U.S. Department of Education

Office for Civil Rights

August 26, 2020

Dear Educators and Stakeholders:

The purpose of this guidance is to inform you that the Department of Education (Department) is withdrawing the following documents:

1. January 2001 Revised sexual harassment guidance: harassment of students by school employees, other students, or third parties and the January 25, 2006 Dear Colleague letter distributing it.

2. September 22, 2017 Q&A on Campus Sexual Misconduct.

3. Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964, 59 FR 8756 (dated February 23, 1994);

4. Dear Colleague Letter to University Counsels on Use of Race in Admissions and Financial Aid (July 30, 1996);

5. Letter of July 27, 1990, to Robert S. Peterkin, Superintendent of Schools, Milwaukee, Wisconsin, from Ted Sanders, Under Secretary, U.S. Department of Education, enclosing a July 27, 1990 memorandum to Ted Sanders from Richard D. Komer, Deputy Assistant Secretary for Policy, OCR, on the Milwaukee Choice Program;

6. Letter of September 21, 1990 to the Honorable Tommy G. Thompson, Governor of the State of Wisconsin, from Michael Williams, Assistant Secretary for Civil Rights, and Robert R. Davilla, Assistant Secretary, Office of Special Education and Rehabilitative Services, on the Milwaukee Parental Choice Program;

7. Letter of March 30, 2001 to John W. Bowen, School Board Attorney for Pinellas County School Board, Largo, Florida, (and others) from Susan Bowers, Acting Deputy Assistant Secretary for Civil Rights, and Patricia J. Guard, Acting Director, Office of Special Education Programs, on Florida's program of Scholarships to Public or Private Schools of Choice for Students with Disabilities.

8. May 14, 2014 Guidance on Charter Schools.

With respect to Documents 1 and 2, and a subsequent 2006 letter that recirculated Document 1, this guidance is now outdated. As of August 14, 2020, the policies and procedures therein have been superseded by the Title IX Rule, announced on May 6, 2020 and published in the *Federal Register* on May 19, 2020 (85 Fed. Reg., 30026), promulgated as regulations implementing Title IX of the Education Amendments of 1972. Those regulations are now found in 34 C.F.R. part 106. Note that the Title IX Rule will not be enforced retroactively, so to the extent that Document 1 and 2 are helpful to recipients for appropriately responding to sexual harassment that allegedly occurred prior to August 14, 2020, they will remain accessible on the Department's website.

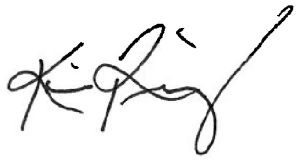
Documents 3 and 4 purport to explain the legal framework that governs the use of race in financial aid and/or admissions by postsecondary schools under the Constitution and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq. Key portions of Document 1 and Document 2 have been superseded by subsequent U.S. Supreme Court decisions addressing the use of race in higher education, in *Fisher v. Univ. of Texas at Austin*, 136 S. Ct. 2198 (2016) (*Fisher II*), *Fisher v. Univ. of Texas at Austin*, 570 U.S. 297 (2013) (*Fisher I*), and *Grutter v. Bollinger*, 539 U.S. 306 (2003). Additionally, these two documents advocate policy preferences and positions beyond the requirements of the Constitution and Title VI.

With respect to Documents 5, 6, and 7, the memorandum and two letters were originally circulated decades ago as stakeholder correspondence addressing specific school-choice programs involving student vouchers. The memorandum and letters reached conclusions under Section 504 and the regulation in 34 C.F.R. 104.39(a) that State Education Agencies (SEAs) are responsible for ensuring that private schools accepting state-funded vouchers were subject to parts of Section 504, despite not receiving federal funds. These letters and the memorandum associated with them appear to establish a legislative rule, interpreting requirements under Section 504 that was not subjected to any public or stakeholder comment.

The Department has determined that the most appropriate interpretation of 34 C.F.R. 104.39(a) is that, by its own, it applies only to recipients of federal funds that provide elementary or secondary education, and therefore does not require that SEAs exercise responsibility for ensuring private schools comply with this Section 504 requirement as a condition of accepting students who use state-funded vouchers. Accordingly, the Department of Education has decided to withdraw the letters and memorandum. However, the withdrawal of these documents does not alter or affect the obligation of schools to provide equitable services to children with disabilities who are parentally placed in private schools and participating in state voucher programs. Such students may be eligible to receive special education and related services under the Individuals with Disabilities Education Act (IDEA), formerly the Education of the Handicapped Act (EHA). Additional information clarifying IDEA's requirements and the role and responsibility of local educational agencies to provide such services to parentally placed students, including students participating in state operated voucher programs, is forthcoming.

With respect to Document 8, that guidance is predicated on guidance documents that have been previously withdrawn by the Department, and purports to interpret the U.S. Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2007).[1] In addition, the Department concludes that other aspects of this guidance document advocate policy preferences and positions beyond the requirements of the Constitution, Title IV and Title VI. By suggesting to recipients of federal funding that they take action or refrain from taking action beyond plain legal requirements, the documents are inconsistent with governing principles for agency guidance documents. Rather than federal guidance, the best source of information regarding the requirements of Title VI and the U.S. Constitution are those authorities themselves, along with decisions by the U.S. Supreme Court interpreting them.

The protections afforded to students by Title VI, Title IX, Section 504, and Title II remain fully in place to protect students from discrimination. The Department is firmly committed to vigorously enforcing civil rights protections on behalf of all students, within the boundaries of existing law. This guidance does not add requirements to applicable law. If you have questions or are interested in commenting on this letter, please contact the Office for Civil Rights at ocr@ed.gov or 800-421-3481 (TDD: 800-877-8339) or, with respect to documents 5, 6, and 7, the Office of Special Education and Rehabilitative Services.



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U.S. Department of Education

[1] These rescinded documents are the 2011 Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools (rescinded July 3, 2018); OCR and Department of Justice, Questions and Answers About *Fisher v. University of Texas at Austin* (rescinded July 3, 2018); Department of Education and Department of Justice, Dear Colleague Letter on *Schuette v. Coalition to Defend Affirmative Action* (rescinded July 3, 2018); and 2014 Dear Colleague Letter on Nondiscriminatory Administration of School Discipline (rescinded December 21, 2018).)