



Education Department Kicks Off New Era of Title VI Discrimination Enforcement: What Your School Must Know + 5 Steps to Take Now

Insights

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Starting tomorrow, the U.S. Department of Education will crack down on “overt and covert racial discrimination” in educational institutions receiving federal funding, according to a February 14 “Dear Colleague” letter issued by the agency’s Office for Civil Rights (OCR). While the letter states that it aims to “clarify and reaffirm” existing nondiscrimination obligations, it has created compliance confusion for many schools across the country, especially regarding their diversity-related activities. We’ll explain everything your institution needs to know and provide five steps you should consider taking immediately to comply.

What Happened?

The OCR issued a “Dear Colleague” letter on February 14 that targets educational institutions – including preschool, elementary, secondary, and postsecondary educational institutions that receive federal financial assistance from the DOE – and their responsibilities under Title VI of the Civil Rights Act, the Constitution, and other relevant authorities. While the letter is presented as a reminder of existing legal requirements, it centers on the agency’s broad assertion that: “The law is clear: 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.”

What Does the “Dear Colleague” Letter Say?

After claiming that American schools have “toxically indoctrinated students with the false premise that the United States was built upon ‘systemic and structural racism’ and advanced discriminatory policies and practices,” the letter warns educational institutions that Title VI discrimination “under any banner” is illegal, citing the law’s prohibition on discrimination based on race, color, or national origin in any program or activity receiving federal financial assistance. It then asserts that the Supreme Court’s 2023 decision prohibiting race-conscious admissions must be extended to other educational operations, including:

- hiring, promotion, and compensation;
- financial aid, scholarships, and prizes;
- administrative support, discipline, housing, and graduation ceremonies; and

- **all other aspects of student, academic, and campus life.**

OCR adopts a “simple” test in the letter: “If 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.” The agency also states that the following programs and practices, among others, violate Title VI:

- DEI programs that “preference certain racial groups and teach students that certain racial groups bear unique moral burdens that others do not.”
- The use of “students’ personal essays, writing samples, participation in extracurriculars, or other cues as a means of determining or predicting a student’s race and favoring or disfavoring such students.”
- The elimination of standardized testing “to achieve a desired racial balance or to increase racial diversity.”
- The encouragement of “segregation by race at graduation ceremonies and in dormitories and other facilities.”

The letter closes by advising all educational institutions to:

- ensure that their policies and actions comply with existing civil rights law;
- cease all efforts to circumvent prohibitions on the use of race by relying on proxies or other indirect means; and
- cease all reliance on third-party contractors, clearinghouses, or aggregators to circumvent prohibited uses of race.

How Does This Impact Your Educational Institution?

While the “Dear Colleague” letter does not technically have the force of law, the DOE clearly intends to proactively monitor Title VI compliance, as depicted in the letter, at federally funded educational institutions across the board. Specifically, it states that schools must review their policies and eliminate race-based considerations by **February 28** or risk losing all federal funding.

The OCR confirmed the Education Department will take “appropriate measures” by the end of this month to assess compliance with Title VI and related legal standards (including in additional guidance to be provided by the agency). The DOE’s termination on February 17 of over \$600 million in grants to educational institutions and nonprofits for DEI training programs for teachers may signal what such “appropriate measures” could look like for schools and universities. The Department of Government Efficiency (DOGE) also weighed in by warning about the potential loss of public-school funding in a [social media post on X](#).

However, many educational institutions are unsure how to comply with the agency's latest directive, which might open more questions than it answers – such as whether the DOE's interpretation of Title VI will apply to funding for student organizations or affinity groups, and how that could impact student governance and funding decisions typically delegated to students. Arguably, student organizations and affinity groups that are open to all students, regardless of race, are not discriminatory – but the “Dear Colleague” letter raises concerns over whether the Trump administration would reach the same conclusion.

5 Steps Your Educational Institution Can Take to Ensure Compliance with Title VI

Here are five key actions your school should consider taking immediately based on these developments and the lack of certainty as to DOGE's and DOE's next steps:

1. **Identify all federally funded educational programs, staff, and supplies.** Each educational institution must determine the risk and potential impact of losing federal funding with very little notice or none at all. The financial arm of the institution should consider creating a six-month fiscal plan on how to react to the funding loss and identify options in achieving quick reductions in expenditures.
2. **Initiate conversations with stakeholders.** The OCR's shift in perspective and procedure will necessarily impact all federally funded educational institution stakeholders – parents and guardians, students, staff, vendors, and the external community. Demonstrate to all stakeholders: (a) how the institution intends to handle this situation; (b) what changes will be occurring; (c) how any changes impact relationships or contractual obligations; and (d) that the institution developed a six-month fiscal plan in case something catastrophic arise at the federal level.
3. **Review all policies, programs, clubs, and activities.** The potential areas of non-compliance identified in the “Dear Colleague” letter can serve as a starting point for leadership racing to meet the February 28 compliance deadline. By conducting a thorough review of these areas and meaningfully addressing any issues identified as soon as possible, educational institutions can demonstrate they acted in good faith to comply.
4. **Memorialize all potential compliance issues and develop appropriate action plans.** Since some issues may not be possible to address before February 28 (for example, due to current contractual obligations or requirements), you should identify and create an action plan for each such item, so that your institution can demonstrate good faith should it need to seek a legal remedy.
5. **Reach Out to Legal Counsel.** In this time of uncertainty, you should consider reaching out to your attorney to develop a game plan to comply with evolving requirements. Our team can help you design, administer, and continually evaluate legally sound, effective DEI policies and initiatives that align with federal and state requirements.

Conclusion

Please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Education Team](#) to obtain practical advice and guidance on how to appropriately address complaints under Title VI or compliance matters related to the Education Department's latest enforcement initiatives. Visit our [New Administration Resource Center for Employers](#) to review all our thought leadership and practical resources, and make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

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