

Title VI: Certification and Litigation Updates

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What is Title VI?

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs or activities that receive federal financial assistance. The implementing regulations for Title VI can be found in the Code of Federal Regulations, Volume 34, Part 100 and outline the types of discrimination prohibited under Title VI, including racial harassment, permitting a hostile environment, segregation, and differential treatment. The U.S. Department of Education (USDOE) Office for Civil Rights (OCR) is tasked with enforcing Title VI.

Students for Fair Admissions v. Harvard College

In Students for Fair Admissions v. Harvard College (citation omitted), Students for Fair Admissions sued Harvard University claiming that its admission policies were discriminatory. The group argued that Harvard's use of race as a factor in admissions led to Asian American students being unfairly held to higher academic standards compared to applicants of other racial backgrounds. Harvard argued that race was just one factor considered in admission, with a goal to create a diverse student body. The United States Supreme Court held that Harvard's admission process violated the Equal Protection Clause of the 14th Amendment, effectively ruling that race-conscious admissions policies are unconstitutional.

While diversity can still be considered as a compelling interest, race cannot be used as a factor in admissions and institutions must pursue race-neutral alternatives.

The "Dear Colleague" Letter and PDE's Response

On February 14, 2025, USDOE issued a "Dear Colleague" letter regarding [Title VI of the Civil Rights Act in Light of Students for Fair Admissions v. Harvard](#) and the subsequently issued a document addressing [Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act](#). These publications, directed to all LEAs and Higher Education institutions, set forth the position of the USDOE that, based upon the Supreme Court decision in Students for Fair Admissions v. Harvard College, the USDOE views any program conducted by a recipient of Federal Funding that uses race as a

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The United States Supreme Court and Schools: Cases on the Horizon

By: Nicole Williams, Esq.



The U.S. Supreme Court recently heard arguments in three cases likely to shape the future of public education. A decision on all three is expected in late June or early July.

• Oklahoma Statewide Charter School Board v. Drummond – Oklahoma's charter school law requires charter schools to be non-religious "in their programs, admissions policies, and other operations." In 2023, the Oklahoma Charter School Board approved the application of the Archdiocese of Oklahoma City and the Diocese of Tulsa to establish a virtual Catholic charter school. The purpose of the school is explicitly religious and the contract between the Charter School Board and the school stated that the school is allowed to freely exercise its religious beliefs. The Oklahoma Supreme Court granted the request of the state's attorney general to invalidate the contract. The U.S. Supreme Court must decide whether a privately owned and operated charter school's educational decisions are considered state action simply because the school has a contract with the state to provide free education to students, and whether the First Amendment's Free Exercise Clause prohibits, or the Establishment Clause requires, a state to exclude religious schools from its charter-school program.

• A.J.T. v. Osseo Area Schools – the question before the Supreme Court in A.J.T. is whether the Americans with Disabilities Act of 1990 (ADA) and Rehabilitation Act of 1973 (Section 504) require children with disabilities to satisfy a "bad faith or gross misjudgment" standard when seeking relief for discrimination relating to their education. Here, parents of A.J.T., a student with severe epilepsy requested accommodations related to the length and time of her school day, which the school refused. A.J.T., through her parents, was successful in her claim for lack of FAPE under the IDEA; however, there was no finding that the "deliberate indifference", which would have resulted in an award of money damages. The court found that the actions of the school did not amount to the "bad faith"

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Court Cases, *continued*

- A.J.T. v. Osseo Area Schools *continued* - standard required to receive damages under the discrimination statutes. The Supreme Court must now determine what must be shown in order to reach a finding of deliberate indifference under the ADA and Section 504.
- Mahmoud v. Taylor - Parents of students from various religious backgrounds in the Montgomery County Public Schools in Maryland sued the school board, arguing that the denial of notice and opt-out options for LGBTQ-inclusive books in the district's ELA curriculum for pre-K through grade 5 violated their religious freedom and parental rights. The U.S. Supreme Court now must decide whether public schools burden parents' religious exercise when they compel elementary school children to participate in instruction on gender and sexuality against their parents' religious convictions and without notice or opportunity to opt out. **Stay tuned for the outcome of these significant cases.** ♦

Title VI, *continued*

a criterion for participation as suspect and violative of Title VI. This letter also established a "whistleblower" process. Following the issuance of these publications, on April 3, 2025, the USDOE directed State Education Agencies (SEAs) to certify that LEAs are in compliance with Title VI, and the responsibilities outlined in Students for Fair Admissions, via a Title VI Certification Letter. On April 9, the Pennsylvania Department of Education (PDE) sent a Letter to the USDOE reaffirming its commitment to compliance with federal civil rights laws and affirming that all Pennsylvania LEAs are in compliance with and will continue to comply with Title VI. PDE took the position that no further action was required on the part of individual LEAs.

Ongoing Litigation

There have been multiple lawsuits filed across the United States by various groups and institutions challenging the USDOE's position and interpretation of Title VI since the publication of the DCL and Certification requirement. It is a very fluid situation with cases being filed almost weekly and court opinions being issued at a similar pace. As of this writing, there are two decisions that are noteworthy. In AFT v. U.S. Department of Education, which was filed in Maryland Federal Court, the Court stayed the February 14 Dear Colleague Letter and strongly suggested the related certification requirement issued to LEAs and SEAs, which were due April 23, 2025, should be stayed as well. Of more significance is the case of NEA v. USDOE, et al., which was decided by a Federal Court in New Hampshire. That court enjoined the USDOE and Linda McMahon, the Secretary of Education, from enforcing or applying either the Dear Colleague Letter or the above noted FAQ. Both of these cases granted Preliminary Relief with full injunction hearings to follow. The continuing litigation dictates that this will be an evolving process.

Attorneys at WBK will provide relevant litigation updates as they become available and remain ready to consult with districts on an ongoing basis regarding Title VI compliance and related issues. ♦

WBK Happenings

- Attorneys Jocelyn Kramer and Rebecca Heaton Hall recently presented at Tri-State's Dr. Jean E. Winsand Workshop for Women in School Leadership on current issues impacting schools.
- Several WBK attorneys will be presenting at the 2025 Dr. Samuel Francis School Law Symposium & Special Education Workshop being held on June 18, 2025, at Regional Learning Alliance. Attorneys Kramer and Annemarie Harr will be presenting "Times are Tough but So Are You: A review of litigation, executive orders, and more." Attorneys Hall and Megan Turnbull will review traditional and novel 1st Amendment issues in the public sector and provide the background to issue-spot tricky free speech scenarios and offer strategies to stay legally compliant in the workplace, the classroom and public meeting settings in a presentation titled "Sex, Censure and Cyber Crime: 1st Amendment 2025 Edition." "Classroom to Courtroom: Where Family Law Meets Education Law" will focus on the intersection of family and education law with a focus on special education and will be presented by Attorneys Lynne Sherry and Kelly Perkovich.
- Attorneys Kramer and Harr will be speaking at the PSBA School Solicitors Symposium being held on July 31, 2025, and August 1, 2025 at the Omni Bedford Springs Resort in Bedford, PA. Their presentation will take a closer look at the impact of the recent Executive Orders, proposed regulatory updates, and related enforcement actions on our schools. ♦

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