

Insights, News & Events

DEPARTMENT OF EDUCATION PROVIDES DEI GUIDANCE AFTER SCOTUS AFFIRMATIVE ACTION RULING: 4 THINGS COLLEGES AND UNIVERSITIES NEED TO KNOW

Insights
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Colleges and universities can still take steps to foster diverse and inclusive campuses — even after the Supreme Court’s decision severely limiting race-conscious admissions in education, according to the latest guidance from the Department of Education (DOE). Specifically, the DOE issued a “Dear Colleague” letter and Q&As last week to help colleges and universities understand the SCOTUS ruling as they continue to pursue racially diverse campuses “that include students with a range of viewpoints, talents, backgrounds, and experience.” Here are the top four points you need to know about the August 14 guidance as you review your diversity and inclusion initiatives for compliance and success.

1. Back to School: The Supreme Court Decision

This summer, the Supreme Court held that the race-conscious admissions policies at Harvard College and the University of North Carolina violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act. In its opinion, the Court noted that, except for military academies, all colleges and universities — whether public or private — are subject to the ruling if they receive federal financial aid. This blockbuster decision has forced admissions teams to rethink and rework a decades-old approach that had become interwoven into the day-to-day practices of many colleges and universities. You can read more on the decision [here](#). The good news is that the DOE’s recent guidance provides some clarity on how colleges and

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universities can move forward with diversity and inclusion initiatives.

2. Head of the Class: What Did the Department of Education Say?

In its ["Dear Colleague" letter](#), the DOE reaffirmed its commitment to ensuring educational institutions remain open to all individuals, regardless of their race. Importantly, the DOE reinforced the impact diverse student populations have on campuses — “livelier and more informative classroom discussions, breaking down of prejudices and increased cross-racial understanding, as well as heightened cognitive development and problem-solving skills.”

To that end, the DOE provided some insight into how the higher education community can still fulfil its goals of achieving a diverse student population while complying with the decision. Examples include:

- Focusing on recruitment, retention, and inclusion on campus;
- Providing prospective students with messaging that reinforces a commitment to all students being welcome; and
- Reviewing policies and procedures to ensure they highlight and prioritize those attributes that you value most.

3. Saved by the Bell: Ways Colleges and Universities Can Still Achieve Diverse Student Populations

The Q&A document delves deeper into these concepts. According to the DOE, colleges and universities should:

- **Continue to review applications through a holistic lens**, ensuring their application process includes opportunities for applicants to demonstrate how backgrounds and attributes position the applicant to contribute to the campus.
- **Consider other steps to achieve a student body that is diverse across a broad range of factors including race and ethnicity.** Such an approach should allow for careful consideration of targeted outreach, recruitment, and pathway program strategies.

- Remember that the decision does not foreclose an admissions officer from ultimately learning the race or ethnicity of the applicant as part of an evaluation process that faithfully adheres to the institution's values, **so long as an admissions decision is not made based on race.**

The DOE also encouraged colleges and universities to examine admission preferences tied to legacy status or donor affiliation, which are unrelated to a student's individual merit and potential and which tend to benefit privileged students.

4. Extra Credit: Other Considerations for Higher Education Institutions

The DOE also affirmed that colleges and universities may continue to collect demographic data from applicants, so long as that information is not impermissibly used in admissions decisions. The collection of this data has benefits, such as providing support for developing and refining outreach, recruitment, and pathway programs targeted to the institution's needs. Such collection may also aid in evaluating admissions programs for potential discriminatory impact, as well as providing context for evaluating student programming.

The DOE also encouraged institutions to carefully evaluate their policies to determine which factors most faithfully reflect institutional values and commitments. This includes all policies — including, for example, whether preferences for legacy students or children of donors might be “counter to efforts to promote equal opportunities for all students in the context of college admissions.”

Finally, the DOE reminds the higher education community that a key component in this process is retaining students from diverse backgrounds — something more than just merely admitting them. The DOE supports institutions fostering a sense of belonging through offices of diversity, campus cultural centers, and other campus resources — ensuring they are available to all students.

Conclusion

Please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Higher Education Team](#) to obtain practical advice and guidance on how to adapt your policies to comply. Although this guidance is directed

toward colleges and universities, K-12 school leaders will surely have questions about best practices for their DEI programs. Our [K-12 attorneys](#) are ready to help. We will continue to monitor the latest developments and provide updates as warranted, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information.