# *Mis*guidance

## Analyzing the U.S. Department of Justice's 7/29/25 Civil Rights Guidance

**EXECUTIVE SUMMARY**

On 07/29/25, the U.S. Department of Justice (DOJ) issued non-binding guidance relevant to all recipients of federal funds on how the Trump Administration interprets federal antidiscrimination laws, including as applied to efforts to advance diversity, equity, and inclusion. **While some portions of DOJ's guidance reflect current law, others misstate or overreach, creating a real risk of chilling lawful practices designed to ensure equal opportunity for all.** (This is an executive summary of our full analysis focused on education.)

Efforts to expand educational opportunities, remove barriers to high-quality education, and create inclusive education environments that enable success for all students *are fully aligned* with our nation's civil rights laws and our historic national commitment to equal opportunity for all, including those who are thriving *and* those who lack equal access or face heightened barriers. Yet DOJ's guidance creates new risks for higher education, K-12, early education, and other child-serving systems that have been or might be subject to the Administration's unprecedented enforcement actions.

To help leaders navigate these challenges, *Mis*guidance (click here) first situates DOJ's guidance within the broader context of the Administration's focus on halting efforts to advance diversity, equity, and inclusion. It then outlines the following four cross-cutting flaws in the guidance, highlighting along the way where DOJ's examples of "unlawful" and "best" practices do more to obscure the law than to clarify it:

**Delegitimizing Efforts to Address Discrimination:** DOJ's guidance advises federal funding recipients to avoid considering race, sex, or other protected traits in performance metrics—discouraging lawful, court-endorsed uses of disaggregated data to identify and lower barriers. This risks freezing inequities in place and undermining the obligation under federal law to address discrimination.

**Delegitimizing Federal Court-Endorsed Diversity, Equity & Inclusion Interests:** The guidance ignores that diversity remains a legitimate institutional value even following the Supreme Court's 2023 *SFFA v. Harvard* decision. For example, inclusive outreach and recruitment that advance those aims is permissible, but DOJ, with its narrowed focus on so-called "reverse discrimination," suggests it is not.

**Delegitimizing Lawful Race-Neutral Means that Advance Diversity, Equity & Inclusion Goals:** Authentic, mission-aligned, race-neutral criteria (e.g., socioeconomic status, geography, first-gen status) are permissible, even if correlated with race. DOJ's treatment of these and other race-neutral means of advancing diversity, equity, and inclusion blurs correlation with unlawful intent, omits that both intent and impact are required for liability, and overstates the legal risk of acting with "mixed motives."

**Misguiding the Field Through Misleading Examples:** Most of DOJ's examples of "unlawful practices" are only unlawful if the assumptions embedded in the hypotheticals are true. From staff training to student groups to incorporating "lived experience" into selection processes, the guidance fails to fully clarify for the field the range of lawful ways to pursue legitimate goals via these race-neutral means.

**Ahistorical, inaccurate, and misleading—DOJ's guidance will most likely chill lawful activities creating equal opportunities for all. In this period of federal uncertainty and overreach, education leaders must not substitute the Administration's anti-"DEI" policy preferences for the actual law of the land**.

Click here to access the full version of *Mis*guidance.

*This analysis does not constitute legal advice.*