



# Updates to Department of Education and Department of Justice Guidance on Title VI

July 3, 2018



Dear Colleague:

The purpose of this letter is to inform you that the Department of Justice and the Department of Education are withdrawing the following documents:

- December 2, 2011 Dear Colleague Letter Regarding the Use of Race by Educational Institutions;
- 2011 Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education dated December 2, 2011;
- 2011 Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools dated December 2, 2011;
- September 27, 2013 Dear Colleague Letter on the Voluntary Use of Race to Achieve Diversity in Higher Education After *Fisher v. University of Texas at Austin* [Fisher I];
- September 27, 2013 Questions and Answers About *Fisher v. University of Texas at Austin* [Fisher I];
- May 6, 2014 Dear Colleague Letter on the Supreme Court Ruling in *Schuetz v. Coalition to Defend Affirmative Action*; and
- September 30, 2016 Questions and Answers About *Fisher v. University of Texas at Austin* [Fisher II].

These documents purport to explain the legal framework that governs the use of race by elementary, secondary, and postsecondary schools under the Constitution, Title IV of the Civil Rights Act of 1964 (Title IV), 42 U.S.C. §§ 2000c et seq., and Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d et seq. The documents advocate specific policies and procedures for educational institutions to adopt, analyze a number of hypotheticals, and draw conclusions about whether the actions in those hypotheticals would violate the Equal Protection Clause of the Fourteenth Amendment to the Constitution or Title IV or Title VI of the Civil Rights Act of 1964.

The Departments have reviewed the documents and have concluded that they advocate policy preferences and positions beyond the requirements of the Constitution, Title IV, and Title VI. Moreover, the documents prematurely decide, or appear to decide, whether particular actions violate the Constitution or federal law. By suggesting to public schools, as well as 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.

Accordingly, the Department of Education and the Department of Justice have decided to withdraw the documents. The protections from discrimination on the basis of race guaranteed by the Constitution, Title IV, and Title VI remain in place. The Departments are firmly committed to vigorously enforcing these protections on behalf of all students.

Sincerely,

/s/

Kenneth L. Marcus  
Assistant Secretary for Civil Rights

/s/

John M. Gore  
Acting Assistant Attorney General

U.S. Department of Education

U.S. Department of Justice