Legal Update Article

A New Chapter for Educational Institutions: DOE Prohibits Use of Race in All Aspects of Student, Academic, Campus Life

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Takeaways

- The Department of Education's 2/14/25 Dear Colleague Letter directs educational institutions that they cannot segregate or separate or otherwise distribute benefits or burdens on the basis of race.
- It confirms the current administration's interpretation that the 2023 SCOTUS decision in *Students for Fair Admissions v. Harvard* prohibits educational institutions from considering race in nearly all aspects of student, academic and campus life.
- Institutions should continue to assess all of their programs and activities for compliance with antidiscrimination laws, including Title VI of the Civil Rights Act.

Related links

- 2/14/25 Dear Colleague Letter
- U.S. Department of Education Launches "End DEI" Portal (press release)

Article

The U.S. Department of Education's Office for Civil Rights (OCR) issued a Dear Colleague Letter (DCL) directing educational institutions that they are prohibited from using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life. To this end, the Department announces that it intends to take measures to assess compliance with Title VI of the Civil Rights Act of 1964 and its implementing regulations, including antidiscrimination requirements, beginning March 1, 2025.

Title VI prohibits discrimination on the basis of race, color, and national origin in federally assisted programs.

Although a DCL does not have the force of law or create new legal standards, the Feb. 14, 2025, DCL makes clear the current administration's interpretation of the law.

In order to ensure compliance with the DCL's directives and avoid the possible loss of federal funding, the Department advises institutions to:

- Ensure policies and actions comply with existing civil rights law, including Title VI;
- Stop all efforts to circumvent prohibitions on the use of race by relying on proxies or other indirect means to accomplish such ends; and

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- Stop all reliance on third-party contractors, clearinghouses, or aggregators that are being used in an effort to circumvent prohibited uses of race.

OCR Acting Assistant Secretary for Civil Rights Craig Trainor said the DCL was written "to clarify and reaffirm the nondiscrimination obligations of schools and other entities that receive federal financial assistance from the [U.S.] Department of Education." Trainor stated that the DCL reiterates existing legal requirements under Title VI and the Equal Protection Clause of the U.S. Constitution, among other authorities. Trainor claimed, "In recent years, American educational institutions have discriminated against students on the basis of race, including white and Asian students, many of whom come from disadvantaged backgrounds and low-income families … colleges, universities, and K-12 schools have routinely used race as a factor in admissions, financial aid, hiring, training, and other institutional programming." Trainor further reiterated that, "discrimination on the basis of race, color, or national origin is, has been, and will continue to be illegal."

SFFA Decision

The DCL notes the U.S. Supreme Court's decision in *Students for Fair Admissions v. Harvard (SFFA),* 600 U.S. 181 (2023), "sets forth a framework for evaluating the use of race by state actors and entities covered by Title VI." The DCL states that, although *SFFA* addressed admissions decisions, its holding applies more broadly to institutional programming. In essence, the Department's stance is that "[i]f an educational institution treats a person of one race differently than it treats another person because of that person's race, the educational institution violates the law."

Examples; Additional Guidance

The DCL provides examples of programs that OCR views as discriminatory in light of *SFFA.* These include diversity, equity, and inclusion programs that teach students that "certain racial groups bear unique moral burdens."

The DCL also provides examples of programs that may appear neutral on their face but that may take race into consideration and thus run afoul of antidiscrimination laws. The examples include the use of students' personal essays or writing samples, participation in extracurriculars, elimination of standardized testing to increase racial diversity, or "other cues" as a means to determine or predict a student's race and either favor or disfavor students as a result. The Department's view is that relying on such "non-racial information as a proxy for race" to make decisions is a violation of the law regardless of whether the proxies are used on an individual or systematic basis.

The DCL states that additional "legal guidance will follow in due course" and that, for all institutions that receive federal financial assistance, the Department "will vigorously enforce the law on equal terms as to all preschool, elementary, secondary, and postsecondary educational institutions, as well as state educational agencies."

On Feb. 27, 2025, the Department announced the launch of its "End DEI" portal. The secure portal allows the public to submit reports of discrimination based on race and sex in publicly funded K-12 schools. The Department said it will use the submissions to identify potential areas of investigation.

This is a developing situation, and we continue to analyze and understand the implications for academic institutions. Jackson Lewis' attorneys are available to answer

your questions, review policies, and provide guidance.

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