

OCR Provides Further Guidance About When DEI Violates Title VI

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On February 14, 2025, the Department of Education's Office for Civil Rights ("OCR") issued a Dear Colleague Letter ("DCL") which explained that schools had "discriminated against students on the basis of race, including white and Asian students" and had "justify[ed] their discrimination "under the banner of 'diversity, equity, and inclusion' ("DEI")[.]" Hunton's analysis of this DCL is available [here](#).

On March 1, 2025, the OCR issued further guidance on Title VI in the form of Frequently Asked Questions ("FAQ"). These FAQs clarified the DCL's stance toward illegal DEI programming. The FAQ explained that whether DEI programming violates Title VI does not depend on the use of terminology – including "diversity," "equity," and "inclusion," – but rather on whether the DEI programming restricts or discourages access based on race, or creates a race-based hostile environment.

The FAQs explained that, where DEI programming is race-neutral, OCR may consider the following factors to determine whether a school acted with a racially discriminatory purpose:

1. Whether members of a particular race were treated differently than similarly situated students of other races;
2. The historical background or administrative history of the policy or decision;
3. Whether there was a departure from normal procedures in making the policy or decision;
4. Whether there was a pattern regarding policies or decisions towards members of a particular race;
5. Statistics demonstrating a pattern of the policy or decision having a greater impact on members of a particular race; and
6. Whether the school was aware of or could foresee the effect of the policy or decision on members of a particular race.

The DCL is recommended reading for all institutions of higher education seeking to navigate their

responsibilities under Title VI, but there are additional key points for colleges and universities to consider as they are navigating these issues.

Access to Educational Opportunities

The DCL referred to race-based affinity spaces, housing, or graduation ceremonies as discriminatory, and the FAQ contextualized this, explaining that such programming is discriminatory if it “allows one race but not another or otherwise separates students, faculty, or staff based on race.”

The DCL referred to curriculum, and the FAQ clarified “nothing in Title VI, its implementing regulations, or the Dear Colleague Letter requires or authorizes a school to restrict any rights otherwise protected by the First Amendment.” In addition, the FAQ balances this statement by reiterating schools’ obligations to prevent a hostile environment and address racial harassment. In determining whether certain curriculum discussing race from a historical and sociological perspective would qualify as creating a hostile environment, the FAQ noted that such discussions may be considered hostile in an elementary school, but not out of place in a university classroom.

Creation of a Hostile Environment based on Race

The FAQ provided examples of school activities that could create a hostile environment by **requiring** employees or students to:

- Engage in political activism such as protests or privilege walks.
- Embrace specific perspectives on race-related issues, and investigating or disciplining them if they do not.
- Participate in trainings, orientations, coursework, or courses that reinforce racial stereotypes, challenge speech protected under the First Amendment.
- Accept different disciplinary measures based on their racial group.

The FAQ clarified that schools are permitted to continue cultural programming and discussions on race-related topics, provided they do not limit access or create a racially hostile environment. In assessing programming, schools should consider whether it would discourage member of all races from attending.

While OCR has tempered its stance on race-related programs and educational access with the FAQ, it is recommended that schools continue to take steps to review policies, procedures, and practices, including those involving admissions and access to academic, extracurricular, and financial support programs to ensure compliance with Title VI.

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