



## **NEA's Summary of First Amendment Protections for Educators April 2025**

Since January 2025, the current administration has issued numerous anti-DEI executive orders (EOs) and guidance that infringe on the First Amendment rights of both educators and students. This summary provides guidance on how the First Amendment protects educators against some of the impact of these anti-DEI actions. Because of ongoing litigation challenging these limitations, this summary may not reflect the most recent court decisions on challenges brought by NEA and other organizations.

### **Executive Orders and Guidance**

[EO 14151](#), *Ending Radical and Wasteful Government DEI Programs and Preferencing*, focuses on ensuring a “government committed to serving every person with equal dignity and respect.”<sup>1</sup> This EO targets government agencies that provide grants and other funding, and directs the Office of Management and Budget (OMB) to coordinate the termination of all discriminatory programs, including all “equity-related” grants or contracts “to the maximum extent allowed by law.”

[EO 14173](#), *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, directs all federal agencies to “terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements.”<sup>2</sup> This EO also revokes [EO 11246 of 1965](#), prohibits contractors from considering “race, color, sex, sexual preference, religion, or national origin in ways that violate the Nation’s civil rights laws,” and requires contractors and grantees to certify that they do not “operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.”

On February 14, 2025, ED issued an anti-DEI [Dear Colleague Letter](#) that threatens to revoke federal funding from any school that supports DEI in teaching, programs, hiring, or admissions. The Letter, its related [FAQs](#), and the [End DEI portal](#) have placed in jeopardy longstanding curriculum and educational programming in schools and higher education institutions, infringing on the scholarship and speech of educators.

Other EOs with a potential impact on educators’ speech and association include the [Ending Radical Indoctrination in K-12 Schooling EO](#) that threatens to pull federal funding for “illegal and discriminatory treatment and indoctrination in any K-12 school,” and threatens action against any K-12 teacher or official who “otherwise unlawfully” facilitates “the social transition of a minor student.”<sup>3</sup> In addition, the [anti-Semitism EO](#) targets international students in the U.S. on student

visas as along with faculty and staff who engage in protests, and threatens removal for activities allegedly related to anti-Semitism.<sup>4</sup>

## **Ongoing Litigation**

On March 5, 2025, NEA and NEA-NH—with the support of the ACLU and its NH and MA chapters—filed a lawsuit challenging the implementation of the February 14th Dear Colleague Letter. The [lawsuit](#) challenges the Dear Colleague Letter as (1) impermissibly vague in violation of the due process requirements of the Fifth Amendment of the U.S. Constitution; (2) as a violation of the First Amendment protections for free speech and association as to its impact on higher education faculty; and (3) as a violation of multiple protections of the Administrative Procedures Act. On March 21<sup>st</sup>, the plaintiffs filed an amended complaint and moved for a preliminary injunction against enforcement of the Dear Colleague Letter or the anti-DEI tipline. AFT filed a [similar complaint](#) challenging the Letter on February 25, 2025, and has moved for a preliminary injunction as well.

On February 3, 2025, Democracy Forward filed a [complaint](#) challenging the administration’s first two anti-DEI EO’s on behalf of the National Association of Diversity Officers in Higher Education (NADOHE), the American Association of University Professor (AAUP), the Restaurant Centers United, and the Mayor and City Council of Baltimore. The complaint argues that three aspects of those orders are impermissibly vague: (1) the termination of “equity related” grants; (2) the requirement that persons seeking a contract or grant with the federal government certify that they are not engaged in impermissible DEI work; (3) and the threat to take legal action against inaccurate certifications. On February 21, 2025, the court issued a preliminary [injunction](#) against all three requirements on the ground that the underlying terms were impermissibly vague.<sup>5</sup> This decision was appealed to the 4<sup>th</sup> Circuit Court of Appeals, which has [stayed](#) the district court’s injunction pending further review on appeal.

## **First Amendment Protections**

These actions by the administration implicate the speech and association rights of educators, including their off duty speech and association. For higher education faculty in particular, this includes speech in their classroom, research, and scholarship. Private universities have First Amendment interests that are impacted by these actions as well, as do students who have broader First Amendment protections than higher education faculty in many instances.<sup>6</sup>

The First Amendment protects both the affirmative right of educators to speak (or to not speak) and the right to be free from retaliation for the exercise of that right,<sup>7</sup> which can include any adverse action against an educator or the threat thereof.<sup>8</sup> Prohibited compulsion of speech includes any government action compelling “affirmance of a belief with which the speaker disagrees.”<sup>9</sup>

### *What Speech is Protected*

When a public sector educator is speaking as a private citizen on a matter of public concern, the speech will be protected, unless the speaker’s interests are outweighed by the public employer’s interests in regulating that speech.<sup>10</sup> Matters of public concern include issues of “social, political,

or other interest to a community,"<sup>11</sup> such as racism or sex discrimination in the community or beyond.<sup>12</sup> In contrast, an educator's criticism of an institutional policy, such as a decision to eliminate a DEI-related program or an internal discussion of an educator's personal experiences with racism or sexism, would likely not be protected as a matter of public concern.<sup>13</sup>

Even if the speech of an educator touches on a matter of public concern, a public employer can still discipline the speaking educator or otherwise infringe or prohibit the speech if the government puts forth a sufficient justification for its limitation on the speech.<sup>14</sup> Regulation of an individual educator's speech can be justified by disruption to their school district's operations,<sup>15</sup> protection of the institution's educational mission or integrity,<sup>16</sup> or a violation of a content-neutral school policy.<sup>17</sup>

The 2025 EOs and related guidance aim to punish holders of a particular content or viewpoint on the enumerated DEI-related issues or topics. Content-based interference with an individual educator's speech can include dictating what can or should be said in class, or the content of research or scholarship. Restriction or chilling of, or retaliation for, speech based on its content alone is "presumptively invalid,"<sup>18</sup> and can only occur if the government has a compelling interest in controlling the speech based on its content.<sup>19</sup> This approach means that an educator's speech cannot be restricted solely because the government considers that speech to be "misguided."<sup>20</sup>

### *Limitations on Protections*

Even if an educator's speech is on a matter of public concern, free speech rights are limited by the scope of their public sector employment. Generally, a public employee's speech is unprotected if spoken as a public employee rather than "as a private citizen."<sup>21</sup> The protection of speech related to scholarship or teaching depends in large part on the protection of academic freedom weighed against the connection between the speech and an educator's job duties.<sup>22</sup>

Based on academic freedom, speech by higher education faculty retains protection "at least when engaged in core academic functions, such as teaching and scholarship."<sup>23</sup> For example, a court protected a university professor who refused to use preferred pronouns, so as to avoid providing institutions with an "alarming power to compel ideological conformity."<sup>24</sup> In contrast, the in-classroom speech of K-12 educators generally is not protected as the speech of a "private citizen" because the core of a teacher's job is to speak in the classroom on the subjects covered in assigned classes.<sup>25</sup> Under this approach, for example, a court denied protection for a sixth grade teacher's "discussion of why [racial epithets] are hurtful and must not be used."<sup>26</sup> At both the K-12 and higher education levels, speech related to administration or compliance, such as service on a faculty committee, can be unprotected as part of educators' job duties.<sup>27</sup>

### *Advocacy*

To succeed in a speech claim, an educator will need to assert and explain how the speech involves a matter of public concern, while at the same time arguing that the speech was as a private citizen, rather than part of the faculty member's job duties that do not carry the protection of academic freedom. For speech or association potentially banned by the EOs, educators should present the protected speech as part of their academic pursuits (either teaching or research at the higher

education level) or as speech that was not directly connected to their job duties. If the educator is being targeted for speech based on its viewpoint, then advocates must insist on a compelling reason for the institution or the government to retaliate against that educator.

Advocates for educators should push for policies that define what speech is protected and under what circumstances, including support for educators' academic freedom. For example, a CBA or policy can require a commitment to actively foster within the university a climate favorable to the responsible exercise of academic freedom, and acknowledge the fundamental need to protect educators from any censorship or restraint in order to ensure thoughtful discussion and intellectual inquiry in the classroom, scholarship, research, or creative expression. The institution should agree to parameters on how faculty can engage in service, advocacy, and faculty governance without fear of retaliation, such as assurance that educators will not be disciplined due to teaching controversial topics or expressing their opinions on those topics so long as the educator presents a balanced lesson consistent with recognized and accredited scholarship on the topic, uses relevant and appropriate materials, and maintains a classroom environment which is conducive to the free exchange and examination of ideas. Outside of the classroom, educators should be assured of their right to publicly present opinions on matters of public concern or which have significant artistic value outside of work without discrimination, intimidation, or retaliation.<sup>28</sup>

## CONCLUSION

We hope that this guidance helps advocacy efforts to advance academic freedom and speech and association protections for educators. For additional guidance on these issues, see the NEA Educator Advocacy [Rights](#) Guide. For further assistance on such matters, please contact Stacy Hickox in the NEA Office of General Counsel [shickox@nea.org](mailto:shickox@nea.org).

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<sup>1</sup>Exec. Order No. 14,151, 90 Fed. Reg. 8339, 8339 (Jan. 29, 2025), Ending Radical And Wasteful Government DEI Programs And Preferencing – The White House

<sup>2</sup>Exec. Order No. 14173, 90 Fed. Reg. 8633, 8634-35 (Jan. 31, 2025), Ending Illegal Discrimination And Restoring Merit-Based Opportunity – The White House

<sup>3</sup> This EO along with the Protecting Children from Chemical and Surgical Mutilation executive order issued January 28, 2025 are addressed in separate NEA Guidance.

<sup>4</sup> Additional Measures to Combat Anti-Semitism (Jan. 29, 2025), Additional Measures to Combat Anti-Semitism – The White House.

<sup>5</sup> <https://law.justia.com/cases/federal/district-courts/maryland/mdcce/1:2025cv00333/575287/44/>.

<sup>6</sup> FIRE, SILENCE IN THE CLASSROOM (2024)(faculty members are four times more likely to self-censor than they were in the 1950s); Faculty-Report-2024-Final.pdf; David Glasglow, ED of Meltzer Center for Diversity, Inclusion & Belonging at NYU. Linked In Post on Jan. 23, 2025. <https://www.scrippsnews.com/business/what-federal-changes-to-dei-policies-could-mean-for-business>.

<sup>7</sup> *Suarez Corp. Indus. v. McGraw*, 202 F.3d 676, 685 (4th Cir.2000).

<sup>8</sup> *Muldrow v. City of St. Louis, Mo.*, 144 S. Ct. 967, 974-75 (2024).

<sup>9</sup> *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, — U.S. —, 138 S. Ct. 2448, 2463 (2018); *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995); *Tinker v. Des Moines Independent Community School Dist.*, 393 U. S. 503, 505–506 (1969); see also, e.g., *Miami Herald Publishing Co. v. Tornillo*, 418 U. S. 241, 256 (1974); *Wooley v. Maynard*, 430 U. S. 705, 714 (1977); *National Institute of Family and Life Advocates v. Becerra*, 585 U. S. —, —, 138 S.Ct. 2361, 2371 (2018) (NIFLA).

<sup>10</sup> *Pickering v. Bd. of Educ.*, 391 U.S. 563, 574 (1968).

<sup>11</sup> *Connick v. Myers*, 461 U.S. 138, 146-48 (1983). See also *Buchanan v. Alexander*, 919 F.3d 847, 853 (5th Cir. 2019).

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<sup>12</sup> *Adams v. Trustees of Univ. of North Carolina–Wilmington*, 640 F.3d 550, 561-63 (4th Cir. 2011)(publications addressing academic freedom, civil rights, campus culture, sex, feminism, abortion, homosexuality, religion, and morality touched on issues of public concern).

<sup>13</sup> See, e.g., *Tawwater v. Rowan College at Gloucester Co.*, 2023 N.J. Super. Unpub. LEXIS 700 (Sup. Ct. N.J. May 9, 2023). See also, *Jensen v. Brown*, No. 23-2545 (9th Cir. 2024)(appealing decision of district court that professor was not protected for speech re: curriculum standards at community college).

<sup>14</sup> See, e.g., *Damiano v. Grants Pass School District No. 7*, No. 1:21-cv-00859-CL, 2023 WL 2687259 (D. Ore. Mar. 29, 2023)(showing of educators’ video opposing district’s pronoun use policy was unprotected based on school’s interest in protecting safety and wellbeing of its students).

<sup>15</sup> *Id.*

<sup>16</sup> *Gruber v. Bruce*, 643 F. Supp. 3d 824; 2022 WL 17352455 (M.D. Tenn. Dec. 1, 2022), *aff’d* 2024 WL 3051196 (6th Cir. May 16, 2024)(interests in controlling a faculty member’s public criticism of ideas of another faculty member). See also *Reges v. Cauce*, No. 2:22-cv-00964-JHC 2024 WL 2140888 at \*25 (W.D. Wash. May 8, 2024)(faculty member’s alternative acknowledgment statement in syllabus interfered with the performance of instructor duties); *Riley’s American Heritage Farms v. Elsasser*, 32 F. 4<sup>th</sup> 707 (9<sup>th</sup> Cir. 2022)(genuine issue of material fact as to whether school district’s asserted interests in preventing disruption were so substantial that they outweighed vendor’s and shareholder’s free speech interests precluded summary judgment); *Boyd v. Canadian Independent Sch. Dist.*, No. 2:21-CV-95-Z-BR, 2022 WL 837933 (N.D. Tex. Feb. 17, 2022), report adopted, 2022 WL 837195 (N.D. Tex., Mar. 21, 2022)(maintaining harmony among coworkers and protecting against disruption of normal operations justified suppression of speech); *McLaughlin v. Sullivan County Board of Educ.*, No. 2:20-CV-00243-DCLC-CRW, 2021 WL 3744803 (E.D. Tenn. Aug. 24, 2021); jury verdict for school upheld, 2024 WL 233737 (January 22, 2024) (speech could lead to inaccurate survey results and otherwise impede “efficient functioning of the school administration.”).

<sup>17</sup> *Hedgepeth v. Britton*, No. 21 CV 3790, 2024 WL 689959 (N.D. Ill. Feb. 20, 2024), appeal filed (Mar. 20, 2024).

<sup>18</sup> *Wollschlaeger*, 848 F.3d at 1300

<sup>19</sup> *Reed*, 576 U.S. at 163; *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000); *Hurley*, 515 U.S. at 571, 578, 115 S.Ct. 2338; *Dale*, 530 U.S. at 659, 120 S.Ct. 2446; *303 Creative LLC v. Elenis*, 600 U.S. 570, 592 (2023).

<sup>20</sup> *303 Creative LLC v. Elenis*, 600 U.S. 570, 586 (2023).

<sup>21</sup> *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

<sup>22</sup> Compare *Meriwether*, 992 F.3d 492, *Demers v. Austin*, 746 F.3d 402 (9th Cir. 2014), *Heim v. Daniel*, 81 F.4th 212, 226-28 (2d Cir. 2023); *Buchanan v. Alexander*, 919 F.3d 847, 852-54 (5th Cir. 2019), *Piggee v. Carl Sandburg Coll.*, 464 F.3d 667, 670-71 (7th Cir. 2006), *Bishop v. Aronov*, 926 F.2d 1066, 1075 (11th Cir. 1991), and *Adams v. Trs. of Univ. of N.C.- Wilmington*, 640 F.3d 550 (4th Cir. 2011) (all (declining to apply *Garcetti* to a professor’s speech)), with *Renken v. Gregory*, 541 F.3d 769 (7th Cir. 2008) (applying *Garcetti* to a professor’s speech regarding administration of grant).

<sup>23</sup> *Meriwether*, 992 F.3d at 504. See also *Adams*, 640 F.3d at 563 ( “if applied to teaching and academic writing, *Garcetti* would directly conflict with the important First Amendment values previously articulated by the Supreme Court.”).

<sup>24</sup> *Meriwether*, 992 F.3d at 506.

<sup>25</sup> *Mayer v. Monroe Co. Community School Corp.*, 474 F.3d 477, 478-80 (7th Cir. 2007). See also *Price v. Howard Cnty. Public Sch. System*, No. GLR-22-541, 2023 WL 170425 (D. Md. Jan. 11, 2023) (K-12 teacher did not have protection for comments in question during a class debate and showed videos while teaching students in his classroom).

<sup>26</sup> *Brown*, 824 F.3d at 715.

<sup>27</sup> *Williams-Preston v. South Bend Community School Corp.*, No. 3:20-CV-773, 2023 WL 2074351 (N.D. Ind. Feb. 17, 2023). See also, *Sullivan v. Univ. of Washington*, 60 F.4th 574 (9th Cir. 2023)(information related to faculty members’ appointment to a controversial committee was not protected because committee was formed to discharge an official governmental purpose); *Bhattacharya v. Bd. of Regents of Southeast Missouri State Univ.*, 2022 WL 17844457 (E.D. Mo. Dec. 22, 2022)(communications regarding assignment of laboratory space and value of curriculum were unprotected because speech was pursuant to speaker’s official duties as a tenured professor).

<sup>28</sup> See California Model Section X, Academic Freedom, and UNF-UFF CBA, 2022-2025, Art. 10, for additional language.