

DIVERSITY, EQUITY, & INCLUSION: LAWFUL DEI IN PUBLIC K-12 SCHOOLS

August 2026

Since January 2025, the federal administration has issued multiple executive orders and guidance documents seeking to eliminate Diversity, Equity, & Inclusion (DEI) initiatives across all federal agencies and in federally funded programs — including all PreK-12 public schools. At the same time, the U.S. Department of Education’s Office for Civil Rights (OCR) has drastically reduced its oversight and enforcement of discrimination complaints based on race, gender, and disability — curtailing mechanisms that, in previous administrations, held schools accountable for addressing racial discrimination and ensuring inclusive school environments.

Most recently, the U.S Department of Education (ED) issued a fast-tracked final rule eliminating “disparate-impact” regulations under Title VI, a law that prohibits discrimination in schools based on race, color, and national origin.¹ These regulations required schools to recognize and address the discriminatory effect of school policies which disproportionately impacted Black and Brown students, regardless of intent to discriminate. One month later, in August 2026, the administration issued a “Dear Colleague” letter to all public schools instructing school administrators to cease considering race with regard to school disciplinary policies. This updated fact sheet addresses the scope and applicability of the administration’s anti-DEI executive orders and most recent actions and the continuing obligations of schools to address racial discrimination and ensure safe, affirming, and inclusive school environments under federal and state law.

WHAT IS DEI?

Diversity, equity, inclusion, and accessibility (“DEIA” or “DEI”) policies and practices in public schools seek to create inclusive learning environments where all students feel welcomed and respected and have equal opportunities to succeed, regardless of race, ethnicity, gender, socioeconomic status, or disability. These efforts benefit all students by fostering learning environments where all students are valued. Research shows that these practices result in improved academic outcomes and increased critical thinking skills, and they prepare all students for a diverse world. By allowing children to learn from different perspectives, they promote positive social and work interactions.²

HOW HAVE DEI POLICIES SHAPED PUBLIC SCHOOLS?

Historically, efforts to promote diversity in education have included landmark policies such as desegregation, affirmative action, and the development of multicultural curricula aimed at

reducing systemic disparities and enhancing inclusivity.³ Deeply rooted in the Civil Rights Act of 1964,⁴ DEI practices help schools fulfill their legal obligations to eliminate discrimination on the basis of race, color, and national origin in public accommodations, public education, and federally assisted programs.⁵ Effective DEI policies and practices can root out individual racial bias, reduce and remedy discrimination, and promote diversity. They can remedy entrenched racial inequities, including avoiding the unlawful disparate treatment of students.⁶

DEI ensures equitable opportunities that benefit all students, particularly those who have been most marginalized by our education system: Black and Brown students, children with disabilities, students of different ethnic backgrounds, LGBTQ students, and children impacted by poverty. Research shows that fostering diversity is vital to providing equitable learning opportunities, nurturing critical thinking skills, and preparing students to succeed in a pluralistic society.⁷

WHAT IS TITLE VI AND HOW DOES IT RELATE TO DEI?

Ten years after the landmark decision in *Brown v. Board of Education*,⁸ Congress enacted the Civil Rights Act of 1964 which sought in part to end racial discrimination and segregation in public schools and federally assisted programs. The Act includes Title IV (prohibiting segregation) and Title VI which work in tandem to address persistent issues of racial segregation and discrimination.⁹ 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.”¹⁰ Title VI prohibits discrimination based on actual or *perceived* race, color, and national origin, including characteristics of shared ancestry, ethnicity, citizenship, or residency (including a country with a dominant religion or distinct religious identity).¹¹

Title VI applies to institutions that receive federal financial assistance, including PreK-12 public schools (districts and charters) and colleges that receive federal funding.¹² Regulations promulgated under Title VI expressly require that funding recipients with a history of racial discrimination “take affirmative action to overcome the effects of prior discrimination.”¹³ Moreover, “[e]ven in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.”¹⁴

At its core, Title VI was designed to ensure that educational institutions fulfill their responsibilities to provide equitable educational opportunities for all students by addressing and remedying racial and national origin discrimination, including harassment.¹⁵ Since its enactment, Title VI has protected students against such discrimination. The Office for Civil Rights has used evidence-based DEI programs and practices for decades and encouraged state education agencies to use them, too, as critical tools to combat discrimination, remedy racially hostile environments, and fulfill essential obligations under Title VI.¹⁶

TITLE VI PROTECTS AGAINST INTENTIONAL DISCRIMINATION, AND CLAIMS MAY BE BASED ON INDIRECT EVIDENCE OF DISCRIMINATION

Title VI bars intentional discrimination, which may be shown through: (1) direct evidence of intentional discrimination or (2) indirect evidence that discriminatory intent was more likely than not the motive behind a certain action or policy. Indirect evidence may be shown where (a) a facially neutral policy (one that does not appear to affect one group more than another) is applied differently based on the race of the individual or (b) the policy is applied evenhandedly but was motivated by discrimination and has racially discriminatory impact.¹⁷

Intentional discrimination can trigger a private right of action, meaning that individuals who have been intentionally discriminated against can file a complaint in federal court themselves. The U.S. Court of Appeals for the Third Circuit and other appellate courts have recognized that a school's failure to address a racially hostile environment can also establish a claim under Title VI and a plaintiff can recover money damages "for alleged 'severe, pervasive, and objectively offensive' student-on-student harassment if the school 'acts with deliberate indifference to known acts of harassment.'"¹⁸ Courts have also held that Title VI forbids a recipient of federal funds from retaliating against someone who complains about discriminatory conduct prohibited by the statute on the ground that retaliation is a "long-recognized form of intentional discrimination" prohibited by other federal civil rights statutes.¹⁹

CAN A STUDENT FILE A LAWSUIT UNDER TITLE VI ON THE GROUND THAT A POLICY DISPROPORTIONATELY IMPACTS CERTAIN STUDENTS BASED ON RACE, COLOR, OR NATIONAL ORIGIN WHERE THERE WAS NO INTENT TO DISCRIMINATE?

This type of filing was previously permitted by the Supreme Court (*Lau v. Nichols*, 1974) but subsequently rejected as an avenue of relief in 2001. In *Lau v. Nichols*, the Supreme Court unanimously held that a policy that disparately affects a protected class (in that case, based on race, color, and national origin) can constitute discrimination, even if the discrimination was unintentional.²⁰ In *Lau*, the Supreme Court held that the failure of a public school district to provide tailored English language instruction to students with limited English proficiency violated Title VI, even though the discrimination was not intentional.²¹ This ruling directly led to new federal enforcement standards, which still require all federally funded schools to take affirmative steps to overcome language barriers.²² See ELC-PA's [fact sheet on the rights of multilingual learners](#).

In the 2001 case, *Alexander v. Sandoval*, the Court limited the scope of Title VI's private enforcement, holding that a private right of action exists only in cases of intentional discrimination, not in cases of unintentional discrimination with a discriminatory effect.²³ This meant that only states and the federal government could sue and challenge unintentionally discriminatory policies; individuals could no longer bring such a claim in federal court.²⁴ Although the Supreme Court disallowed disparate-impact claims in private suits under Title VI in the *Sandoval* decision, the majority acknowledged but did not address whether federal administrative regulations continued to prohibit discriminatory policies based on disparate-impact liability alone.²⁵

WHAT ARE DISPARATE-IMPACT REGULATIONS?

As explained above, disparate-impact discrimination occurs when a seemingly neutral policy, practice, or action causes a disproportionate adverse impact on a statutorily protected group, regardless of intent. Disparate-impact discrimination has also been recognized by courts in the employment context under Title VII.²⁶ Disparate-impact regulations prohibit such discrimination by federal agencies and federally funded agencies and programs, including schools. Pursuant to their rulemaking power, federal funding agencies, including the U.S. Department of Education (ED), have issued rules and guidance under Title VI prohibiting disparate-impact discrimination, and these regulations were enforced by the Department of Justice and Office for Civil Rights through settlements and resolutions.²⁷ Notably, disparate-impact liability has been used to address discrimination under a wide range of statutes, including the [Age Discrimination in Employment Act](#), [Equal Credit Opportunity Act](#), and the [Fair Housing Act](#). The Americans with Disabilities Act also bars disparate-impact discrimination in public accommodations, disallowing criteria “that have the effect of discrimination on the basis of disability” or “perpetuate the discrimination of others who are subject to common administrative control.”²⁸

WHY ARE DISPARATE-IMPACT REGULATIONS IMPORTANT?

Disparate-impact protections contained in statutes, regulations, and case law allow enforcement agencies to challenge artificial and unjustified barriers to equal opportunities in a broad range of contexts, including school, employment, and obtaining a loan.²⁹ The federal government has consistently supported disparate-impact protections by codifying regulations using this framework to root out unlawful discrimination that appears neutral but creates unjust barriers to opportunity.³⁰ Disparate-impact regulations have been particularly important to address racial segregation of schools and anti-Black racism in the school discipline context.³¹

When neutral policies or practices disproportionately exclude or limit opportunities or benefits for a statutorily protected group, the harm caused by the discrimination is no less significant than in cases where intentional discrimination can be shown. Historically, disparate-impact regulations in the school context have had profound impact in addressing racial segregation and school discipline practices.³² As courts have recognized, it is often extremely difficult to show intentional discrimination.³³ Ignoring disparate-impact claims perpetuates and increases discrimination. Moreover, investigations by OCR based on disparate-impact theory have often uncovered underlying intentional discrimination.

Over decades, OCR has routinely investigated and addressed the racially disproportionate effects of seemingly neutral school discipline policies, and in some cases these investigations have also uncovered intentional discrimination. For example, in an OCR case that was resolved in 2022, the agency investigated neutral school discipline policies that disproportionately impacted Black students in a school district in California. As part of its comprehensive investigation, OCR examined the district’s suspensions and expulsions, truancy rates, school resource officer appointments, and law enforcement citations requiring students to appear in juvenile court. OCR repeatedly found examples of Black and white students with the same or similar discipline history who were disciplined far differently, and it found that Black students were disciplined “more frequently and

more harshly than similarly situated white students.” This was true with regard to subjective offenses like “defiance,” “disruption,” and “inappropriate behavior” and objective offenses like truancy. OCR found that the district had “a consistent and stark pattern of a racially discriminatory effect” on Black students, and the systemic investigation led to a finding of intentional discrimination (disparate treatment), which needed to be remedied through specific interventions and tracked through data collection.³⁴

HOW HAVE DISPARATE-IMPACT REGULATIONS CHANGED UNDER THE CURRENT ADMINISTRATION?

On July 24, 2026, ED published a final rule that removed the disparate-impact liability provisions from Title VI of the Civil Rights Act regulations. The fast-track process that the department used did not provide any opportunity for public comment.³⁵ More than 60 civil rights organizations, including ELC-PA, objected to the action and called for reinstatement of the provisions, explaining the grave harm which will clearly and unfairly harm Black and Brown students.³⁶

This modification of the Title VI regulation means that the Office for Civil Rights will no longer investigate or remedy facially neutral school policies or practices that disproportionately harm students based on race, color, and national origin. The change aligns with the administration’s previously issued executive order that promised to “eliminate” disparate-impact liability “in all contexts to the maximum degree possible to avoid violating the Constitution, Federal civil rights laws, and basic American ideals.”³⁷

WHAT DOES RESCINDING DISPARATE-IMPACT REGULATIONS MEAN FOR STUDENTS AND SCHOOLS?

It is important to understand this regulatory change in its proper context. First, as described above, nothing has changed with regard to the right of students to file Title VI claims alleging intentional discrimination based on direct or indirect evidence through a private right of action in federal court. In addition, claims alleging intentional discrimination continue to be subject to investigation by the federal government under the current regulations as modified in July 2026.

Second, although federal administrative regulations have the force of law, they remain subject to legal challenge and can be invalidated if they violate the law or fail to follow mandated procedural requirements.³⁸ As the Supreme Court explained in its landmark ruling in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) – which overturned more than 40 years of deference to federal agencies in interpreting the laws they enforce – the Administrative Procedures Act not only prescribes procedures for agency action but also mandates judicial review of such action and requires courts to “hold unlawful and set aside agency action, findings, and conclusions found to be ... not in accordance with law.” 5 U.S.C. § 706(2)(A).³⁹ It is likely that the rescission of disparate-impact liability under Title VI will be subject to a court challenge. In addition, like all federal regulations, the rescission of disparate-impact liability provisions can be modified or overturned by future administrations.

Most importantly, this particular change to federal regulations that govern how federal agencies investigate and analyze Title VI complaints does not supersede, preempt, or undermine in any way other applicable laws, including guarantees of equal protection under the U.S. Constitution,⁴⁰ student rights under our state’s anti-discrimination laws in the Pennsylvania Human Relations Act,⁴¹

and Pennsylvania’s constitutional protections.⁴² The regulatory change also does not change current local school board policies seeking to comply with these laws. Those obligations and duties of public schools, as discussed more thoroughly below, remain intact and must be followed to ensure equal access to educational opportunities for public school students across Pennsylvania.

HAS THE ADMINISTRATION ISSUED NEW GUIDANCE CONCERNING SCHOOL DISCIPLINE POLICIES?

Yes. On Aug. 18, 2026, about one month after rescinding the disparate-impact liability provision under Title VI, the administration issued new guidance to all local and state educational agencies instructing schools that they should no longer take race into account with regard to school discipline policies. While acknowledging that Title VI explicitly mandates that students cannot be “treated differently based on race, color, or national origin in matters of discipline or otherwise,” the letter states that “the use or consideration of race in student discipline violates Title VI and the Constitution absent truly extraordinary circumstances that satisfy strict scrutiny.”⁴³ This statement was not supported by an analysis of relevant case law and judicial precedent in which courts have relied on disparate-impact evidence as a factor in determining discriminatory intent in Title VI cases.⁴⁴ Instead, the guidance declares that schools are prohibited from even *considering* whether students of certain racial groups are subjected to school discipline to a disproportionate degree.

The new guidance rejects decades of OCR investigations and resolutions, as well as national data and research studies that have repeatedly shown that Black and Brown students are disciplined far more harshly and for longer periods of time than their white peers for the same behavior. This data is reflected in prior school discipline guidance issued in 2014 and reiterated in 2023.⁴⁵ The prior guidance specifically instructed school administrators to address and remedy facially neutral policies and practices which, although not adopted with the intent to discriminate, nonetheless had the unjustified effect of discriminating against Black and Brown students on the basis of race, color, and national origin.⁴⁶

This prior guidance also relied on information from the Civil Rights Data Collection, which has consistently reflected stark disparities in school discipline rates based on race. For example, as reflected in the 2014 Dear Colleague letter, Black students without disabilities were more than three times as likely as their white peers without disabilities to be expelled or suspended. Although Black students represented only 15% of students, they made up 35% of students suspended once, 44% of those suspended more than once, and 36% of students expelled, according to school discipline data. Further, more than 50% of students involved in school-related arrests or referred to law enforcement were Black or Hispanic.⁴⁷ Research cited also indicated that these “substantial racial disparities” were not explained by more frequent or more serious behavior by students of color; rather, unexplained racial disparities in school discipline rates indicate a need to consider whether schools were engaging in racial discrimination in violation of Title VI.⁴⁸ Similar statistics were cited in guidance issued in 2023.⁴⁹ Ignoring this reality, the new school discipline guidance also baldly asserts that policies and practices of considering racial disparities in school discipline discriminate against white students and cause public schools to be more disruptive, less safe, and result in increased violence.⁵⁰

In the same [press release](#), the administration also announced that OCR had opened two Title VI investigations: one into a school district that allegedly sought to address “the disproportionality of discipline on students of color” when making discipline decisions, and another district where education leaders allegedly commented that the district’s discipline policies reflected systemic “whiteness.” These investigations have just been initiated.

HOW DOES THE NEW SCHOOL DISCIPLINE GUIDANCE AFFECT SCHOOLS IN PENNSYLVANIA?

The August guidance letter expressly acknowledges: “The contents of this guidance lack the force and effect of law and do not bind the public or create new legal standards. This document is designed to provide clarity to the public regarding existing legal requirements under Title VI.”⁵¹

As multiple courts have consistently recognized, a guidance document like this Dear Colleague Letter — an executive order — does not carry the force of law and does not create or purport to create new law, but rather provides information regarding an agency’s interpretation of a regulation, statute, or enforcement policy.⁵² It is **not legally binding** on anyone and cannot impose legal restrictions. A guidance letter is not afforded any legal authority because it is not the product of a rigorous review process. Instead, it is issued by an agency head providing an opinion regarding a particular regulation.⁵³

For these reasons, despite its directive language that instructs school districts not to consider race when crafting and implementing school discipline policies, the guidance cannot impose this legal requirement on schools. Moreover, a school district’s school discipline policies and practices must comply with all applicable federal and state statutes and case law, which require districts to consider race in developing all policies to ensure that Black and Brown students and other protected classes are not wrongly discriminated against by being punished more severely based on race.

The guidance is likely subject to legal challenge, as occurred with regard to the administration’s Feb. 14, 2025, Dear Colleague Letter, which provided OCR’s interpretation of Title VI and the Equal Protection Clause under the Supreme Court’s 2023 decision in *Students for Fair Admissions v. Harvard (SFFA)*. Court cases also challenged a subsequent announcement that required states and school districts to affirmatively certify their compliance with DOE’s interpretations of Title VI and SFFA.⁵⁴ Several legal challenges were brought against both the February letter and the certification requirement. On Aug. 14, 2025, the U.S. District Court for the District of Maryland vacated the letter as unlawful on the ground that it was unconstitutionally vague, raised First Amendment and due process concerns, and substantially sought to “alter the legal obligations of schools and educators without employing the procedures necessary to implement such a change” under the Administrative Procedures Act 5 U.S.C. § 706.⁵⁵ Similarly, here, to the extent that the August guidance letter prescribes new law and policy, it surpasses the bounds of an interpretive rule and is subject to being vacated on this basis.⁵⁶

Based on the foregoing, schools are not required to comply with the directives in the August school discipline guidance. The instruction that schools cannot consider race in developing and implementing school discipline policies is not supported by any case law and is antithetical to both

Title VI and an equal protection analysis.⁵⁷ As the Supreme Court explained in *Arlington Heights* (1977) and the Third Circuit has repeatedly affirmed, “a policy’s disproportionate or discriminatory impact might provide circumstantial evidence of state actors’ discriminatory purpose, along with other indicators like the policy’s historical background and the legislative or administrative history.” Accordingly, state and local education agencies should not ignore the discriminatory impact of school discipline and other policies, and data relating to race should be considered and examined.⁵⁸

WHAT IS THE IMPACT OF THE ADMINISTRATION’S “ANTI-DEI” EXECUTIVE ORDERS?

On Jan. 29, 2025, President Trump signed an Executive Order (EO) titled “Ending Radical Indoctrination in K-12 Schooling.”⁵⁹ This EO, for the first time, describes DEI as “discriminatory equity ideology,” whereby members of a race, color, sex, or national origin (e.g., white students) are disfavored and subjected to guilt, anguish, and distress for actions that happened in the past.⁶⁰ The EO denounces DEI as “illegal” without defining it and focuses on alleged harm and discrimination against white people.⁶¹ The EO also promotes “Patriotic Education” grounded in a “unifying, inspiring, ennobling” characterization of America and its history.⁶² This EO specifically announced plans to cut funding to schools that support indoctrination or “illegal” DEI concepts in curricula or teacher training.⁶³

As mentioned above, an EO is not law, but rather a directive from the president that explains how an administration plans to interpret and enforce the law.⁶⁴ EOs cannot override statutes or case law interpreting those laws.⁶⁵ Although federal executive agencies are bound by EOs with regard to how they enforce existing laws such as Title VI, courts are not bound by EOs. Moreover, EOs can be – and have been – challenged in federal court, because any action that the president directs federal agencies to undertake through an EO must be based on an existing statute or the president’s own constitutional power.⁶⁶ For more information on EOs, see ELC-PA’s [Analysis on Executive Orders](#).

ANTI-DEI “DEAR COLLEAGUE” LETTER AND OTHER GUIDANCE ISSUED IN 2025

On Feb. 14, 2025, OCR issued guidance stating that preK-12 schools are prohibited from engaging in diversity, equity, and inclusion practices on the grounds that they are illegal and racially discriminatory.⁶⁷ The “Dear Colleague” Letter (DCL) specifically threatened to cut federal funding from state educational agencies and school districts for noncompliance with this interpretation.⁶⁸

As acknowledged in a footnote, the DCL (like an EO) “does not have the force and effect of law.”⁶⁹ Rather, the guidance communicates the agency’s interpretation of laws, regulations, and enforcement policies.⁷⁰

On March 1, 2025, the U.S. Education Department issued FAQs following up on the DCL.⁷¹ The FAQs similarly stated that DEI was discriminatory and illegal but notably also recognized that: (1) nothing in Title VI or its implementing regulations authorizes a school to restrict rights that are otherwise protected by the Constitution, such as the First Amendment; (2) school programs that are focused on a particular heritage or culture, such as Black History Month, and open to all are not

discriminatory; and (3) the Department of Education is prohibited from controlling school curricula.⁷²

The Dear Colleague Letter and the FAQ reversed the previous administration’s positions on DEI, including how it should be used to address school discipline, by advising schools to eliminate discipline protocols rooted in DEI on the ground that they are discriminatory against white students. This position was expanded on in an April 2025 Executive Order titled “Reinstating Commonsense School Discipline Policy,”⁷³ which contradicts recognized research that Black, Latino, and Native American students are disciplined more frequently and more harshly than white and Asian students for the same behavior, much to their detriment.⁷⁴

On April 3, the Department directed state educational agencies to certify compliance with Title VI by obtaining confirmation of compliance from school districts and charter schools.⁷⁵ States responded to this directive in different ways.⁷⁶ Pennsylvania’s Department of Education responded by simply stating that all of the state’s local educational agencies “have previously certified, on multiple occasions, that they comply and will continue to comply with Title VI.”⁷⁷

THE SUPREME COURT’S HOLDING IN *SFFA* CASE DOES NOT SUPPORT ANTI-DEI MEASURES

The DCL and FAQ issued by the administration and other recent guidance rely heavily on a broad interpretation of the Supreme Court’s ruling in *Students for Fair Admissions v. Harvard* (*SFFA*) to claim that all DEI policies and any efforts to treat a person of one race differently than a person of another race violate federal law. As legal scholars have explained in detail, the administration’s interpretation of *SFFA* is overbroad and faulty.⁷⁸ The EOs and guidance on DEI are constitutionally suspect, and DEI remains lawful.⁷⁹

First, the administration’s DCL states that *SFFA* prohibits the use of race in any context, including in hiring, promotion, compensation, financial aid, scholarships, administrative support, discipline, graduation ceremonies, and “all other aspects of student, academic, and campus life.”⁸⁰ In contrast, the *SFFA* ruling is far more limited – beginning with the fact that it was limited to the college admissions context and the use of race under the circumstances presented. In that case, the court struck down the practice of using an applicant’s racial identity as a formal criterion in the college admissions decision processes, finding that the policy was not narrowly tailored to a compelling state interest and the diversity goals espoused were not measurable.⁸¹ The *SFFA* decision stands in stark contrast to prior Supreme Court precedent recognizing the educational benefits of diversity as a compelling government interest.⁸² Nonetheless, the Court’s ruling did not call for the elimination of all diversity, equity, inclusion, and accessibility policies and practices at all, and the court made clear that the ruling was limited. For example, the majority in *SFFA* specifically recognized that its holding did not apply to all institutions of higher education, such as military academies, because the acceptability of race-based admissions in that context raised “potentially distinct interests” that may require a different analysis.⁸³

Second, although the DCL and FAQ assert that it is “impermissible” to consider race as a factor in decision-making, no matter the form, the Supreme Court in *SFFA* expressly recognized that race

may be considered: “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.”⁸⁴ The Court also expressly acknowledged that diversity is a “commendable” goal.⁸⁵ Moreover, as the Third Circuit has observed, “the mere awareness or consideration of race should not be mistaken for discriminatory intent or for proof of an equal protection violation.”⁸⁶

Third, the *SFFA* decision is limited only to facially race-based classifications in higher education admissions.⁸⁷ Federal courts have routinely rejected the administration’s theory that *all* race-conscious educational policies are unlawful post-*SFFA*.⁸⁸ As one court explained, there is “no reason to conclude that [*SFFA*] changed the law governing the constitutionality of facially neutral, valid secondary education admissions policies under equal protection principles.”⁸⁹ However, the Third Circuit recently found that admissions policies for competitive Philadelphia high schools were racially motivated, though not facially racial, and resulted in increases of one racial group at the expense of another, which could be unconstitutional under *SFFA*.⁹⁰ This generalization is at odds with the text of *SFFA* and Justice Brett Kavanaugh’s concurrence, where he stated: “And 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.’”⁹¹ He also referenced the use of long-standing race-neutral devices to increase accessibility of opportunities citing in prior Supreme Court rulings.⁹² Pre-*SFFA* Supreme Court rulings also encouraged universities to consider race-conscious, facially race-neutral alternatives.⁹³ The Supreme Court has also consistently recognized that remedying the effects of past intentional discrimination continues to be a compelling interest that may justify a race-based policy under the strict scrutiny test.⁹⁴ *SFFA* did not overrule these precedents, so their endorsement of race-conscious policies remains governing law.⁹⁵

In sum, *SFFA* does not apply to most K-12 schools, race-neutral policies, or non-admissions decisions in the college context. Neither the DCL and FAQs, nor the administration’s EOs change these facts.

THE ADMINISTRATION’S ANTI-DEI EXECUTIVE ORDERS, DIRECTIVES, GUIDANCE, AND THREATENED ACTIONS WERE SUCCESSFULLY CHALLENGED AND RENDERED UNENFORCEABLE

Several federal district courts issued injunctions to block enforcement of the DCL and other administration policies on the grounds that the directives to schools are illegal, unconstitutional, and unenforceable. Specifically, these courts held that the DCL, the FAQs, and the April 3 directive to certify compliance with Title VI:

- Violated due process under the Fifth Amendment due to the vagueness of “illegal DEI” and other terms;
- Allowed censorship of undefined “DEI programs” and undermined students’ right to receive information under the First Amendment;
- Contravened the right of states and local educational agencies to determine curriculum under the 10th Amendment and in accordance with federal statutes; and

- Violated the Administrative Procedures Act by contravening constitutional rights, not being in accordance with law (including the Supreme Court’s holding in *SFFA*), and exceeding the Education Department’s statutory authority.⁹⁶

On April 24, 2025, a federal court enjoined the Education Department from “enforcing and/or implementing” the DCL, the FAQs, the “End DEI” Portal,⁹⁷ and the April 3 certification of compliance with Title VI against the plaintiff National Education Association (NEA), et al., its members, and any entity that employs, contracts with, or works with its members.⁹⁸ Because NEA is a national labor union of educators, and this decision affects NEA members working in schools across the country, the Education Department issued a formal notification on the DCL, FAQs, and April 3 letter stating that it “will not take any enforcement action, or otherwise implement, the Feb. 28, 2025, Dear Colleague Letter, associated FAQs, the End DEI Portal, or the certification requirement until further notice.”⁹⁹ The Portal has now been marked as historical and is not currently active.

In the *NEA* case, a U.S. district court in New Hampshire held in part that the DCL violated legal prohibitions against the federal government interfering with local school curricula.¹⁰⁰ This court also stated emphatically of the DCL: “[t]hough it purports to be grounded in existing law, the Letter fails to explain how or why existing law requires banning” DEI from school curricula.¹⁰¹ In another case, a District of Columbia federal court similarly blocked the DCL, finding in part that because the DCL threatened schools with drastic funding losses for “failure to comply with vaguely defined prohibitions on DEI initiatives,” it violated the Fifth Amendment’s prohibition of vagueness.¹⁰²

A federal court in the District of Maryland likewise blocked the enforcement of the DCL, and in August 2025, on consideration of motions for summary judgment, declared both the DCL and the April 3 certification requirement to be unlawful requiring vacature of the orders pursuant to the Administrative Procedures Act. As the court explained in her ruling: “The government did not merely remind educators that discrimination is illegal: it initiated a sea change in how the Department of Education regulates educational practices and classroom conduct, causing millions of educators to reasonably fear that their lawful, and even beneficial, speech might cause them or their schools to be punished. The law does not countenance the government’s hasty and summary treatment of these significant issues.”¹⁰³

On Jan. 21, 2026, ED dismissed its appeal of the District Court of Maryland’s decision that the DCL and April 3 actions were unlawful.¹⁰⁴ This means that **the order finding the DCL illegal and unenforceable remains in place**. ED cannot take action pursuant to the letter, so preK-12 schools cannot be financially penalized for failing to comply with the EO. Because the DCL was found illegal in another case, the *NEA* case was dismissed.¹⁰⁵ In their motion to dismiss, the Department of Education agreed not to rely on the DCL, attempt to enforce it, nor reinstate the April 3 certification demand.¹⁰⁶

In short, **the administration’s anti-DEI directives and guidance no longer stand.**¹⁰⁷

THE ADMINISTRATION IS NOT LEGALLY AUTHORIZED TO CUT FEDERAL FUNDS BASED ON ALLEGED VIOLATIONS OF TITLE VI

Even if the DCL were not currently blocked by several federal courts, states and school districts face little risk of immediately losing federal funding. Federal agencies must follow statutorily prescribed procedural steps to legally cut funds for Title VI violations. Before cutting off funds, the government must: (1) conduct a program-by-program evaluation of the alleged violations; (2) provide notice and an opportunity for hearing; (3) determine that compliance cannot be secured by voluntary means; (4) limit any cuts to only those particular programs in which noncompliance has been found; and (5) submit a report to the relevant committees in Congress at least 30 days before the funds are halted.¹⁰⁸

As a result, notwithstanding being enjoined by the courts, the DCL and other directives do not alter schools' legal obligations, nor do they subject schools to a loss of funding without the opportunity to defend school policies.

THE ADMINISTRATION IS PROHIBITED FROM DETERMINING STATE AND LOCAL SCHOOL CURRICULUM

The federal government is not legally authorized to make curriculum decisions; rather, state and local decision-makers have control over curriculum and educational content. This prohibition protects the principle that the primary responsibility for education rests at the state and local levels.

Multiple federal statutes prohibit the U.S. Department of Education from “exercis[ing] any direction, supervision or control over the curriculum, program of instruction, administration or personnel of any educational institution ... or over the selection or content of library resources, textbooks or other instructional materials.”¹⁰⁹ The Pennsylvania Constitution also requires that the General Assembly “provide for the maintenance and support of a thorough and efficient system of public education.”¹¹⁰ State and local educational agencies, regardless of recent federal action, continue to possess the right to design the curriculum that teachers teach and students learn.

STATE AND SCHOOL DISTRICT ANTI-DEI INITIATIVES STRUCK DOWN BY COURTS

The federal government's push for dismantling diversity, equity, and inclusion initiatives has received more attention, but some states and school districts have also taken actions to prohibit schools from being inclusive of all perspectives, ideas, and identities. Some of these rules were developed in response to the administration's EOs, and others predate such actions.¹¹¹ For example, some of these rules prevent students from establishing clubs and communities that represent their interests and civic concerns; prohibit schools from training faculty and staff on supporting students; and, most concerning, restrict students' access to honest, nuanced teaching of academic subjects.

With a few exceptions, federal district courts have repeatedly enjoined these laws and policies, preventing them from taking effect. The policies are remarkably similar in these challenges, but courts have provided varying reasons for finding them likely to be unenforceable.

Anti-DEI restrictions often use broad language to describe what they prohibit. Under the Fifth Amendment and Fourteenth Amendment, laws and restrictions promulgated by governments must be specific enough to put individuals on notice about what actions they can and can't take, or else they are unconstitutionally vague.¹¹² In short, laws must be clear on what you are not allowed to do or they are unconstitutional. Some federal district courts have granted preliminary injunctions because the rules are unconstitutionally vague.¹¹³ Notably, these rulings often do not challenge the idea that the anti-DEI focus of a policy is unacceptable, but rather contend that the rule is not sufficiently detailed to enforce. These states and school districts may develop more specific policies prohibiting DEI initiatives, which could be challenged in other ways.

Anti-DEI laws and policies have also been challenged on the ground that they violate other laws. For example, a federal district court in New Hampshire determined that an anti-DEI policy was in conflict with federal disability law because the state law required all people to be treated the same, regardless of their disability status. This state law conflicted with federal laws that required accommodations and additional services for students with disabilities.¹¹⁴

A more common legal theory that district courts have adopted is that anti-DEI restrictions violate students' and teachers' First Amendment rights.¹¹⁵ Students and teachers retain their right to speak freely and openly within schools, subject to restrictions of safety and curriculum.¹¹⁶ A federal district court found that when anti-DEI restrictions prohibit, or even potentially chill, students and teachers from discussing or organizing around ideas,¹¹⁷ this likely violates the First Amendment rights of students and teachers.¹¹⁸ Claims that DEI policies and trainings constitute compelled speech under the First Amendment have been met with mixed success.¹¹⁹

OFFICE FOR CIVIL RIGHTS: SELECTIVE ENFORCEMENT AND IMPACT OF REDUCTIONS IN STAFF

Although Title VI remains in full force and effect as described above, the administration has created significant barriers to using the Office for Civil Rights (OCR) to vindicate claims of racial, sex, and disability discrimination.

Congress established OCR with the mandate to effectively carry out the nation's civil rights laws in education, which includes enforcing federal statutes prohibiting discrimination on the basis of race, sex, and disability.¹²⁰ With respect to racial discrimination, the Department is required to "make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with" Title VI.¹²¹ If the Department determines that there has been noncompliance with Title VI, it must "inform the recipient [of federal funding]" and resolve the matter by informal means.¹²² If the action cannot be resolved, compliance may be affected by the suspension or termination of or refusal to grant or continue federal financial assistance or by any other means authorized by law.¹²³ OCR may take such remedial action as deemed necessary to overcome the effects of the discrimination.¹²⁴

OCR is historically one of the government's largest enforcers of the Civil Rights Act of 1964. Its investigators follow a process to determine whether complaints from the public meet governing legal criteria for a civil rights claim, then carry out investigations methodically and in a neutral manner. For years, OCR has also issued resolution agreements that include DEI policies and

practices to combat discrimination in schools and colleges. These remedies seek to foster positive and inclusive school climates free from discrimination, remedy racial disproportionality in school discipline, and reduce bullying and harassment, among other goals. OCR resolutions have included requirements to revise school discipline policies that result in discrimination, add new DEI programs, establish a stakeholder equity committee, and hire expert consultants to implement nondiscriminatory discipline practices, undertake data analysis, implement research-based discipline strategies, and conduct implicit bias training.¹²⁵

In contrast to this history, the administration is now selectively cherry-picking cases and refusing to consider certain claims, including race-based claims asserted by Black and Brown families, while targeting claims involving transgender athletes, for example, for investigation to achieve an anti-trans agenda. In 2024, OCR published 25 resolutions of cases where a school district was investigated for racial or national origin discrimination, harassment, or hostile environments. These resolutions provided specific remedies to combat ongoing racial discrimination. Conversely, in 2025, OCR published only two resolutions. In neither case did OCR find that the protections of Title VI had been violated.¹²⁶ In addition, the administration has drastically reduced OCR staffing — eliminating seven of 12 OCR regional offices and laying off half the staff.¹²⁷

OCR's selective enforcement and reductions in staffing have been challenged through litigation.¹²⁸ On June 18, 2025, a federal judge issued a preliminary injunction to temporarily restore OCR to its status quo, directing the Education Department to reinstate all laid-off OCR employees. The judge said the layoffs and shuttering of seven regional offices had rendered the remaining staff “incapable of addressing the vast majority of OCR complaints, especially since the Department of Justice's Civil Rights Division is undergoing its own downsizing.”¹²⁹ The court expressly held that OCR had “abdicated its enforcement duties” including that the OCR statute requires prompt investigations¹³⁰ and does not authorize the office to “selectively enforce complaints that come into the OCR that it prefers; the statute requires that the OCR investigate *all* complaints alleging violations of federal civil rights laws prohibiting race, sex, and disability-based discrimination.”¹³¹ However, on July 14, 2025, the Supreme Court denied an application for a stay of the preliminary injunction, allowing OCR to continue to have insufficient staff for addressing complaints and enforcing Title VI.¹³² Justices Ketanji Brown Jackson, Elena Kagan, and Sonia Sotomayor dissented from the denial, saying that allowing OCR's layoffs to proceed “will unleash untold harm, delaying or denying educational opportunities and leaving students to suffer from discrimination, sexual assault, and other civil rights violations without the federal resources Congress intended.”¹³³

PENNSYLVANIA HUMAN RELATIONS ACT CONTINUES TO PROTECT AGAINST DISCRIMINATION

Pennsylvania's Constitution guarantees that state and local governments cannot deny or abridge equal rights based on race or ethnicity.¹³⁴ The Pennsylvania Human Relations Act (PHRA) expands these protections by prohibiting discrimination in public K-12 schools.¹³⁵ Discrimination on the basis of race, color, sex (including gender identity/expression and sexual orientation), religion, ancestry, national origin, and disability are barred.¹³⁶ The PHRA has been expanded over the years to specifically name and capture more types of unlawful discriminatory conduct, such as racial discrimination based on hair texture and protective hairstyles.¹³⁷

The Pennsylvania Human Rights Commission (PHRC) reaffirmed its commitment to enforcing Pennsylvania’s anti-discrimination laws in the wake of the Dear Colleague letter and the federal administration’s EO.¹³⁸ In January 2025, the PHRC stated: “Regardless of what happens nationally, Pennsylvanians can be assured that under Pennsylvanian laws, they are protected. Pennsylvania was founded on the principles of tolerance and peace. It will remain a welcoming place for people of all backgrounds and lifestyles.”¹³⁹ As such, the PHRA continues to be a crucial anti-discrimination protection regardless of recent federal action. For information, see ELC-PA’s [Fact Sheet on How to File a PHRC Complaint](#).

THE IMPORTANCE OF PROTECTING STUDENTS FROM DISCRIMINATION

Despite the recent actions by the federal administration, state and local education agencies have continuing legal obligations to protect their students from discrimination. The U.S. Constitution,¹⁴⁰ Title VI,¹⁴¹ and the Equal Educational Opportunities Act of 1974¹⁴² all prohibit discrimination in schools, as do the Pennsylvania Constitution and the PHRA.¹⁴³ The administration’s EOs and currently unenforceable DCL, FAQs, and certification letter do not change these obligations. Schools can and must support students and protect them from discrimination, including promoting inclusive classroom environments and undertaking proactive and remedial anti-discrimination measures, including DEI, knowing that these obligations continue and that such measures benefit all students to learn and thrive in school.

The Education Law Center-PA (ELC-PA) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC-PA advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, multilingual learners, LGBTQ+ youth, children experiencing homelessness, and children at the intersection of multiple underserved identities.

ELC-PA’s publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC-PA’s Helpline for information and advice — visit www.elc-pa.org/contact or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) — or contact another attorney of your choice.

¹ Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulation, 34 C.F.R. Part 100.

² Vijayvardhan Kamalumpundi et al., *Diversity, equity, and inclusion in a polarized world: Navigating challenges and opportunities in STEM*, 35 Molecular Biology Cell 1 (2024) (collecting research).

³ Rosa, Jose. (2025). *The Critical Importance of Diversity, Equity, and Inclusion (DEI) and the Detrimental Impact of Anti-DEI Policies*.

⁴ 42 U.S.C. § 1971 et seq. (2006).

⁵ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d.

⁶ The concept of DEI is exemplified in *Brown v. Board of Education* where the court held that racial segregation deprived Black students of the equal protection of the laws guaranteed by the Fourteenth Amendment and ordered segregated schools to transition to a racially integrated system of public education with all deliberate speed, including calling for the immediate admission of Black children to schools previously attended by white students only. *Brown v.*

Bd. of Ed. of Topeka, Shawnee Cnty., Kan., 347 U.S. 483, 495 (1954), supplemented sub nom. *Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955). See also *Grutter v. Bollinger*, 539 U.S. 306 (2003) (race-based admissions policies upheld as narrowly tailored to serve compelling state interest of obtaining a diverse student body and did not violate the Equal Protection Clause).

⁷ Gupta, Aarya & Gupta, Mitali & Swamy, Riya & Kawale, Harshali. (2025). *The Impact of Educational Diversity on Today's Youth: Shaping Future Leaders and Innovators*. 5. 238.

⁸ *Brown v. Bd. of Educ.*, 347 U.S. 483.

⁹ See Title IV, 42 U.S.C. §§ 2000c et seq. When originally enacted, Title IV addressed desegregation based on race, color, religion, or national origin but was amended in 1972 to also prohibit discrimination and segregation based on sex. Title VI, 42 U.S.C. § 2000d.

¹⁰ *Id.*

¹¹ *Id.* Office for Civil Rights (2017), See *Know Your Rights: Title VI and Religion*, U.S. Dept. of Education, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/know-rights-201701-religious-disc.pdf>.

¹² 28 C.F.R. § 42.102(c).

¹³ 34 C.F.R. § 100.3(b)(6)(i).

¹⁴ 34 C.F.R. § 100.3(b)(6)(ii).

¹⁵ Office for Civil Rights, Fed. Reg. Vol. 59, No. 47, See *Racial Incidents and Harassment Against Students*, Dept. of Education, (1994), <https://www.ed.gov/laws-and-policy/civil-rights-laws/harassment-bullying-and-retaliation/racial-incidents-and-harassment-against-students>.

¹⁶ Lawyers for Civil Rights Boston, *Diversity, Equity and Inclusion (DEI) in Massachusetts Public Schools: A Legal and Practical Guide for Implementing Principles of Diversity, Equity and Inclusion in Public School Settings* (Oct. 2023) (discussing obligations and OCR DEI Fact Sheet: Diversity & Inclusion Activities Under Title VI, U.S. Dept. Educ. Off. C.R. (Jan. 2023)), <https://lawyersforcivilrights.org/wp-content/uploads/2023/10/Guidance-on-DEI-in-Massachusetts-Public-Schools-2023.pdf>.

¹⁷ *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). In the absence of direct evidence of intentional discrimination, Title VI claims are subject to the framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *Astaraee v. Villanova Univ.*, 509 F. Supp. 3d 265, 270 (E.D. Pa. 2020). See also *Lewis v. Ascension Par. Sch. Bd.*, 662 F.3d 343, 349 (5th Cir. 2011) (remanding case for factual determination regarding whether school board acted with a racially discriminatory motive in developing student assignment plan).

¹⁸ See e.g., *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247 (3d Cir. 2014); *Whitfield v. Notre Dame Middle Sch.*, 412 F. App'x 517 (3d Cir. 2011); *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655 (2d Cir. 2012).

¹⁹ *Bloomberg v. New York City Dep't of Educ.*, 119 F.4th 209, 214 (2d Cir. 2024) (explaining that to establish such a claim, Bloomberg must allege that she engaged in protected activity, the DOE knew about her protected activity, she suffered an adverse action, and there was a causal connection between the protected activity and the adverse action).

²⁰ *Lau v. Nichols*, 414 U.S. 563 (1974) (holding that failure to provide English-language instruction to limited English proficient students violated Title VI because the school district discriminated against students based on national origin even if the discrimination was unintentional).

²¹ *Id.*

²² Stanford University. "Appendix B; Task-Force Findings Specifying Remedies Available for Eliminating Past Educational Practices Ruled Unlawful Under *Lau v. Nichols*,"

<http://web.stanford.edu/~hakuta/www/LAU/IAPolicy/LauRemedies.htm>;

Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701-1758.

²³ *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001). *Blunt v. Lower Merion Sch. Dist.*, 767 F.3d 247 (3d Cir. 2014).

²⁴ Exec. Order No. 14281, 90 Fed. Reg. 17537, *Restoring Equality of Opportunity and Meritocracy* (Apr. 23, 2025). In this executive order, President Trump declared a ban on the use of disparate-impact liability by federal agencies.

²⁵ *Alexander v. Sandoval*, 532 U.S. 275; 42 U.S.C. § 2000d-1.

²⁶ See *Griggs v. Duke Power Co.*, 401 U.S. 424, 431, 91 S.Ct. 849, 853, 28 L.Ed.2d 158 (1971) (explaining that Title VII "proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation").

²⁷ 34 C.F.R. Part 100; see OCR Case Resolutions: *Race, Color, and National Origin Discrimination*, <https://www.ed.gov/laws-and-policy/civil-rights-laws/race-color-and-national-origin-discrimination/case-resolutions-race-color-and-national-origin-discrimination>.

²⁸ 42 USC 12112(b)(3)(A)and(B).

²⁹ See e.g., U.S. Dept. of Justice, [Justice Department Secures Over \\$6.5M from Citadel Federal Credit Union to Address Redlining of Black and Hispanic Communities](#) (Oct. 10, 2024).

³⁰ 42 U.S.C. § 2000e-2(k)(1)(A)(i); *Smith v. City of Jackson*, 544 U.S. 228 (2005); 42 U.S.C.S. § 2000d; 34 C.F.R. § 100.3(b)(2) (2023); *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519 (2015).

³¹ *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-prison Pipeline for Students of Color With Disabilities Briefing Report*, U.S. Commission on Civil Rights, (July 2019).

³² See, e.g., *Columbus Bd. of Ed. v. Penick*, 443 U.S. 449, 464-65 (1979) (citations omitted) (explaining that “[a]dherence to a particular policy or practice, with full knowledge of the predictable effects of such adherence upon racial imbalance in a school system” is one factor that courts consider in determining whether segregative intent exists).

³³ *Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 265, 266 (1977) (citations omitted) (“Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available. The impact of the official action – whether it ‘bears more heavily on one race than another,’ may provide an important starting point.”)

³⁴ Letter from Zachary Pelchat, U.S. Dept. of Educ. Office for Civil Rights to Elvin Momon, Superintendent Victor Valley Union High School District (Aug. 16, 2022),

<https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/09145003-a.pdf>.

³⁵ Federal Register, 34 CFR Part 100, *Rescinding Portions of the Department of Education Title VI Regulations To Align With the Statutory Text and Conform to Executive Order 1428* (July 24, 2026),

<https://www.federalregister.gov/documents/2026/07/24/2026-15019/rescinding-portions-of-the-department-of-education-title-vi-regulations-to-align-with-the-statutory>.

³⁶ NAACP, Press Release, *Civil Rights Groups Condemn Department of Education Final Rule Weakening Civil Rights Protections for Students; Final Rule Would Enable Policies that Disproportionately Harm Students Based on Race, Color, and National Origin* (July 23, 2026), <https://www.naacpldf.org/wp-content/uploads/Civil-Rights-Groups-Condemn-Department-of-Education-Final-Rule-Weakening-Civil-Rights-Protections-for-Students.pdf>.

³⁷ Exec. Order 14281, 90 Fed. Reg. 17537 (April 23, 2025), *Restoring Equality of Opportunity and Meritocracy* <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-equality-of-opportunity-and-meritocracy/>.

³⁸ See e.g., *Renee v. Duncan*, 623 F.3d 787, 790 (9th Cir. 2010), *opinion supplemented on reh'g*, 686 F.3d 1002 (9th Cir. 2012) (invalidating 34 C.F.R. § 200.56(a)(2)(ii) on ground that a federal regulation permitting teachers participating in alternative-route teacher training without full state certification to be characterized as “highly qualified teachers” under No Child Left Behind Act).

³⁹ *Loper Bright Enters. v. Raimondo*, 603 U.S. at 391 (holding that courts need not, and under the Administrative Procedure Act may not, defer to an agency's interpretation of the law simply because a statute is ambiguous, overruling *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)).

⁴⁰ U.S. Const. amend. XIV, § 1.

⁴¹ Pa. Human Relations Act, 43 P.S. § 955.

⁴² See, e.g., Pa. Const. Art. I, § 29 (“Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the individual”); Pa. Const. Art. I, § 26 (“Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right”); Article III, Section 14 (“The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.”).

⁴³ Letter From Kimberly Richey, Acting Assistant Sec’y for OCR, U.S. Dept. of Educ., Dear Colleague Letter: Guidance on Pupil Discipline and Compliance with Title VI (Aug. 18, 2026) at p.3, <https://www.ed.gov/media/document/dear-colleague-letter-guidance-pupil-discipline-and-compliance-title-vi-august-18-2026-114385.pdf>.

⁴⁴ Several Third Circuit cases have considered data regarding race to analyze Equal Protection and Title VI claims which are co-extensive. Examples of such cases include *Sargent v. Sch. Dist. of Philadelphia*, 165 F.4th 727, 739 (3d Cir. 2026) (citing *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266-268 [1977]). See also *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 543 (3d Cir. 2011); see also *Antonelli v. New Jersey*, 419 F.3d 267, 274 (3d Cir. 2005).

⁴⁵ Joint Guidance by Dept. of Justice and Office for Civil Rights, *Nondiscriminatory Administration of School Discipline* (Jan. 8, 2014), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>; 86 Fed. Reg. 30,449, Docket ID ED-2021-OCR-0068, Request for Information Regarding the Nondiscriminatory Administration of School Discipline (June 8, 2021); U.S. Dep’t of Educ. & U.S. Dep’t of Justice, *Resource on Confronting Racial Discrimination in Student Discipline* (May 2023), https://www.justice.gov/d9/press-releases/attachments/2023/05/26/tvi-student-discipline-resource-202305_0.pdf (2023 Dear Colleague Letter).

⁴⁶ *Id.*

⁴⁷ *Id.* at pp 3-4.

⁴⁸ *Id.*

⁴⁹ See Note 43.

⁵⁰ Letter from Kimberly Richey, Department Education Ass. Secretary for Civil Rights, *Dear Colleague Letter: Guidance on Pupil Discipline and Compliance with Title VI* (Aug. 18, 2026) at p.6-7, 12 (alleging that students who should have been expelled remained in schools, making them less safe, more disruptive, and “increasing school violence”).

⁵¹ *Id.* at p. 1.

⁵² See, e.g., *Yu v. Vassar Coll.*, 97 F. Supp. 3d 448, 462 n.7 (S.D.N.Y. 2015) (finding that a “Dear Colleague” letter published by OCR “does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations”); *C.C. v. Paradise High Sch.*, No. 16-cv-2210, 2019 WL 6130439, at *5 (E.D. Cal. Nov. 19, 2019) (noting that a “Dear Colleague” letter “is a guidance document issued by a government agency providing insight into that agency’s interpretation or application of a particular statute, regulation or rule”), *aff’d sub nom. Csutoras v. Paradise High Sch.*, 12 F.4th 960 (9th Cir. 2021); *United States ex rel. Hitrost, LLC v. Study Across the Pond, LLC*, No. 21-cv-10274, 2025 WL 871024, at *8 (D. Mass. Mar. 19, 2025) (explaining that a “Dear Colleague” letter was “merely meant to provide guidance on a previously issued final regulation” and “does not by itself create or purport to create law”).

⁵³ See *Christensen v. Harris Cty.*, 529 U.S. 576, 587 (2000) (“Interpretations such as those in opinion letters—like interpretations contained in policy statements, agency manuals, and enforcement guidelines, all of which lack the force of law—do not warrant deference”).

⁵⁴ Letter from Craig Trainor, Acting Assistant Sec’y for OCR, U.S. Dep’t of Educ., *Dear Colleague Letter: Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard* (Feb. 14, 2025), marked no longer enforceable, <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>.

⁵⁵ *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 796 F. Supp. 3d 66, 123 (D. Md. 2025).

⁵⁶ *Id.* at 612 (“Although this Court does not doubt that the government intended to issue an interpretive rule, because the Letter prescribes new law and policy, and has the force and effect of law, it surpasses the bounds of an interpretive rule.”)

⁵⁷ *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) (finding law school’s narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body did not violate the Equal Protection Clause or Title VI).

⁵⁸ *Sargent v. Sch. Dist. of Philadelphia*, 165 F.4th at 739; *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d at 543 (3d Cir. 2011); *Antonelli v. New Jersey*, 419 F.3d at 274.

⁵⁹ Exec. Order No. 14190, 90 Fed. Reg. 8853 (Jan. 29, 2025), *Ending Radical Indoctrination in K-12 Schooling*, <https://www.federalregister.gov/documents/2025/02/03/2025-02232/ending-radical-indoctrination-in-k-12-schooling>.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ American Bar Association, *What Is an Executive Order?*, 2021, https://www.americanbar.org/groups/public_education/publications/teaching-legal-docs/what-is-an-executive-order/.

⁶⁵ *Id.*

⁶⁶ American Bar Association, *General FAQs on Executive Orders*, 2021, https://www.americanbar.org/groups/public_education/resources/teacher_portal/educational_resources/executive_orders/.

⁶⁷ Letter from Craig Trainor, Acting Assistant Sec’y for OCR, U.S. Dep’t of Educ., *Dear Colleague Letter: Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard* (Feb. 14, 2025), marked no longer enforceable, <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>.

⁶⁸ *Id.* at 4.

⁶⁹ *Id.* at 1 n.3.

⁷⁰ Educ. Rts. Inst., *Understanding the February 14, 2025 Dear Colleague Letter from the Office for Civil Rights Regarding Title VI and Race Discrimination in Schools* (Mar. 2025), <https://www.law.virginia.edu/sites/default/files/documents/understanding-dear-colleague-letter.pdf>.

⁷¹ U.S. Dep’t of Educ., Off. for C.R., *Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act* (Mar. 1, 2025), <https://www.ed.gov/media/document/frequently-asked-questions-about-racial-preferences-and-stereotypes-under-title-vi-of-civil-rights-act-109530.pdf>.

⁷² *Id.* at 6.

⁷³ Exec. Ord. No. 14280 90 Fed. Reg. 17533, *Reinstating Commonsense School Discipline Policies* (Apr. 23, 2025).

- ⁷⁴ Sean Darling-Hammond & Eric Ho, *No Matter How You Slice It, Black Students Are Punished More: The Persistence and Pervasiveness of Discipline Disparities*, 10 AERA OPEN 1 (2024); Melanie Leung-Gagné, et al., Learning Pol’y Inst., Pushed out: Trends and disparities in out-of-school suspension.
- ⁷⁵ US Dep’t of Educ., Press Release, *ED Requires K-12 School Districts to Certify Compliance with Title VI and Students v. Harvard as a Condition of Receiving Federal Financial Assistance* (Apr. 3, 2025).
- ⁷⁶ NPR, *With federal funding on the line, school leaders weigh Trump DEI order* (Apr. 17, 2025) (“For example, New York, Minnesota, Illinois, and Wisconsin refused to comply with the directive, challenging it as unauthorized, unlawful, and unconstitutionally vague. Vermont, Missouri, and Montana sent a single certification on behalf of all of their school districts.”) <https://www.npr.org/2025/04/17/nx-s1-5361196/trump-dei-school-leaders-response>.
- ⁷⁷ Letter from Angela P. Fitterer, Exec. Deputy Sec’y of Educ., Pa. Dep’t of Educ., to US Dep’t of Educ., Off. of C.R. (Apr. 9, 2025), <https://www.pa.gov/content/dam/copapwp-pagov/en/education/documents/schools/grants-and-funding/pde%20response%20to%20ocr%20on%20title%20vi.pdf>.
- ⁷⁸ See, e.g., Memorandum To: Colleagues, University Offices of General Counsel, and University Leaders Re: *DEI Programs Are Lawful Under Federal Civil Rights Laws and Supreme Court Precedent* (Feb. 20, 2025), <https://race.usc.edu/wp-content/uploads/2025/02/Law-Professors-DEI-Executive-Orders-Memo.pdf>.
- ⁷⁹ *Id.*
- ⁸⁰ U.S. Department of Education DCL, *supra* note 24, at 2.
- ⁸¹ *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 214-18 (2023).
- ⁸² See *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 314 (1978); *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).
- ⁸³ *Students for Fair Admissions*, 600 U.S. at 213 n.4.
- ⁸⁴ *Id.* at 230.
- ⁸⁵ *Id.* at 214.
- ⁸⁶ *Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011).
- ⁸⁷ *Id.* at 317 (Kavanaugh, J., concurring); see also *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007) (distinguishing use of race in higher education admissions from K-12 school assignment plans).
- ⁸⁸ See, e.g., *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 879, 885-86 (4th Cir. 2023) (applying rational basis review to a race-neutral high school admissions policy); *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for the City of Bos.*, 89 F.4th 46, 59 (1st Cir. 2023) (same).
- ⁸⁹ *Bos. Parent Coal. for Acad. Excellence*, 89 F.4th at 59.
- ⁹⁰ *Sargent v. Sch. Dist. Phila.*, 165 F.4th 727 (3rd Cir. 2026).
- ⁹¹ *Students for Fair Admissions*, 600 U.S. at 317 (citations omitted) (Kavanaugh, J. concurring).
- ⁹² *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 509 (1989) (plurality opinion of O’Connor, J.) (noting that City of Richmond “has at its disposal a whole array of race-neutral devices to increase the accessibility of city contracting opportunities to small entrepreneurs of all races”).
- ⁹³ See, e.g., *Fisher v. Univ. of Tex.*, 570 U.S. 297, 312 (2013) (“[S]trict scrutiny imposes on the university the ultimate burden of demonstrating ... that available, workable race-neutral alternatives do not suffice.”); *Grutter v. Bollinger*, 539 U.S. 306, 339 (2003) (same); *Parents Involved*, 551 U.S. at 789 (Kennedy, J., concurring) (“race conscious” policies are permissible, including “strategic site selection of new schools; drawing attendance zones with general recognition of the demographics of neighborhoods; allocating resources for special programs; recruiting students and faculty in a targeted fashion; and tracking enrollments”).
- ⁹⁴ See *Parents Involved*, 551 U.S. 701, 702, 127 S. Ct. 2738, 2742, 168 L. Ed. 2d 508 (2007) (citing *Freeman v. Pitts*, 503 U.S. 467, 494, 112 S.Ct. 1430, 118 L.Ed.2d 108 (1992)).
- ⁹⁵ *Jakiche v. Board of Regents of the U. of N.M.*, 2026 WL 1694564, a recent case arising out of a federal district court in New Mexico, upheld a university admission policy that ranked applicants for diversity as well as academic prowess. Among other justifications for upholding the policy, the court asserted that a Title VI violation could not be found because “[a]s an initial matter, the medical school’s admissions criteria do not identify a particular type of applicant diversity” allowing *SSFA* to not apply to the policy. *Id.* at *4.
- ⁹⁶ See *Nat’l Educ. Ass’n v. United States Dep’t of Educ.*, 779 F. Supp. 3d 149 (D.N.H. Apr. 24, 2025) (“*NEA v. Dept. of Ed*”); *Nat’l Ass’n for Advancement of Colored People v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 53 (D.D.C. Apr. 24, 2025) (“*NAACP v. Dept. of Ed*”); *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 779 F. Supp. 3d 584, 610 (D. Md. Apr. 24, 2025) (“*AFT v. Dept. of Ed*”).
- ⁹⁷ US Dept. of Education, Press Release, “U.S. Department of Education Launches ‘End DEI’ Portal” marked as historical and no longer maintained (Feb. 27, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-launches-end-dei-portal>.

⁹⁸ *NEA v. Dept. of Ed*, 779 F. Supp. 3d at 172 (finding NEA likely to succeed on the merits in part because the DCL was not in accordance with the Administrative Procedures Act, 5 U.S.C. § 706(2)(A) and violated various provisions of federal law prohibiting the Department from directing or controlling schools' curricula).

⁹⁹ See DCL, *supra* note 24, at 1 (ED's notification in red).

¹⁰⁰ *NEA v. Dept. of Ed*, 779 F. Supp. at 198.

¹⁰¹ *Id.*

¹⁰² *NAACP v. Dep't of Educ.*, 779 F. Supp. 3d at 66 (“[T]he certification requirement threatens serious consequences for schools’ failure to comply with vaguely-defined prohibitions on DEI initiatives. Those consequences include the termination of federal funding, breach of contract suits brought by the Department of Justice, and liability under the False Claims Act, 31 U.S.C. § 3729(a). The Court finds that threatening penalties under those legal provisions, without sufficiently defining the conduct that might trigger liability, violates the Fifth Amendment’s prohibition on vagueness.”).

¹⁰³ *AFT v. Dep’t of Educ.*, 796 F. Supp. 3d at 123.

¹⁰⁴ *AFT v. Dept. of Ed*, No. 25-228, 2025 WL 2374697 (D. Md. Jan. 21, 2025).

¹⁰⁵ *NEA v. Dept. of Ed*, No. 25-CV-00091-LM, 779 F. Supp. 3d 149 (D.N.H. Feb. 3, 2025).

¹⁰⁶ *Id.*

¹⁰⁷ There are, however, still pending cases related to the legality of grant revocations or altered grant policies in areas of education based on diversity, equity, and inclusion policies. See *Wash. State Ass’n of Head Start & Early Childhood Assistance & Educ. Prog. v. Kennedy*, 820 F.Supp. 3d 1178 (W.D. Wash. Jan. 6, 2026); *San Francisco Unified Sch. Dist. v. AmeriCorps*, 789 F. Supp. 3d 716 (N.D. Cal. June 18, 2025).

¹⁰⁸ 42 U.S.C. § 2000d-1 (Title VI); see also 20 U.S.C. § 1682 (Title IX).

¹⁰⁹ See Department of Education Organization Act of 1979, 20 U.S.C. §§ 6301 *et seq.*; General Education Provisions Act, 20 U.S.C. §§ 1221 *et seq.*; see also *Milliken v. Bradley*, 418 U.S. 717, 742 (1974); *United States v. Lopez*, 514 U.S. 549, 566 (1995).

¹¹⁰ Pa. Const. Art. III § 14.

¹¹¹ See, e.g., ARK. CODE ANN. § 14-1-114 (effective August 2025); FLA. STAT. ANN. § 1007.25 (anti-DEI provisions added in 2023).

¹¹² *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (“Living under a rule of law entails various suppositions, one of which is that (all persons) are entitled to be informed as to what the State commands or forbids.”).

¹¹³ See e.g., *Nat’l Educ. Ass’n-N.H. v. N.H. Attorney General*, 806 F. Supp. 3d 166 (D.N.H. Oct. 2, 2025); *Jackson Fed’n of Tch. v. Fitch*, 799 F. Supp. 3d 571 (S.D. Miss. Aug. 18, 2025); but cf. *Simon v. Ivey*, 2025 WL 234585 at *72 (N.D. Ala. Aug. 13, 2025) (finding that anti-DEI language was not unconstitutionally vague because the dictionary meanings of the terms were readily ascertainable).

¹¹⁴ *Nat’l Educ. Ass’n-N.H.*, 806 F. Supp. 3d at 202-06.

¹¹⁵ See, e.g., *GSA Network v. Morath*, 821 F. Supp. 3d 753 (S.D. Tex. Feb. 20, 2026) (Plaintiffs challenged anti-DEI state law for their implications on speech.).

¹¹⁶ See *Kennedy v. Bremerton*, 597 U.S. 507 (2022) (“[O]ur precedents remind us that the First Amendment’s protections extend to ‘teachers and students,’ neither of whom ‘shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.’”) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969)).

¹¹⁷ See *Rice v. Schell*, 2026 WL 1242088 (S.D. Ohio Apr. 29, 2026), where a federal district court determined that challenging a university’s decision to shut down DEI programs and committees to avoid state action was not itself a violation of the First Amendment. This case suggests that it needs to be state action or a policy that changes what a teacher or student is allowed to say or do for a violation of the First Amendment to be found.

¹¹⁸ *Jackson Federation of Tch.*, 799 F. Supp. 3d at 575.

¹¹⁹ See *Henderson v. Springfield R-12 Sch. Dist.*, 163 F.4th 478 (8th Cir. 2025) (finding that there was sufficient evidence to sustain a compelled speech claim against a school’s mandatory DEI training); but also see *Johnson v. Filger*, 821 F. Supp. 3d 1203 (E.D. Cal. Feb. 20, 2026) (finding that the mandatory DEI trainings were not likely compelled speech).

¹²⁰ See 20 U.S.C. § 3413; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.* (race); Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.* (sex), and Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131, *et seq.* (disability); see also 34 C.F.R. Part 100; 34 C.F.R. Part 106; 28 C.F.R. § 35.171.

¹²¹ 34 C.F.R. § 100.7(c).

¹²² 34 C.F.R. § 100.7(d)(1).

¹²³ 34 C.F.R. § 100.8(a).

¹²⁴ 34 C.F.R. § 104.6(a)(1).

¹²⁵ See, e.g., Resolution Agreement OCR Case No. 09-14-5003 Victor Valley Union High School District (Aug. 15, 2022), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/09145003-b.pdf>; Resolution Agreement, Peoria Unified School District OCR Case 08-22-1273 (Sep. 30, 2022), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/08221273-b.pdf>.

¹²⁶ See Letter from Wendy Gatlin, Off. for C.R., U.S. Dep’t of Educ., to Sean Bulson, Superintendent of Harford Cnty. Pub. Schs. (Dec. 22, 2025) (OCR Docket No. 3-25-1226); Letter from Lori Welker, Off. for C.R., U.S. Dep’t of Educ., to Lewis Ferebee, Superintendent of District of Columbia Pub. Schs. (Apr. 1, 2025) (OCR Docket No. 11231172).

¹²⁷ See Jodi Cohen and Jennifer Smith Richards, *Massive Layoffs at the Department of Education Erode Its Civil Rights Division*, ProPublica (Mar. 12, 2025), <https://www.propublica.org/article/education-department-civil-rights-division-eroded-by-massive-layoffs>; Jennifer Smith Richards and Jodi Cohen, *A Gutted Education Department’s New Agenda: Roll Back Civil Rights Cases, Target Transgender Students*, ProPublica (May 2, 2025), <https://www.propublica.org/article/education-department-civil-rights-donald-trump-discrimination>.

¹²⁸ See, e.g., *Carter v. United States Dep’t of Educ.*, No. CV 25-0744 (PLF), 2025 WL 1453562, at *8 (D.D.C. May 21, 2025) (denying preliminary injunction on ground that plaintiffs failed to offer sufficient evidence that OCR failed to perform its statutory and regulatory duties or would be unable to perform its duties and questioning whether actions qualified as final agency action); *Nat’l Ass’n for the Advancement of Colored People v. United States*, No. 8:25-CV-00965-JRR, 2025 WL 2402191, at *16 (D. Md. Aug. 19, 2025) (finding that Plaintiffs failed to make “a clear showing of likelihood of success.”).

¹²⁹ *Victim Rts. L. Ctr. v. United States Dep’t of Educ.*, No. CV 25-11042-MJJ, 2025 WL 1704311, at *5 (D. Mass. June 18, 2025), Appeal Filed, *Victim Rights Law Center, et al v. United States Department of Education, et al.*, 1st Cir., Aug. 14, 2025. The appeal was asserted on the basis of the Supreme Court’s stay in *McMahon v. New York*, 145 S. Ct. 2643 (2025), which stayed two orders that had enjoined massive firings and the dismantling of Education Department. The Supreme Court’s order is unaccompanied by explanatory discussion. The district court distinguished the holding in *Carter*, explaining: “Plaintiffs have provided a record which demonstrates that OCR is not investigating most complaints and have clearly demonstrated irreparable harm with respect to at least two students who are unable to return to public school because their complaints have been forestalled by the OCR.” *Id.* at *11 n.5. However, the First Circuit refused to grant a stay as a result of the appeal, arguing that *McMahon* was governing. See *Victim R. L. Ctr. v. U.S. Dep’t Educ.*, 154 F.4th 5 (1st Cir. 2025).

¹³⁰ Federal regulations explicitly require the OCR to promptly investigate and resolve complaints that indicate possible failures to comply with Title VI. For example, “[t]he responsible Department official or his designee” is required to “make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply” with the regulations implementing Title VI. 34 C.F.R. § 100.7(c)). In addition to mandating retroactive investigations, the regulations require OCR to initiate periodic compliance reviews to assess the practices of funding recipients to determine whether they comply with the Title VI regulations. *Id.* See Off. For Civ. Rts., U.S. Dep’t of Educ., OCR Case Processing Manual (hereinafter “Case Processing Manual”), at 21 (Feb. 19, 2025), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocrcpm.pdf>. See 34 C.F.R. § 100.7(a).

¹³¹ *Victim Rts. L. Ctr. v. United States Dep’t of Educ.*, No. CV 25-11042-MJJ, 2025 WL 1704311, at *13.

¹³² *McMahon*, 145 S. Ct. 2643 (2025).

¹³³ *Id.* at 2653.

¹³⁴ Pa. Human Relations Act, 43 P.S. § 955; see also Pa. Const. Art. I, § 29 (“Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the individual”).

¹³⁵ Pa. Human Relations Act, 43 P.S. § 955.

¹³⁶ *Id.* See 43 P.S. §§ 951 - 963.

¹³⁷ 16 PA. CODE §§ 41.204, 41.207 (defining traits associated with race to include but not limited to, hair texture and protective hairstyles, such as braids, locs, and twists).

¹³⁸ Press Release, Pa. Hum. Rel. Comm’n., *The PHRC releases statement affirming anti-discrimination protections in Pennsylvania* (Jan. 25, 2025).

¹³⁹ *Id.*

¹⁴⁰ U.S. Const. amend. XIV, § 1; *Brown v. Bd. of Educ.*, 347 U.S. 483.

¹⁴¹ 42 U.S.C. §§ 2000d-2000d-7; 34 C.F.R. § 100.3(b)(6)(i).

¹⁴² 20 U.S.C. §§ 1703, 1703(f).

¹⁴³ Pa. Const. Art. I §§ 1, 26, 28, 29; Pa. Human Relations Act, 43 P.S. § 955.