

Dear Colleague Letter Office for Civil Rights

Dated February 14, 2025

Presentation by the Office of General Counsel
February 26, 2025

Dear Colleague Letters Generally

- Issued by Office for Civil Rights (OCR), U.S. Dept. of Education
- Significant guidance
- Does not have the force and effect of law and does not bind the public or create new legal standards
- Designed to provide clarity regarding existing legal requirements

Content of Feb. 14 Dear Colleague Letter

- Federal law prohibits covered entities from using **race, color, or national origin** in decisions pertaining to **admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life.**
- Whereas *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) only applied to admissions.

Content of Feb. 14 Dear Colleague Letter

Programs that seem neutral on their face but lead to decisions based on race, color, or national origin are not permissible

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For example:

- A school may not use students' personal essays, writing samples, participation in extracurriculars, or other cues as a means of determining or predicting a student's race and favoring or disfavoring such students
- A school may not eliminate standardized testing to achieve a desired racial balance or to increase racial diversity

OCR's Position

Treating students differently on the basis of race, color, or national origin to achieve nebulous goals such as diversity, racial balancing, social justice, or equity is illegal under controlling Supreme Court precedent.

What the State of WY has already done

During the 2024 Wyoming Legislative budget session, lawmakers adopted a bill prohibiting funds from this appropriation to be expended on the office of diversity, equity, and inclusion at the University of Wyoming and any diversity, equity, or inclusion programs, activities, or functions.

What the State of WY has already done

On March 22, 2024, Gov. Gordon line-item vetoed the “programs, activities, or functions” portion of the footnote.

What UW has already done

Following the implementation of this legislation, President Seidel created a working group with members from faculty senate, staff senate, ASUW, deans, and administrators to provide suggestions on:

- Which programs, activities, and functions should be continued, modified, or discontinued
- How essential student success and institutional excellence programs, activities, and functions could be organized and funded within the University to make them most effective

What UW has already done

In addition to the University's core missions of teaching, research, outreach, and service, the Working Group reaffirmed the University's principal values of:

- Being open and welcoming to all
- Supporting and treating everyone fairly and respectfully
- Political neutrality as an institution
- Merit-based hiring and grading

What UW has already done

- Inquiry versus advocacy in the classroom
- Academic freedom in teaching and research
- Freedom of expression and creating a space for all voices
- Equitable access and equal opportunity
- Considering the needs of every student

What UW has already done

In its Final Report to the President, the working group provided a recommended definition of diversity, equity, and inclusion.

The University Board of Trustees adopted the definition on May 10, 2024, and voted to close the Office of Diversity, Equity, and Inclusion, effective July 1, 2024, consistent with the legislation.

Equal Opportunity and Prohibited Efforts

Prohibited efforts include advocating, promoting, or funding a program, activity, or function that:

- Advantages or disadvantages, or attempts to advantage or disadvantage an individual or group on the basis of **race, color, sex, national origin, gender identity, or sexual orientation**, to equalize or increase outcomes, participation or representation as compared to other individuals or groups; or

Equal Opportunity and Prohibited Efforts

- Promotes the position that the action of a group or an individual is inherently, unconsciously, or implicitly biased, privileged or inherently superior or inferior on the basis of **color, sex, national origin, gender identity, or sexual orientation**.

UW's Equal Opportunity and Prohibited Efforts Directive

The statement carves out protections for:

- Classroom instruction
- Research
- Accreditation
- State and federally required equal opportunity policies and non-discrimination training

UW's Equal Opportunity and Prohibited Efforts Directive

- Requirements for access programs (military veterans, Pell Grant recipients, first-generation college students, nontraditional and transfer students, low-income students, individuals with disabilities)
- Private scholarships
- Student-led organizations
- Constitutionally protected speech
- *De minimus* administrative activities.

UW has already discontinued...

- Mandates for search committees to advance candidate pools that included candidates based on their protected class
- The option for direct hiring of candidates based on their protected class and without a competitive process
- Requests for diversity or loyalty statements from candidates
- Requiring search committees to use a diversity statement
- Requiring evaluation of an employee's commitment to diversity, equity, and inclusion in the staff annual performance evaluation

UW has already reviewed and modified...

- Hundreds of **programs, activities, functions, and websites** for compliance with UW's Equal Opportunity and Prohibited Efforts Statement
- Preferences for **race and gender** in scholarships

Scholarships, awards, and assistantship programs

- The University used to have several scholarships, awards, or assistantship programs that contained a preference requirement related to gender or race/national origin
- Most were held through the UW Foundation and were part of the original criteria set by donors for the specific scholarship gifts
- In the past several years, OCR indicated that these types of scholarships can violate the nondiscrimination requirements of the Civil Rights Act Titles VI and IX

Scholarships, awards, and assistantship programs

- If scholarships contain these preferences, there are some nuances and exceptions to permitting them to continue, including a concept commonly referred to as a “pool and match” system where the scholarships are awarded based on nondiscriminatory criteria (i.e., grades, test scores, etc.) and then scholarships with the preferences are applied to backfill the commitment to the student. (See e.g. 34 C.F.R. 106.37(b)).
- The University continues to work with OCR on complaints related to scholarships, and the UW Foundation is working on addressing or changing both past and future gender and race preferences in scholarships.

What UW is required to do by Feb. 28

- Ensure that policies and actions comply with existing civil rights laws
- Cease all efforts to circumvent prohibitions on the use of race by relying on proxies or other indirect means to accomplish such ends
- Cease all reliance on third-party contractors, clearinghouses, or aggregators that are being used to circumvent prohibited uses of race

Next Steps

Cabinet and Deans will continue to:

- Work with various departments to ensure that UW is not in violation of the Dear Colleague Letter
- Support **essential student success and institutional excellence** programs, activities, and functions that meet the **needs of each student**
- Provide a **welcoming environment** for all

Questions?