

# OCR Issues Additional DEI Guidance

March 4, 2025

On Saturday, March 1, 2025, the U.S. Department of Education’s Office for Civil Rights (OCR) released additional guidance on Title VI of the Civil Rights Act of 1964 (“Title VI”) in the form of a Frequently Asked Questions document (the “FAQ”), providing further clarification on the directives outlined in OCR’s February 14, 2025 **Dear Colleague Letter** (“DCL”) which, though subject to ongoing litigation contesting its legality, remains in effect and subject to enforcement.

The DCL announced a “simple” test: “If an educational institution treats a person of one race differently than it treats another person because of that person’s race, the educational institution violates the law.” The DCL based its approach on an expansive reading of the Supreme Court of the United States’ 2023 decision in **Students for Fair Admissions v. Harvard** (*SFFA*), which held that race-conscious admissions practices are unconstitutional.<sup>[1]</sup>

The FAQ, consistent with this broad interpretation of *SFFA*, asserts that the Supreme Court’s decision has “far-reaching implications for race-based policies in education” and repeats the Court’s refrain that, “[e]liminating racial discrimination means eliminating all of it.” Thus, any consideration of race in awarding “educational benefits or resources—such as, inter alia, admissions spots, financial aid, scholarships, prizes, administrative support, or job opportunities” violates Title VI. The FAQ reiterates that it is always unlawful to: 1) use race as a negative, 2) adopt facially race-neutral policies aimed at race conscious aims, and 3) provide activities or programming that excludes individuals from participation or otherwise separates students, faculty, or staff based on race.

At the same time, the FAQ narrows the DCL’s “simple” test in important ways.

First, the FAQ clarifies that diversity, equity, and inclusion (DEI) programs and activities are not inherently unlawful. Rather, whether such activities and programs violate Title VI will be determined on a case-by-case basis, considering the totality of the circumstances. OCR will assess whether DEI programs “discourage[] members of all races from attending, either by excluding or discouraging students of a particular race or races, or by creating hostile environments based on race for students who do participate.” Though what constitutes “discouraging” participation remains unclear.

Second, the FAQ explains that programs focused on particular cultures, heritages, parts of the globe, and historical observances (e.g., Black History Month), are permissible so long as participation is open to all students regardless of race.

Finally, the FAQ clarifies that OCR will adhere to the enforcement procedures detailed in its [2025 Case Processing Manual](#) when investigating potential Title VI violations. According to the Manual, if OCR determines that a school has failed to comply with civil rights laws, it should first contact the institution and attempt to resolve any complaints voluntarily.

Should you have any questions about the impact of the DCL, FAQ, or recent Executive Actions on your institution's policies and practices, please contact Jennifer McLaughlin ([jmclaughlin@cullenllp.com](mailto:jmclaughlin@cullenllp.com)), Dina Vespia ([dvespia@cullenllp.com](mailto:dvespia@cullenllp.com)), Deirdre Mitacek ([dmitacek@cullenllp.com](mailto:dmitacek@cullenllp.com)), Michael DiSiena ([mdisiena@cullenllp.com](mailto:mdisiena@cullenllp.com)), Nicole Donatich ([ndonatich@cullenllp.com](mailto:ndonatich@cullenllp.com)), or Jordan Milite ([jmilite@cullenllp.com](mailto:jmilite@cullenllp.com)).

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## Footnote

<sup>[1]</sup> *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

## Practices

- Higher Education

## Attorneys

- Jennifer A. McLaughlin
- Dina L. Vespia
- Deirdre M. Mitacek
- Michael DiSiena
- Nicole A. Donatich
- Jordan Milite