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# The Offices of the Attorney General for the State of Illinois, the Commonwealth of Massachusetts, and the State of New York

**To**: Institutions of Higher Education and K-12 Schools

**From**: The Attorneys General of Illinois, Massachusetts, New York, California, Connecticut, Delaware, Maine, Maryland, Minnesota, New Jersey, Nevada, Oregon, Rhode Island, Vermont, and the District of Columbia

**Date**: March 5, 2025

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In view of recent Executive Orders (EOs)[1]; a U.S. Department of Education (USED) "Dear Colleague" letter dated February 14, 2025[2] targeting diversity, equity, inclusion, and accessibility policies and programming in schools; and USED's subsequent "Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act" document (FAQ), the above-noted Offices of the Attorney General are issuing Joint Guidance. The Guidance addresses the Supreme Court's June 2023 decision on race-conscious admissions policies at institutions of higher education,[3] and clarifies the legal landscape for Institutions of Higher Education (IHEs) and K-12 schools operating in our states as they work to advance educational goals and access to educational opportunities.

Educational institutions should continue to foster diversity, equity, inclusion, and accessibility among their student bodies. The USED's February 14 "Dear Colleague" letter and February 28 FAQ correctly identify federal civil rights laws that apply to IHEs and K-12 schools. The documents then, however, misconstrue Supreme Court precedent, wrongly imply that it might be unlawful for schools to consider the impact of policies and practices

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[1] Exec. Order No. 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633 (Jan. 21, 2025); Exec. Order No. 14151, Ending Radical and Wasteful DEI Programs and Preferencing, 90 Fed. Reg. 8339 (Jan. 20, 2025); Exec. Order No. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, 90 Fed. Reg. 8615 (Jan. 20, 2025).

[2] https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf

[3] *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023).

on diversity, and create a misimpression of the impact of diversity, equity, inclusion, and accessibility programming and its legality. To be clear, *nothing* in the "Dear Colleague" letter or FAQ changes existing law and well-established legal principles that encourage—and even require—schools to promote educational opportunity for students of all backgrounds. The President cannot change longstanding legal precedent by executive order,[4] and a Dear Colleague letter and FAQ document certainly cannot do so.[5] The "Dear Colleague" letter has inspired fear, and the Attorneys General write to mitigate that fear.

The February 14 Dear Colleague letter asserts that the Supreme Court's holding in *Students for Fair Admissions v. Harvard* (*SFFA*) "sets forth a framework for evaluating the use of race" under Title VI of the Civil Rights Act of 1964.[6] But *SFFA* is specific to higher education admissions practices that use an applicant's race as a "plus" factor in evaluating an applicant for admission. IHEs can and should assume that *SFFA*'s reasoning extends to a school's provision of a concrete benefit or opportunity to a *particular individual* based on that individual's race – and that any such preference would have to meet the exacting standard of strict scrutiny. But a school may lawfully consider the ways in race affected a particular student's life, as the Supreme Court itself pointed out in *SFFA*.[7]

The February 14 Dear Colleague letter and the February 28 FAQ also incorrectly suggest that it would be unlawful for educational institutions to implement a race-neutral policy in order to increase racial or other forms of diversity. *SFFA* did not hold race-neutral policies unlawful, and in fact, the Supreme Court has encouraged "draw[ing] on the most promising aspects of . . . race-neutral alternatives" to achieve "the diversity the [institution] seeks." *Grutter v. Bollinger*, 539 U.S. 306, 339, 342 (2003).[8]

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[4] U.S. Const. art. II, § 3 (the President "shall take Care that the Laws be faithfully executed"); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring).

[5] USED recognizes that its February 14 Dear Colleague Letter "does not have the force and effect of law and does not bind the public or create new legal standards," Letter at 1 n.3, and that neither does its February 28 FAQ, FAQ at 1 n.3. Instead the Dear Colleague letter and FAQ purport to "provide[] notice of the [USED]'s existing interpretation of federal law." Letter at 3; FAQ at 1 n.3 (same). But the Supreme Court has recently explained that "agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 392 (2024) (emphasis in original). Rather, the Court held, "Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." *Id.* Courts therefore will not defer to USED's interpretation in deciding how federal law applies to diversity, equity, and inclusion programs at educational institutions.

[6] To the extent the Dear Colleague letter claims that the framework "set[] forth" is strict scrutiny review to determine whether an IHE's use of race in the admissions process is constitutional and compliant with Title VI of the Civil Rights Act of 1964, that framework is decades old, having first been set forth by the Supreme Court in 1979 in *Regents of the University of California v. Bakke*, 438 U.S. 265.

[7] The *SFFA* decision affirmatively does not "prohibit[] universities from considering an applicant's discussion of how race affected [their] life, be it through discrimination, inspiration, or otherwise." 600 U.S. at 230. For example, the opinion notes that a school might provide "[a] benefit to a student who overcame racial discrimination . . . tied to *that student's* courage and determination." *Id.* at 231 (emphasis in original).

[8] *SFFA* did not overrule *Grutter*, nor did it call into question that decision's approval of race-neutral measures to increase student body diversity.

Federal courts across the country, including Circuit Courts of Appeals, have recently reaffirmed that it is not unlawful for a school to implement race-neutral admissions practices in order to increase student body diversity. In 2023, following the *SFFA* decision, the First Circuit upheld a temporary admissions plan for three selective high schools in Boston that was intended to and did result in an increase in racial, socioeconomic, and geographic diversity. The temporary plan shifted admissions criteria from standardized test scores to GPAs and student zip codes. The First Circuit held that the plan violated neither Title VI nor the Equal Protection Clause of the Fourteenth Amendment. In doing so, the First Circuit held that "[t]here is nothing constitutionally impermissible about a school district including racial diversity as a consideration and goal in the enactment of a facially neutral plan."[9] The First Circuit found "no reason to conclude that [*SFFA*] changed the law governing the constitutionality of facially neutral, valid secondary education admissions policies under equal protection principles."[10] Similarly, the Fourth Circuit upheld a selective enrollment plan in 2023 in which a school board explicitly held a "desire to … improve racial diversity and inclusion by way of race-neutral measures."[11] There, the Fourth Circuit noted that utilizing race-neutral measures to achieve increased diversity is "a practice that the Supreme Court has consistently declined to find constitutionally suspect." The Supreme Court's denied certiorari in this case months later, letting the Fourth Circuit's ruling stand.[12]

Further, some of the nation's foremost legal scholars issued their own response to the Dear Colleague letter, pointing out its many inaccuracies. There, the professors explain the fundamental legality of common diversity, equity, and inclusion (DEI) practices, and urge university leaders to "respond confidently, with both law and moral principle on your side, and not to sacrifice essential and legally defensible DEI initiatives that help universities fulfill their most basic mission to pursue truth and knowledge for the common good."[13] Our offices share in the professors' call.

Finally, the February 14 Dear Colleague Letter mischaracterizes DEI programs, stating that they "frequently preference certain racial groups" and "stigmatize students who belong to particular racial groups based on crude racial stereotypes." On the contrary, practices and programming that lawfully promote diversity, equity, inclusion, and accessibility confer important educational and social benefits for students.[14] They foster learning environments

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[9] *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 Cnty. 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).

[10] *Id*. at 61.

[11] *Coal. for TJ v. Fairfax Cnty. Sch. Bd*., 68 F.4th 864, 885-86 (4th Cir. 2023), cert. denied, 2024 WL 674659 (Feb. 20, 2024).

[12] *Id.*

[13] "DEI Programs Are Lawful Under Federal Civil Rights Laws and Supreme Court Precedent," https://www.nacua.org/docs/default-source/new-cases-and-developments/2025/ogc-memo-re-trump-dei-and-sffa-2025-02-20.pdf?sfvrsn=4d1e55be_1 (footnote omitted).

[14] There is a crucial distinction between programs and policies that segregate students based on race—which was outlawed in *Brown v. Board of Education*, 347 U.S. 483 (1954)—and celebrations that center a particular racial or ethnic group, but that are open to all students regardless of race. USED's February 28 FAQ, contrary to longstanding

that provide *all* students an equal opportunity to learn and better prepare students to work in our diverse country and participate in our multiracial democracy. They are essential to promoting fair treatment and eliminating stigmatization. The *SFFA* decision has no bearing on these lawful DEI programs, and the February 14 Dear Colleague letter cannot and does not prohibit them.[15] Similarly, the February 14 Dear Colleague letter and subsequent FAQ document do not have the force of law, and so cannot disturb the continued viability of classroom instruction or course offerings that address race, sexual orientation, gender identity, disability, religion, or related topics.

Longstanding legal precedent has established that educational institutions may take steps to build student bodies that are meaningfully diverse across numerous dimensions, like geography, socioeconomic status, race, and sexual orientation and gender identity, among others. The attached guidance on *SFFA*, first issued by the Commonwealth of Massachusetts in 2023 and updated in light of the DOE's recent communication, provides additional information on legally compliant ways that educational institutions can continue to meaningfully and successfully achieve the worthy goals of diverse and equitable student bodies consistent with state law, Title VI, and the U.S. Constitution.

At the same time, the Attorneys General remind all educational institutions that they must themselves abide by the nation's civil rights laws, whatever changes they may make to their programming and policies. Fear of the "Dear Colleague" letter or the loss of federal funding is not a justification to impose or reimpose discriminatory practices. The Attorneys General stand ready to enforce their States' robust civil rights protections—which in many cases exceed federal civil rights protections—wherever discrimination may be found.

law, elides this distinction.

[15] To the extent the Dear Colleague letter relies on President Trump's January 21, 2025 Executive Order titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," that order specifically "does not prevent …[f]ederally-funded State and local educational agencies or institutions of higher education from engaging in First Amendment-protected speech." Moreover, key parts of that Executive Order were preliminarily enjoined by a District Court Judge on February 21, 2025. *See Nat'l Ass'n of Diversity Officers in Higher Ed. v. Trump*, Case No. 1:25-cv- 00333-ABA (D. Md.).

## Legal Guidance Regarding *Students for Fair Admissions, Inc. v. Harvard* and Lawfully Promoting Access to Educational Opportunity

The original version of this guidance was released by the Commonwealth of Massachusetts in October of 2023 following the Supreme Court's decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. the University of North Carolina* ("*SFFA*").[16]

This updated guidance from the above-noted States clarifies that nothing about the federal government's recently issued documents changes the state of the law; nor do they prohibit diversity, equity, and inclusion efforts in admissions and access to higher education or other educational settings. This guidance also includes steps that K-12 schools can take to set their students up for success.

### LEGAL OVERVIEW

On June 29, 2023 the Supreme Court issued its decision in *SFFA*, holding that the race-conscious admissions systems utilized at Harvard and the University of North Carolina ("UNC") violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment, respectively.[17]

In *SFFA*, the Court asserted three bases for its determination that Harvard's and UNC's admissions programs violated the Equal Protection Clause and therefore also Title VI in relying on individual students' race as a factor in the admissions process. First, the programs were not operated in a way that could be "subjected to meaningful judicial review" under the applicable strict constitutional scrutiny, because their stated goals were "not sufficiently coherent" to be measurable,[18] and the programs did not "articulate a meaningful connection between the means they employ and the goals they pursue" due to the use of "imprecise" and "opaque" racial categories.[19] Second, the programs used race to make a "zero-sum" decision in a "negative" manner that "operate[d] as a stereotype."[20] And third, the programs lacked a "logical end point."[21]

Accordingly, the Court found Harvard's and UNC's programs violated the Equal Protection Clause and Title VI. In its decision, the Court recognized the "tradition of giving a degree of deference to a university's academic decisions" and noted that "[u]niversities may define their mission as they see fit" within constitutional limits.[22] Similarly, at the end of the decision, the Court stated that schools could continue to consider "an applicant's discussion of how race affected his or her life" so long as that consideration was specific to that student's "unique ability to contribute to the university. In other words, students must be

[16] *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181 (2023).
[17] *Id.*
[18] *Id.* at 214.
[19] *Id. at* 215-16.
[20] *Id. a*t 218.
[21] *Id. a*t 221.
[22] *Id.* at 217.

treated based on their experiences as individuals—not on the basis of race."[23]

Importantly, *SFFA* involved a challenge to higher education admissions processes that used race as a "plus" factor in specific ways to make "zero-sum" decisions that advantage some individuals and disadvantage others. The case has no direct application to programs outside of higher education admissions or to admissions policies that do not use race as a factor for admissions in the same way.

## FREQUENTLY ASKED QUESTIONS

Institutions of higher education and K-12 schools can and should adopt numerous approaches as they work to advance their respective missions, break down barriers, and increase access for historically underrepresented students. The following answers to Frequently Asked Questions are intended to provide guidance on steps that can be taken, consistent with *SFFA* and existing state and federal law, to improve post-secondary access and success.[24]

### Institutional Mission:

*Can institutions of higher education still include diversity as part of their missions? And may institutions of higher education still work to support efforts to achieve equitable outcomes in persistence and graduation of their students?*

Nothing in the Court's opinion or the federal government's EOs and February 14 "Dear Colleague" Letter challenges institutions' ability to work to achieve diversity and equity, so long as the particular race-conscious admissions practices at issue in *SFFA* are not the tools through which they seek to achieve those goals. Institutions of higher education may continue to articulate missions and goals related to student body diversity and equitable outcomes for students and may use all legally permissible methods to achieve that diversity and equity, some of which are described below.

### Admissions:

*How can institutions of higher education consider race in admissions?*

> The Supreme Court in *SFFA* limited the ability of institutions of higher education to consider an applicant's race in and of itself as a plus factor in deciding whether to admit the applicant.
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> However, the Court made clear that "nothing in [its] 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."[25] As

[23] *Id.* at 230-31.

[24] Educational institutions should be aware that state laws—including state constitutions, state statutes, or state regulations—may impose legal standards that are different from those imposed by the federal laws that are the focus of this guidance. Schools should be attentive to applicable state laws when assessing the legality of a particular course of action.

[25] *Id.* at 217; *see id.* at 230 (discussing that a "benefit" tied to a specific student's courage and determination may be

such, an institution may choose to advance its educational goals by using a holistic review in admissions considering factors such as cultural competencies, income level, first generation to attend college, neighborhood or community circumstances, disadvantages overcome, and the impact of an applicant's particular experiences on their academic achievement and on the perspectives they would bring to the school environment. Institutions may use admissions criteria that look beyond traditional measures such as grades to more holistic ones that allow for consideration of applicants' life experiences more generally, including their experiences linked to their race and how those experiences shaped their lives and the unique contributions they can make to campus.

As stated in the Supreme Court's decision in *SFFA*, institutions remain free to consider any quality or characteristic of a student that bears on the institution's admissions decision, provided that any benefit is tied to "that student's" characteristics, and that the student is "treated based on his or her experiences as an individual," and "not on the basis of race."[26]

*What changes should institutions of higher education make to their admissions practices?*

Those institutions of higher education that consider race in the manner that the Court addressed in the *SFFA* decision will need to re-evaluate their current practices to ensure compliance with the law. For instance, using an individual student's race as itself a "plus" or a "tip" in holistic admissions decisions was directly addressed by the Court, and any such practice must be re-evaluated.

Institutions may also choose to audit their existing admissions processes, practices, and criteria to identify potential barriers to access for historically underrepresented students and use the Court's decision as an opportunity to retool operations in ways that better align with their institutional mission. More specifically, institutions can reconsider and recalibrate criteria that have generally created barriers for certain student groups, such as application fees, early admissions plans, legacy preferences, testing requirements, athletic preferences, curricular requirements, and grade thresholds.

*What kind of data can institutions of higher education collect?*

Institutions of higher education may continue to collect data based on race and ethnicity, and other aspects of identity. The Supreme Court in its *SFFA* decision addressed the use of individual students' race as a plus factor in admissions decisions—not collection of data on race for broader informational, research, and evaluation purposes. Accordingly, while such data collection may continue, under the Court's decision, institutions may not provide an advantage to an individual

given to such student who overcame racial discrimination, and that a benefit may be given to a student whose heritage or culture motivated them to assume a leadership role or attain a specific goal if the benefit is tied to that particular student's unique ability to contribute to the university).

[26] *Id*. at 230-31.

applicant specifically on the basis of the data collected about their race, including, e.g., based on how their race compares to the race of other students admitted thus far during a rolling admissions process.[27]

## Recruitment Practices and Programs:

*How can institutions of higher education target outreach of potential applicants?*

As part of a comprehensive approach to conducting outreach to potential applicants, institutions of higher education can make special efforts to reach particular groups. Institutions do not have to ignore race when identifying prospective students for outreach and recruitment programs, provided such programs do not give targeted groups of students preference on the basis of racial status in and of itself and that all students have the same opportunity to apply and compete for admission.

For instance, campuses may work with community organizations serving particular groups to share information about the application process and attract applications from that population. Similarly, as long as programs are open to all participants, regardless of their race, institutions may offer outreach, informational, and other programs that may, because of their content, be of particular interest to members of a particular racial group. For example, partnering with affinity groups associated with community-based organizations is one culturally sustaining approach often undertaken by institutions that seek to diversify their student bodies.

Additionally, institutions of higher education may continue to target outreach to potential applicants based on a wide range of characteristics, such as academic interests, geographic residency, financial means and socioeconomic status, family background, and parental education level.

Institutions of higher education may also engage in expanded outreach by increasing the number and types of high schools, organizations, and regions admissions officers visit during the recruiting season.

*How can institutions of higher education build relationships with middle and high schools?*

Institutions of higher education may engage in many policy and practice reforms to develop robust relationships with middle schools and high schools across their communities with particular emphasis on those schools with historically low college-going rates.

Practices may include:

- Partnering with particular schools and/or community-based organizations to offer mentoring or other programming throughout the school year to enhance students' academic exposure;

[27] *Id.* at 230.

- Hosting or sponsoring local, state, and federally funded college access programming;

- Hosting Admissions Days at regional high schools, inviting seniors and partnering with admissions counselors and financial aid advisors to complete admissions applications;

- Reaching out to area high schools and designating a high school staff person to recruit students from inside the high school as a "high school liaison" who meets with students individually, in small groups, and in large settings and assists students in filling out applications, visiting the institution of higher education, and looking at career options;

- Offering tours on campus for local high school students that include information sessions where students can complete applications on the spot; and

- Hosting "academic preview days" for local high school students focused on individual programs, where students are invited to visit campus for the day including campus tours, lunch with staff and faculty, and a current student panel focused on the particular program.

*Can K-12 schools continue programs aimed at ensuring that college and career programs are inclusive of all students, and that schools provide a safe and supportive environment?*

Administrators, teachers, counselors, and staff at K-12 schools should be confident that they may continue to carry out the vitally important work of preparing all students in their states for life after graduation and ensuring a safe and supportive school environment.

*How can K-12 schools continue to prepare all students for college or careers?*

It is imperative that K-12 schools maintain and strengthen efforts to prepare all students for college and careers – including students from historically underrepresented backgrounds, who are disproportionately students of color. Schools must continue to provide all students with access to the course work, instruction, enrichment opportunities, counseling, and other preparatory programs necessary to prepare them for college and careers. In some circumstances, this may mean taking targeted action so that students from underserved communities, including communities of color, are aware of, have access to, and participate in these courses and programs. Schools should be confident that these vital programs and practices remain lawful.

Schools should consider dedicating particular attention to the following types of programs and services:

- Making available online college and career planning resources, that can help students and their families successfully navigate the college application and selection process, empowering them to envision the future that they deserve;

- Comprehensive counseling and coursework that prepares students for post-secondary education;

- Providing students with a rigorous high school course of study that aligns with college admissions standards;

- Offering Early College, which gives students the opportunity to take college courses and earn credits at no cost before they graduate high school;

- Innovation Career Pathways program, which provides workforce learning options to high school students, including learning opportunities in Advanced Manufacturing, Information Technology, Environmental and Life Sciences, Health Care and Social Assistance, Business and Finance, and Clean Energy; and

- Expanding access to Advanced Placement (AP), dual enrollment, and other advanced course work during high school.

*How can K-12 schools promote a safe and supportive school environment?*

Schools should continue to take affirmative steps to create and maintain a positive school climate where all students feel safe, supported, respected, and ready to learn. School leaders should review their current practices to ensure that their district is complying with all applicable anti-discrimination, anti-bullying, and civil rights laws and developing and implementing programs and policies that incorporate best practices and meet the needs of their local community. Schools' responsibilities under these laws include the following:

- Review curriculum to ensure that it promotes inclusivity and does not perpetuate discriminatory or demeaning stereotypes;

- Provide students at all grade levels with needed skills, knowledge, and strategies through evidence-based bullying prevention curriculum;

- Develop and implement plans to support and protect students who are vulnerable to becoming targets of bullying or harassment because of their race, color, religion, national origin, sex, gender identity, sexual orientation, or disability, among other identifying characteristics;

- Prohibit students from engaging in bullying or harassment and prescribe disciplinary measures that may be imposed for violations;

- Implement comprehensive policies and procedures for reporting, investigating, and responding to bullying and harassment; and

- Train administrators, teachers, and school staff to successfully implement anti-bullying and anti-harassment policies and procedures, including by providing teachers with sufficient professional development opportunities to ensure that they can carry out the educational requirements above.

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If you have further questions, please contact the offices of the above-noted attorneys general using their publicly available office email addresses and phone numbers.

*March 5, 2025*