

U.S. Department of Education Office for Civil Rights Publishes DEI Factsheet

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The U.S. Department of Education Office for Civil Rights (OCR) has published a [factsheet entitled “Diversity and Inclusion Activities Under Title VI,”](#) clarifying that diversity, equity, and inclusion training “in most factual circumstances” is consistent with Title VI of the Civil Rights Act of 1964 (Title VI).

Title VI provides that “no person ... shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination” due to “race, color, or national origin” by any program or initiative that receives federal funding. According to the factsheet released by OCR, “[a]ctivities intended, in whole or in part, to further objectives such as diversity, equity, accessibility, and inclusion are not generally or categorically prohibited under Title VI.”

Determining whether an activity or program of a school or college (including diversity, equity, and inclusion efforts) results in prohibited intentional different treatment because of a person’s race or the creation of a racially hostile environment requires assessing the totality of the circumstances in each particular case. OCR has enumerated activities it does not see as “categorically prohibitive” under Title VI, including:

- Diversity, equity, and inclusion training;
- Instruction in or training on the impact of racism or systemic racism;
- Cultural competency training or other nondiscrimination trainings;
- Efforts to assess or improve school climate, including through creation of student, staff, or parent teams, use of community focus groups, or use of climate surveys;
- Student assemblies or programs focused on antiharassment or antibullying;
- Investigations of, and issuance of reports concerning the causes of, racial disparities within a school; or
- Use of specific words in school policies, programs, or activities, such as equity, discrimination, inclusion, diversity, systemic racism, or similar terms.

OCR highlights that for years, in agreeing to resolve OCR Title VI investigations, schools and colleges have implemented diversity, equity, and inclusion activities (including those outlined above) to remedy potential different treatment of students, provide remedial measures to address harassing conduct, assist in remedying other forms of discrimination on the basis of race, and foster a more positive and inclusive school climate. OCR’s factsheet provides that these activities are generally compliant with the law on permissible diversity, equity, and inclusion activities.

OCR’s release of the factsheet comes as some states seek to or have enacted laws (such as Florida’s Anti-Woke law) to limit or restrict certain diversity, equity, and inclusion initiatives and training.

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Jackson Lewis attorneys in our Higher Education Group are available to assist with any questions concerning OCR's latest factsheet, assisting with the implementation of DEI initiatives and climate surveys in your school or college, including appropriately addressing federal and state obligations, or otherwise providing guidance and legal assistance with OCR investigations.

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