



Education Department's DEI Certification Requirement for Schools: Overview and Legal Challenges

March 17, 2026

Title VI of [the Civil Rights Act of 1964](#) prohibits discrimination based on race, color, or national origin in programs that receive federal funding. On February 14, 2025, the Department of Education's (ED's) Office for Civil Rights (OCR) released a "[Dear Colleague Letter](#)" (DCL) to "clarify and reaffirm" antidiscrimination requirements under [Title VI](#) for schools that receive funding from ED. On April 3, 2025, ED [announced](#) that it had sent letters to state education agencies (SEAs) that oversee K-12 schools requiring certification of compliance with these nondiscrimination requirements in order to continue receiving funding from the agency. Both the DCL and the certification-requirement announcement assert that numerous schools are out of compliance with Title VI due to their operation of diversity, equity, and inclusion (DEI) programs. For support, OCR points to the Supreme Court's 2023 decision in [Students for Fair Admissions v. Harvard \(SFFA\)](#), in which the Court struck down race-conscious admissions policies at two colleges for violating Title VI and the Constitution's Equal Protection Clause.

A number of plaintiffs have challenged OCR's DCL and certification requirement in court, arguing that these agency actions violated several statutory limitations and constitutional provisions. A district court vacated both in August 2025; the government initially appealed the ruling but subsequently [withdrew](#) that appeal. It [appears](#) that ED has opened at least one Title VI investigation into a race-conscious school program since the court ruling.

OCR's actions and the accompanying litigation raise numerous legal issues, including ED's relationship to state and local education agencies, the scope of OCR's statutory authority, the meaning of Title VI and the Equal Protection Clause, and the relationship between statutory nondiscrimination requirements and constitutional protections under the First and Fifth Amendments. This Sidebar begins with a brief background on Title VI, ED's recent actions, and the Supreme Court's decision in *SFFA*. It continues by examining the statutory and constitutional challenges brought against ED's DCL and certification requirement. It concludes with considerations for Congress.

Congressional Research Service

<https://crsreports.congress.gov>

LSB11405

Title VI Background

Courts interpret [Section 601 of Title VI](#) to [prohibit](#) discrimination based on race, color, or national origin by recipients of federal funding to the same degree that the Equal Protection Clause prohibits such discrimination by the government. All federal agencies that distribute federal funds [implement](#) Title VI as a condition of receiving those funds. ED distributes [funding](#) to all K-12 public school districts and all public and most private colleges and universities. ED's regulations implementing Title VI [provide](#) that applications for federal financial assistance must provide [assurances](#) that recipient educational programs will comply with the law. Likewise, SEAs must "have on file" with ED a set of assurances—as part of a consolidated state plan or application under the [Elementary and Secondary Education Act of 1965](#)—that each program within such plan will comply with all applicable statutes and regulations ([including](#) Title VI).

OCR is responsible for [enforcing](#) Title VI in schools that receive funds from ED. OCR can investigate allegations of discrimination as well as conduct compliance reviews and directed investigations. Title VI provides that [compliance](#) with its requirements should be reached voluntarily whenever possible; however, a school's refusal to comply with Title VI's requirements can eventually result in fund termination or referral to the Department of Justice to enforce the law in court. (Agency enforcement is explained in more detail in another [Legal Sidebar](#).) In addition, individuals subjected to racial discrimination by a recipient of federal funds may [sue](#) to enforce Section 601.

Students for Fair Admissions v. Harvard

SFFA involved admissions policies at Harvard and the University of North Carolina (UNC) that permitted consideration of race in reviewing applications. Before *SFFA*, the Supreme Court had [interpreted](#) the Equal Protection Clause to allow colleges and universities to use race as a factor in admissions decisions, at least under certain circumstances. While consideration of race in other contexts was generally found to run afoul of the Equal Protection Clause (and thus Title VI), some race-conscious admissions practices were held to satisfy the searching standard of strict scrutiny. Under strict scrutiny, consideration of race is only permissible if it serves a compelling government interest and is narrowly tailored to that interest. In the context of college admissions, the Court had held that consideration of race could serve the compelling interest of crafting a [diverse student body](#). To satisfy narrow tailoring, schools typically had to consider race as part of a holistic and flexible review of a student's entire application, rather than utilizing [quotas](#) or "[racial balancing](#)."

The *SFFA* Court departed from this precedent and concluded that Harvard's and UNC's admissions policies violated Title VI and the Equal Protection Clause, respectively. The Court [held](#) that the schools' interest in promoting diverse viewpoints was "amorphous" and eluded meaningful judicial review, and even if it wasn't, the [schools](#) had "fail[ed] to articulate a meaningful connection between the means they employ and the goals they pursue." In the Court's view, it was unclear how making admissions decisions using arbitrary racial categories under the challenged policies offered educational benefits. Further, the Court [held](#) that the school's use of race to promote diverse viewpoints depended on racial stereotypes by assuming students of racial minorities are "different from nonminority students." Finally, the Court [observed](#) that previous opinions "expressed marked discomfort with the use of race in college admissions" and signaled that eventually, race-conscious policies "[must end](#)." Harvard's and UNC's policies had no end date, [giving](#) the Court "no reason to believe that [the schools] will—even acting in good faith—comply with the Equal Protection Clause any time soon."

ED's DEI Dear Colleague Letter and Certification Requirement

The February 2025 DCL [laid](#) out OCR's interpretation of what conduct Title VI prohibits, as informed by the *SFFA* decision. The DCL [states](#) that schools have “advanced discriminatory policies and practices” based on the “false premise that the United States is built upon ‘systemic and structural racism.’”

According to the [DCL](#), some schools have inserted “racial stereotypes and explicit race-consciousness into” educational programming “under the banner of” DEI. The DCL further states that, while directly favoring one race over another [violates](#) the law, “[o]ther programs discriminate in less direct, but equally insidious ways.” Namely, the DCL [claims](#), “DEI programs ... frequently preference certain racial groups and teach students that certain racial groups bear unique moral burdens that others do not.” DEI programs, according to the DCL, “stigmatize students” of certain racial groups based on racial stereotypes, like the policies in *SFFA*, and thus “deny students the ability to participate fully in the life of a school.” The DCL does not define “DEI programs.”

OCR followed the DCL with a [frequently asked questions](#) (FAQ) document that went into more detail about what conduct the agency considers prohibited by Title VI. The FAQ states that some schools have attempted to “veil discriminatory policies” with titles like “social-emotional learning” and “culturally responsive teaching.” Further, according to the FAQ, certain practices, such as requiring classes or programs “that are designed to emphasize and focus on racial stereotypes,” can violate the law.

OCR later [announced](#) that it was requiring SEAs to certify compliance with the DCL's [position](#) on Title VI and *SFFA* in order to continue receiving funding from the agency. The announcement [pointed](#) to the DCL and stated that schools were violating Title VI by “using DEI programs to discriminate against one group of Americans to favor another based on identity characteristics.” SEAs were also required to collect certifications from local education agencies (LEAs) within their state and initially had 10 days to return the signed certification. (ED later extended that deadline.)

OCR's position, as expressed through these documents, appears to stand in contrast to a previous interpretation of Title VI's scope from 2023. A [guidance document](#) from that year indicated that schools had implemented DEI activities as part of resolution agreements with the agency to *resolve* Title VI issues, indicating that OCR did not view at least some DEI programs as conflicting with the statute at that time.

Judicial Challenges to the DCL and Certification Requirement

Organizations representing teachers, professors, and students have challenged the DCL and certification requirement in several cases on both statutory and constitutional grounds. In April 2025, the District Court for the District of New Hampshire issued a preliminary injunction in *National Education Association v. Department of Education* (*NEA*) barring the government from “enforcing or implementing” the DCL and certification requirement; on the same day, the District Court for the District of Columbia denied a motion for a preliminary injunction as to the DCL in *National Association for Advancement of Colored People v. Department of Education* (*NAACP*) but granted one as to the certification requirement. In August 2025, the District Court for the District of Maryland vacated both the DCL and certification requirements in *American Federation of Teachers v. Department of Education* (*AFT*). A discussion of the statutory and constitutional arguments raised in these cases follows.

Statutory Challenges

Statutory challenges to the DCL and certification requirement have included allegations that ED's actions failed to follow the rulemaking requirements of the Administrative Procedure Act (APA), were arbitrary and capricious under that statute, and exceeded ED's statutory authority under the Department of Education Organization Act (DEOA). Not every court addressed the same statutory challenges.

Notice and Comment Procedures Under the APA

The APA’s rulemaking provisions require agencies to provide the public with notice and an opportunity to comment upon proposed legislative rules—those that impose binding legal obligations—before they go into effect. The *NAACP* court rejected the argument that ED’s documents amounted to legislative rules that should have gone through the APA process, reasoning that the “conditional” language did not impose a new legal obligation. The court acknowledged that the documents signaled a change from ED’s prior interpretation of Title VI but concluded that, under controlling precedent from the D.C. Circuit, the documents did not amount to legislative rules because they only “narrow[ed] leeway previously afforded.”

The *NEA* and *AFT* courts went the other way. The *NEA* court ruled that the DCL imposed new and “substantial obligations”—whereas ED had previously encouraged schools to use DEI programs, it now characterized them as unlawful under Title VI. Likewise, the *AFT* court ruled that because Title VI and *SFFA* had never been understood to prohibit classroom instruction on concepts concerning race, the DCL amounted to a substantive change in what the law requires of schools. For the court, the DCL aimed to broaden Title VI’s requirements to “cover classroom speech and curriculum” and thus imposed new legal obligations, making it a legislative rule. The *AFT* court applied the same reasoning to the certification requirement, writing that “it defie[d] logic” that ED would need every SEA and LEA to certify compliance with existing law for a second time in less than a year if there were no change in legal obligations. The court also pointed out that the certification requirement contained numerous threats of enforcement actions for noncompliance, supporting that it imposed an affirmative obligation “to certify compliance with new undefined legal requirements.”

Arbitrary and Capricious Review Under the APA

The APA instructs courts to set aside agency actions that are arbitrary and capricious, a standard of review under which agencies must show their actions are the product of reasoned decisionmaking. The *AFT* court ruled that ED failed this test for the DCL and certification requirement. According to the court, the government did not acknowledge that the documents “went beyond merely restating settled principles of civil rights law,” yet the documents reflected important changes concerning ED’s authority to “regulate curriculum” and “prospectively categorize content as discriminatory.” The court observed that the government nevertheless “insist[ed]” that the documents needed no process at all and generated no underlying administrative record for support. There was thus no apparent reasoned basis for these actions, in the court’s view.

The *AFT* court additionally ruled that ED’s failure to comply with or consider the requirements of the Paperwork Reduction Act (PRA) when issuing the certification requirement supported the conclusion that it was “procedurally defective and arbitrary and capricious.” The PRA imposes various procedural requirements on agencies when they seek to collect information from regulated entities, such as notice and comment procedures and approval by the Office of Management and Budget (OMB). The court observed that ED had previously complied with the PRA when it sought similar certifications, and it was “surprising” that the agency issued this certification requirement “without any apparent awareness that it had circulated a similar certification less than a year before.”

DEOA Limitation on ED’s Control of School Curriculum

ED’s authorizing statute, the DEOA, contains an explicit limitation on the Department’s discretion: the law provides that ED lacks authority “to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system.” The *NEA* court ruled that the DCL’s attempt to ban teaching about various concepts, such as “systemic and structural racism,” without explaining why it is prohibited by existing antidiscrimination

law, likely exceeded ED's statutory authority in light of this provision. The *AFT* court [reached](#) a similar conclusion, [observing](#) that the DCL states that teaching "students that certain racial groups bear unique moral burdens that others do not," and "toxically indoctrinat[ing] students with the false premise that the United States is built upon systemic and structural racism," are discriminatory practices. For the court, the DCL thus aimed to [exercise](#) control over school curriculum. Further, in the *AFT* court's view, there was no [basis](#) in Title VI or the *SFFA* decision to conclude that such discussions of race are necessarily discriminatory under the law (which might supersede the DEOA's limitation on controlling curriculum).

Constitutional Challenges

Constitutional challenges to the DCL and certification requirement have included allegations that ED's actions discriminated on the basis of content and viewpoint in violation of the First Amendment and were void for vagueness in violation of the Due Process Clause of the Fifth Amendment.

First Amendment

The First Amendment [prohibits](#) the government from suppressing or requiring adherence to particular ideas or messages. For this reason, [content-based](#) laws and regulations—those that regulate speech on the basis of its subject matter, topic, or substantive message—are considered [presumptively unconstitutional](#). In particular, the Supreme Court has [held](#) that viewpoint discrimination, a form of content-based discrimination that targets particular views on a subject, is a "more blatant" violation of the First Amendment. The *AFT* and *NEA* courts held that the DCL likely violated the First Amendment because it attempted to prohibit recipients of federal funds from expressing certain viewpoints. For example, the *AFT* court pointed out that the DCL says it is "targeting 'proponents' of diversity, equity, inclusion, and social justice," yet a "person who . . . opposes DEI or who opposes the concepts that are discussed in the Letter is perfectly free to use federal funds to exercise their expression and do so without the fear that they will be punished or have funds taken away as a result." According to the *AFT* court, this "[clear viewpoint discrimination](#)" is not allowed, especially when the government is attempting to use its power over federal funding "to coerce the suppression of speech it disfavors." The *NEA* court, focusing on the DCL's application to professors at universities and colleges, also acknowledged what it viewed as the [coercive effect](#) of the DCL, [explaining](#) that the threat of funding termination "has been enough to lead many schools to censor their professors or eliminate all reference to [DEI] within the school." In analyzing the certification requirement, however, the *AFT* court [held](#) that the "face of the document does not proscribe or regulate speech," as it only required that schools certify that they would not participate in "illegal DEI," and it therefore did not violate the First Amendment based on viewpoint discrimination.

The *NAACP* court dealt with a different First Amendment challenge involving the rights to [receive information](#) and [freely associate](#). The court held that the plaintiffs had not sufficiently established [standing](#) to bring these claims. In particular, the court [observed](#) that the plaintiffs in *NAACP* were students who alleged harm by programs that their schools ended for fear of Title VI enforcement, and that even if the court enjoined the DCL or certification requirement, the threat of Title VI enforcement under existing law would remain.

Fifth Amendment

The [Due Process Clause](#) of the Fifth Amendment states that "[n]o person" shall "be deprived of life, liberty, or property, without due process of law." Among other things, this command obligates the federal government to provide clear notice as to what a law requires, [particularly](#) when speech is being regulated. In *NAACP*, *NEA*, and *AFT*, the plaintiffs alleged that ED's actions violated the Due Process Clause because the documents were so vague that schools could not know what constitutes "illegal DEI." The *NAACP* court [held](#) that plaintiffs were likely to succeed on their Fifth Amendment claim, as the

documents failed to define DEI “or delineate between a lawful DEI practice and an unlawful one” while simultaneously threatening serious consequences for failure to comply. The *NEA* court [reached](#) the same conclusion, emphasizing that compliance with the DCL and certification requirement could rest on “the subjective determinations of enforcement authorities” about what constitutes “illegal DEI” and leave teachers and schools to guess what they could or could not do. The *AFT* court was also in accord, [holding](#) that the combination of these factors created a “chilling effect” that could lead schools and teachers to overcorrect and limit all discussion of anything plausibly related to DEI.

Current Status and Considerations for Congress

As mentioned, the *AFT* court vacated both the DCL and the certification requirement. The government initially appealed but later moved to [dismiss](#) its appeal, which the court granted. The government subsequently filed joint motions to dismiss with the plaintiffs in the pending *NEA* and *NAACP* cases, agreeing not to rely on the substance of the documents in enforcement actions or to reinstate the certification requirement. ED has not said whether it considers these agreements as preserving agency discretion to pursue enforcement actions against schools based on an interpretation of *SFFA* as prohibiting some forms of DEI-related activity. It appears that OCR has opened at least one Title VI investigation since ED moved to dismiss all three cases. ED’s [press release](#) announcing the investigation does not mention *SFFA*, though it does state that “[d]iscrimination disguised as ‘equity’ is still discrimination[.]” The administrative [complaint](#), filed with OCR by a third party in December 2025, cites the enjoined DCL and its interpretation of *SFFA*.

Congress has a number of options available if it seeks to legislate in this area. Congress could amend Title VI to clarify whether DEI programs constitute discrimination under the statute. Congress could also amend the statute to direct federal agencies, including ED, to issue regulations providing more specificity as to what constitutes illegal discrimination under Title VI, particularly in the context of DEI. Such legislation and any resulting regulations would not, however, be insulated from constitutional challenges, including First Amendment or equal protection claims. Legislation could also address when or whether SEAs and LEAs must certify compliance with the law, including precisely what obligations must be included. Likewise, Congress could establish specific requirements for ED to seek such certifications.

Additionally, Congress could alter the DEOA’s limitation on federal control over curriculum, though depending on the substance, such legislation could face challenges under the [Tenth Amendment](#)’s reservation of certain powers to the states. As a general matter, control of curriculum has traditionally been viewed as a power reserved for state and local governments. Alternatively, Congress could impose tighter limitations on ED’s authority in this area. For instance, Congress could impose specific limitations on OCR’s authority to enforce Title VI where doing so overlaps with school curriculum.

Author Information

Jared P. Cole
Legislative Attorney

Madeline W. Donley
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.