

U.S. Department of Education Office Publishes Guidance on Race in Admissions, School Programming

By Susan D. Friedfel, Monica H. Khetarpal, Carol R. Ashley & Laura A. Ahrens

August 28, 2023

Meet the Authors



Susan D. Friedfel

Principal
914-872-8027
Susan.Friedfel@jacksonlewis.com



Monica H. Khetarpal

Principal
(312) 803-2529
Monica.Khetarpal@jacksonlewis.com



The U.S. Department of Education Office for Civil Rights (OCR) and the U.S. Department of Justice Civil Rights Division have published a joint [Dear Colleague Letter](#) (Joint OCR and DOJ DCL) that, together with a [Q&A](#), provides information to assist colleges and universities in understanding the impact of the U.S. Supreme Court's [Students for Fair Admissions, Inc. decisions](#).

OCR also published a [separate DCL](#) (OCR DCL) that addresses Title VI of the Civil Rights Act of 1964. The OCR DCL clarifies the circumstances where institutions that receive federal funding can develop curricula and engage in activities to promote racially inclusive school communities consistent with Title VI.

The Joint OCR and DOJ DCL confirms that OCR and DOJ are committed to ensuring educational institutions remain open to all, regardless of race, and encourages institutions to cultivate campuses that are diverse in terms of viewpoints, talents, backgrounds, and experiences.

The Q&A clarifies that higher education institutions can continue to consider how an applicant's individual background and attributes, including experiences associated to race, may contribute to the campus as part of a holistic application-review process. In addition, institutions can continue to articulate missions and goals that are tied to student body diversity through means that do not give individual applicants a preference based on race in admissions decisions. Institutions may continue to operate outreach, recruitment, and pathway programs and, in doing so, may consider individuals' race and other factors such as geographic residency, socioeconomic status, family background, and parental education level. Institutions are encouraged to carefully evaluate their admissions policies to best determine which factors in a holistic admissions process reflect institutional values and commitments.

The OCR DCL clarifies that "a school-sponsored or recognized group or program with a special emphasis on race, such as a student club or mentorship opportunity, that is open to all students, typically would not violate Title VI simply because of its race-related theme." Further, extracurricular activities and events that are open to all students regardless of race generally do not create a racially hostile environment under Title VI.

Under Title VI, "no person in the United States 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. OCR clarified that the U.S. Supreme Court has confirmed Title VI prohibits racial classifications that would violate the Equal Protection Clause of the U.S. Constitution.

Carol R. Ashley

Of Counsel

Carol.Ashley@jacksonlewis.com



Laura A. Ahrens

Associate

(864) 672-8045

Laura.Ahrens@jacksonlewis.com

Related Services

Employment Litigation
Higher Education

OCR reminds institutions, “It is the province of states, localities, and educational institutions to make determinations regarding curricular and programming choices, including academic course materials and related discussions.” In particular, OCR states that it does not involve itself in complaints that are based on the content of academic course materials or related discussions absent allegations of discrimination. Generally, Title VI does not prohibit schools from holding assemblies, meetings, focus groups, or listening sessions regarding students’ experiences with race in the school or community, nor does Title VI restrict a school from sponsoring or recognizing extracurricular activities with race-related themes. All students, regardless of race, should have an equal opportunity to participate in any such educational programs or activities.

Title VI violations may occur when schools separate students based on race or treat students differently based on race, as well as if they create, encourage, accept, tolerate, or fail to correct a racially hostile educational environment. School programs, including the implementation of curricula and the support of extracurricular organizations that treat students differently on the basis of race are subject to strict scrutiny under Title VI. This means that, under a fact-specific analysis, a school must show that use of student race in this way is narrowly tailored to further a compelling interest. OCR states, “In almost all circumstances, separating students based on race violates Title VI even if programming for each group is identical.” However, a school program may include group discussions or activities that focus on race or divide students into smaller groups to discuss related topics so long as participation is not required or denied based on a student’s race.

The Jackson Lewis Higher Education Group is able to assist with questions concerning the Dear Colleague Letters. The team is also prepared to assist institutions to adjust to the changes in the legal landscape and offer confidential full admissions audits and limited reviews of specific aspects of institutions’ admission, scholarships, student programming, and other practices, along with guides to implementation. Please contact a Jackson Lewis attorney with any questions.

©2023 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.