

SETTING THE RECORD STRAIGHT

The U.S. Department of Education’s Anti-Opportunity “Dear Colleague Letter”

In order to implement President Trump’s executive orders, on February 14, 2025, the Office for Civil Rights of the U.S. Department of Education (ED OCR) sent a “Dear Colleague” letter grossly misstating the law and threatening to cut funding to pre-K through 12 schools, colleges, and universities that invest in steps to level the playing field for students, faculty, and staff. Because this letter is designed to instill fear and sow confusion, it’s important to separate fact from fiction.

FACT: Black students face persistent barriers to opportunity.

More than seventy years after the gains that followed *Brown v. Board of Education*,¹ too many Black students attend segregated schools where they are denied the same resources as their peers. During the 2020-21 school year, more than a third of students—about 18.5 million—attended schools where seventy-five percent or more students were of a single race or ethnicity.² Segregated schools often report significant disparities in academic outcomes, including less access to experienced teachers; less supportive school climates; and fewer resources.³ Moreover, higher educational institutions, particularly selective public and private colleges and universities that often serve as gateways to leadership positions, continue to admit students of color at far lower rates compared to their proportion of the college-age population⁴—despite the talents of those applicants.

We cannot let the Trump administration deepen the divides in this country. LDF will continue to fight to ensure that all students have the opportunity to thrive. We hope you will fight alongside us.

FACT: The Supreme Court’s decision in *Students for Fair Admissions v. President & Fellows of Harvard College/University of North Carolina (“SFFA”)*,⁵ does not prohibit schools from advancing diversity, equity, inclusion, and accessibility or considering a student’s discussion of their race in admissions essays.

In *SFFA*, the Supreme Court decided that Harvard and the University of North Carolina’s use of race as a tip in college admissions was unconstitutional. However, the Supreme Court reaffirmed that the benefits of diversity are “plainly worthy” and “commendable goals” for universities to pursue in lawful ways.⁶ The Supreme Court also made clear that their decision did not “prohibit[. . .] universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.”⁷

FACT: Educational institutions can lawfully address barriers to equal opportunity.

Schools have a moral and legal responsibility to ensure that every student has an equal opportunity to thrive. Schools have taken a number of steps to advance these goals—from eliminating tests that do not objectively assess merit to investing in diversity, equity, inclusion, and accessibility programs.

Diversity, equity, inclusion, and accessibility programs are not preferences or quotas. These programs include pathway programs that expose students to science, technology, engineering and math careers; broad outreach and recruitment measures to expand the college applicant pool; voluntary affinity groups that any student can join; sexual harassment and antidiscrimination trainings; and mentoring programs that are open to all. They may also include efforts to ensure that the school creates equal employment opportunities for teachers, faculty, administrators, and other staff. Diversity, equity, inclusion, and accessibility programs often serve students of various backgrounds, including students of color, first-generation college students, students of particular faiths, veterans, students with disabilities, adult learners, LGBTQ+ students, women, students from rural communities, international students, and students from low-income communities. Despite the wide variety of these programs, they all share the common goal of ensuring that talented, hardworking students and faculty can thrive and perform at their best.

Courts have upheld many programs that advance equal opportunity for all students—including efforts that ED OCR now claims are unlawful, like eliminating standardized testing. *See, e.g., Boston Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 61 (1st Cir. 2023), *cert. denied*, No. 23-1137, 2024 WL 5036302 (U.S. Dec. 9, 2024). Ultimately, diversity, equity, inclusion, and accessibility programs benefit all students, as diverse learning environments help build critical thinking, problem-solving ability, and intellectual self-confidence and prepare students to thrive in our increasingly global economy.

FACT: “Dear Colleague” letters do not change the law.

Federal law prohibits educational institutions that receive federal funding from discriminating based on race, gender, and other characteristics. ED OCR sends “Dear Colleague” letters to pre-K through 12 schools, colleges, and universities to explain how it will interpret and enforce those laws. “Dear Colleague” letters cannot create or change the law. Courts decide what the law means. In fact, if followed, this “Dear Colleague” could potentially expose schools to legal jeopardy, as it encourages schools to ignore well-established law designed to ensure compliance with civil rights laws.

FACT: ED OCR rarely terminates funding to schools—and courts have the final say if they try.

It is very rare for ED OCR to terminate funding to a school. Before ED OCR can terminate funding to a school, the school is entitled to a hearing in front of either the agency or a court where it can present evidence and argue the law. Rather than terminate funding, ED OCR usually negotiates voluntary agreements whereby schools agree to change policies or practices in order to remedy discrimination. If ED OCR takes the rare step of terminating funding to a school, the school can ask a court to overturn that decision. Courts have the final say.

Endnotes

- 1 47 U.S. 483 (1954).
- 2 See U.S. Gov’t Accountability Off., GAO-22-104737, Student Population Has Significantly Diversified, but Many Schools Remain Divided Along Racial, Ethnic, and Economic Lines II (June 2022), <https://www.gao.gov/assets/gao-22-104737.pdf>.
- 3 Roslyn A. Mickelson, *School Integration and K-12 Outcomes: An Updated Quick Synthesis of the Social Science Evidence*, Nati’l Coal. on Sch. Diversity (2016) <https://eric.ed.gov/?id=ED571629>.
- 4 Jeremy Ashkenas, et al., *Even With Affirmative Action, Blacks and Hispanics Are More Underrepresented at Top Colleges Than 35 Years Ago*, N.Y. TIMES (Aug. 24, 2017), <https://www.nytimes.com/interactive/2017/08/24/us/affirmative-action.html>. The Supreme Court invalidated the University of North Carolina’s affirmative action policy even though that institution admitted underrepresented students of color, including Black, Latinx, Hawaiian/Pacific Islander, and Native students, “at lower rates than their white and Asian American counterparts, and those with the highest grades and SAT scores [we]re denied twice as often as their white and Asian American peers.” *Students for Fair Admissions v. University of North Carolina*, 567 F. Supp. 3d 580, 666-67 (M.D.N.C. 2021), overruled by *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).
- 5 600 U.S. 181 (2023).
- 6 *Id.* at 213-14.
- 7 *Id.* at 230.