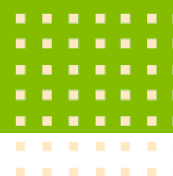




Viewpoints

Department of Education Releases Guidance on Use of Race and DEI Programming



On February 14, 2025, the Office of Civil Rights released guidance in the form of a **“Dear Colleague” letter** regarding race in K-12 schools and higher education following the Supreme Court’s 2023 decision in *Students for Fair Admissions v. Harvard*, a Supreme Court case from 2023 that ended the use of race as a permissible factor to be considered in college admissions.

The letter outlines the Department’s position on existing law, including Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the United States Constitution. Building on the Supreme Court’s use of strict scrutiny to analyze race-based classifications, the letter clarifies that “[n]ebulous concepts like racial balancing and diversity are not compelling interests” do not pass strict scrutiny. It notes that “treating students differently on the basis of race to achieve nebulous goals such as diversity, racial balancing, social justice, or equity is illegal under controlling Supreme Court precedent.”



Notably, the letter includes diversity, equity, and inclusion, or “DEI,” programming in its definition of impermissible racial discrimination based on the rationale that such programming preferences certain races while imputing moral burdens onto others.

The letter notifies educational institutions that it “intends to take appropriate measures to assess compliance with the applicable statutes and regulations based on the understanding embodied in this letter,” including anti-discrimination requirements that are a condition for federal funding. The letter advises educational institutions to do the following:

1. Ensure that their policies and actions comply with existing civil rights law.
2. Cease all efforts to circumvent prohibitions on the use of race by relying on proxies or other indirect means to accomplish such ends, such as through essays or personal statements.
3. Cease all reliance on third-party contractors, clearinghouses, or aggregators that are being used by institutions in an effort to circumvent prohibited uses of race.

It reminds institutions that failure to comply with federal civil rights law may result in potential loss of federal funds.

If you have questions about how this guidance impacts your institution, please reach out to legal counsel.

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