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Re: Critical Points on Title VI and Response to the Department of Education, Office of Civil Rights February 14, 2025 Dear Colleague letter and February 28, 2025 "Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act"



Dear Educator:

The Lawyers' Committee for Civil Rights Under Law represented students and alumni before the Supreme Court in the *SFFA v. Harvard* and *SFFA v. UNC*. The holding in those cases addressed specifically the use of race in admissions policies applied by the University of North Carolina and Harvard College. We write today in response to a February 14, 2025 Dear Colleague Letter from the Department of Education's ("ED") Office for Civil Rights ("OCR") purporting to summarize the existing legal requirements under Title VI of the Civil Rights Act of 1964 (Title VI) based on its interpretation of the Supreme Court's decision in *SFFA v. Harvard* ("2025 Dear Colleague Letter"), as well as a follow-up Frequently Asked Questions document that attempts to clarify this initial guidance ("FAQs").[1] **To put it plainly, ED's guidance constitutes a vast and unjustified expansion of the *SFFA v. Harvard* decision ("*SFFA*") that conflicts with federal civil rights law.**

In this letter, we clarify the *true* scope of Title VI to help ensure that your educational institution, whether at the PreK-12 or higher education level, continues to do the vital—and in some cases federally mandated—work that ensures students from all backgrounds are welcomed and supported.[2]

**To that end, we have determined that both the 2025 Dear Colleague Letter and the FAQs contain statements of current Title VI requirements and suggestions for compliance that are improper, misleading, or incorrect. In summary,**

- The 2025 Dear Colleague Letter improperly attacks the ability to use race-neutral means to achieve greater diversity, suggesting that educational institutions cannot seek to increase racial diversity by using race-neutral means. There is no legal authority, however, that suggests that the use of race-neutral means in this way is prohibited under Title VI.

- Though the 2025 Dear Colleague Letter implies otherwise, *SFFA* does not require a colorblind approach in all facets of operations and decision-making for educational institutions.

- Both the 2025 Dear Colleague Letter and the FAQs inaccurately describe diversity, equity, and inclusion programs as a form of impermissible racial stereotyping or

initiatives that can create hostile environments that violate Title VI. In truth, evidence-based DEI programs are critical tools that educational institutions can use to combat discrimination and racially hostile environments, sometimes as a way to fulfill their obligations under Title VI.

- The FAQs misstate educational institutions' obligations to prevent segregation under Title VI by criticizing institutional support for race-based affinity groups and the celebrations they often hold. But under Title VI, educational institutions are welcome to support such activities so long as they are open to all students, regardless of race.

Given the many inaccuracies and misrepresentations in the 2025 Dear Colleague Letter and the FAQs, we urge you to continue to provide all lawful programming designed to enhance racial equity on your campus.

## I. Background: Title VI and the Department of Education

Ten years after the landmark *Brown v. Board of Education* decision, Congress enacted Title VI to address persisting issues of segregation and discrimination. Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[3] At its core, Title VI was designed to ensure that educational institutions fulfill their responsibilities to ensure educational opportunity for all students, regardless of their race, by remedying racial discrimination, including harassment.

While some progress has been made since the passage of Title VI, much work remains to be done to realize equitable educational opportunity. Today, Black students and other students of color continue to disproportionately attend under-resourced schools due to the lasting effects of *de jure* segregation and the ongoing ramifications of housing segregation. As a result, Black and Latino students continue to be underrepresented in advanced placement math and computer science courses and have less access to school counselors and certified teachers.[4] They also continue to face deeply entrenched barriers to educational access at all levels, driven by implicit biases and discriminatory policies. For instance, Black and Latino students disproportionately face serious discipline, like suspensions and expulsions, as compared to white students accused of similar offenses.[5] Racial and ethnic disparities also persist in higher education, where "[w]hite and Asian students are more likely than others to enroll in college, attend four-year institutions, and graduate with degrees that open the doors to valuable labor market opportunities."[6] On campus, 21% of Black postsecondary students say they "frequently" or "occasionally" feel discriminated against, and Black students are more likely to experience discrimination at institutions with the least racially diverse student bodies.[7] **Under Title VI, educational institutions have an obligation to ensure that they are not engaging in discriminatory practices, including by identifying and remedying intentional discrimination, artificial**

**discriminatory barriers to educational opportunity, and racial harassment that makes school schools unsafe for students of color.**

To help educational institutions understand the nature of their responsibilities under Title VI, the Department of Education periodically provides guidance, such as "Dear Colleague Letters" or FAQs, to explain the current state of federal civil rights law and how schools should comply with it. **These guidance documents do not make or change federal law**; they only provide guidance about existing law.

OCR released Title VI guidance in 2023 which made clear that "[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."[8] Other than the Supreme Court's decision in *SFFA*, there have been no major changes in Title VI law since that 2023 guidance was issued.

Yet, in purporting to address educational institutions' obligations under Title VI, the 2025 Dear Colleague Letter attempts to rewrite federal law by suggesting that a wide scope of efforts to combat persistent racial disparities at the PreK-12 and higher education level are illegal. It makes broad and unsupported assertions regarding what Title VI prohibits and threatens that educational institutions will lose their federal funding if they fail to comply with the Trump Administration's view of the law. Two weeks after ED issued the 2025 Dear Colleague Letter, it distributed the FAQs, which likewise attempt to explain and clarify schools' obligations under Title VI. Though the FAQs appear to walk back some of the most egregious misstatements of law in the 2025 Dear Colleague Letter, they continue to overstate the scope of school programs and initiatives that may be unlawful under Title VI.

## II. Analysis of Legal Errors in the 2025 Letter and FAQs

**We implore your schools, colleges, and universities to avoid taking drastic action in response to the 2025 Dear Colleague Letter and FAQs, and to resist pressure to dismantle important programs or activities that comply with federal law.**

In that vein, we ask you to consider some critical rebuttals to the 2025 Dear Colleague Letter and the FAQs.

### 1. The 2025 Dear Colleague Letter improperly attacks the ability to use race-neutral means to achieve greater diversity.

Most egregiously, ED attempts to expand the reach of the *SFFA* decision by stating that the use of race-neutral means to advance racial diversity or other race-conscious goals is prohibited under Title VI.[9] This is simply untrue.

In *SFFA*, two justices emphasized that the use of race-neutral means was an acceptable way to achieve the race-conscious goals that schools like Harvard and UNC had. Specifically,

Justice Kavanaugh stated in his concurring that "governments and universities still can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race."[10] Likewise, Justice Thomas's concurring opinion expressed support for race-neutral programs: to support his interpretation of federal law in the case, he examined the implementation of the Freedman's Bureau, a congressional effort after the civil war to provide aid to recently-freed Black people, and described it as a permissible race-neutral program despite the fact that the overwhelming majority of those who would be helped by the program were Black.[11]

Importantly, in the wake of the *SFFA* decision, courts have upheld the use of race-neutral measures to enhance racial equity. Specifically, the Fourth Circuit in *Coalition for TJ v. Fairfax County School Board* and the First Circuit in *Boston Parent Coalition for Academic Excellence Corp. v. School Committee for the City of Boston* both held that high school admissions programs that increased the racial diversity of their student population through race-neutral means were permissible. In reaching its decision, the Fourth Circuit specifically noted that "[t]he Supreme Court has repeatedly blessed seeking to increase racial diversity in government programs through race-neutral means."[12] Similarly, the First Circuit concluded that "we find no reason to conclude that [*SFFA*] changed the law governing the constitutionality of facially neutral, valid secondary education admissions policies."[13] Ultimately, the Supreme Court declined to review these decisions, meaning that they are still good law.

**There is nothing in *SFFA* or other recent decisions from the Supreme Court or other federal courts to suggest that the use of race-neutral means to achieve race-conscious goals, like greater racial diversity, is prohibited under Title VI.** This means that efforts like removing artificial barriers to admission to increase racial diversity are still legal under Title VI. Despite what the 2025 Dear Colleague Letter says, this could include, for example, removing standardized testing requirements, which extensive research has shown systematically underpredict the academic potential of Black students and other students of color, hindering upward mobility.[14] In fact, in some cases, efforts to remove artificial barriers may be necessary to remedy discrimination under Title VI.

2. **The 2025 Dear Colleague Letter overstates the reach of the Supreme Court's decision in *SFFA,* falsely implying that it requires absolute colorblindness.**

Contrary to the 2025 Dear Colleague Letter's description of the Supreme Court's decision in *SFFA*,[15] ***SFFA* does not require a colorblind approach in all facets of operations and decision-making**, including, for example, targeted outreach and recruitment efforts. In *SFFA*, the Supreme Court held only that the race-conscious admissions programs at Harvard and UNC failed to satisfy strict scrutiny.

The Court's narrow ruling in *SFFA* does not support the broad application that the 2025 Dear Colleague Letter attempts to ascribe to the decision. As Chief Justice Roberts said in the majority opinion in *SFFA*, "nothing in this opinion should be construed as prohibiting

universities from considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."[16] The decision also made clear that students applying to college are allowed to self-disclose their race in their application materials, such as in their personal essays, and that colleges and universities may consider an applicant's discussion of how race affected the applicant's life, so long as that discussion was concretely tied to a particular characteristic the applicant possessed or the unique way in which they could contribute to the university.[17]

The FAQs seemingly acknowledge that absolute colorblindness is not required, stating that "[s]chools can credit what is unique about the individual in overcoming adversity and hardship but never the person's race."[18] However, while the FAQs accurately state that schools cannot craft essay prompts that *require* an applicant to discuss their race, prompts that the schools know can lead to students voluntarily self-disclosing are lawful so long as the schools do not impermissibly rely on the student's race to make their admissions decisions. Indeed, students are free to express their authentic selves in their application, including how they may have "overcame racial discrimination," or how their "heritage or culture motivated," them as long as the student is "treated on the basis of his or her experiences as an individual."[19]

**3. The 2025 Dear Colleague Letter and the FAQs inaccurately describe Diversity, Equity, and Inclusion programs as a form of impermissible racial stereotyping that creates a hostile environment.**

Despite the 2025 Dear Colleague Letter's assertion that diversity, equity, inclusion, and accessibility ("DEI") programs are a form of "covert racial discrimination" or the FAQs' claim that "extreme practices" can create hostile environments,[20] evidence-based efforts designed to remedy particular barriers and to achieve DEI are tools that educational institutions can use to help *combat* discrimination and racially hostile environments, as required by Title VI. As the Attorneys General from 16 states in a joint letter recently explained, "[w]ell-designed diversity, equity, inclusion, and accessibility initiatives also call on [educators] to pay attention to the (intentional and unintentional) impact their policies and practices have on different groups of current and prospective [students]. For decades, both state and federal courts have consistently recognized that this does not amount to impermissible discrimination."[21] DEI programming can include "[p]rioritizing widescale recruitment efforts to attract a larger pool of applicants from a variety of backgrounds," "[c]onducting training on topics such as unconscious bias, inclusive leadership, and disability awareness to improve [student] confidence and create a shared understanding around cultural norms," and hosting affinity groups (as long as they remain open to all) to allow students from similar backgrounds or experiences to feel valued and heard.[22] These initiatives are critical tools that help to prevent and correct intentional discrimination and unconscious bias, identify and break down systemic barriers, integrate occupations, and increase access to opportunity.

The 2025 Dear Colleague Letter also attacks inclusive and culturally responsive education programs, claiming that they "teach students that certain racial groups bear unique moral burdens that others do not" and that "[s]uch programs stigmatize students who belong to particular racial groups based on crude racial stereotypes."[23]

However, inclusive and culturally responsive education helps to better explain the history of inequality in our country and its continuing present-day consequences for historically marginalized communities. This approach to education does not "toxically indoctrinate[] students" as the 2025 Dear Colleague Letter contends, nor does it create hostile environments for students as the FAQs assert, but rather has been found to have numerous benefits, including being associated with positive student perceptions of racial socialization, feelings of belonging, and exploration of ethnic identity in school.[24] In this way, inclusive education does not discriminate on the basis of race or contribute to a hostile environment, but instead helps students confront discrimination and creates a safe school environment where all students can learn. And critically, even though ED has recently demonstrated a willingness to take aim at university curriculum,[25] principles of academic freedom prohibit the government from dictating "who may teach, what may be taught, how it shall be taught, and who may be admitted to study."[26]

4. **The FAQs falsely imply that student affinity group activities amount to racial segregation under *Brown v. Board of Education* and Title VI.**

The FAQs incorrectly assert that affinity practices in the context of "programming, graduation ceremonies, housing, or any other aspect of school life" that currently exist in schools across the country constitute unlawful "segregationist activities" under *Brown v. Board of Education*.[27] This is a gross mischaracterization of the law. Guidance issued by OCR during the prior Administration made clear that school-sanctioned or school-sponsored race-related student groups are lawful so long as they are open to all students regardless of race.[28] In fact, shortly after the decision in *SFFA*, OCR released a Dear Colleague Letter on Race and School Programming, which indicated that educational institutions could, consistent with Title VI, engage in activities that promote racially inclusive school communities.[29] This guidance indicated, among other things, that Title VI generally does not restrict school districts from holding assemblies, meetings, focus groups, or listening sessions that relate to students' experiences with race in their school or community; and that school-sponsored or recognized groups or programs with a special emphasis on race, such as a student club or mentorship opportunity, that are open to all students, do not violate Title VI simply because of a race-related theme.[30] This would include voluntary student associations that are open to all but based on a protected characteristic, such as a Black Students Association, or voluntary recognition ceremonies at graduation, such as the Black Students Association hosting an event to celebrate its graduating members. This remains true regardless of the racial makeup of students that participate in such associations or attend such events.

## III. Conclusion

**We urge you to continue to provide all lawful programming designed to enhance racial equity on your campuses.** Though the Supreme Court has ruled that explicit racial balancing, a process where a school seeks a "specified percentage of a particular group merely because of its race or ethnic origin," is not permitted,[31] the other stated goals of diversity, social justice, or equity not only have not been found impermissible, but in fact were lauded by Chief Justice Roberts in *SFFA.* There, he stated that UNC's and Harvard's goals, including "better educating its students through diversity," "producing new knowledge stemming from diverse outlooks," and "enhancing appreciation, respect, and empathy, cross-racial understanding, and breaking down stereotypes," were "commendable."[32] The 2025 Dear Colleague Letter's attempt to suggest otherwise is merely an effort to scare schools into making unnecessary changes to programs that are designed to help students of color.

To reiterate, guidance from ED, such as the 2025 Dear Colleague Letter, cannot make or change existing law. Therefore, **any programs, policies, or procedures that your educational institution previously ensured were compliant with Title VI are likely still compliant regardless of the sweeping assertions in the 2025 Dear Colleague Letter and the FAQs**. And despite the 14-day deadline stated in the 2025 Dear Colleague Letter, the FAQs make clear that there are several procedural steps that OCR must undertake before it can withhold federal funding, including conducting an investigation and working with the school to address issues if OCR determines that the school has violated civil rights laws.[33]

We are, of course, greatly disappointed that the Trump Administration is attempting to use Title VI to scare educational institutions into abandoning the important work they are doing to support all of their students, including students of color. Rather than cede to the 2025 Dear Colleague Letter, we are counting on you to continue striving to achieve the educational equity that Title VI promises.

Sincerely yours,

*/s/ Michael Pillera*
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[1] Letter from Craig Trainor, Acting Assistant Sec'y for Civ. Rts., U.S. Dep't of Educ., to Colleagues (Feb. 14, 2025); U.S. DEP'T OF EDUC., OCR, FREQUENTLY ASKED QUESTIONS ABOUT RACIAL PREFERENCES AND STEREOTYPES UNDER TITLE VI OF THE CIVIL RIGHTS ACT (Feb. 28, 2025).
[2] This letter should not be construed as legal advice and readers should consult their attorney for legal consultation.
[3] 42 U.S.C. § 2000d.
[4] Ileana Najarro, *What the Latest Civil Rights Data Show About Racial Disparities in Schools*, EDUCATION WEEK (Jan. 16, 2025); U.S. DEP'T OF EDUC., OCR, STUDENT ACCESS TO AND ENROLLMENT IN MATHEMATICS, SCIENCE, AND COMPUTER SCIENCE COURSES AND ACADEMIC PROGRAMS IN U.S. PUBLIC SCHOOLS 6, 16, 17 (May 2024).
[5] Najarro, *supra* note 4; U.S. DEP'T OF EDUC., OCR, STUDENT DISCIPLINE AND SCHOOL CLIMATE IN U.S. PUBLIC SCHOOLS 5, 7, 8, 14 (Nov. 2023).
[6] AM. COUNCIL ON EDUC. & MELLON FOUND., RACE AND ETHNICITY IN HIGHER EDUCATION: 2024 STATUS REPORT xi (2024).
[7] Camille Lloyd & Courtney Brown, *One in Five Black Students Report Discrimination Experiences*, GALLUP (Feb. 9, 2023).
[8] U.S. DEP'T OF EDUC., OCR, FACT SHEET: DIVERSITY AND INCLUSION ACTIVITIES UNDER TITLE VI 1 (Jan. 31, 2023).
[9] 2025 Dear Colleague Letter at 2–3 (describing programs that "may appear neutral on their face, [but] a closer look reveals that they are, in fact, motivated by racial considerations" and those that rely "on non-racial information as a proxy for race" as impermissible under Title VI).
[10] *SFFA*, 600 U.S. at 317 (Kavanaugh, J., concurring) (cleaned up).
[11] *Id.* at 247 (Thomas, J., concurring) ("Importantly, however, the [Freeman Bureau's] Acts applied to *freedmen* (and refugees), a formally race-neutral category, not blacks writ large.").
[12] *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 891 (4th Cir. 2023), *cert. denied*, 218 L. Ed. 2d 71 (Feb. 20, 2024).
[13] *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 61 (1st Cir. 2023), *cert. denied*, 145 S. Ct. 15 (2024).
[14] William C. Kidder & Jay Rosner, *How the SAT Creates "Built-In Headwinds": An Educational and Legal Analysis of Disparate Impact*, 43 SANTA CLARA L. REV. 131 (2002); Saul Geiser, *Norm-Referenced Tests and Race-Blind Admissions: The Case for Eliminating the SAT and ACT at the University of California*, UC BERKELEY CSHE 15.17 (Dec. 2017); Richard V. Reeves & Dimitrios Halikias, *Race Gaps in SAT Scores Highlight Inequality and Hinder Upward Mobility*, BROOKINGS INST. (Feb. 1, 2017).
[15] *See* 2025 Dear Colleague Letter at 2.
[16] *SFFA*, 600 U.S. at 230.
[17] *See id.* at 230–31.
[18] FAQs at 7.
[19] *SFFA*, 600 U.S. at 231.
[20] 2025 Dear Colleague Letter at 3; FAQs at 7.
[21] OFFS. OF THE ATT'YS GEN. OF MASS. & ILL., MULTI-STATE GUIDANCE CONCERNING DIVERSITY, EQUITY, INCLUSION AND, ACCESSIBILITY EMPLOYMENT INITIATIVES 3 (Feb. 13, 2025).
[22] *Id.* at 4–5.
[23] 2025 Dear Colleague Letter at 3.
[24] *Id.* at 2; FAQs at 6; Christy M. Byrd, *Does Culturally Relevant Teaching Work? An Examination from Student Perspectives*, 6 SAGE OPEN 1 (July–Sept. 2016).
[25] *See, e.g.*, Collin Binkley & Jake Offenhartz, *Trump Demands Unprecedented Control at Columbia, Alarming Scholars and Speech Groups*, THE ASSOCIATED PRESS (Mar. 14, 2025).
[26] *Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 263 (1957) (citation omitted).
[27] FAQs at 5.
[28] U.S. DEP'T OF JUST. & DEP'T OF EDUC., QUESTIONS AND ANSWERS REGARDING THE SUPREME COURT'S DECISION IN *STUDENTS FOR FAIR ADMISSIONS, INC. V. HARVARD COLLEGE AND UNIVERSITY OF NORTH CAROLINA* (Aug. 14, 2023).
[29] Letter from U.S. Dep'ts of Just. & Educ. to Colleagues (Aug. 14, 2023).
[30] *Id.* at 10–11.

[31] *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 311 (2013).
[32] *SFFA*, 600 U.S. at 214 (citation omitted).
[33] For more details on the steps that OCR must take before it can withhold federal funding, refer to its 2025 Case Processing Manual. U.S. DEP'T OF EDUC., OCR., CASE PROCESSING MANUAL (CPM) (Feb. 19, 2025).