March 12, 2025

Open Letter to K-12 and Higher Education Administrators:
Diversity, Equity, and Inclusion are Critical and Effective. Who Will Stand Up for Them?

On February 14, 2025, the U.S. Department of Education, Office for Civil Rights (OCR) issued a stunning *Dear Colleague Letter* on its interpretation of civil rights law and intended civil rights enforcement under Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment. Overturning 158 years of constitutional and legal precedent, the guidance declared that all attempts to ensure racial equity in schools are illegal and threatened future enforcement action against schools and districts attempting to exercise their legal responsibilities to protected classes. With its draconian sanctions for noncompliance, threatening loss of funding, the letter is—and was intended to be—an exercise in threat and bullying, the aim of which is to garner compliance through fear.

Despite its intimidating tone, however, careful analysis reveals that the letter is wildly erroneous and lacking legal authority. *Therefore, the Dear Colleague Letter should not be used to make educational or legal decisions*. Many of the policies put forth by this administration have faced immediate legal roadblocks or were swiftly retracted, causing confusion, and this letter faces two similar challenges, due to its reliance on faulty legal arguments.

We write today to encourage you as an educational administrator to avoid being driven by intimidation into ill-considered action—ultimately, it is our nation's students, youth, and children—your students—who will be hurt by voluntary compliance with this unjustified and likely illegal policy proposal from the Department of Education ("the Department").

Abundant flaws in the Dear Colleague Letter have been noted by legal experts and professional associations:[1]

Overextension of Current Case Law. The letter purports to ground its arguments in the Supreme Court case *Students for Fair Admissions v. Harvard* ("*SFFA*").[2] Yet, the letter dramatically expands the bounds of that narrow decision in all directions. The *SFFA* decision responded to practices at the collegiate level (University of North Carolina and Harvard); the Dear Colleague Letter extends its claims to all pre-school, elementary, and secondary institutions, as well as to

[1] A number of legal sources, professional associations, and advocacy groups have posted detailed critiques challenging the Dear Colleague Letter, including AASA The School Superintendents Association, Education Counsel, the NAACP Legal Defense Fund, Democracy Forward, and the announcement of a lawsuit brought against the Dear Colleague Letter by the National Education Association and the ACLU.

[2] 600 U.S. 181 (2023).

agencies receiving federal funding. Although the Supreme Court was clear that *SFFA*'s parameters were limited to college *admissions*, the Department charged well beyond those court-interpreted limits, extending the decision to include "hiring, promotion, compensation, discipline, and housing." As legal scholar Liliana Garces notes, such over-reach means that "OCR is effectively demanding new obligations of institutions without the proper legal authority to do so." The Department cannot rewrite the laws when it has neither the lawmaking power of Congress nor the interpretive power of the courts.

Inaccurate Claims. While purportedly grounded in the *SFFA* precedent, the Dear Colleague Letter contradicts that ruling at every turn. The letter claims that even race-neutral methods of ensuring racial equity are illegal, although the Court never asserted this in *SFFA*. In fact, the Supreme Court has maintained the constitutionality of race-neutral methods for achieving diversity in education[3]—precedent that has been routinely upkept by the federal circuit courts.[4] Unlike the Dear Colleague Letter, the Supreme Court case focused on the *means* by which diversity, equity, and inclusion could be attained in college admissions procedures and did not deny the legality of the concepts themselves. In writing the *SFFA* opinion, Chief Justice John Roberts called those principles "worthy" and "commendable."

Further, no federal law prohibits the teaching of race or race-related topics, nor does federal law ban diversity, equity, and inclusion programs, social-emotional learning, culturally responsive pedagogy, or student affinity or support groups that are open to all. It is deceptive of the Department to use the Dear Colleague Letter to imply otherwise.

Contradictions with Federal Law. The concepts of diversity, equity, and inclusion are *codified into federal law* dating back over 150 years. Diversity, equity, and inclusion form the bedrock principles of core constitutional and civil rights laws, including the Fourteenth Amendment of the U.S. Constitution, the Civil Rights Act of 1964, and the Individuals with Disabilities Education Act. All these laws *require* educational institutions to proactively protect and include those who have faced historical discrimination and exclusion, to ensure institutions have diverse representation of a variety of groups and to guarantee that laws and policies are implemented with equity. These are not opinions, or a recently discovered plot engineered by socialists and diversity officers—they are established principles of longstanding federal law. Demanding that they be abandoned is, in fact, urging educational institutions to violate the law.

[3] *SFFA*, 600 U.S. at 284; *see also* Grutter *v. Bollinger*, 539 U.S. 306, 339, 342 (2003).
[4] *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 62 (1st Cir. 2023), *cert. denied*, 145 S. Ct. 15 (2024) at 62; *see also Coalition for TJ v. Fairfax County. Sch. Bd.*, 68 F.4th 864, 885-86 (4th Cir. 2023) (noting that the "desire to … improve racial diversity and inclusion by way of race-neutral measures" is "a practice that the Supreme Court has consistently declined to find constitutionally suspect"), *cert. denied*, 2024 WL 674659 (Feb. 20, 2024).

Moreover, federal law prohibits the Department from dictating institutional and educational programs and curricular choices.[5] This right is reserved only for state and local educational agencies and educational institutions. Yet, the Department uses the Dear Colleague Letter to coerce schools and districts to adopt programmatic and curricular choices grounded in its own ideological agenda.

Unenforceable Threats. The Dear Colleague Letter states in a footnote that it "does not have the force and effect of law," a boilerplate disclaimer often used in executive guidance documents to avoid running afoul of the Administrative Procedure Act. Yet, the message makes numerous threats to educational institutions based on faulty legal interpretations and vague agency expectations. It demanded immediate alignment, setting an impossible two-week window for compliance—something never seen in an OCR guidance letter. It threatened a loss of federal funding for non-compliance. It implied that the agency will begin investigations against educational institutions that ignore the guidance. It makes a vigilante-like request for citizens to file complaints with the Department, even though *there is no law being broken*. Indeed, a hotline for taking such complaints was announced by the Department only days later. Lacking any legal authority to enforce its threats, the letter simply replaces the law and facts with administrative bullying, hoping to scare school administrators into compliance.

Misrepresentation of Diversity, Equity, and Inclusion. On February 28, 2025, the Department published an FAQ document in response to the pushback on the Dear Colleague Letter. In the FAQ document, the Department clarifies that diversity, equity, and inclusion initiatives are not in and of themselves illegal but that they should not be used as a cloak for discrimination. This was true before the Trump administration took office and will remain true in the next administration. So long as your school or district is not denying students access to educational opportunities based on their race, you should not allow the administration to turn these terms into "boogeymen" by canceling or removing programs without reason or evidence beyond the existence of the Dear Colleague Letter.

Diversity, equity, and inclusion are not, as the anti-DEI propaganda campaign asserts, some kind of "Marxist bogeyman." They are principles, enshrined in the Fourteenth Amendment, *Brown v. Board of Education*, the Civil Rights Act of 1964, and numerous other laws and precedents. They have guided our society to an increase in the rights, freedoms, and participation by those

[5] *See, e.g.*, 20 U.S.C. § 7906a (stating the Department may not "mandate, direct, or control" the "academic standards and assessments, curricula, or program of instruction" that States, localities, and schools use to implement requirements under federal education law), *id.* § 1232a (clarifying that no program shall authorize the Department to "exercise any direction, supervision, or control over the curriculum, [or] program of instruction), *id.* § 3403 ("No provision . . . shall be construed to authorize [the Department] . . . to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution[.]").

who have been—and remain—denied full access to those rights, freedoms, and participation, at no detriment to other groups. The assertion that diversity, equity, and inclusion programs "stigmatize students who belong to particular racial groups based on crude racial stereotypes" is simply a fallacy and a false assertion, not backed up with a single example of such "pernicious" practice.[6]

Evidence-free allegations. For decades, the Department has supported and, indeed, required adherence to evidence-based policy and practice. Yet, the language of the letter is purely inflammatory and intimidating and unconcerned about providing factual support for its claims. Not a shred of evidence is presented to support wild claims that "pervasive and repugnant race-based preferences and other forms of racial discrimination have emanated throughout every facet of academia" and that "educational institutions have toxically indoctrinated students with the false premise that the United States is built upon 'systemic and structural racism.'"

In sum, we urge schools and districts to echo the words of the National Education Association in their critique of the Dear Colleague Letter:

> The federal government has no authority to intrude upon the decisions of universities, colleges, and school districts regarding what is taught, how it is taught, and what educational programming will be provided. Not only do federal education laws prohibit such interference, but federal civil rights laws permit such decisions. Curriculum, instruction, and programming choices that recognize, celebrate, and explore the rich diversity of our country are lawful, valid, and necessary to provide educational opportunity and access to all students.

Simply put, there is no legal basis for the February 14, 2025, letter from the Department. This letter is an effort to bully schools, districts, educators, students, youth, and children into unequal educational opportunities, and it is a hostile attempt to erode civil rights and the far-reaching impacts of educational equity in this country for students with disabilities, LGBTQI+ students, students of color, and those students from historically marginalized groups. As such, its threats are hollow and unenforceable.

Finally, although the FAQ document released by OCR on February 28, 2025, appears to walk back the most extreme claims of the Dear Colleague Letter (e.g., that federal funds could be withheld after a two-week period without investigation), it holds firm in the letter's unsubstantiated claims that schools are using "DEI" initiatives to discriminate. The FAQs also highlight concerning ways in which OCR will use facts about how schools are improving for students with the highest needs as circumstantial evidence of discrimination. Rather than provide clarity, the FAQs further stoke fear and anxiety to compel compliance. Now more than ever, K-

[6]The Trump Executive Order, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (EO 14173), called DEI "an unlawful, corrosive, and pernicious identity-based spoils system."

12 institutions and institutions of higher education must continue to uphold civil rights law and not let baseless allegations and threats lead them astray from protecting all students.

What Should Be Done

First, and foremost, do not engage in proactive voluntary compliance with the February 14 Dear Colleague Letter.

The Dear Colleague Letter has already been the target of two lawsuits, and it is likely to be challenged in court by others. Despite the administration's efforts to apply pressure with additional letters, guidance, FAQs, and hollow threats, educators, schools, and districts must hold the line. Here are some steps you can take at your districts and schools to ensure you are continuing to provide equal educational opportunities to all students:

- Continue to comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act, and all federal and state civil rights law. Rely on current legal precedent from court cases in your state's federal circuit to understand the parameters of compliance with versus violation of these laws.
- Do not cancel, remove, or otherwise dismantle lawful programs, offices, or staff that ensure equal access to education for students of all intersectional backgrounds.
- For institutions of higher education, ensure that all admissions policies and procedures are up to date. Adhere to the limits set by the *SFFA* decision, *but do not go beyond them because of the Dear Colleague Letter.*
- Collect and report data on the implementation and outcomes of diversity, equity, and inclusion programs—and, indeed, all programs or initiatives—to demonstrate the importance and effectiveness of those programs.
- Work with local groups to create a unified strategy to push back on unenforceable interpretations of law, particularly those that will directly impact districts with high-need student populations, such as those in both rural and urban communities.
- Make a firm public commitment to supporting and adhering to statutory and constitutional civil rights protections and existing laws. Consider lending administrative influence on actions supported by student groups, professional associations, and civil rights organizations.
- Explore the avenue of litigation, or joining existing litigation, against the federal government if it does not sufficiently provide statutory funding for educational services, programs, and curricula as required by federal law or if it cuts such funding without legal and due process.

- Resist the temptation to engage in *soft compliance*. Like the "soft censorship" occurring in schools that quietly pull books off shelves and remove other materials in fear of potential disagreement, soft compliance can deprive students, teachers, and administrators of opportunities to engage in dialogue and develop initiatives that can create safe and affirming experiences for all.

Our country and our schools have made considerable progress in ensuring the rights of all by adhering to civil rights law and the bedrock principles of diversity, equity, and inclusion upon which those laws are based. For the sake of all your students and educators, this is not the time to allow fear of unenforceable threats to drive educational institutions into abandoning those principles and, indeed, the rule of law.

To follow up or should you have any questions about the issues raised in this letter, please contact us at FedSDC@fedsdc.org.

Sincerely,

The Federal School Discipline and Climate Coalition (FedSDC)

About FedSDC

FedSDC is a diverse group of local community organizers, national organizations, and directly impacted students, youth, families, and community members committed to advocating for legislative and federal action to protect the interests and educational rights of Black and Brown students and youth through a racial and educational equity lens. Establishing police-free schools while implementing effective, non-punitive, and culturally sustaining practices in schools and alternatives to school discipline, is a core value for our coalition.

To learn more about FedSDC, check out our website at FedSDC.org.