

U.S. Department of Education To Step Up Scrutiny of Any Educational Institution's Programs Deemed "DEI"

by Nicole Engisch and Nisha Verma

On February 14, 2025, the U.S. Department of Education, Office of Civil Rights (the "Department") issued a "Dear Colleague Letter" to "clarify and reaffirm" that schools, colleges and universities receiving "federal financial assistance" are required to comply with federal civil rights laws.^[1] The letter further explains how the current administration interprets federal civil rights laws, in line with the Trump administration's other directives regarding diversity, equity, and inclusion ("DEI"). Lastly, the letter announces that, starting as early as February 28, 2025, the Department will begin enforcing compliance with its interpretation of federal law against educational institutions. This eUpdate will summarize and analyze the key provisions in the letter and will offer recommendations in light of the letter's pronouncements.

What is the Basis for the Letter?

The letter claims that educational institutions have discriminated against students on the basis of race, including white and Asian students, by using "race as a factor in admissions, financial aid, hiring, training, and other institutional programming," as well as by encouraging "segregation by race at graduation ceremonies and in dormitories and other facilities." The letter also alleges that educational institutions have "toxically indoctrinated students" through DEI training, programming and discipline and through teaching about "systemic and structural racism." Thus, the Department's letter is consistent with a number of President Trump's recently issued Executive Orders ("EOs"), including EO 14173 ([Ending Illegal Discrimination And Restoring Merit-Based Opportunity – The White House](#)), and U.S. Attorney General Pam Bondi's Department of Justice directive entitled, "[Ending Illegal DEI and DEIA Discrimination and Preferences.](#)"^[2]

As with other recent administration directives, the letter cites the Supreme Court's recent case, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023), and contends that not only did the case provide that "the use of racial preferences in college admissions is unlawful," but it also set forth a broad

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- Nicole Engisch
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framework for evaluating any practice that classifies and assigns students based on race. The letter asserts that any racial classification practice will be subject to strict scrutiny, and that only two delineated, narrow types of interests will meet that strict scrutiny test: (1) remediating specific, identified instances of past illegal discrimination; and (2) avoiding imminent and serious risks to human safety in prisons.

What Practices Does the Letter Highlight?

The letter contends that while the *Students for Fair Admissions* case involved admissions decisions, the Department interprets that decision “more broadly,” and believes it prohibits educational institutions (and other covered entities) from using race in “admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies,” as well as “all other aspects of student, academic, and campus life.” The letter further asserts that “race-based decision-making, no matter the form, remains impermissible.”

The letter also asserts that any decision based on what it refers to as using “non-racial information as a proxy for race” will violate the law, such as eliminating standardized testing as a means of achieving increased racial diversity.

The letter calls out DEI programs that “teach students that certain racial groups bear unique moral burdens that others do not” because they purportedly rely on “crude racial stereotypes” and therefore deny students the ability to participate fully in school.

The letter expressly advises educational institutions to: (1) ensure that their policies and actions comply with civil rights law; (2) stop efforts to “circumvent prohibitions on the use of race by relying on proxies”; and (3) stop reliance on third-party contractors, clearinghouses, or aggregators to circumvent prohibited uses of race.

Does the Letter Have the Force of Law?

The letter notes that its guidance “does not have the force and effect of law and does not bind the public or create new legal standards.” Instead, the letter intends “to provide clarity” regarding the requirements under Title VI of the Civil Rights Act of 1964, the Equal Protection Clause, “and other relevant authorities.”

The letter claims to provide notice of the Department’s “existing interpretation of federal law” and states that additional guidance is forthcoming, but it does not say when or in what form that guidance will take.

How Will the Department Enforce the Guidance in the Letter?

The letter states that the Department will “take appropriate measures to assess compliance” with federal law based on the letter’s parameters beginning no later than 14 days, or starting February 28, 2025, and it notes that those institutions that fail to comply with federal civil rights law may, “consistent with applicable law, face potential loss of federal funding.”

The letter also includes a link to the Department's Office of Civil Rights online complaint form, and it encourages individuals to submit complaints against any institution believed to have engaged in unlawful discrimination.

How Should Education Institutions Anticipate the Guidance Will Be Implemented?

- The letter appears to be intentionally broad in applying not just to educational institutions that receive federal funding, but also to institutions that receive "financial assistance." The letter may therefore apply to those institutions in which students are receiving federal financial aid.
- The letter appears to go beyond current Supreme Court case law by expanding the holding of the *Students for Fair Admissions* case by applying that case's strict scrutiny test to matters beyond admission decisions. Accordingly, while the letter signifies the Department's intention to broaden the holding to other aspects of education, disputes regarding the scope of the *Students for Fair Admissions* case would have to be litigated in court.

What Are the Next Steps for Educational Institutions?

- We recommend that educational institutions:
- Conduct an independent and comprehensive privileged internal DEI review to evaluate policies, practices, programs, initiatives, and communications and to assess reputational, business, and legal risk. The scope of the review should include external and internal communications as well as all training.
- Because the Department's letter, and the President's Executive Orders and Bondi's DOJ directives, do not change or replace existing anti-discrimination statutes, the DEI review should assess whether and to what extent your organization may continue to engage in practices that are consistent with anti-discrimination and other laws that have long been on the books, despite the recent directives from the Trump administration, which present a risk even where a given practice was not previously considered to be illegal.
- Educational institutions and other organizations should keep in mind that state law addressing discrimination and DEI continues to apply, and at least certain states may interpret state law differently from the administration's recent directives.^[3]
- Be prepared for further scrutiny from the Department, as well as the possibility of subpoenas, law enforcement involvement, whistleblower complaints or scrutiny from various agencies.
- Consider that what was formerly a garden-variety "discrimination" claim response playbook must evolve to address the changing landscape that now includes the possibility of False Claims Act liability (for federal contractors) and criminal enforcement.
- Consider additional training and adjusting mindsets so stakeholders can better understand administration directives when addressing DEI policies and practices and other certifications related to federal funding.

^[1] The letter was issued by the Acting Assistant Secretary for Civil Rights at the

Department, Craig Trainor. See [dear-colleague-letter-sffa-v-harvard-109506.pdf](#).

[2] See Dorsey's recent eUpdates: [What Companies and Higher Education Institutions Need to Know Regarding DOJ's New Memoranda to Enforce the Administration's Directive to "End Illegal DEI" Practices and for the "Total Elimination of Cartels and Transnational Criminal Organizations"](#) | News & Resources | Dorsey, [Goodbye Affirmative Action Plan? President Trump Revokes Long-Standing Federal Contractor and Grantee Practices and Targets Private Sector DEI Initiatives with New Enforcement Initiative](#) | News & Resources | Dorsey, and [Federal Assistance in Jeopardy? What to Know about OMB Guidance About Hundreds of Billions in Federal Research and Loans to Research Institutions, Universities, and Private Organizations](#) | News & Resources | Dorsey.[3] See Multi-State Guidance Concerning Diversity, Equity, Inclusion and Accessibility Employment Initiatives: <https://www.mass.gov/doc/multi-state-guidance-concerning-diversity-equity-inclusion-and-accessibility-employment-initiatives/download>