ACHIEVING COMMON DIGNITY

A Trustee Guide to Ensuring a Discrimination-free Campus

Perspectives on Higher Education

American Council of Trustees and Alumni | Institute for Effective Governance®

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ACTA
American Council of Trustees and Alumni

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American society is characterized by its diverse cultures. But diversity alone, especially when narrowly understood as a matter of race and gender, does not define the American identity or that of a university. The American identity emphasizes merit, individual liberty, self-governance, and civil engagement. These are all the more essential to the mission and identity of colleges and universities.

Race-based preferences and similar forms of discrimination challenge both the financial future and the ethical foundation of higher education. Trustees must ask two basic questions: What exactly does the law require, and what is the right thing to do? The courts will ultimately decide the former. The latter is simpler, though often, to higher education's discredit, fiercely disputed. Colleges and universities must commit to treating all members of the community, regardless of race or gender, with equal dignity. They need to do this not out of begrudging compliance with a government mandate, but in response to a moral imperative that, as this guide explains, is rooted in the very purpose of an institution of higher education.

Students for Fair Admissions v. Harvard and the End of Affirmative Action in College Admissions

In states where legislatures have curbed or banned diversity, equity, and inclusion (DEI) programs, many colleges and universities have made haphazard cuts to DEI, either out of genuine confusion about the law or to feign compliance with it. Neither excuse will stand, and neither will protect an institution from legal consequences or moral hazard.

The progress of the law, along with the moral and legal failure of attempts to evade it, has grown yet clearer with the 2023 U.S. Supreme Court ruling in *Students for Fair Admissions v. Harvard* and its companion case, *Students for Fair Admissions v. University of North Carolina* (collectively "*SFFA*"). The court ruled that race-based affirmative action programs in college admissions are unconstitutional and in violation of Title VI of the Civil Rights Act. While banning race-based preferences in admissions, the Supreme Court included one potentially problematic sentence in its ruling that has been widely misunderstood and misused: "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."[1]

In this one sentence, the Supreme Court sought to establish a material difference between the consideration of an applicant's race *per se* and of the applicant's lived experience inasmuch as his or her race may have affected it. In other words, a college cannot give preference to candidates *because* they are black or Hispanic, but it can consider an admissions essay that, for example, describes challenges experienced while immigrating to the U.S. This diversity/identity/adversity essay carveout was used by 43 of the top 65 higher education institutions prior to the 2023–2024 school year and made mandatory at 31 institutions.[2]

Trusting college admissions officers—and, in some instances, upper-level administrators—to observe this legal distinction has introduced challenges of its own, notably, the potential to replicate racial discrimination in *de facto* form, with admissions essays serving merely to signal race or another special minority category, such as LGBTQ+ identification. Many institutions, including Harvard University, reacted to the *SFFA* decision seemingly in ways designed to evade the clear intent of the law. Referring to the Supreme Court's clarification that "Nothing in this ruling should be construed as prohibiting universities from considering an applicant's discussion of how race affected his or her life," Harvard stated that while it will comply with the letter of the law, it will also "determine how to preserve, consistent with the Court's new precedent, our essential values."[3]

Following the decision, Harvard, along with Sarah Lawrence College, Johns Hopkins University, and Rice University, adopted new application essay

prompts that strongly appear to invite candidates to disclose their race, leading one commentator to write: "It's hard to read the word 'diverse' in this prompt as anything other than a signal for students to mention their race or other favored identity characteristics."[4]

By contrast, the University of North Carolina–Chapel Hill's Board of Trustees avoided even the appearance of racial discrimination (and, thereby, litigation). It embraced both the letter and the spirit of the law. The board passed a resolution (see Appendix A) prohibiting the university from granting preferential treatment "on the basis of race, sex, color, ethnicity, or national origin, religion, sexual orientation, gender identity, age, disability, genetic information, or veteran status in its admissions, hiring and contracting" and prohibiting the indirect consideration of race by proxy.[5] This was a dramatic reversal for the university, which had spent nearly $25 million fighting against Students for Fair Admissions in court.[6]

The *SFFA* Decision and Implications for Diversity, Equity, and Inclusion

While the *SFFA* case specifically dealt with college admissions, President Donald Trump's administration has issued policies that extend the principle of anti-discrimination to other college and university functions. Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity" (see Appendix B), issued on January 21, 2025, calls for institutions that receive federal funding, including institutions of higher education, to end DEI programs that violate federal civil rights laws. The order also calls for the U.S. attorney general and secretary of education to issue guidance to universities regarding compliance with the *SFFA* decision.[7]

Subsequently, on February 14, 2025, the administration issued a Dear Colleague Letter (see Appendix C) instructing colleges and universities that receive federal funds that they "may neither separate or segregate students based on race, nor distribute benefits or burdens based on race."[8] This has largely been interpreted as a call to discontinue most, if not all, DEI programs, because inherently they unlawfully discriminate on the basis of race. Guidance from the U.S. attorney general issued on July 29, 2025, (see Appendix D) sought to provide a number of specific recommendations. The administration's position continues to be disputed in federal court, most recently in August

2025 when a U.S. District Court judge vacated the February Dear Colleague Letter on constitutional grounds and under the Administrative Procedures Act, although the ruling is still subject to appeal.[9]

Even before the *SFFA* case, many states, including Ohio, Texas, and Utah, passed their own laws addressing DEI, which range from requiring public colleges and universities to catalogue and report expenditures on DEI programs, to outright bans on DEI programs altogether.[10] Typically, such legislation explicitly includes gender discrimination as well as race-based discrimination in its prohibitions. Some legislation apparently went too far: In Florida, the Eleventh Judicial Circuit ruled that the state's ban on mandatory DEI training content deemed racially or sexually discriminatory violates free speech rights under the First and Fourteenth Amendments to the U.S. Constitution, largely because it was not a content-neutral policy.[11] That ruling is a powerful reminder to all leaders of public (and many private) universities that the First Amendment is determinative and must be scrupulously observed.

Colleges and universities have taken mixed approaches to complying with the Dear Colleague Letter and other governmental directives to limit or eliminate DEI. As noted above, the two defendants in *SFFA* diverged sharply in response to the ruling. The University of Michigan Board of Regents made a dramatic course correction regarding the university's very extensive DEI staffing and expenditures by ending its DEI 2.0 strategic plan, closing its DEI offices, and discontinuing its use of diversity statements in faculty hiring. The Ohio State University announced that it would close its Office of Diversity and Inclusion and its Center for Belonging and Social Change, while renaming its Office of Institutional Equity as the Office of Civil Rights Compliance. The University of Colorado established the Office of Collaboration to replace its former DEI office, while other universities audited their websites to remove references to terms like "diversity" or "inclusion." It is, however, quite unclear what these changes of nomenclature mean operationally, and those institutions that have largely renamed, rather than significantly reduced or eliminated, the activities of their DEI offices may find themselves open to sanctions. Trustees will need to be vigilant to ensure full compliance.[12]

Understanding the Scope of DEI in Practice

Title VI of the Civil Rights Act of 1964 prohibits colleges and universities that receive federal funds from discriminating on the basis of race, color, or national origin, which includes various manifestations of antisemitism.[13] Despite this, institutions for decades have operated "race-conscious" programs or policies, typically under the aegis of remedying the effects of past societal discrimination. (Affirmative action fell under this category until the *SFFA* decision declared it unlawful.) These programs, along with others that provide resources intended to support members of protected class identity groups, such as LGBTQ+, usually fall under the umbrella of DEI programs.

In addressing, as we do below, the discriminatory and destructive aspects of DEI, it is important to remember that some of its activities are lawful and appropriate. DEI personnel may have responsibilities that extend beyond traditional diversity efforts, such as facilitating compliance with the Americans with Disabilities Act or providing services for veterans—areas that reflect the broader scope of DEI and align with deeply held societal values like supporting individuals with disabilities and those who have served in the armed forces. But far too much of it (see page 12) has veered into a narrow form that perpetuates destructive identitarian stereotypes, undermines intellectual exchange, and, at worst, creates a hostile learning environment for students.

It is unfortunate that "diversity" has come to be identified through the distorted lens of DEI. Diversity of experience and background has long been recognized as a vital element of the creative process. Intellectual diversity vastly improves problem-solving and fosters breakthroughs in our understanding. It is worth the time to consider the chapter entitled "When Less of the Same Is More" in David Epstein's book *Range: Why Generalists Triumph in a Specialized World* as a reminder that intellectual diversity, rather than diversity based on appearance, is what should matter in higher education.[14] So also, "inclusion." Inclusion in its classical sense of fostering respect for all members of the community is a basic premise of our pluralistic society.

But the unfortunate truth is that most contemporary DEI offices at colleges and universities apply definitions of diversity and inclusion that balkanize communities based on certain characteristics, typically race, ethnicity, gender, or sexual orientation. At far too many institutions of higher education across the country, the terms "diversity" and "inclusion" signal divisions within campus communities rather than promote universal opportunities for students to learn. DEI might not always "discriminate" in the legalistic sense of prohibiting students from access to services, but it often erases the dignity and autonomy of the individual in favor of group identity—in other words, stereotypes.

This distorted view strikes at the heart of higher education because it undermines the very mission of the college or university. A robust liberal arts education equips students to learn *how* to think, not *what* to think. This only happens when a campus community values intellectual diversity among its faculty and students and welcomes the free exchange of ideas. The narrow vision of DEI encourages neither. Erec Smith, co-founder and president of Free Black Thought and former associate professor of rhetoric at York College of Pennsylvania, distinguishes DEI in contemporary practice from other programs that legitimately operate in good faith to combat discrimination:

> DEI is built upon a foundation whose very mission is to perpetuate racism.
>
> Contemporary DEI is not an extension of the Civil Rights Movement. It is undergirded by a quasi-Marxist ideology called Critical Social Justice. The primary tenet of Critical Social Justice is this: "The question is not 'did racism take place?' but rather 'how did racism manifest in that situation?'" So, according to Critical Social Justice, racism is always already taking place. There is no need to think for oneself; the narrative—one of perpetual oppression—does the thinking for you.[15]

DEI in practice at colleges and universities fails students in at least three ways. First, it disempowers them with a false narrative about "whiteness" and racial authenticity. In extreme forms, it asserts that ordinary pedagogical methods, such as writing in standardized English or even requiring students in basic

mathematics to produce the correct answer, perpetuate "whiteness."[16] Second, too often it advances a worldview that undermines the very foundation of intellectual inquiry, leaving no room for dissent. One can still find official university web pages with lists of so-named "microaggressions."[17] However such lists might be intended, they are ultimately a form of speech control whose collateral damage is shutting down discourse. Third, such programs often discriminate in choosing which groups are worthy of their attention. At Northwestern University, for example, the Office of Institutional Diversity (which has since been renamed as the Office of Community Enrichment) did not invite Asian staff to its celebration of employees of color, citing limited space. And in its welcome letter celebrating the university's diversity, it made no mention of Asian students.[18] There have been several notorious instances, discussed below, when DEI offices failed to address campus antisemitism and in some cases aided and abetted it.

Since their inception, institutions of higher education have aimed to pursue knowledge and truth, promote intellectual diversity, encourage open-minded discovery, foster critical thinking, and facilitate civil discourse. The focus on DEI can detract from this mission. It often prioritizes diversity statistics, such as the number of graduates and faculty of particular racial or gender groups, over broader educational values. As Glenn Loury, the Merton P. Stoltz Professor Emeritus of Social Sciences at Brown University, noted, "DEI was and remains a bad idea because it elevates values like 'diversity' and 'equity' above competency and merit. If you tell some people—explicitly or implicitly—that they don't have to work as hard as everyone else, guess what will happen? Most of them won't work as hard as everyone else. . . . "[19]

Tabia Lee, former director of the Office of Equity, Social Justice, and Multicultural Education at De Anza Community College and co-founder of Free Black Thought, experienced firsthand the pressure to conform ideologically that DEI administrators place on their colleagues and others. She remarked, "Anything short of lockstep adherence to critical social justice was impermissible. . . . Protection of orthodoxy supersedes all else: collegiality, professionalism, the truth."[20]

Arguably the strongest evidence that DEI is more preoccupied with a narrow and prejudicial political view than actual inclusiveness is its failure to protect Jewish students from antisemitism on campus following the Hamas attack

on Israel of October 7, 2023. As demonstrations escalated violently across the country, Jews—as well as non-Jews who expressed support for Israel—found themselves the targets of pervasive harassment. Explaining why the failure was so systemic, one commentator wrote, "despite having endured thousands of years of oppression . . . Jews are not *viewed* [emphasis in the original] as oppressed at all within a DEI framework. On the contrary, they are generally seen as white, privileged oppressors who do not merit the attention of DEI programs."[21] Researchers Jay Greene and James Paul reviewed available posts on Twitter (now X.com) of 741 DEI personnel at 65 universities. They found that 96% of the posts were critical of Israel, but 62% were favorable to China, where the Uighurs were suffering atrocious persecution: The administrators singled out Israel for their scorn.[22] Perhaps not surprisingly, the past presidents of the Anti-Defamation League and the American Jewish Committee called for an end to DEI programs.[23]

Studies give cause for skepticism that DEI's various interventions produce the desired effects of creating a deeper understanding of diverse peoples and increasing inclusion. A pair of 2018 studies found no statistically significant evidence linking the hiring of an executive-level chief diversity officer to increased diversity on campus.[24] A 2021 review published in the *Annual Review of Psychology* examined more than a decade's worth of academic research on methods for reducing prejudice and "did not find a broad evidence base on which to draw conclusions about the effects of diversity training." The authors found this "disappointing, considering the frequency with which calls for diversity training emerge in the wake of widely publicized instances of discriminatory conduct."[25]

Numerous studies suggest that current approaches to DEI initiatives may unintentionally reinforce bias rather than diminish it. In a 2018 meta-analysis of DEI programs, sociologists Frank Dobbin and Alexandra Kalev noted that "hundreds of studies dating back to the 1930s suggest that anti-bias training doesn't reduce bias, alter behavior, or change the workplace." They attributed this to the ineffectiveness of the top-down, command-and-control model typically used in corporate training, arguing that such approaches backfire because "people resist external controls on their thoughts and behavior and perform poorly in their jobs when they lack autonomy."[26]

More recent findings support this conclusion. A 2024 study by the Network Contagion Research Institute in collaboration with Rutgers University examined the responses of over 400 undergraduate students to anti-oppression educational materials focused on race, religion, and caste. Rather than fostering inclusion, the interventions led to an increase in hostile attribution bias.[27] With evidence of this nature, the argument that campus DEI programs will do better is exceedingly weak.

Programs that focus on expanding opportunity, fostering respectful dialogue across differences, or ensuring compliance with legal protections for veterans, individuals with disabilities, and other historically marginalized groups can serve important roles within a university setting. However, it is essential that such efforts do not morph into ideologically rigid systems that silence dissent, enforce conformity of thought, or curtail open inquiry. DEI must not be allowed to be a vehicle for imposing a narrow worldview that stifles debate, suppresses uncomfortable truths, or punishes individuals for holding contrarian views. Trustees and academic leaders alike have a responsibility to ensure that all programming, however it is named, aligns with the university's core mission: the pursuit of knowledge through rigorous, open, and respectful intellectual engagement. The pages that follow set forth a plan for doing so.

1. Review the core values of your institution.

Boards should start by defining their institutions' values clearly and unambiguously, so that future trustees will know which programs align with those values and which do not. Simply calling to "end DEI" is a counterproductive exercise that will likely result merely in creative rebranding, or conversely, cutting services that are not discriminatory to begin with. For example, the federal government's own guidance recognizes that cultural programs and celebrations remain perfectly compliant with Title VI, as long as they are open to all students. At issue are programs that discriminate unlawfully or create a hostile learning environment by advancing negative racial stereotypes.[28]

As a board member, your fiduciary responsibility is to uphold the mission of the institution. Every strategic plan, policy, or decision you make flows from the college or university's mission. The same goes for any overarching value

statements that your institution publishes on its website. Evaluate vision or value statements that apply to the institution as a whole. Do they reflect the whole of the institution and not just the opinion of a vocal minority (or even majority) of the community? Colleges and universities are unique civic institutions that must not only tolerate unorthodox or contrarian ideas but embrace their presence as necessary to the process of advancing human knowledge. As such, trustees should ensure that statements of their institution's values remain free of political or social agendas that are extraneous to the core work of advancing knowledge and educating students. Do your institutional values implicitly endorse discrimination of any type? It is properly within the board's prerogative to issue a resolution calling for the examination, and if necessary, revision of any institutional value or mission statements that inform campus policy.

You may be told that you are acting "outside of your lane." But there is no greater responsibility for trustees than defending the rights of faculty to be *free to teach* and the rights of students to be *free to learn*. As the *Economist* observed, elite institutions in particular have too often become hostile to the ideals of classical liberalism.[29] Yet no institution is exempt from the duty to ensure an academic climate that encourages, rather than discourages, an entrepreneurial approach to intellectual growth. The vitality of American higher education—and by extension, the country's capacity for innovation, civic leadership, and economic competitiveness—is all at stake.

2. Adopt the Chicago Principles on Freedom of Expression and the Kalven Report on institutional neutrality.

The educational mission of any college or university relies on the free exchange of ideas. A growing number of institutions have adopted the Chicago Principles on Freedom of Expression and the Kalven Report on institutional neutrality to ensure that the university, in its corporate capacity, does not discourage individual members of the institutional community from expressing their own views. When DEI runs counter to these principles—for example, when it acts as an apparatus to silence and censure faculty or students selectively based on viewpoint—then it is the duty of trustees to intervene.

The Chicago Principles were published in 2015 and have since been adopted by over 100 colleges and universities across the country.[30] In short, the Chicago Principles uphold the idea that because the primary mission of an institution of higher education is the pursuit of knowledge and truth, campuses must defend the free exchange of ideas as sacrosanct. Therefore, do not allow administrators to set obstacles to that purpose, for example, facilitating an anonymous reporting system that can easily be abused to chill unpopular speech. This should be viewed as an academic dysfunction tantamount to tolerating plagiarism in the classroom.

The Report on the University's Role in Political and Social Action, or Kalven Report for short, was first published by a University of Chicago faculty committee chaired by Harry Kalven, Jr., in 1967 and has since been adopted by over 25 colleges and universities.[31] The main idea behind the Kalven Report is the promotion of institutional neutrality. Institutional neutrality preserves campus freedom of expression and intellectual diversity. When a university remains neutral and abstains from declaring a collective opinion on political and social issues, it frees students and faculty to develop and articulate their own individual ideas and opinions.

You have the responsibility to enact policies that make clear the lasting values of the institution and to ensure that your campus leadership inculcates those values frequently. And most of all, you must remain vigilant, receptive to campus feedback, and ready to reengage when needed. There are no shortcuts. Colleges and universities are complex enterprises, and institutional inertia will guarantee that ideological discrimination—whether explicit or implicit—will continue unless governing boards make clear that it will not be tolerated.

3. Conduct a comprehensive inventory of diversity programs.

As trustees, you are tasked with the difficult responsibility of discerning whether the institution is stewarding properly its financial resources in service of its mission. Your institution's well-being depends on your willingness to discontinue such programs that undermine the university's values, purpose, and budget. The sheer amount that universities spend on diversity programs alone should make trustees stop and consider what value they add to the

institution. An example of large investments in DEI programs that ultimately failed: In early 2025, the University of Michigan discontinued its DEI 2.0 Strategic Plan. The university's DEI expenditures totaled $250 million, with little evidence to show that they improved the campus climate.[32] An audit of salaries, program expenditures, and faculty release-time is information the board should have.

Concrete findings about trends across higher education put into perspective the size and scope of DEI programs. A report published in 2021 assessed personnel counts at 65 universities representing 16% of all students enrolled in four-year institutions in the United States. The authors found that "the average university examined has 4.2 DEI personnel for every one ADA compliance person."[33] The Americans with Disabilities Act, unlike DEI, is a legal mandate. This distinction between legal obligation and institutional choice becomes especially important when considering the likely outcome of major DEI investments.

Your administration and faculty may be skeptical of, or even resistant to, questions from board members about DEI. This may be uncomfortable at first, especially given that most people rightfully believe that the ideas of diversity and inclusion are positive values but do not understand how DEI as practiced runs counter to those values.

Focusing too narrowly on the nomenclature of whether something is a "DEI program" will miss the broader goal of ending unlawful discrimination and promoting free expression. In the wake of the deadline for compliance with the February 14, 2025, Dear Colleague Letter, many college presidents were quick to reassure lawmakers that their institutions were already adhering to federal law. Given the national scope of the documented problems surrounding DEI programs preceding Executive Order 14173, trustees should be properly skeptical of any assessment downplaying the need for change. Put another way, rebranding DEI offices alone is not meaningful progress toward ending unlawful discrimination. In fact, it could easily become an evasive action for continuing "business as usual."

Boards must instead focus on scrutinizing any practice, program, center, or school that advantages or disadvantages any member of the campus

community because of his or her race, ethnicity, or any other protected class characteristic. The University of Colorado provides an example of when such scrutiny may be justified. Although the university system has taken down its DEI webpage, individual campuses continue their enthusiastic embrace of DEI. The University of Colorado–Colorado Springs's Knapsack Institute aims to provide participants with "an intersectional conceptual framework for understanding concepts of oppression and privilege" and strategies for "managing emotions and reactions in the classroom".[34] Its website explains:

> The name, "The Knapsack Institute" hails from Peggy McIntosh's renowned article, "White privilege and male privilege: A personal account of coming to see correspondences through work in women's studies," in which she states:
>
> "I have come to see white privilege as an invisible package of unearned assets which I can count on cashing in each day, but about which I was 'meant' to remain oblivious. White privilege is like an invisible weightless knapsack of special provisions, assurances, tools, maps, guides, codebooks, passports, visas, clothes, compass, emergency gear, and blank checks."[35]

The language of the Knapsack Institute seems to be code for the DEI agenda of showing the unearned advantage of some races and the victim status of others. While many find this language repugnant, merely voicing academic arguments does not alone constitute discriminatory action. This poses a special challenge for boards, which must respect the academic freedom of faculty to teach on controversial subjects, **while at the same time ensuring that they fulfill their responsibility to maintain a campus that neither unlawfully discriminates, nor creates an objectively hostile learning environment**. Academic freedom and free speech principles notwithstanding, institutions should view with caution any program that calls to stereotype individuals based on race (or any protected class characteristic). Boards should be vigilant to ensure that such programs treat participants equally in accordance with federal civil rights laws. For example, segregating discussion units based on race or requiring students to contextualize their contributions in terms of their own race is

inherently discriminatory. Recent federal guidance also warns that training modules that "single out, demean, or stereotype individuals based on protected characteristics" may violate federal law under certain circumstances.[36]

A more straightforward example concerns the University of Colorado–Boulder's College of Communication, Media, Design and Information. The college's commitment to DEI states:

> If we are to build and sustain a diverse, equitable and inclusive college, we have to begin by recognizing the long histories of inequity as fueled by systemic exclusion. These legacies, born in anti-Black racism, continue to impact college and university cultures, and our task is to challenge the systems of privilege and disadvantage in higher education, particularly as they intersect with race, ethnicity, gender, sexuality, ability and social class.[37]

One would be hard-pressed to interpret this statement as anything other than encouraging a hostile learning environment for certain groups of students based on their putative privilege *vis-à-vis* class membership. This call to arms, moreoever, is unlikely to encourage students to challenge the institution's worldview.

Creating a true nondiscriminatory environment requires drafting board resolutions that articulate precisely what the institution will and will not tolerate, whether called DEI or any other moniker. Clarity and transparency are key to winning over the trust of those who are open-minded but who may be nonetheless skeptical of your intentions. And board resolutions will be necessary to ensure that your actions have a lasting effect long after your service on the board ends.

4. End the use of bias response teams.

Unfortunately, many programs on college campuses commonly engage in forms of stereotyping that encourage the community to view selected groups as victims in need of protection. Ironically, "bias response teams," despite their name and stated purpose, are among the worst offenders in applying group stereotypes. Although they often set themselves out as

informal and non-punitive, their actions too often have a chilling effect on speech: Almost half of bias response teams include campus law enforcement, and almost two-thirds have student conduct administrators.[38] Moreover, their informal nature exacerbates the problem, as these programs typically allow anonymous reporting, giving students accused of "bias incidents" no meaningful way to appeal any findings against them. But the most glaring flaw of these quasi-judicial units is that they rely on administrators' subjective judgment of "bias"—a term disconnected from any type of civil sanction—instead of established legal definitions of harassment or of "severe, pervasive, and objectively offensive" conduct that contributes to a hostile learning environment.[39]

Many public institutions, including the University of Michigan, the University of Illinois, and the University of Texas, have shuttered their bias response teams in response to litigation on First Amendment grounds, but hundreds of institutions have continued this harmful practice.[40] Speech First recently identified 454 bias response teams at colleges and universities across the nation.[41] Boards should instead focus attention and resources on their institutions' federal civil rights compliance offices, which monitor Title VI violations and have far greater protections for due process than informal bias response teams. Trustees should also insist on receiving regular reports on all complaints submitted to compliance offices to ensure that they are meeting their statutory responsibilities.

5. Prohibit the use of "diversity statements" as a condition of employment or promotion.

Trustees should prioritize a board resolution prohibiting departments from requiring applicants to submit a "diversity statement," that is, an affirmation of adherence to certain ideological views. Requiring such statements is a widespread problem in higher education. Documents from public records requests of a pair of major state universities showed how otherwise academically qualified candidates for faculty positions were excluded from consideration for not agreeing sufficiently with interviewers' conceptions of diversity, equity, or inclusion or their applicability to academic work.[42] Furthermore, the use of diversity statements in employment screenings is a form of compelled speech that is the antithesis of a liberal arts education and a violation of the First Amendment.[43]

A number of states, including Idaho, Utah, Iowa, North Dakota, and Arizona, already prohibit by law (Arizona by board action) the use of diversity statements.[44] In 2023, the University System of Georgia Board of Regents approved a statement of principles affirming that "Faculty have the right to be unburdened by ideological tests, affirmations and oaths" and that "The key basis for hiring, promotion and tenure should be achievement and a commitment to student success."[45]

6. Consider re-envisioning diversity and inclusion goals under a framework of merit, fairness, and equality.

The Supreme Court in the *SFFA* decision recognized that while one's race in itself is an improper proxy for any criteria for admissions, one's individual circumstances, even if tangentially related to heritage or culture, may "be tied to *that student's* [emphasis in the original] unique ability to contribute to the university."[46]

John Chisholm, former trustee of the Massachusetts Institute of Technology (MIT), describes an approach to diversity that does enrich campus life:

> A very encompassing definition that I like is, "The degree to which a group of individuals represent or demonstrate a range of different skills, knowledge, cultures, identities, geographies, experiences, ideologies, philosophies, values and personalities, thereby providing the greatest opportunity to learn and grow from each other." To underscore an often-overlooked point, diversity is an aspect not of an individual, but of a group of individuals.[47]

It takes hard work in outreach and recruiting to provide this level of true intellectual and experiential diversity. But it can be done, while still maintaining what University of Chicago Professor of Geophysical Sciences Dorian Abbot and others propose in a framework called "merit, fairness, and equality (MFE)." This framework does away with most, if not all, traditional advantage systems (such as legacy and athletic admissions) and race- or gender-based DEI programs. The principle to which institutions must hold fast is that merit and merit alone ultimately determines student admissions and

honors and that faculty hiring practices, tenure, and promotion are similarly meritocratic.[48]

Be wary of attempts to eliminate or disregard standardized admissions tests: They have the power to keep admissions departments honest, providing objective, nationally normed data on the academic preparation of incoming classes.[49] It is for this reason that the new University of Austin guarantees admission to all applicants who score over 1460 on the SAT, 33 on the ACT, or 105 on the Classic Learning Test.[50]

7. Ensure that your college or university requires a course in U.S. history or government as a prerequisite for graduation.

Ending discriminatory practices on campus does not mean ignoring the deep significance of historical events in which people have been mistreated or have suffered prejudice and discrimination. But rather than entrusting that responsibility to a residence life advisor or administrative unit, the classroom is the best venue for this kind of conversation, led by faculty and placed in its proper context within the complex history of this nation. Some campuses have made the mistake of mandating "anti-racist" coursework without ensuring that students understand the American story in all its successes and failures. An example of this narrow approach is the University of Pittsburgh's requirement for all new students to take a course on anti-black racism.[51] Cornell University narrowly escaped implementing a similar measure in 2021.[52] The stain of racism is part of America's history, but it is anti-intellectual to limit students' perspectives through a required focus upon racism in isolation. South Carolina's Reinforcing College Education on America's Constitutional Heritage (REACH) Act requires undergraduates to complete a three-credit course in which they read, at a minimum, the U.S. Constitution, the Declaration of Independence, the Emancipation Proclamation, five of the Federalist Papers, and one or more documents foundational to the African American struggle. A similar version of the REACH Act was included in Ohio Senate Bill 1, passed into law in 2025, and requires institutions to include instruction on the American economic system and capitalism.[53]

Fewer than one in five four-year colleges and universities require students to take a survey course in U.S. history or government. Ensuring that students graduate with a common factual framework of our country's history is one of the most important actions a board can take to bridge the nation's cultural divide on these emotionally sensitive, but important social issues. Students who understand the evolving story of America's commitment to civil rights and equality under the law, along with freedom of speech and freedom of conscience, will be more likely to cherish these values in their campus community and throughout their lives as citizens.

Conclusion

Colleges and universities exist to pursue truth, foster knowledge, and educate citizens for a pluralistic democracy. These missions cannot coexist with programs or policies that stereotype, silence, or exclude individuals based on their identity or beliefs. While the ideals of diversity and inclusion may come from places of caring and compassion, their institutionalization under contemporary DEI frameworks has too often led to the opposite—ideological conformity, intellectual suppression, and unequal treatment.

Trustees must ensure that campus environments uphold the dignity and rights of all members, rooted in fairness, open inquiry, and merit. Board members should aim to build a campus community that fosters the arts of good citizenship and gives no place to racism or any other behavior that obstructs freedom to teach, freedom to learn, and the development of character. By re-centering institutional practices on enduring principles—freedom of expression, intellectual diversity, equal opportunity, and a shared civic understanding—governing boards can lead higher education back to its highest purpose: facilitating a free and vibrant exchange of ideas in the service of truth and human flourishing.

APPENDICES
Appendix A

RESOLUTION OF THE BOARD OF TRUSTEES
OF THE UNIVERSITY OF NORTH CAROLINA
CONCERNING CIVIL RIGHTS

WHEREAS, Article I of the Constitution of the State of North Carolina provides: "*We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.*"

WHEREAS, this guarantee of the right of our State's citizens to "enjoy the fruits of their own labor" is unique to North Carolina and was enacted to protect North Carolinians' rights to pursue their chosen profession and derive the benefits from their hard work – free from unreasonable interference from the government.

WHEREAS, the "fruits of their own labor" right applies to admissions, hiring and contracting in the State of North Carolina.

WHEREAS, the Constitution of the State of North Carolina states in Article 9, Section 9 that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

WHEREAS, the federal Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, religion, sex or national origin, such that discrimination on the basis of sex and race in hiring, promoting, and firing violates the laws of the United States.

WHEREAS, the Fourteenth Amendment to the United States Constitution provides, in part, that no state can deny to any person within its jurisdiction the equal protection of the laws, and Title IX specifically prohibits discrimination based on sex.

WHEREAS, voters in the State of California passed Proposition 209 in 1996, which mandates that the state cannot discriminate against or grant preferential treatment on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, and public contracting. And in 2020, voters in California overwhelmingly voted down Proposition 16, which would have repealed Proposition 209.

WHEREAS, Section 116-33 of the North Carolina General Statutes requires the Trustees of the University of North Carolina to promote the sound development of the University, helping it serve the State, and the Board of Trustees is responsible for oversight as advisor to the Board of Governors and Chancellor concerning the management and development of the Institution.

WHEREAS, Section 300.8.5 of the UNC Policy Manual seeks to advance diversity and to foster an inclusive environment that engages, respects, and values all members of the University community and to ensure such efforts are carried out in an effective manner. The UNC Policy Manual defines "Diversity" as the ways in which individuals vary, including, but not limited to,

backgrounds, personal characteristics, ideas, beliefs, cultures, and traditions that distinguish one individual or group from another, which may include, but are not limited to, Federal, State, University, and constituent institution protected classes.

WHEREAS, the UNC Policy Manual defines "Inclusion" as the enablement of individuals, including those from underrepresented groups, to fully and equitably have access to, and participate in, the University's programs, services, facilities, and institutional life.

WHEREAS, the UNC Policy Manual defines "Diversity and Inclusion (D&I)" collectively as the intentional efforts undertaken to create an institutional culture and a working and learning environment that offers acceptance, support, and respect for a diversity of individuals as they pursue their academic, research, and professional ambitions and interests.

WHEREAS, the UNC Policy Manual defines "Equal Opportunity (EO)" as the right of individuals to be considered for admission to, employment by, and promotion within the Institution on the basis of merit, experience, and qualifications, without unlawful or impermissible discrimination with respect to federal, State, University, and constituent institution protected classes.

WHEREAS, the University, through its Chancellor, D&I Officer, or other Chancellor designee, is required by the UNC Policy Manual to provide a report at least annually to the Board of Trustees on D&I-related information, as identified by the President or President's designee. The Board of Trustees may request or require additional or more frequent information to be reported related to D&I operations, programs, and activities.

WHEREAS, it is the unequivocal policy of the University of North Carolina to prohibit discrimination against businesses on the basis of race, color, national origin, or sex; to promote and encourage full and open competition; and to promote equal access to contracting opportunities among the various contractors and vendors that do business with the University.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the University of North Carolina, as of this the 27th day of July 2023 that:

The University shall not unlawfully discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin, religion, sexual orientation, gender identity, age, disability, genetic information, or veteran status in its admissions, hiring and contracting; and

The University shall report to the Board on its programs that lawfully discriminate; and

The University shall not "establish through application essays or other means" any regime of or encourage heuristics and/or proxies premised upon race-based preferences in hiring or admissions. If the University considers the personal experience of applicants for admission, each applicant "must be treated based on his or her experiences as an individual – not on the basis of race"; and

This Resolution shall apply only to action taken after the Resolution's effective date; and

Nothing in this Resolution shall be interpreted to prohibit *bona fide* qualifications based on sex which are reasonably necessary to the normal operation of public employment, public education, or public contracting; and

Nothing in this Resolution shall be interpreted as invalidating any valid court order or judicial consent decree in force as of the effective date of this Resolution; and

Nothing in this Resolution shall be interpreted to prohibit action which must be taken to establish or maintain eligibility for any federal program, where ineligibility would result in a loss of federal funds to the State; and

For the purposes of this Resolution, "State" shall include the University, or any other political subdivision or governmental instrumentality of or within the University; and

The remedies available for violations of this Resolution shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of then-existing North Carolina and U.S. antidiscrimination laws; and

This Resolution shall be self-executing. If any part or parts of this Resolution are found to be in conflict with applicable State or federal law, or the Constitution of the State of North Carolina or the United States Constitution, the Resolution shall be implemented to the maximum extent permitted such that the foregoing violation(s) are avoided. Any portion(s) of this Resolution held invalid shall be severable from the remaining portions of this Resolution without affecting the validity thereof or the remainder of the Resolution as a whole.

_____ Date: _____
Audit Committee Chair, Board of Trustees

_____ Date: _____
Audit Committee Vice-Chair and Secretary of the Board of Trustees

_____ Date: _____
Chair, Board of Trustees

_____ Date: _____
Vice-Chair, Board of Trustees

_____ Date: _____
Member, Board of Trustees

Appendix B

Federal Register / Vol. 90, No. 20 / Friday, January 31, 2025 / Presidential Documents 8633

Presidential Documents

Executive Order 14173 of January 21, 2025

Ending Illegal Discrimination and Restoring Merit-Based Opportunity

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose.* Longstanding Federal civil-rights laws protect individual Americans from discrimination based on race, color, religion, sex, or national origin. These civil-rights protections serve as a bedrock supporting equality of opportunity for all Americans. As President, I have a solemn duty to ensure that these laws are enforced for the benefit of all Americans.

Yet today, roughly 60 years after the passage of the Civil Rights Act of 1964, critical and influential institutions of American society, including the Federal Government, major corporations, financial institutions, the medical industry, large commercial airlines, law enforcement agencies, and institutions of higher education have adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called ''diversity, equity, and inclusion'' (DEI) or ''diversity, equity, inclusion, and accessibility'' (DEIA) that can violate the civil-rights laws of this Nation.

Illegal DEI and DEIA policies not only violate the text and spirit of our longstanding Federal civil-rights laws, they also undermine our national unity, as they deny, discredit, and undermine the traditional American values of hard work, excellence, and individual achievement in favor of an unlawful, corrosive, and pernicious identity-based spoils system. Hard-working Americans who deserve a shot at the American Dream should not be stigmatized, demeaned, or shut out of opportunities because of their race or sex.

These illegal DEI and DEIA policies also threaten the safety of American men, women, and children across the Nation by diminishing the importance of individual merit, aptitude, hard work, and determination when selecting people for jobs and services in key sectors of American society, including all levels of government, and the medical, aviation, and law-enforcement communities. Yet in case after tragic case, the American people have witnessed first-hand the disastrous consequences of illegal, pernicious discrimination that has prioritized how people were born instead of what they were capable of doing.

The Federal Government is charged with enforcing our civil-rights laws. The purpose of this order is to ensure that it does so by ending illegal preferences and discrimination.

Sec. 2. *Policy.* It is the policy of the United States to protect the civil rights of all Americans and to promote individual initiative, excellence, and hard work. I therefore order all executive departments and agencies (agencies) to terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements. I further order all agencies to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.

Sec. 3. *Terminating Illegal Discrimination in the Federal Government.* (a) The following executive actions are hereby revoked:

(i) Executive Order 12898 of February 11, 1994 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations);

(ii) Executive Order 13583 of August 18, 2011 (Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce);

(iii) Executive Order 13672 of July 21, 2014 (Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity); and

(iv) The Presidential Memorandum of October 5, 2016 (Promoting Diversity and Inclusion in the National Security Workforce).

(b) The Federal contracting process shall be streamlined to enhance speed and efficiency, reduce costs, and require Federal contractors and subcontractors to comply with our civil-rights laws. Accordingly:

(i) Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity), is hereby revoked. For 90 days from the date of this order, Federal contractors may continue to comply with the regulatory scheme in effect on January 20, 2025.

(ii) The Office of Federal Contract Compliance Programs within the Department of Labor shall immediately cease:

(A) Promoting ''diversity'';

(B) Holding Federal contractors and subcontractors responsible for taking ''affirmative action''; and

(C) Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.

(iii) In accordance with Executive Order 13279 of December 12, 2002 (Equal Protection of the Laws for Faith-Based and Community Organizations), the employment, procurement, and contracting practices of Federal contractors and subcontractors shall not consider race, color, sex, sexual preference, religion, or national origin in ways that violate the Nation's civil rights laws.

(iv) The head of each agency shall include in every contract or grant award:

(A) A term requiring the contractual counterparty or grant recipient to agree that its compliance in all respects with all applicable Federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code; and

(B) A term requiring such counterparty or recipient to certify that it does not operate any programs promoting DEI that violate any applicable Federal anti-discrimination laws.

(c) The Director of the Office of Management and Budget (OMB), with the assistance of the Attorney General as requested, shall:

(i) Review and revise, as appropriate, all Government-wide processes, directives, and guidance;

(ii) Excise references to DEI and DEIA principles, under whatever name they may appear, from Federal acquisition, contracting, grants, and financial assistance procedures to streamline those procedures, improve speed and efficiency, lower costs, and comply with civil-rights laws; and

(iii) Terminate all ''diversity,'' ''equity,'' ''equitable decision-making,'' ''equitable deployment of financial and technical assistance,'' ''advancing equity,'' and like mandates, requirements, programs, or activities, as appropriate.

Sec. 4. *Encouraging the Private Sector to End Illegal DEI Discrimination and Preferences.* (a) The heads of all agencies, with the assistance of the

Attorney General, shall take all appropriate action with respect to the operations of their agencies to advance in the private sector the policy of individual initiative, excellence, and hard work identified in section 2 of this order.

(b) To further inform and advise me so that my Administration may formulate appropriate and effective civil-rights policy, the Attorney General, within 120 days of this order, in consultation with the heads of relevant agencies and in coordination with the Director of OMB, shall submit a report to the Assistant to the President for Domestic Policy containing recommendations for enforcing Federal civil-rights laws and taking other appropriate measures to encourage the private sector to end illegal discrimination and preferences, including DEI. The report shall contain a proposed strategic enforcement plan identifying:

(i) Key sectors of concern within each agency's jurisdiction;

(ii) The most egregious and discriminatory DEI practitioners in each sector of concern;

(iii) A plan of specific steps or measures to deter DEI programs or principles (whether specifically denominated ''DEI'' or otherwise) that constitute illegal discrimination or preferences. As a part of this plan, each agency shall identify up to nine potential civil compliance investigations of publicly traded corporations, large non-profit corporations or associations, foundations with assets of 500 million dollars or more, State and local bar and medical associations, and institutions of higher education with endowments over 1 billion dollars;

(iv) Other strategies to encourage the private sector to end illegal DEI discrimination and preferences and comply with all Federal civil-rights laws;

(v) Litigation that would be potentially appropriate for Federal lawsuits, intervention, or statements of interest; and

(vi) Potential regulatory action and sub-regulatory guidance.

Sec. 5. *Other Actions.* Within 120 days of this order, the Attorney General and the Secretary of Education shall jointly issue guidance to all State and local educational agencies that receive Federal funds, as well as all institutions of higher education that receive Federal grants or participate in the Federal student loan assistance program under Title IV of the Higher Education Act, 20 U.S.C. 1070 *et seq.,* regarding the measures and practices required to comply with *Students for Fair Admissions, Inc.* v. *President and Fellows of Harvard College,* 600 U.S. 181 (2023).

Sec. 6. *Severability.* If any provision of this order, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of its provisions to any other persons or circumstances shall not be affected thereby.

Sec. 7. *Scope.* (a) This order does not apply to lawful Federal or private-sector employment and contracting preferences for veterans of the U.S. armed forces or persons protected by the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.*

(b) This order does not prevent State or local governments, Federal contractors, or Federally-funded State and local educational agencies or institutions of higher education from engaging in First Amendment-protected speech.

(c) This order does not prohibit persons teaching at a Federally funded institution of higher education as part of a larger course of academic instruction from advocating for, endorsing, or promoting the unlawful employment or contracting practices prohibited by this order.

Sec. 8. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to and does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 21, 2025.

[FR Doc. 2025–02097
Filed 1–30–25; 8:45 am]
Billing code 3395–F4–P

Appendix C

On April 24, 2025, a federal court enjoined the Department from "enforcing and/or implementing" the following: Dear Colleague Letter: Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard (Feb. 14, 2025), Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act (first issued on Feb. 28, 2025), End DEI Portal, and Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification Under Title VI and SFFA v. Harvard (April 3, 2025) (certification requirement) against the plaintiff National Education Association, et al., its members, and any entity that employs, contracts with, or works with its members. See, Nat'l Educ. Ass'n v. United States Dep't of Educ., No. 25-CV-091-LM (D.N.H. Apr. 24, 2025). As a result, the Department of Education's Office for Civil Rights will not take any enforcement action, or otherwise implement, the February 28, 2025, Dear Colleague Letter, associated FAQs, the End DEI Portal, or the certification requirement until further notice.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE ACTING ASSISTANT SECRETARY

February 14, 2025

Dear Colleague:

Discrimination on the basis of race, color, or national origin is illegal and morally reprehensible. Accordingly, I write to clarify and reaffirm the nondiscrimination obligations of schools and other entities that receive federal financial assistance from the United States Department of Education (Department).[1] This letter explains and reiterates existing legal requirements under Title VI of the Civil Rights Act of 1964,[2] the Equal Protection Clause of the United States Constitution, and other relevant authorities.[3]

In recent years, American educational institutions have discriminated against students on the basis of race, including white and Asian students, many of whom come from disadvantaged backgrounds and low-income families. These institutions' embrace of pervasive and repugnant race-based preferences and other forms of racial discrimination have emanated throughout every facet of academia. For example, colleges, universities, and K-12 schools have routinely used race as a factor in admissions, financial aid, hiring, training, and other institutional programming. In a shameful echo of a darker period in this country's history, many American schools and universities even encourage segregation by race at graduation ceremonies and in dormitories and other facilities.

[1] Throughout this letter, "school" is used generally to refer to preschool, elementary, secondary, and postsecondary educational institutions that receive federal financial assistance from the Department.

[2] Title VI provides that: "No 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." 42 U.S.C. § 2000d, *et seq.*; 34 C.F.R. § 100, *et seq*.

[3] This document provides significant guidance under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007). This guidance does not have the force and effect of law and does 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, the Equal Protection Clause, and other federal civil rights and constitutional law principles. If you are interested in commenting on this guidance, please email your comment to OCR@ed.gov or write to the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. For further information about the Department's guidance processes, please visit the Department's webpage here.

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access

Educational institutions have toxically indoctrinated students with the false premise that the United States is built upon "systemic and structural racism" and advanced discriminatory policies and practices. Proponents of these discriminatory practices have attempted to further justify them—particularly during the last four years—under the banner of "diversity, equity, and inclusion" ("DEI"), smuggling racial stereotypes and explicit race-consciousness into everyday training, programming, and discipline.

But under any banner, discrimination on the basis of race, color, or national origin is, has been, and will continue to be illegal.

The Supreme Court's 2023 decision in *Students for Fair Admissions v. Harvard*[4] (*SFFA*), which clarified that the use of racial preferences in college admissions is unlawful, sets forth a framework for evaluating the use of race by state actors and entities covered by Title VI. The Court explained that "[c]lassifying and assigning students based on their race" is lawful only if it satisfies "strict scrutiny," which means that any use of race must be narrowly tailored—that is, "necessary"—to achieve a compelling interest.[5] To date, the Supreme Court has recognized only two interests as compelling in the context of race-based action: (1) "remediating specific, identified instances of past discrimination that violated the Constitution or a statute"; and (2) "avoiding imminent and serious risks to human safety in prisons, such as a race riot."[6] Nebulous concepts like racial balancing and diversity are not compelling interests. As the Court explained in *SFFA*, "an individual's race may never be used against him" and "may not operate as a stereotype" in governmental decision-making.[7]

Although *SFFA* addressed admissions decisions, the Supreme Court's holding applies more broadly. At its core, the test is simple: 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. Federal law thus prohibits covered entities from using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life. Put simply, educational institutions may neither separate or segregate students based on race, nor distribute benefits or burdens based on race.

Although some programs may appear neutral on their face, a closer look reveals that they are, in fact, motivated by racial considerations.[8] And race-based decision-making, no matter the form, remains impermissible. For example, a school may not use students' personal essays, writing samples, participation in extracurriculars, or other cues as a

[4] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023).
[5] *Id.* at 207.
[6] *Ibid.*
[7] *Id.* at 218.
[8] *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).

means of determining or predicting a student's race and favoring or disfavoring such students.[9]

Relying on non-racial information as a proxy for race, and making decisions based on that information, violates the law. That is true whether the proxies are used to grant preferences on an individual basis or a systematic one. It would, for instance, be unlawful for an educational institution to eliminate standardized testing to achieve a desired racial balance or to increase racial diversity.

Other programs discriminate in less direct, but equally insidious, ways. DEI programs, for example, frequently preference certain racial groups and teach students that certain racial groups bear unique moral burdens that others do not. Such programs stigmatize students who belong to particular racial groups based on crude racial stereotypes. Consequently, they deny students the ability to participate fully in the life of a school.

The Department will no longer tolerate the overt and covert racial discrimination that has become widespread in this Nation's educational institutions. 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.

All students are entitled to a school environment free from discrimination. The Department is committed to ensuring those principles are a reality.

This letter provides notice of the Department's existing interpretation of federal law. Additional legal guidance will follow in due course. The Department will vigorously enforce the law on equal terms as to all preschool, elementary, secondary, and postsecondary educational institutions, as well as state educational agencies, that receive financial assistance.

The Department intends to take appropriate measures to assess compliance with the applicable statutes and regulations based on the understanding embodied in this letter beginning no later than 14 days from today's date, including antidiscrimination requirements that are a condition of receiving federal funding.

All educational institutions are advised to: (1) ensure that their policies and actions comply with existing civil rights law; (2) cease all efforts to circumvent prohibitions on the use of race by relying on proxies or other indirect means to accomplish such ends; and (3) cease all reliance on third-party contractors, clearinghouses, or aggregators that are being used by institutions in an effort to circumvent prohibited uses of race.

[9] *Students for Fair Admissions*, 600 U.S. at 230 ("[U]niversities may not simply establish through application essays or other means the regime we hold unlawful today.").

Institutions that fail to comply with federal civil rights law may, consistent with applicable law, face potential loss of federal funding.

Anyone who believes that a covered entity has unlawfully discriminated may file a complaint with OCR. Information about filing a complaint with OCR, including a link to the online complaint form, is available here.

Thank you in advance for your commitment to providing our Nation's students with an educational environment that is free of race, color, or national origin discrimination.

Sincerely,

/s/
Craig Trainor
Acting Assistant Secretary for Civil Rights
United States Department of Education

Appendix D

Office of the Attorney General
Washington, D. C. 20530

July 29, 2025

MEMORANDUM FOR ALL FEDERAL AGENCIES

FROM: THE ATTORNEY GENERAL

SUBJECT: GUIDANCE FOR RECIPIENTS OF FEDERAL FUNDING REGARDING UNLAWFUL DISCRIMINATION

I. INTRODUCTION

One of our Nation's bedrock principles is that all Americans must be treated equally. Not only is discrimination based on protected characteristics illegal under federal law, but it is also dangerous, demeaning, and immoral. Yet in recent years, the federal government has turned a blind eye toward, or even encouraged, various discriminatory practices, seemingly because of their purportedly benign labels, objectives, or intentions. No longer. Going forward, the federal government will not stand by while recipients of federal funds engage in discrimination.

This guidance clarifies the application of federal antidiscrimination laws to programs or initiatives that may involve discriminatory practices, including those labeled as Diversity, Equity, and Inclusion ("DEI") programs.[1] Entities receiving federal funds, like all other entities subject to federal antidiscrimination laws, must ensure that their programs and activities comply with federal law and do not discriminate on the basis of race, color, national origin, sex, religion, or other protected characteristics—no matter the program's labels, objectives, or intentions. In furtherance of that requirement, this guidance identifies "Best Practices" as non-binding suggestions to help entities comply with federal antidiscrimination laws and avoid legal pitfalls; these are not mandatory requirements but rather practical recommendations to minimize the risk of violations.

Entities that receive federal financial assistance or that are otherwise subject to federal anti-discrimination laws, including educational institutions, state and local governments, and public and private employers, should review this guidance carefully to ensure all programs comply with their legal obligations.

[1] DEI programs go by other names as well, such as Diversity, Equity, Inclusion, and Accessibility ("DEIA") and Diversity, Equity, Inclusion, and Belonging ("DEIB").

II. EXECUTIVE SUMMARY

This guidance emphasizes the significant legal risks of initiatives that involve discrimination based on protected characteristics and provides non-binding best practices to help entities avoid the risk of violations. Key points include:

- **Statutory nondiscrimination requirements:** Federal law prohibits discrimination based on protected characteristics like race, sex, color, national origin, or religion.
- **Legal pitfalls of DEI Programs:** The use of terms such as "DEI," "Equity," or other euphemistic terms does not excuse unlawful discrimination or absolve parties from scrutiny regarding potential violations.
- **Prohibition on Protected Characteristics as Criteria:** Using race, sex, or other protected characteristics for employment, program participation, resource allocation, or other similar activities, opportunities, or benefits, is unlawful, except in rare cases where such discrimination satisfies the relevant level of judicial scrutiny.
- **Importance of Sex-Separated Intimate Spaces and Athletic Competitions:** Compelling employees to share intimate spaces with the opposite sex or allowing men to compete in women's athletic competitions would typically be unlawful.
- **Unlawful Proxy Discrimination:** Facially neutral criteria (e.g., "cultural competence," "lived experience," geographic targeting) that function as proxies for protected characteristics violate federal law if designed or applied with the intention of advantaging or disadvantaging individuals based on protected characteristics.
- **Scrutiny of Third-Party Funding:** Recipients of federal funds should ensure federal funds do not support third-party programs that discriminate.
- **Protection Against Retaliation:** Individuals who object to or refuse to participate in discriminatory programs, trainings, or policies are protected from adverse actions like termination or exclusion based on that individual's opposition to those practices.[2]

III. KEY FEDERAL ANTIDISCRIMINATION PROVISIONS AND LAW

Federal antidiscrimination laws prohibit discrimination on the basis of protected characteristics, including race, color, religion, sex, and national origin. The U.S. Supreme Court has consistently held that policies or practices based upon protected characteristics are subject to

[2] Unlawful retaliation occurs when a federally funded entity takes adverse actions against employees, participants, or beneficiaries because they engage in protected activities related to opposing DEI practices they reasonably believe violate federal antidiscrimination laws.

rigorous judicial scrutiny. Race-based classifications are subject to strict scrutiny, requiring a compelling governmental interest and narrowly tailored means to achieve that interest.[3] Sex-based classifications are subject to heightened scrutiny, requiring an exceedingly persuasive justification and substantial relation to an important governmental objective.[4] Discrimination based on other protected characteristics, such as religion, is also evaluated under analogous standards.[5] Entities receiving federal funds must comply with applicable civil rights laws, including:

- **Title VI of the Civil Rights Act of 1964:** Prohibits discrimination based on race, color, or national origin in any program or activity receiving federal financial assistance. This includes most educational institutions, healthcare providers, and state and local government agencies.

- **Title VII of the Civil Rights Act of 1964:** Prohibits employment discrimination based on, or motivated by, race, color, religion, sex, or national origin, in any terms, conditions, or privileges of employment, including hiring, promotion, demotion, termination, compensation, job transfers, training, or access to employment privileges and benefits.

- **Title IX of the Education Amendments of 1972:** Prohibits discrimination based on sex in education programs or activities receiving federal financial assistance. Title IX protections extend beyond athletics and include addressing sexual harassment, sex-based harassment, admissions policies, and equal access to resources and programs.

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[3] *See, e.g.*, *Students for Fair Admissions, Inc. v. Harvard*, 600 U.S. 181, 214 (2023) (holding racial classifications by public institutions are subject to strict scrutiny and racial classifications by private institutions can serve as basis for revoking funding under Title VI); *Ricci v. DeStefano*, 557 U.S. 557, 579 (2009) ("[E]xpress, race-based decision-making violates Title VII's command that employers cannot take adverse employment actions because of an individual's race."); *see also Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021) (holding grant program with race and sex preferences is unlawful under Equal Protection Clause).

[4] *See, e.g.*, *United States v. Virginia*, 518 U.S. 515, 531 (1996).

[5] *See, e.g.*, *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464, 479 (2020) ("The Free Exercise Clause, which applies to the States under the Fourteenth Amendment, protects religious observers against unequal treatment and against laws that impose special disabilities on the basis of religious status . . . . [S]trict scrutiny applies . . . because Montana's no-aid provision discriminates based on religious status"); *Shapiro v. Thompson*, 394 U.S. 618, 631 (1969) (holding discriminating against individual for exercising fundamental constitutional rights is subject to heightened scrutiny), *overruled on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974); *see also Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 540 (1993) (relying on Equal Protection principles in holding intentional discrimination against exercise of religion is subject to strict scrutiny).

- **Equal Protection Clause of the Fourteenth Amendment:** Prohibits States from denying any person the equal protection of the laws, relevant in the context of discrimination claims involving state or local government actions.

IV. UNLAWFUL DISCRIMINATORY POLICIES AND PRACTICES

The following is a non-exhaustive list of unlawful practices that could result in revocation of grant funding. Federal funding recipients may also be liable for discrimination if they knowingly fund the unlawful practices of contractors, grantees, and other third parties.

A. Granting Preferential Treatment Based on Protected Characteristics

1. What Constitutes Unlawful Preferential Treatment?

Preferential treatment occurs when a federally funded entity provides opportunities, benefits, or advantages to individuals or groups based on protected characteristics in a way that disadvantages other qualified persons, including such practices portrayed as "preferential" to certain groups. Such practices violate federal law unless they meet very narrow exceptions.

2. Examples of Unlawful Practices

Race-Based Scholarships or Programs: A university's DEI program establishes a scholarship fund exclusively for students of a specific racial group (e.g., "Black Student Excellence Scholarship") and excludes otherwise qualified applicants of other races, even if they meet academic or financial need criteria. This extends to any race-exclusive opportunities, such as internships, mentorship programs, or leadership initiatives that reserve spots for specific racial groups, regardless of intent to promote diversity. Such race-exclusive programs violate federal civil rights law by discriminating against individuals based solely on their race or treating people differently based on a protected characteristic without meeting the strict legal standards required for race-conscious programs.

Preferential Hiring or Promotion Practices: A federally funded entity's DEI policy prioritizes candidates from "underrepresented groups" for admission, hiring, or promotion, bypassing qualified candidates who do not belong to those groups, where the preferred "underrepresented groups" are determined on the basis of a protected characteristic like race.

Access to Facilities or Resources Based on Race or Ethnicity: A university's DEI initiative designates a "safe space" or lounge exclusively for students of a specific racial or ethnic group.

B. Prohibited Use of Proxies for Protected Characteristics

1. What Constitutes Unlawful Proxies?

Unlawful proxies occur when a federally funded entity intentionally uses ostensibly neutral criteria that function as substitutes for explicit consideration of race, sex, or other protected characteristics. While these criteria may appear facially neutral, they become legally problematic under any of the following circumstances:

- They are selected because they correlate with, replicate, or are used as substitutes for protected characteristics.
- They are implemented with the intent to advantage or disadvantage individuals based on protected characteristics.

2. Examples of Potentially Unlawful Proxies

"Cultural Competence" Requirements: A federally funded university requires job applicants to demonstrate "cultural competence," "lived experience," or "cross-cultural skills" in ways that effectively evaluate candidates' racial or ethnic backgrounds rather than objective qualifications. This includes selection criteria that advantage candidates who have experiences the employer associates with certain racial groups. For instance, requiring faculty candidates to describe how their "cultural background informs their teaching" may function as a proxy if used to evaluate candidates based on race or ethnicity.

Geographic or Institutional Targeting: A federally funded organization implements recruitment strategies targeting specific geographic areas, institutions, or organizations chosen primarily because of their racial or ethnic composition rather than other legitimate factors.

"Overcoming Obstacles" Narratives or "Diversity Statements": A federally funded program requires applicants to describe "obstacles they have overcome" or submit a "diversity statement" in a manner that advantages those who discuss experiences intrinsically tied to protected characteristics, using the narrative as a proxy for advantaging that protected characteristic in providing benefits.

C. Segregation Based on Protected Characteristics

1. What Constitutes Unlawful Segregation?

Segregation based on protected characteristics occurs when a federally funded entity organizes programs, activities, or resources—such as training sessions—in a way that separates or restricts access based on race, sex, or other protected characteristics. Such practices generally violate federal law by creating unequal treatment or reinforcing stereotypes, regardless of the stated goal (e.g., promoting inclusion or addressing historical inequities). Exceptions are narrow

and include only cases where federal law expressly permits race-based remedies for specific, documented acts of past discrimination by the institution itself, or in specialized contexts such as correctional facilities where courts have recognized compelling institutional interests.

While compelled segregation is generally impermissible, failing to maintain sex-separated athletic competitions and intimate spaces can also violate federal law. Federally funded institutions that allow males, including those self-identifying as "women," to access single-sex spaces designed for females—such as bathrooms, showers, locker rooms, or dormitories—undermine the privacy, safety, and equal opportunity of women and girls. Likewise, permitting males to compete in women's athletic events almost invariably denies women equal opportunity by eroding competitive fairness. These policies risk creating a hostile environment under Title VII, particularly where they compromise women's privacy, safety, or professional standing, and can violate Title IX by denying women access to the full scope of sex-based protections in education. To ensure compliance with federal law and to safeguard the rights of women and girls, organizations should affirm sex-based boundaries rooted in biological differences.

2. Examples of Unlawful Practices

Race-Based Training Sessions: A federally funded university hosts a DEI training program that requires participants to separate into race-based groups (e.g., "Black Faculty Caucus" or "White Ally Group") for discussions, prohibiting individuals of other races from participating in specific sessions. In contrast, a "Faculty Academic Support Network" open to all faculty interested in promoting student success avoids reliance on protected characteristics and complies with federal law.

Segregation in Facilities or Resources: A college receiving federal funds designates a "BIPOC-only study lounge," facially discouraging access by students of other races. Even if access is technically open to all, the identity-based focus creates a perception of segregation and may foster a hostile environment. This extends to any resource allocation—such as study spaces, computer labs, or event venues—that segregates access based on protected characteristics, even if intended to create "safe spaces." This does not apply to facilities that are single-sex based on biological sex to protect privacy or safety, such as restrooms, showers, locker rooms, or lodging.

Implicit Segregation Through Program Eligibility: A federally funded community organization hosts a DEI-focused workshop series that requires participants to identify with a specific racial or ethnic group (e.g., "for underrepresented minorities only") or mandates sex-specific eligibility, effectively excluding others who meet objective program criteria. Use of Protected Characteristics in Candidate Selection

3. What Constitutes Unlawful Use of Protected Characteristics?

Unlawful use of protected characteristics occurs when a federally funded entity or program considers race, sex, or any other protected trait as a basis for selecting candidates for employment

(e.g., hiring, promotions), contracts (e.g., vendor agreements), or program participation (e.g., internships, admissions, scholarships, training). This includes policies that explicitly mandate representation of specific groups in candidate pools or implicitly prioritize protected characteristics through selection criteria, such as "diverse slate" requirements, diversity decision-making panels, or diversity-focused evaluations. It also includes requirements that contracting entities utilize a specific level of working hours from individuals of certain protected characteristics to complete the contract. Such practices violate federal law by creating unequal treatment or disadvantaging otherwise qualified candidates, regardless of any intent to advance diversity goals.

4. Examples of Unlawful Practices

Race-Based "Diverse Slate" Policies in Hiring: A federally funded research institute adopts a policy requiring that all interview slates for faculty positions include a minimum number of candidates from specific racial groups (e.g., at least two "underrepresented minority" candidates), rejecting otherwise qualified candidates who do not meet this racial criterion. This extends to any policy that sets racial benchmarks or mandates demographic representation in candidate pools, such as requiring a certain percentage of finalists to be from "diverse" backgrounds.

Sex-Based Selection for Contracts: A federally funded state agency implements a DEI policy that prioritizes awarding contracts to women-owned businesses, automatically advancing female vendors or minority-owned businesses over equally or more qualified businesses without preferred group status. This includes any contract selection process that uses sex or race as a tiebreaker or primary criterion, such as policies favoring "minority- or women-owned" businesses without satisfying the appropriate level of judicial scrutiny.

Race- or Sex-Based Program Participation: A federally funded university's internship program requires that 50% of selected participants be from "underrepresented racial groups" or female students, rejecting equally or more qualified applicants who do not meet these demographic criteria. This extends to any program—such as scholarships, fellowships, or leadership initiatives—that uses race, sex, or any other protected characteristic as a selection criterion, even if framed as addressing underrepresentation.

D. Training Programs That Promote Discrimination or Hostile Environments

1. What Constitutes Unlawful DEI Training Programs?

Unlawful DEI training programs are those that—through their content, structure, or implementation—stereotype, exclude, or disadvantage individuals based on protected characteristics or create a hostile environment. This includes training that:

- Excludes or penalizes individuals based on protected characteristics.

- Creates an objectively hostile environment through severe or pervasive use of presentations, videos, and other workplace training materials that single out, demean, or stereotype individuals based on protected characteristics.

2. Examples of Unlawful Practices

Trainings That Promote Discrimination Based on Protected Characteristics: A federally funded school district requires teachers to complete a DEI training that includes statements stereotyping individuals based on protected characteristics—such as "all white people are inherently privileged," "toxic masculinity," etc. Such trainings may violate Title VI or Title VII if they create a hostile environment or impose penalties for dissent in ways that result in discriminatory treatment.[6]

E. Recommendations on Best Practices

Ensure Inclusive Access: All workplace programs, activities, and resources should be open to all qualified individuals, regardless of race, sex, or other protected characteristics. Avoid organizing groups or sessions that exclude participants based on protected traits. Some sex separation is necessary where biological differences implicate privacy, safety, or athletic opportunity.

Focus on Skills and Qualifications: Base selection decisions on specific, measurable skills and qualifications directly related to job performance or program participation. For example, rather than asking about "cultural competence," assess specific skills such as language proficiency or relevant educational credentials. Criteria like socioeconomic status, first-generation status, or geographic diversity must not be used if selected to prioritize individuals based on racial, sex-based, or other protected characteristics.

Prohibit Demographic-Driven Criteria: Discontinue any program or policy designed to achieve discriminatory outcomes, even those using facially neutral means. Intent to influence demographic representation risks violating federal law. For example, a scholarship program must not target "underserved geographic areas" or "first-generation students" if the criteria are chosen to increase participation by specific racial or sex-based groups. Instead, use universally applicable criteria, such as academic merit or financial hardship, applied without regard to protected characteristics or demographic goals.

Document Legitimate Rationales: If using criteria in hiring, promotions, or selecting contracts that might correlate with protected characteristics, document clear, legitimate rationales unrelated to race, sex, or other protected characteristics. Ensure these rationales are consistently applied and are demonstrably related to legitimate, nondiscriminatory institutional objectives.

Scrutinize Neutral Criteria for Proxy Effects: Before implementing facially neutral criteria, rigorously evaluate and document whether they are proxies for race, sex, or other protected

[6] Federal law allows for workplace harassment trainings that are focused on preventing unlawful workplace discrimination and that do not single out particular groups as inherently racist or sexist.

characteristics. For instance, a program targeting "low-income students" must be applied uniformly without targeting areas or populations to achieve racial or sex-based outcomes.

Eliminate Diversity Quotas: Focus solely on nondiscriminatory performance metrics, such as program participation rates or academic outcomes, without reference to race, sex, or other protected traits. And discontinue policies that mandate representation of specific racial, sex-based, or other protected groups in candidate pools, hiring panels, or final selections. For example, replace a policy requiring "at least one minority candidate per slate" with a process that evaluates all applicants based on merit.

Avoid Exclusionary Training Programs: Ensure trainings are open to all qualified participants, regardless of protected characteristics. Avoid segregating participants into groups based on race, sex, or other protected characteristics. Trainings should not require participants to affirm specific ideological positions or "confess" to personal biases or privileges based on a protected characteristic.

Include Nondiscrimination Clauses in Contracts to Third Parties and Monitor Compliance: Incorporate explicit nondiscrimination clauses in grant agreements, contracts, or partnership agreements, requiring third parties to comply with federal law, and specify that federal funds cannot be used for programs that discriminate based on protected characteristics. Monitor third parties that receive federal funds to ensure ongoing compliance, including reviewing program materials, participant feedback, and outcomes to identify potential discriminatory practices. Terminate funding for noncompliant programs.

Establish Clear Anti-Retaliation Procedures and Create Safe Reporting Mechanisms: Implement and communicate policies that prohibit retaliation against individuals who engage in protected activities, such as raising concerns, filing complaints, or refusing to participate in potentially discriminatory programs. Include these policies in employee handbooks, student codes of conduct, and program guidelines. Provide confidential, accessible channels for individuals to report concerns about unlawful practices.

V. CONCLUSION

Entities are urged to review all programs, policies, and partnerships to ensure compliance with federal law, and discontinue any practices that discriminate on the basis of a protected status. The recommended best practices provided in this guidance are non-binding suggestions to assist entities in avoiding legal pitfalls and upholding equal opportunity for all. By prioritizing nondiscrimination, entities can mitigate the legal, financial, and reputational risks associated with unlawful DEI practices and fulfill their civil rights obligations.

End Notes

1. Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 600 U.S. 181 (2023), 39, https://www.supremecourt.gov/opinions/22pdf/20-1199_hgdj.pdf.

2. Sonja Starr, "Admissions Essays After SFFA," *Indiana Law Journal* 100, no. 3, article 1 (2025), https://www.repository.law.indiana.edu/ilj/vol100/iss3/1/.

3. WBZ-News Staff, "Harvard says it will preserve university's 'essential values' despite Supreme Court affirmative action ruling," *CBS News*, June 29, 2023, https://www.cbsnews.com/boston/news/harvard-university-supreme-court-affirmative-action-ruling-race-college-admissions/; and Michael Poliakoff, "Moral Failure and Government Intrusion at Harvard," *Law & Liberty*, June 11, 2025, https://lawliberty.org/moral-failure-and-government-intrusion-at-harvard/.

4. Steven McGuire, "Can Harvard Use Application Essays to Discriminate by Race?", *Wall Street Journal*, August 11, 2023, https://www.wsj.com/opinion/can-harvard-use-application-essays-to-discriminate-by-race-unc-fair-admission-5638086f.

5. University of North Carolina Board of Trustees, "Resolution of the Board of Trustees of the University of North Carolina Concerning Civil Rights," July 27, 2023, https://drive.google.com/file/d/12htNs7ttMcQxcCJCANJ2GvDojD6ARy3G/view.

6. Travis Fain, "UNC's unsuccessful race-based admissions fight cost $25 million," *WRAL News*, September 7, 2023, https://www.wral.com/story/unc-s-unsuccessful-race-based-admissions-fight-cost-25-million/21037612/.

7. Donald J. Trump, "Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity," January 21, 2025, *Federal Register* 90, no. 20, https://www.federalregister.gov/documents/2025/01/31/2025-02097/ending-illegal-discrimination-and-restoring-merit-based-opportunity.

8. Craig Trainor, "Dear Colleague Letter: Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard," United States Department of Education Office for Civil Rights, February 14, 2025, https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf.

9. American Federation of Teachers, et al., v. Department of Education, et al., Civil Case No. SAG-25-628, Document 83 (2025), https://democracyforward.org/wp-content/uploads/2025/08/DCL-MSJ-opinipn.pdf.

10. "Policy on diversity, equity, and inclusion and other concepts," Ohio Revised Code § 3345.0217, Ohio Legislature, 136th General Assembly (2025), https://codes.ohio.gov/ohio-revised-code/section-3345.0217; "Responsibility of Governing Boards Regarding Diversity, Equity, and Inclusion Initiatives," Senate Bill 17, Texas Senate, 88th Legislature (2023), https://compliance.utexas.edu/sb17; and "Prohibition on the use of certain submissions in higher education – Exceptions," Utah Code § 53B-1-116, Utah State Legislature (2024), https://le.utah.gov/xcode/Title53B/Chapter1/53B-1-S116.html?v=C53B-1-S116_2024070120240501.

11. Honeyfund.Com Inc. v. Governor, State of Florida, No. 22-13135 (Eleventh Circuit 2024), https://law.justia.com/cases/federal/appellate-courts/ca11/22-13135/22-13135-2024-03-04.html.

12. Nicholas Confessore, "University of Michigan to Scuttle Its Flagship D.E.I Program," *New York Times,* March 27, 2025, https://www.nytimes.com/2025/03/27/education/university-of-michigan-dei.html; Ted Carter, "A Message from President Carter," Office of the President, The Ohio State University, February 27, 2025, https://president.osu.edu/story/communications-messages-2; and Alexander Edwards, "University of Colorado renames DEI office to 'Office of Collaboration,'" *Denver Gazette*, January 24, 2025, https://denvergazette.com/news/local/university-colorado-dei-office-collaboration/article_bf083bb6-daa7-11ef-854e-331f8a7feb7b.html.

13. U.S. Department of Justice Civil Rights Division, "Title VI of the Civil Rights Act of 1964," updated March 24, 2025, https://www.justice.gov/crt/fcs/TitleVI.

14. David Epstein, *Range: Why Generalists Triumph in a Specialized World* (New York: Riverhead Books, 2019).

15. Erec Smith, "The Impact of DEI on College Campuses," *Journal of Free Black Thought*, Substack, March 9, 2024, https://freeblackthought.substack.com/p/the-impact-of-dei-on-college-campuses.

16. Michael Chapman, "Cato's Erec Smith: 'DEI is Built Upon a Foundation Whose Very Mission Is to Perpetuate Racism,'" *Cato at Liberty*, March 25, 2024, https://www.cato.org/blog/catos-erec-smith-dei-built-upon-foundation-whose-very-mission-perpetuate-racism; and Kenin M. Spivak, "The Folly of 'Woke' Math," *National Review*, September 16, 2021, https://www.nationalreview.com/2021/09/the-folly-of-woke-math/.

17. Georgetown University Library, "DEIA Resources – Microaggressions,"

Diversity, Equity, Inclusion and Accessibility Committee, accessed June 30, 2025, https://library.georgetown.edu/deia/microagressions; University of Colorado–Boulder Department of Civil, Environmental and Architectural Engineering, "Signs of Microaggressions," December 13, 2023, https://www.colorado.edu/ceae/2023/12/13/signs-microaggressions-dec-13-2023; Naomi Nishi, "Understanding, Preventing, & Supporting Around Microaggressions" (PowerPoint presentation, Colorado State University College of Veterinary Medicine and Biomedical Sciences), accessed June 30, 2025, https://hr.colostate.edu/wpcontent/uploads/sites/25/2024/02/Considering-and-Contextualizing-Microaggressions.pdf; and Madeleine Kearns, "Amherst College's Glossary of 'Wokeness,'" *National Review*, April 10, 2019, https://www.nationalreview.com/2019/04/amherst-colleges-glossary-of-wokeness/.

18. Reginald C. Oh, "Asian Americans and the Pursuit of Unhappiness," *Washington Monthly*, November 10, 2021, https://washingtonmonthly.com/2021/11/10/asian-americans-and-the-pursuit-of-unhappiness/.

19. Glenn Loury, "Are We Responsible for Anti-DEI Overreach?", The Glenn Show, March 18, 2025, https://glennloury.substack.com/p/are-we-responsible-for-anti-dei-overreach.

20. Tabia Lee, "A Black DEI Director Canceled by DEI," *Compact*, March 31, 2023, https://www.compactmag.com/article/a-black-dei-director-canceled-by-dei/.

21. Tammi Rossman-Benjamin, "Why DEI Programs Can't Address Campus Antisemitism," *SAPIR*, August 7, 2023, https://sapirjournal.org/antisemitism/2023/why-dei-programs-cant-address-campus-antisemitism/; and Pamela Paresky, "Critical Race Theory and the 'Hyper-White' Jew," *SAPIR*, May 6, 2021, https://sapirjournal.org/social-justice/2021/critical-race-theory-and-the-hyper-white-jew/.

22. Jay Greene and James Paul, "Inclusion Delusion: The Antisemitism of Diversity, Equity, and Inclusion Staff at Universities," *Center for Education Policy Backgrounder*, no. 3676 (2021), Heritage Foundation, https://www.heritage.org/education/report/inclusion-delusion-the-antisemitism-diversity-equity-and-inclusion-staff.

23. Haley Cohen, "Former ADL, AJC leaders Abe Foxman and David Harris call for scrapping DEI," *Jewish Insider*, December 20, 2023, https://jewishinsider.com/2023/12/former-adl-ajc-leaders-abe-foxman-and-david-harris-call-for-scrapping-dei/

24. Steven W. Bradley et al., "The Impact of Chief Diversity Officers on Diverse Faculty Hiring," National Bureau of Economic Research, Working Paper 24969, August 2018, https://www.nber.org/system/files/working_papers/w24969/w24969.pdf; and Drew Allen and Gregory C. Wolniak, "Exploring the Effects of Tuition Increases on Racial/Ethnic Diversity at Public Colleges and Universities," *Research in Higher Education* 60, no. 1 (2019):18–43, eric.ed.gov/?id=EJ1205284.

25. Elizabeth Levy Paluck et al., "Prejudice Reduction: Progress and Challenges," *Annual Review of Psychology* 72 (2021): 533–560, https://www.annualreviews.org/content/journals/10.1146/annurev-psych-071620-030619.

26. Frank Dobbin and Alexandra Kalev, "Why Doesn't Diversity Training Work? The Challenge for Industry and Academia," *Anthropology Now* 10, no. 2 (2018): 48–55, https://www.tandfonline.com/doi/full/10.1080/19428200.2018.1493182; Alexandra Kalev and Frank Dobbin, "Does Diversity Training Increase Corporate Diversity? Regulation Backlash and Regulatory Accountability," Working Paper, 2020, https://dobbin.scholars.harvard.edu/sites/g/files/omnuum1871/files/dobbin/files/dobbin_-_aatraining_clean.pdf; and Frank Dobbin and Alexandra Kalev, "Why Diversity Programs Fail: And what works better," *Harvard Business Review*, 2016, https://hbr.org/2016/07/why-diversity-programs-fail. The authors suggest that mentoring may be a more promising strategy.

27. Ankita Jagdeep et al., "Instructing Animosity: How DEI Pedagogy Produces the Hostile Attribution Bias," Network Contagion Research Institute and Rutgers University Social Perception Lab, November 13, 2024, https://networkcontagion.us/wp-content/uploads/Instructing-Animosity_11.13.24.pdf.

28. "Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act" (Washington, DC: United States Department of Education Office for Civil Rights, February 28, 2025), https://www.ed.gov/media/document/frequently-asked-questions-about-racial-preferences-and-stereotypes-under-title-vi-of-civil-rights-act-109530.pdf.

29. "The threat from the illiberal left," *Economist*, September 4, 2021 https://www.economist.com/leaders/2021/09/04/the-threat-from-the-illiberal-left.

30. Committee on Freedom of Expression at the University of Chicago, "Report of the Committee on Freedom of Expression," July 2014, https://provost.uchicago.edu/sites/default/files/documents/reports/FOECommitteeReport.pdf.

31. University of Chicago Faculty Committee, "Kalven Committee: Report on the University's Role in Political and Social Action," *Record* 1, no. 1 (1967), https://provost.uchicago.edu/sites/default/files/documents/reports/KalvenRprt_0.pdf.

32. Laura Spitalniak, "University of Michigan scraps multimillion dollar DEI investment," *Higher Ed Dive*, March 28, 2025, https://www.highereddive.com/news/university-of-michigan-scraps-multimillion-dollar-dei-investment/743897/; and Nicholas Confessore, "The University of Michigan Doubled Down on D.E.I. What Went Wrong?", *New York Times*, October 16, 2024, https://www.nytimes.com/2024/10/16/magazine/dei-university-michigan.html.

33. Jay P. Greene and James Paul, "Diversity University: DEI Bloat in the Academy," Center for Education Policy Backgrounder, no. 3641 (2021), Heritage Foundation, https://www.heritage.org/education/report/diversity-university-dei-bloat-the-academy.

34. "Bring KI to your Organization," Knapsack Institute, University of Colorado–Colorado Springs, accessed July 22, 2025, https://knapsack.uccs.edu/bring-ki-to-your-organization.

35. University of Colorado–Colorado Springs, "Knapsack Institute: Transforming Teaching & Learning," accessed July 22, 2025, https://knapsack.uccs.edu/; and Peggy McIntosh, "White Privilege: Unpacking the Invisible Knapsack," in "White Privilege and Male Privilege: A Personal Account of Coming To See Correspondences through Work in Women's Studies," Working Paper 189, 1988, https://admin.artsci.washington.edu/sites/adming/files/unpacking-invisible-knapsack.pdf.

36. Pam Bondi, "Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination," Office of the Attorney General, July 29, 2025, https://www.justice.gov/ag/media/1409486/dl?inline.

37. "Diversity, Equity and Inclusion," College of Communication, Media, Design and Information, University of Colorado–Boulder, accessed July 22, 2025, https://www.colorado.edu/cmdi/about/diversity-equity-and-inclusion.

38. Christopher J. Ferguson, "Bias-Response Teams Are a Bad Idea," *Chronicle of Higher Education*, June 5, 2023 https://www.chronicle.com/article/bias-response-teams-are-a-bad-idea.

39. Congressional Research Service, "Title IV and Peer-to-Peer Racial Harassment at School: Federal Appellate Decisions," *Legal Sidebar*, December 8, 2023, https://www.congress.gov/crs_external_products/LSB/PDF/LSB11087/LSB11087.1.pdf.

40. Speech First, "Bias Reporting Systems," last accessed July 22, 2025, https://speechfirst.org/bias-reporting-systems/.

41. Speech First, *Free Speech in the Crosshairs: Bias Reporting on College Campuses*, 2022, https://speechfirst.org/report-free-speech-in-the-crosshairs-bias-reporting-on-college-campuses/#:~:text=This%202022%20Report%2C%20'Free%20Speech,FIRE%20just%20five%20years%20ago.

42. John D. Sailer, "How 'Diversity' Policing Fails Science," *Wall Street Journal*, February 6, 2023, https://www.wsj.com/articles/how-diversity-policing-fails-science-equality-equity-education-texas-tech-job-candidates-interview-dei-pronouns-11675722169; and John Sailer, "Inside Ohio State's DEI Factory," *Wall Street Journal*, November 20, 2023, https://www.wsj.com/opinion/inside-ohio-states-dei-factory-faculty-report-diversity-hiring-cefd804d.

43. David L. Hudson, Jr., "Compelled Speech," Free Speech Center, July 31, 2023, https://firstamendment.mtsu.edu/article/compelled-speech/; and Abigail Thompson, "The University's New Loyalty Oath," *Wall Street Journal*, December 19, 2019, https://www.wsj.com/articles/the-universitys-new-loyalty-oath-11576799749?gaa_at=eafs&gaa_n=ASWzDAhlNTf2wnG3EW-VDizgVX2Vmc9Be1LiaHxXV6Ke7u2d29ETXyW3kgpv1RmNQ_o%3D&gaa_ts=687f81ad&gaa_sig=aET2qjCLshJLnDAN5ZfChPE3eI78mQpjTndEZwLGsPTYLcYrLtHbMGtQ_CMSeMIwUDMnhy4tuHc6EjGsQT9ytA%3D%3D.

44. Senate Bill 1274, Idaho Senate, 67th Legislature (2024), https://legislature.idaho.gov/wp-content/uploads/sessioninfo/2024/legislation/S1274.pdf; "Prohibition on the use of certain submissions in higher education – Exceptions," Utah Code § 53B-1-116; Senate File 2435, Iowa Senate, 90th General Assembly (2024), https://www.legis.iowa.gov/docs/publications/LGE/90/SF2435.pdf; Senate Bill 2247, North Dakota Senate, 68th Legislative Assembly (2023), https://ndlegis.gov/assembly/68-2023/regular/documents/23-0417-02000.pdf; and Zachary Schermele, "Diversity Statements Get the Ax at Arizona's Public Universities," *Chronicle of Higher Education*, August 9, 2023, https://www.chronicle.com/article/diversity-statements-get-the-ax-at-arizonas-public-universities.

45. University System of Georgia, "Board of Regents Approves Statement of Principles Regarding Academic Freedom and Freedom of Expression," April 20, 2023, https://www.usg.edu/news/release/board_of_regents_approves_statement_of_principles_regarding_academic_freedom_and_freedom_of_expression#:~:text=Atlanta%20%E2%80%94%20April%2020%2C%202023,26%20public%20colleges%20and%20universities.

46. Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 40.

47. David Bass, "John Chisholm: Workplaces and Universities Should Embrace Holistic Diversity and Inclusion," Philanthropy Roundtable, June 14, 2022, https://www.philanthropyroundtable.org/john-chisholm-workplaces-and-universities-should-embrace-holistic-diversity-and-inclusion/.

48. Dorian S. Abbot et al., "Merit, Fairness, and Equality," *Heterodox STEM*, Substack, August 5, 2022, https://hxstem.substack.com/p/merit-fairness-and-equality.

49. "America's progressives should love standardised tests," *Economist*, April 16, 2025, https://www.economist.com/united-states/2025/04/16/americas-progressives-should-love-standardised-tests.

50. University of Austin, "Merit-First Admissions," last accessed July 23, 2025, https://www.uaustin.org/admissions.

51. Michael Poliakoff, "Michael Poliakoff: The challenge of anti-racism education," *TribLive*, September 2, 2020, https://triblive.com/opinion/michael-poliakoff-the-challenge-of-anti-racism-education/.

52. Michael Poliakoff, "How Will Cornell Balance Academic Freedom And Anti-Racism?", *Forbes*, June 3, 2021, https://www.forbes.com/sites/michaelpoliakoff/2021/06/03/how-will-cornell-balance-academic-freedom-and-anti-racism/.

53. "Reinforcing College Education on America's Constitutional Heritage Act (REACH Act)," Senate Bill 38, South Carolina Senate, 124th General Assembly (2021), https://www.scstatehouse.gov/sess124_2021-2022/bills/38.htm; and "American civic literacy course requirement," Ohio Revised Code § 3345.382, Ohio Legislature, 136th General Assembly (2025), https://codes.ohio.gov/ohio-revised-code/section-3345.382.

"The modern enlightened person often thinks seeking consensus is a noble goal unless the issue is the power of whiteness, in which case a religious kind of intolerance qualifies as wisdom. The truly progressive task is to enlighten people to the folly and danger of this misimpression."

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