 14173 is valid pending appeal. Then the 4th Circuit reversed the District Court’s decision, therefore EO 14173 is valid and very likely to continue to remain valid.

What does this mean for efforts to eradicate illegal DEI?

- The Trump Admin has not changed its policies, priorities, or enforcement, but it can’t rely on the Dear Colleague Letter for enforcement and eradication of DEI
- The Administration can still require assurances in grant agreements and initiate civil rights enforcement actions using Title VI, IX, and *SFFA v. Harvard*

State efforts to combat illegal DEI

- NC: HB 171 (Awaiting a veto override vote; placed on the House calendar for March 9)
 - No state agency shall promote, support, fund, implement, or maintain workplace DEI in hirings and employment, maintaining DEI staff positions, or offering DEI training



- This is enforced with compliance audits by the State Auditor, removal or termination, civil penalties, or private right of action
- NC: SB 227 (Awaiting a veto override vote; placed on the House calendar for March 9)
 - Prohibits advocacy, compulsion, instruction, professional development, etc. with respect to discriminatory practices and divisive concepts
- SC: H.3927 (Passed in House and pending in Senate)
 - A public entity shall not implement, maintain, or promote DEI, including through employment practices or admissions, giving preferential treatment, establishing a unit/division/office, or requiring people to participate in programs or trainings

Helpful Considerations

- Become educated on legal sources that prohibit illegal DEI. Have a good understanding of current laws and precedent.
- Draft and propose a policy or revision that requires compliance with current law and precedent.
- Advocate for equal opportunities, not equal outcomes, to incentivize every student. Never permit preferences based on race or sex.
- Agree that certain students may require additional attention or learning methods, but not based on race or sex.
- Hold the superintendent accountable for requiring nondiscrimination and for quickly responding to discriminatory practices through presentations and evaluations.