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April 1, 2025

Secretary of Education Linda McMahon  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Acting Assistant Secretary Craig Trainor  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

**RE:** February 14, 2025, “Dear Colleague” Letter and End DEI Website

Dear Secretary McMahon and Acting Assistant Secretary Trainor:

The National Women’s Law Center (“NWLC”) writes to request that the Department of Education (“the Department”) rescind its inaccurate Dear Colleague Letter, “Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard,” published on February 14, 2025<sup>1</sup> (“the Guidance”) and immediately remove its “End DEI” complaint reporting website (“the End DEI website”).<sup>2</sup> The Guidance incorrectly characterizes the current state of the law, and together with the End DEI website, will lead to confusion, misinterpretation, and improper application of students’ civil rights protections.

All students should learn in an environment that is safe, supportive, and affirming. For over 50 years, NWLC has worked to secure equal opportunity in education for women and girls through enforcement of Title IX of the Education Amendments of 1972, the Constitution, and other laws. We advocate for safe, healthy, and inclusive learning environments for all students, especially for girls of color, LGBTQI+ students, students with disabilities, students from families with low income, and those existing at the intersection of these identities. The U.S. Department of Education’s Office for Civil Rights (OCR) is important to ensuring that all students have equal access to a quality education in supportive learning environments free from discrimination; not just some students.

It is imperative that the Department support schools in upholding their non-discrimination obligations on behalf of all students. The Guidance states that the Department’s very mission is “to promote student achievement and preparation for global competitiveness by fostering educational

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<sup>1</sup> U.S. Department of Education Dear Colleague Letter: Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard issued by the U.S. Department of Education’s Office for Civil Rights (OCR) (Feb. 14, 2025), <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>.

<sup>2</sup> U.S. Department of Education “End DEI,” <https://enddei.ed.gov/> (last accessed 3/19/2025).

excellence and ensuring equal access.”<sup>3</sup> The mission of OCR is to “ensure equal access to education through vigorous enforcement of civil rights in our nation’s schools.”<sup>4</sup> The Guidance goes against these very principles and leaves a substantial portion of our nation’s student population susceptible to discriminatory practices and circumstances that hinder their equal access to an education which Title VI of the Civil Rights Act of 1964 was created to protect.

Importantly, agency guidance is not binding law and cannot supersede the Constitution, Title VI and other civil rights laws, or Supreme Court precedent. However, this Guidance is ill-conceived and dangerous as it will lead schools<sup>5</sup> to violate the law. Consequently, the Department should rescind this Guidance immediately and remove its misleading End DEI website.

### **Overbroad and Inaccurate Interpretation of Law and Legal Precedent**

All students deserve to learn in supportive and affirming learning environments, free from racial discrimination. On its face, the Guidance states that discrimination based upon race, color, and national origin is illegal, and we agree. Yet, inexplicably, the Guidance only mentions discrimination against white and Asian students, sending the message that protecting *all* students is not a priority. To be clear, OCR is obligated to ensure that all students can learn in environments free from discrimination in accordance with Title VI, Title IX, and other civil rights laws.<sup>6</sup> The Guidance sends a message to schools that OCR will only protect white and Asian students from discrimination. Students can experience identity-based discrimination in schools for a variety of reasons, including subgroups in the Asian community that are often overlooked in the discourse about higher education admissions and subsequently have lower rates of enrollment in higher education.<sup>7</sup> Ultimately, it is the responsibility of OCR to ensure that all students have equal access to education regardless of their racial identity.

The Guidance incorrectly characterizes the U.S. Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*.<sup>8</sup> In that case, the court did not overrule years of precedent establishing that a diverse student body is a compelling governmental interest.<sup>9</sup> The Court stated that, “...Nothing prohibits universities from considering an applicant’s discussion of how race affected the applicant’s life, so long as that discussion is concretely tied to a quality of character or a unique ability that the particular applicant can contribute to the university.” These cases do not expand beyond higher education and specifically focus on the way Harvard University and the University of North Carolina (in the consolidated case) used race in their

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<sup>3</sup> U.S. Department of Education Dear Colleague Letter: Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard issued by the U.S. Department of Education’s Office for Civil Rights (OCR) (Feb. 14, 2025), <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>.

<sup>4</sup> U.S. Department of Education, “Office of Civil Rights,” <https://www.ed.gov/about/ed-offices/ocr> (last accessed 3/19/2025).

<sup>5</sup> Throughout this letter “Schools” means all Pre-K – 12 public schools, institutions of higher education, and programs that receive federal funding from the U.S. Department of Education.

<sup>6</sup> U.S. Department of Education, “About OCR,” <https://www.ed.gov/about/ed-offices/ocr/about-ocr> (last accessed 3/19/2025).

<sup>7</sup> National Center for Education Statistics Institute for Education Sciences, “Status and Trends in the Education of Racial and Ethnic Groups: Indicator 19 Snapshot: College Participation Rates for Racial/Ethnic Subgroups,” available at [https://nces.ed.gov/programs/raceindicators/indicator\\_reas.asp](https://nces.ed.gov/programs/raceindicators/indicator_reas.asp).

<sup>8</sup> *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

<sup>9</sup> *Grutter v. Bollinger* 539 U.S. 306 (2003); *Fisher v. University of Texas at Austin*, 570 U.S. 297 (2016).

admissions processes. It is still lawful for institutions of higher education to prioritize having a diverse student body and to implement race neutral policies to achieve that goal.

As noted above the Supreme Court did not overrule precedent established by *Grutter v. Bollinger* or *Fisher v. University of Texas Austin*.<sup>10</sup> The Supreme Court's decision in *Fisher v. University of Texas at Austin*, 579 U.S. 297 (2016), which is still binding law, found that the use of race as a factor in a holistic review of an applicant survived strict scrutiny because it was narrowly tailored to serve a compelling interest (diversity at the university) which could not be achieved by other alternatives presented. Further, a federal court in *Coalition for TJ v. Fairfax County School Board*<sup>11</sup> upheld a race neutral admissions policy implemented by a public magnet school to "improve the potential for underrepresented students to gain admission."<sup>12</sup> The Fourth Circuit held that "expanding the array of student backgrounds in the classroom serves, at minimum, as a legitimate interest in the context of public primary and secondary schools." This decision upheld the admissions policy at Thomas Jefferson High School for Science & Technology which used a "holistic review" to increase underrepresented students in its applicant pool and enrollment class. The Supreme Court declined to hear this case which allows the Thomas Jefferson High School for Science & Technology admissions policy to remain in effect.<sup>13</sup>

Further, it is irresponsible for OCR to advise Schools that it is unlawful to remove standardized testing as a means to increase opportunity to students who may not have it otherwise. Not only is this a misreading of Supreme Court precedent, but there is no law that mandates standardized testing for School admissions. OCR cannot, through this Guidance, force schools to make standardized testing a requirement. There is no legal precedent to support the assertion made in The Guidance that it is unlawful to remove standardized testing to increase enrollment of underrepresented students. It is irresponsible for OCR, the office tasked with ensuring that all students have access to education free from discrimination, to provide Schools with this misinformation.

### **The End DEI Website**

The End DEI website adds another layer of confusion and danger for Schools, students, parents and communities. The website mentions, "divisive ideologies and indoctrination,"<sup>14</sup> with no clear definition of what those words mean. The End DEI website is vague with no clear goals with collecting information from parents which puts students and educators at risk. Couple with The Guidance, the End DEI website represents the federal government abusing its power to dictate curriculum and impede Schools' lawful attempts to increase opportunity for underserved students. These efforts threaten to remove funding from Schools for lawful activities, which will harm the students from working class communities the most, regardless of their race.

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<sup>10</sup> Id.

<sup>11</sup> *Coalition for TJ v. Fairfax County School Board*, No. 22-1280, 68 F.4th 864 (4th Cir. 2023).

<sup>12</sup> Id.

<sup>13</sup> Associated Press, "The Supreme Court Leaves in Place the Admissions Plan at an Elite Virginia Public High School," February 20, 2024, available at <https://apnews.com/article/supreme-court-virginia-school-admissions-asian-discrimination-bdac4a3d720c0355f9da1c9539b05c2d>.

<sup>14</sup> U.S. Department of Education "End DEI," <https://enddei.ed.gov/> (last accessed 3/19/2025).

This Guidance and the End DEI website are dangerous and they promote inaccurate information that will cause confusion and violation of civil rights laws. There are benefits to a racially diverse student body which the Supreme Court has recognized and implementing race neutral means to attract a diverse student body remains lawful. The Guidance poses a substantial threat to the civil rights that students are entitled to under Title VI of the Civil Rights Act of 1964, other civil rights laws, and established legal precedent. The End DEI website is a waste of taxpayer resources that could have been better allocated by providing Schools with the resources, technical assistance, and support they need to provide a quality education. We ask that you immediately rescind this misleading Guidance and remove the End DEI website.

Thank you,

A handwritten signature in cursive script that reads "Bayliss Fiddiman".

Bayliss Fiddiman  
Senior Director of Educational Equity  
National Women's Law Center