



**LEGAL GUIDANCE  
REGARDING  
DEI LEGISLATION  
& REGULATORY  
ORDERS**

# GOVERNING LAW AND GUIDANCE

- *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, decided on June 29, 2023;
- Dear Colleague Letter, dated February 14, 2025;
  - Associated FAQs, released on March 1, 2025
- Kentucky's House Bill 4, An Act Relating to Initiatives Regarding Diversity, Equity, and Inclusion, passed on March 28, 2025.

# ***STUDENTS FOR FAIR ADMISSIONS V. HARVARD***

## **2023 SUPREME COURT DECISION**

### **Issue for Court:**

Are the admission practices of two institutions, which both consider race as a factor, lawful under the 14<sup>th</sup> Amendment's Equal Protection Clause?

### **Decision:**

The admission practices violated the 14<sup>th</sup> Amendment's Equal Protection Clause.

**Race cannot be considered in the admissions process.**



***STUDENTS FOR FAIR ADMISSIONS V. HARVARD***  
**2023 SUPREME COURT DECISION**

“[U]niversities may not simply establish through application essays or other means the regime we hold unlawful today. . . **What cannot be done directly cannot be done indirectly.**”

# THE DEAR COLLEAGUE LETTER

Race may not be considered in decisions pertaining to:

- Admissions;
- Hiring;
- Promotion;
- Compensation;
- Financial aid;
- Scholarships;
- Prizes;
- Admin. support;
- Discipline;
- Housing;
- Graduation ceremonies; and
- **Any other aspect of “student, academic, and campus life.”**



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE ACTING ASSISTANT SECRETARY

February 14, 2025

Dear Colleague:

Discrimination on the basis of race, color, or national origin is illegal and morally reprehensible. Accordingly, I write to clarify and reaffirm the nondiscrimination obligations of schools and other entities that receive federal financial assistance from

# THE DEAR COLLEAGUE LETTER

## “PROXIES” FOR RACE ARE PROHIBITED.

The Dear Colleague Letter expressly prohibits the use of non-racial information as a “proxy” for race.

- A “proxy” is any factor that may be correlated with race that is being used by an institution to indirectly make decisions based on race.
- Examples:
  - Socioeconomic status
  - Geographic location

# THE DEAR COLLEAGUE LETTER

“Put simply, educational institutions may neither separate or segregate students based on race, nor distribute benefits or burdens based on race.”

## **FEDERAL RULING**

**ON APRIL 24, 2025, A MARYLAND COURT ISSUED A  
RULING STAYING ITS ENFORCEMENT UNTIL THE  
UNDERLYING CASE IS RESOLVED.**



# THE DEAR COLLEAGUE LETTER

## ENFORCEMENT & PENALTIES

- The Dear Colleague Letter announced that the Department of Education would start seeking enforcement on February 28, 2025.
- An institution that fails to comply faces potential loss of federal funding.
- **On April 24, 2025, a Maryland court issued a ruling staying its enforcement until the underlying case is resolved.**

# THE DEAR COLLEAGUE LETTER: FAQs

## THREE-PART TEST

- To determine whether unlawful discrimination has occurred, ask:
  1. Did a school treat a student or group of students of a particular race differently from a similarly situated student or group of students of other races? (Includes “Hostile Environment” Analysis.)
  2. If so, can the school provide a legitimate non-discriminatory reason for the different treatment that isn’t pretextual?
  3. If the school is unable to offer a legitimate, nondiscriminatory reason, or if the offered reason is found to be a pretext or cover for discrimination, OCR will conclude that unlawful discrimination has occurred.

# HOUSE BILL 4: AN ACT RELATING TO INITIATIVES REGARDING DIVERSITY, EQUITY, AND INCLUSION

House Bill 4 prohibits public colleges and universities in Kentucky, including UofL, from providing differential treatment of benefits to an individual of the basis of that individual's:

- Race;
- National origin;
- Color;
- Sex; or
- Religion



# HOUSE BILL 4

**HB4 is broad. It applies to:**

- Student recruitment;
- Student admissions;
- Scholarship awards & criteria;
- Housing assignments;
- Graduation practices;
- Financial assistance;
- Employment processes (i.e. hiring and promotion); and
- Contracts (i.e. preferential treatment for consideration of vendors, such as minority-owned businesses).

# HOUSE BILL 4

## HB4 explicitly prohibits:

- The establishment or maintenance of a DEI office;
- The employment or contract with an individual serving as a DEI officer;
- DEI training;
- The establishment or maintenance of a DEI initiative; and
- The requirement that a student enroll in or complete a course that “indoctrinate[s] participants with a discriminatory concept.”

# HOUSE BILL 4

**HB4 defines a “DEI initiative” as any:**

“[P]olicy, practice, or procedure designed or implemented to promote or provide differential treatment or benefits to individuals on the basis of religion, race, sex, color, or national origin[.]”

**HB4 defines a “discriminatory concept” as any:**

“[C]oncept that justifies or promotes differential treatment or benefits conferred to individuals on the basis of religion, race, sex, color, or national origin”

(unless exception applies)

# HOUSE BILL 4

## EXCEPTIONS

**HB4 recognizes certain limited exceptions:**

- First Amendment rights;
- **Academic courses or instruction;**
- **Academic freedom;**
- Programs required for institutional accreditation; and
- Activities, programs, and initiatives for:
  - Military veterans
  - Low-income students
  - Nontraditional students, etc.

**All exceptions will  
need to be evaluated  
on a case-by-case  
basis by the Office of  
University Counsel.**

# HOUSE BILL 4

## NEUTRALITY REQUIREMENT

HB4 requires the University to adopt a “policy on viewpoint neutrality that prohibits discrimination on the basis of an individual’s political or social viewpoint[.]”

The University can not “require any individual to endorse or condemn a specific ideology, political viewpoint, or social viewpoint to be eligible for hiring, contract renewal, tenure promotion, admission, or graduation.”



## HOUSE BILL 4

The General Counsel must annually certify a report that is submitted to the Legislative Research Commission with a “complete list [of] policies, programs, practices, and procedures of the institution that are:”

1. Designed or implemented to promote or provide differential treatment or benefits to individuals on the basis of religion, race, sex, color, or national origin; and
2. Required pursuant to any applicable federal or state law, a court order, or a binding contract entered into prior to the effective date of the Act. (Examples: Research, Accreditation, Agreed Order)

# HOUSE BILL 4

## CERTIFICATIONS

HB4 also requires various University administrators to make certifications, including:

- **The President or CFO:** to certify that the no University funds are being spent on DEI initiatives or policies; and
- **The General Counsel:** to certify the necessity of an investigation or hearing related to or involving a “bias incident,” as defined in HB4.
  - “Bias incident” means noncriminal conduct that is alleged to constitute an act or statement against a particular group or individual because of the group's or individual's religion, race, sex, color, or national origin, or perceived religion, race, sex, color, or national origin.

# HOUSE BILL 4

## ENFORCEMENT & PENALTIES

- An institution must be compliant with House Bill 4 by no later than June 30, 2025.
- An institution that fails to comply faces potential civil action from Kentucky's Attorney General.

# QUESTIONS?

If you need to discuss a specific matter,  
please contact the Office of University  
Counsel at (502)852-6981.