

A LEGAL ADVOCACY GUIDE

Combatting Racial Discrimination
and Censorship in K-12 Public Schools

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By: Alyssa Wilson

This guide is meant to serve as a tool for understanding legal protections that can help students, families, and educators push back against racial discrimination and censorship in K-12 public schools.

It explains how Supreme Court precedent and federal laws—like Title VI of the Civil Rights Act of 1964, the First Amendment to the United States Constitution, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution—protect students’ rights, even in the face of legislation aiming to limit discussions about race, history, and identity in schools.

This guide also provides advocacy strategies and applied examples for advocates looking to challenge censorship and racial discrimination in K-12 public schools. Whether you are a student, parent, educator, or advocate, this resource will help you understand existing rights and tangible steps to take to protect those rights, when necessary.

This guide is organized by key legal doctrines, landmark cases, and advocacy strategies to make it easy to navigate.



KEY LEGAL DOCTRINES

Explain the constitutional and federal civil rights protections that protect against racial discrimination and limits censorship in schools.



LANDMARK CASES

Cover major court rulings relevant to public K-12 schools that discuss race and free speech in education.



ADVOCACY STRATEGIES

Offer ways to get involved at your school and/or challenge racial discrimination or censorship in public K-12 schools.

This guide includes two indexes at the end: one for laws, statutes, and constitutional provisions, and another for all cases explained or referenced throughout the guide.

To understand the impact of shifting federal policies and enforcement priorities on your advocacy efforts, refer to the section in the appendix on [education civil rights under Trump 2.0](#). The section provides a high-level overview of evolving obstacles and resources to aid you in advocating for students' rights under the second Trump

Table of Contents

Introduction	1
User Guide	2
Table of Contents	3

01	HOW THE LAW PROTECTS RACE, COLOR, AND NATIONAL ORIGIN IN K-12 PUBLIC SCHOOLS	
	Core Legal Doctrines	6
	Right to an Education	6
	Title VI of the Civil Rights Act of 1964	7
	Equal Protection Clause of the Fourteenth Amendment	10
	Landmark Cases	13
	Desegregation Foundations	13
	<i>Brown v. Board of Education</i> (1954)	13
	<i>Keyes v. School District No. 1, Denver, Colorado</i> (1973)	14
	<i>Parents Involved v. Seattle School District No. 1</i> (2007)	16
Cases Involving Language Equity and Immigration	18	
<i>Lau v. Nichols</i> (1974)	18	
<i>Plyler v. Doe</i> (1982)	19	

02	HOW THE LAW PROTECTS AGAINST CENSORSHIP IN K-12 SCHOOLS	Core Legal Doctrines	23
		Department of Education Organization Act (DEOA)	23
		Federal Preemption	26
		The First Amendment to the U.S. Constitution	28
		Landmark Cases Addressing Censorship & Free Speech	23
		<i>Tinker v. Des Moines Independent School District</i> (1969)	31
		<i>Miller v. California</i> (1973)	33
		<i>Island Trees Union Free School District v. Pico</i> (1982)	34
		<i>Bethel School District v. Fraser</i> (1986)	35
		<i>Hazelwood School District v. Kuhlmeier</i> (1988)	37
		General Advocacy Tips for Censorship	40
<hr/>			
03	RESOURCES	Appendix	44
		Education Civil Rights under Trump 2.0	44
		Glossary	46
		Title VI: Understanding “disparate treatment” and “disparate impact”	49
		Retaliation	50
		Additional Resources for Advocates	51
		Index of Laws, Statutes, and Constitutional Provisions	52
		Index of Landmark Cases	53

CHAPTER

01

HOW THE LAW PROTECTS RACE, COLOR, AND NATIONAL ORIGIN IN K-12 PUBLIC SCHOOLS

Core Legal Doctrines

RIGHT TO AN EDUCATION

Does the U.S. Constitution guarantee students the right to an education?

No. The U.S. Supreme Court ruled in *San Antonio Independent School District v. Rodriguez* (1973) that the U.S. Constitution does not guarantee a federal right to education.

What does this mean?

This means that when students face racial hostility or censorship in schools, they cannot claim their state is violating any federal constitutional right to education. Instead, students must rely on federal civil rights laws and constitutional provisions, such as:

- Title VI (which protects students from discrimination based on race, color, or national origin);
- the Equal Protection Clause (which requires states to treat people equally under the law); and
- the First Amendment (which, among other protections, protects free speech and expression).

Each of these federal laws are further discussed throughout the guide. Refer to the index for page numbers.

Do states guarantee a right to education?

Yes. Every state has its own constitution that ensures the rights of its state citizens. Although the U.S. Constitution does not guarantee the right to education federally, every state constitution provides a state right to education, to varying degrees. This means you can challenge discriminatory education policies under both state constitutional provisions and federal civil rights laws. Each state interprets the right to education in its own way. You should consult legal professionals in your state to understand your state's interpretation of the right to education.



Disclaimer: State laws are outside of the scope of this guide.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

What is the law?

Title VI states that: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 42 U.S.C. § 2000d.

What does this mean?

This means that any program or entity that receives money from the federal government, such as public schools, are not allowed to discriminate against anyone based on their race, color, or national origin.

Who does Title VI apply to? Who does it protect?

- Any recipient of federal funding has to comply with Title VI.
 - This includes virtually all public K-12 schools because they receive money from the federal government for their programs (examples: Title I of the Elementary and Secondary Education Act (ESEA), school lunch programs)
- Title VI protects everyone within a school community, including students, educators, and other school staff.
- “Race, color, and national origin” is a phrase that offers legal protections for a broad range of a person’s characteristics, including:

Shared ancestry and ethnic background

- Title VI protects against discrimination based on someone’s actual racial or ethnic identity or the race or ethnicity others perceive them to be. For example, you cannot be discriminated against because of your African heritage or because someone assumed you were African (even if you’re not).

Cultural heritage and traditions

- Discrimination based on someone’s cultural customs, traditional attire, or community practices associated with a racial or national origin group is prohibited under Title VI.

Immigration status and perceived nationality

- Title VI does not explicitly cover immigration status. However, it protects individuals from discrimination based on their actual national origin or the national origin others perceive them to have.

- “National origin” refers to what country someone is from.
- Policies/practices that harm immigrant communities—such as denying access to public education or services based on how well they speak English—can be challenged under Title VI as national origin discrimination.

Language and linguistic characteristics

- Under Title VI, people cannot be discriminated against for speaking a language other than English or for having limited English proficiency.

Accent and speech patterns

- Under Title VI, people cannot be treated unfairly or denied opportunities based on their accent, dialect, or way of speaking if it is tied to their race or national origin.

Religiously identifiable groups

- Title VI does not prohibit discrimination on the basis of religion. However, discrimination of members of religious groups, such as Jews, Muslims, and Sikhs, sometimes violates Title VI.
 - Title VI protects these religiously identifiable groups when they are discriminated against based on their actual or perceived shared ancestry or ethnic characteristics.

Stereotypes and assumptions

- Title VI protects individuals who are treated unfairly based on biases and stereotypes about their racial or ethnic groups. This can include stereotypes based on assumptions about someone’s intelligence, behavior, or abilities.

How is Title VI used in education?

Title VI can be used to address systemic issues like:

Discipline disparities

- Title VI can be used to challenge school policies that disproportionately punish students of color for the same behaviors that result in lesser or no punishments for white students.

Racial harassment or bullying

- Title VI can be used to hold schools accountable when they fail to address racial harassment and bullying, such as the repeated use of racial slurs, racially-motivated threats, or harassment targeting students of color.

Unequal access to resources

- Title VI can be used to ensure that schools serving predominantly students of color receive equitable funding, experienced teachers, and adequate learning materials—resources comparable to those provided to predominantly white schools.

Barriers for English Learners

- Title VI can be used to ensure schools provide appropriate language support for English Learners, such as bilingual education or translation services, so students are not denied equal learning opportunities.

Access to advanced coursework

- Title VI can be used to address racial disparities in gifted and talented programs, honors courses, and Advanced Placement (AP) course enrollment and to help ensure that students of color are not systematically excluded due to biased tracking or lack of outreach.



How do I use Title VI in my education **advocacy?**

If you think you or your child has experienced discrimination based on race, color, or national origin in school, here are some steps you can take to exercise your Title VI rights:

- Gather evidence (examples include meeting notes, emails, phone logs, data, testimony, and school documents and policies) that helps show that the school's actions (or lack of action) had a discriminatory impact on someone within the school community, such as a student, educator, or school staff member.
- Get to understand your school's policies or code of conduct, particularly if the issue you're experiencing involves school discipline.
- Notify the school and/or district of discrimination that has taken place and ask for a clear resolution of the harms.
- Keep a record of or take notes during any interactions with the school or district (including phone calls, Zoom meetings, and in-person meetings) and a record of any follow-up actions the school or district has taken.
- If your school has not taken satisfactory steps to address the discrimination, review your school's and district's policies to determine whether they offer a way to make a formal complaint to the school or district. If not, you may want to consider filing a complaint with a state or federal agency.
- Work with others in your school community to push for accountability by demanding schools take corrective action, like revising policies, providing training, or increasing access to resources.

If your school takes no action to resolve the discrimination or address any harm, talk to a legal professional about filing a legal complaint under Title VI.

Title VI: What is the difference between “disparate treatment” and “disparate impact”?

Advocates should understand the difference between disparate treatment (also known as intentional discrimination) and disparate impact. Understanding the difference between the two is important because it determines what legal actions can be taken and by whom. Under Title VI, individuals cannot file lawsuits or claims for instances of disparate impact but can sue in instances of intentional discrimination. See *Alexander v. Sandoval* (2001).

If relevant to your advocacy, see the [appendix](#) for a further explanation of this distinction.

EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT

What is the law?

The Equal Protection Clause of the Fourteenth Amendment ensures that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

What does this mean?

This means that states cannot pass or enforce laws or policies that intentionally discriminate against people based on race, gender, national origin, religion, citizenship status, or other protected characteristics.

Who does the Equal Protection Clause apply to?

All “state actors,” including public K-12 schools, must comply with this clause.



State Actor Defined:

A person or organization that is employed by or acts on behalf of the government and, therefore, must honor individuals’ constitutional protections.

- This includes public school officials, school boards, and state education agencies.

How is the Equal Protection Clause used?

The Equal Protection Clause has been used to challenge racial segregation in schools and discriminatory practices that harm students of color more than white students. It has also been used to protect immigrant student rights.

- **Example 1:** The Equal Protection Clause was used in *Thomas v. School Board of St. Martin Parish* (2021) to address unfair discipline policies when Black students were suspended and expelled more often than white students for the same behaviors.
- **Example 2:** The Equal Protection Clause was a key law in *Plyler v. Doe* (1982) that families used to assert that states cannot deny undocumented children access to public education.



How do I use the Equal Protection Clause in my education **advocacy?**

You'll want to prove that a policy or practice was designed with **discriminatory intent**, or essentially, that the school or district adopted the policy or practice because it wanted to discriminate based on race, color, or national origin. On the other hand, you could show that certain school policies or practices impact students of certain races, colors, or national origins more than others (this is called disparate impact, [see appendix](#)).

The Equal Protection Clause is most often used in lawsuits, but advocates can use it outside the courtroom to remind schools that they have a constitutional obligation to give all students equal access to an education.

- Advocates could cite cases that used the Equal Protection Clause (like *Brown and Plyler*, see below) in public statements, in reports, or during meetings with policy makers to advocate for equity in education.
- Advocates can educate school administrators, teachers, and community members about K-12 public schools' constitutional obligations under the Fourteenth Amendment.



This section highlighted:

The legal foundation for educational equity, breaking down the core rights students have under federal law to challenge discrimination based on race, color, or national origin—and how advocates can use these tools to demand fairness and accountability in schools.

Landmark Cases



DESEGREGATION FOUNDATIONS

Brown v. Board of Education (1954)

What was the U.S. Supreme Court trying to figure out?

Is racial segregation in public schools constitutional?

What did the Court decide?

No, “separate but equal” educational facilities are inherently unequal and violate the Equal Protection Clause of the Fourteenth Amendment.

What impact does *Brown* have on K-12 Education?

This decision ended legal racial segregation in schools.



Racial Segregation Defined:

When schools or other places separate people based on their race, often leading to unfair treatment and fewer resources for some groups.”



How can I use *Brown* in my advocacy?

Challenge school policies or practices that result in racial segregation or that negatively impact students of color more than other student populations.

Example: A school district enacts a policy that assigns Black students to separate classrooms within the same school under the pretext of “ability grouping,” with no legitimate educational justification since the students display the same academic abilities when given the same resources. In *Brown*, the Supreme Court ruled that state-sponsored segregation, even if labeled as “separate but equal,” is unconstitutional.

Monitor school district decisions on attendance zones to ensure they do not intentionally reinforce racial segregation.

Use historical and legal precedent (such as *Brown*) to challenge intentional segregation in zoning and school resource allocation.

Keyes v. School District No. 1, Denver, Colorado (1973)

What was the U.S. Supreme Court trying to figure out?

Can “de facto segregation” in schools be challenged under the Equal Protection Clause?



De Jure Segregation Defined:

segregation that was mandated by law or policy, such as laws that required Black and white students to go to separate schools



De Facto Segregation Defined:

segregation that exists even though laws do not require it, such as through housing patterns in a neighborhood or economic inequalities that result in Black and white students going to separate schools



Advocacy Tip: In many desegregation cases, you’ll see the terms “de facto” and “de jure” used to describe the type of segregation at issue.

What did the Court decide?

Yes, intentional actions leading to de facto segregation could violate the U.S. Constitution.

What impact does *Keyes* have on K-12 Education?

Keyes helped to desegregate schools in northern and western states, which were less likely to have de jure segregation than states in the South. The case stated that the issue of segregation was not unique to southern states that were more likely to have Jim Crow laws.

This case also recognized that segregation can occur through facially neutral policies, even if the segregation is not explicitly intended.



How can I use *Keyes* in my advocacy?

Challenge policies that create or maintain racial segregation in schools.

Example: A school district redraws attendance zones in a way that concentrates students of color in underfunded schools while maintaining predominantly white schools with better resources. *Keyes* established that intentional decisions, including school zoning, teacher assignments, and resource distribution, can create unconstitutional racial isolation, even if no law explicitly mandates segregation.

Advocates can use *Keyes* to argue that school policies reinforcing segregation, even when facially neutral, violate students' rights under the Equal Protection Clause.

Use *Keyes* to highlight how modern school segregation persists today through intentional district decisions, not just historical legal mandates.

Advocate for district and state leaders to equip schools with enough money and resources to meet all students' needs and to prevent lesser school quality and opportunities for students of certain races.

Actionable Steps:

- Challenge school district policies on zoning, discipline, and tracking that disproportionately impact students of color and contribute to racial segregation.
- Cite *Keyes* in cases challenging school district boundaries that reinforce segregation through housing policies.

Parents Involved v. Seattle School District No. 1 (2007)

What was the U.S. Supreme Court trying to figure out?

Can public schools use race as a factor in voluntary plans to integrate schools to achieve diversity or prevent racial isolation?

What did the Court decide?

No. Public schools cannot use race as a factor to decide what school a student will attend unless doing so meets the strictest legal standard, known as strict scrutiny.



Student Assignment Plan Defined:

A policy or system that school districts use to decide which schools students will attend. These plans can consider factors like a student's home address, school capacity, and sometimes diversity goals to help create balanced and equitable schools.

In *Parents Involved*, the Court struck down the race-based student assignment plans because they did not pass the strict scrutiny test. Although, the justices agreed the school districts had a valid goal—creating diverse and integrated schools—the Court found that Seattle School District No. 1 did not use the most limited and careful approach to achieve this goal.

What impact does *Parents Involved* have on K-12 Education?

It limited the ability of school districts to use race-conscious policies to promote integration.

- Keyes made it clear that schools could be held accountable for segregation caused by their facially neutral policies, even if no law explicitly required it. But *Parents Involved* made it harder for schools to take action to fix segregation. Now, districts that want to integrate schools can't easily use race in their policies, even if segregation is getting worse. This ruling makes it easier for opponents of integration to challenge diversity efforts and harder for schools to ensure all students have equal opportunities.



Advocacy Tip:

When courts determine whether a policy that treats people differently based on race is constitutional, they apply the strictest legal test, which they call “**strict scrutiny**.” Think of it as a high-stakes test that very few policies pass. For a race-based policy to be allowed, it must:

- Have an extremely important (“compelling”) reason for existing, like undoing racial segregation in a school; and
- Be designed so that race is only used as a last resort (“least restrictive means”) to achieve the goal.
 - If there's any other way to achieve the goal without considering race, the policy under consideration will fail the strict scrutiny test and be ruled unconstitutional.



How can I use *Parents Involved* in my advocacy?

Challenge efforts to eliminate diversity programs.

Example: A school district tries to eliminate a diversity initiative, citing *Parents Involved* as a reason to prohibit *any* consideration of race in school policies.

Justice Kennedy wrote a concurring opinion for *Parents Involved*. His concurrence is important because, while he agreed that the school assignment plans in *Parents Involved* were unconstitutional, he also pointed out that schools have a compelling interest in promoting diversity and reducing racial isolation. His concurring opinion suggests that schools can still promote diversity and reduce racial isolation through race-neutral means, such as:

- Strategic site selection for schools
- Drawing attendance zones with awareness of neighborhood demographics
- Targeted recruitment of students and staff
- Tracking racial disparities in enrollment and achievement



Concurring Opinion Defined:

A concurring opinion is written by a judge who agrees with the final ruling of the court but has different reasons for reaching that conclusion.

Advocates can use Justice Kennedy's concurrence to push back against misinterpretations of *Parents Involved* that suggest all efforts to address racial isolation or promote diversity are unconstitutional.

Actionable Steps:

- Educate policymakers and school officials on race-neutral approaches to promoting diversity that align with *Parents Involved*, like student assignment plans based on family income and choosing school locations equitably.
- Push back against efforts to misapply *Parents Involved* to justify eliminating diversity initiatives by informing opponents about the case's limited scope.
- Remember: *Parents Involved* struck down the use of individual racial classifications as the sole factor in K-12 student assignment plans. This case does not prohibit all efforts to promote diversity or reduce racial isolation in schools.
- Cite Justice Kennedy's concurring opinion in public comments and policy proposals to advocate for race-neutral methods that further the goal of school integration.
- Monitor school board decisions on attendance zones and student assignments to ensure they do not increase racial segregation using compliance with *Parents Involved* as their reasoning.
- Consider the impact of *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* (2023). Although the Supreme Court's decision in *SFFA* significantly limited the use of race-conscious admissions in higher education, *Parents Involved* remains relevant in K-12 education advocacy. The ruling in *SFFA* did not explicitly overrule *Parents Involved*, but *SFFA*'s skepticism toward race-conscious policies may influence lower courts where new cases are brought. Advocates should be prepared for evolving legal arguments if they choose to rely on *Parents Involved*—especially on Kennedy's concurrence—to support race-neutral diversity efforts in public K-12 schools.

CASES INVOLVING LANGUAGE EQUITY AND IMMIGRATION

Lau v. Nichols (1974)

What was the U.S. Supreme Court trying to figure out?

Does a school district's failure to provide adequate support for non-English-speaking students violate Title VI?

What did the Court decide?

Yes, Title VI requires schools to take affirmative steps to ensure meaningful access to education for students with limited English proficiency.



What impact does *Lau* have on K-12 Education?

Lau set a precedent for protecting English Learners from discrimination based on language barriers.



How can I use *Lau* in my advocacy?

Advocate for bilingual education programs or other supports for immigrant students and English Learners (ELs).

Example: A school district's bilingual program provides EL students with math instruction in Spanish but does not ensure they receive the same grade-level curriculum as their non-EL peers. This may mean the school district is violating Title VI.

Advocates can use *Lau* to push for equitable access to academic content, including ensuring EL students in bilingual or sheltered programs receive the same coursework and resources as general education students.

Actionable Steps:

- Advocate for stronger state and local policies that affirmatively protect the rights of EL students. Possible supports include:
 - Language instruction programs that enable ELs to attain English proficiency while accessing grade-level content;
 - Trained teachers and staff qualified to support EL students;
 - Meaningful access to core academic content, including math, science, and social studies;
 - Communication with parents or guardians in a language they understand.
- Oppose inadequate language support programs that fail to provide EL students with meaningful access to education.
- Push for expanded bilingual education and teaching practices that incorporate students' experiences and perspectives to make learning more inclusive and effective.

Plyler v. Doe (1982)

What was the U.S. Supreme Court trying to figure out?

Can states deny undocumented immigrant children access to public education?

What did the Court decide?

No. Denying public education to undocumented children violates the Equal Protection Clause of the U.S. Constitution.

What impact does *Plyler* have on K-12 Education?

- Establishes that states cannot deny undocumented children access to free, public K-12 education without violating the Equal Protection Clause.
- Does not create a federal right to education (*San Antonio Independent School District v. Rodriguez* was not overturned) but does recognize education as essential for economic and social participation.
- Prohibits policies that indirectly discourage enrollment, such as requiring proof of citizenship or allowing immigration enforcement on school grounds.



How can I use *Plyler* in my advocacy?

Push back against policies targeting immigrant students or restricting their educational opportunities

Example: A school district implements an enrollment policy requiring students' proof of citizenship or immigration status.

As it stands, advocates can still use *Plyler* to remind policymakers and school officials of their legal obligation to provide free public education to all children, regardless of immigration status. However, given the current risks to *Plyler* in Tennessee, (see HB0793 and SB0836), advocates should be cautious about pursuing litigation strategies that could escalate the issue to the courts, placing the protections at risk of being overturned by the current U.S. Supreme Court. With the current U.S. Supreme Court, there is a significant risk that a challenge to *Plyler* could lead to its weakening or overturning, as the Court has signaled a willingness to reconsider longstanding precedents on issues like equal protection and education rights.

Actionable Steps:

- Monitor and challenge school enrollment policies that discourage immigrant families from enrolling their children.
- Educate school officials and policymakers on why inclusive enrollment practices align with federal civil rights laws and ensure educational access for all students.
- Use community education and public awareness campaigns to push back against state and local efforts that create barriers for undocumented students.
- Engage in legislative advocacy to prevent harmful state laws from passing, instead of relying on litigation that could place *Plyler* protections at risk of being overturned.



A Note on Plyler in Tennessee:

Tennessee lawmakers have introduced multiple bills (e.g., HB 0793 and SB 0836) aimed at challenging *Plyler* and restricting undocumented students' access to public education. As of May 2025, these bills stalled in committee and did not get signed into law. However, given the potential for these types of bills to advance in the future and potential court escalation, advocates should continue pursuing legislative and community-based strategies to protect students' rights.

For more information on protecting undocumented students' access to education and ways to act, explore the following resources:

- The Education Trust: [Protecting Undocumented Students' Access to K-12 Public Schools](#)
- Education for All Tennessee:
 - Take Action [here](#).
 - View Campaign Resources [here](#).



This section highlighted:

The groundbreaking Supreme Court cases that shaped the fight for educational justice—giving advocates powerful legal precedent to challenge segregation, protect immigrant students, and demand equal opportunities for all, regardless of race, language, or status.

CHAPTER

02

HOW THE LAW PROTECTS AGAINST CENSORSHIP IN K-12 SCHOOLS

What is censorship?

Censorship is the suppression or restriction of certain speech, ideas, books, discussions, or teachings.

How does censorship impact K-12 education?

In education, censorship can limit students' access to diverse perspectives and prevent honest discussions about difficult topics, such as systemic racism and inequality. Censorship disproportionately affects students with marginalized identities by erasing their histories and lived experiences from curricula and removing them from school bookshelves and classroom libraries.

Core Legal Doctrines

DEPARTMENT OF EDUCATION ORGANIZATION ACT (DEOA)

What is the law?

This law states: “No provision of a program administered by the Secretary or by any other officer of the Department shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction, administration, or personnel of any educational institution, school, or school system.” 20 U.S.C. § 3403.

What does this mean?

This law prohibits the federal government from controlling school curricula, instruction, or administration. Federal agencies and officials cannot require schools to teach or remove certain curricular content.

Who does the law apply to?

The law is a limitation placed directly on the federal government.

The law protects state departments of education, school districts, and K-12 public schools from federal overreach in school curriculum.

How is the DEOA used in education?

The DEOA ensures that state and district leaders keep control over curricular decisions.

It also stops the federal government from using its power to fund schools to directly influence curriculum choices.



How do I use the DEOA in my education advocacy?

Push back against federal overreach in local education decisions.

Example: A school district claims that the U.S. Department of Education is forcing them to stop teaching their course on Black history. Under 20 U.S.C. § 3403, a federal agency cannot control local school curricula or administration decisions.

Actionable Steps:

- Argue that curricular decisions should be made at the state or district level, rather than dictated by political pressures made at the federal level.
- Remind school officials that federal anti-discrimination laws, like Title VI, still apply to state and local education agencies that receive federal funding, even though curricular and administrative decisions are primarily state functions.
- Cite 20 U.S.C. § 3403 in letters, complaints, or policy discussions when schools try to ignore federal equity protections.
- Push back against misinformation about federal control, especially in debates over curriculum, diversity initiatives, or educational equity.



A Note on Federal Limits on Curriculum Control

The DEOA explicitly prohibits federal officials from directing or controlling curricula. This restriction has been upheld in more current federal laws, such as the Elementary and Secondary Education Act (ESEA) as amended by the Every Student Succeeds Act (ESSA), which reinforces that federal funding cannot be used to mandate or influence curricular choices.

Example: ESSA 20 U.S.C. § 7906a states that no federal official can control a state’s curriculum, and § 7907 prohibits federal funds from being used to endorse specific curricula. These sections emphasize that, while the federal government sets education priorities through funding, curricular decisions remain under state and local control.

Actionable Steps:

- Push back against false claims by state or district officials who argue that federal law requires or bans teaching certain topics (e.g., race or gender discussions). These laws clarify that curricular control lies with the states.
- Challenge federal overreach if federal officials attempt to impose curriculum restrictions under ESSA. § 7906a can be cited to push back.
- Use ESSA to support your claims. Although ESSA does not dictate what can be taught, it does provide funding to schools that adopt *evidence-based* practices.
 - 20 U.S. Code § 6303: Provides funding for school improvement efforts, requiring that interventions be *evidence-based*.
 - 20 U.S.C. § 6613: Funds professional development programs that incorporate *evidence-based strategies*.
 - 20 U.S.C. § 7118: Establishes *Student Support and Academic Enrichment (SSAE) grants*, which support *evidence-based* programs related to student well-being, including mental health services and school safety initiatives.

Additional notes on federal laws, such as the DEOA and ESSA:

Only Congress can change these restrictions on the federal government—not the president, the U.S. Department of Education, or any other federal agency.

- This means that executive orders, regulations, or agency guidance cannot mandate or prohibit specific curricular content in schools—nor can they declare that federal laws such as the DEOA and ESSA are not in effect.

FEDERAL PREEMPTION

What is the law?

The Supremacy Clause of the U.S. Constitution states:

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” Art. VI, cl. 2.

What does this mean?

On issues that require federal authority, federal law “preempts” state law. Some exceptions apply and are discussed below, in the section titled “Are there any exceptions to federal preemption?”

- **Example:** A state passes a law that says recipients of federal funding are allowed to deny Black students access to educational programs. This state law would directly conflict with Title VI and tries to take away the federal right to be free from race discrimination in school. In this case, a court would strike down the state law and say that Title VI “preempts” it.



Preemption Defined:

Preemption means that when state and federal laws directly conflict, the federal law wins. So, states cannot pass laws that take away rights guaranteed and protected by federal law. If a state law conflicts with the U.S. Constitution or federal statutes, courts can strike it down.

How is it used in education?

Preemption and Censorship: Even if a state bans certain classroom discussions, those bans cannot override federal protections, such as:

- **The First Amendment, which protects free speech.**
Example: If a state bans teachers from discussing systemic racism or prohibits students from expressing certain viewpoints about race in class discussions, that may violate the First Amendment. Courts have ruled that schools cannot censor speech simply because it is controversial or because some people disagree with it.
- **Federal civil rights laws (like Title VI), which protect students from discrimination.**
Example: Title VI prohibits race discrimination in federally funded schools. If a state law censors discussions of race in a way that creates a racially hostile environment, it may violate Title VI.

- **The Equal Protection Clause, which prevents states from enacting discriminatory policies.**

Example: If a state bans discussions of race in a way that disproportionately harms students of color—such as preventing only certain perspectives from being taught—students might have a claim under the Equal Protection Clause. Courts may strike down these bans if they are not applied equally or if they intentionally target certain groups.

If a court finds that state censorship laws or practices violate federal protections, it can strike down those laws.

Are there any exceptions to federal preemption?

Although federal law typically overrides conflicting state laws, federal preemption is not absolute—especially in education. Courts recognize exceptions where state law may win out over federal law. Here are two exceptions that are particularly helpful for education advocacy:

- **Presumption Against Preemption in Education**

Education is traditionally controlled by states, so courts are reluctant to assume federal law automatically overrides state decisions unless a clear conflict exists.

- **Floor Preemption**

Federal civil rights laws set minimum protections, or a “floor” for protections. State laws can expand beyond the floor level of protections by enacting laws with *more* protections. States cannot pass laws that weaken or eliminate the federal protections (i.e., go below the “floor”).

Example: Title VI prohibits racial discrimination in schools. States can pass stronger anti-discrimination laws to provide additional protections for race, but they cannot pass laws that allow racial discrimination in schools or reduce protections guaranteed under Title VI.



A Note on Preemption

Preemption is a complex legal issue, and other exceptions may apply in specific cases. Advocates who are unsure whether federal law preempts their state law should consult a legal professional in



A Note on State vs. Local Control

Although this section is focused on federal vs. state authority (preemption), states can also overstep their authority over local school districts. School districts, which are typically local agencies, traditionally set their own curricula. If a state law completely removes local discretion, it may violate sections of its state constitution, which may protect local control over curricular decisions. Consult with a legal professional in your state to learn more about advocacy options if you think these issues are at play.

THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

What is the law?

The First Amendment to the U.S. Constitution, in relevant part, states that “Congress shall make no law . . . abridging the freedom of speech. . .” U.S. Const. amend. I.

What does this mean?

- This is often called the “Free Speech Clause.”
- This means that **state actors** ([see glossary](#)), including public schools, cannot punish or stop speech just because they disagree with its content or message. However, state actors can limit speech in some cases, like if the speech contains threats or is deemed inappropriate or obscene. Also, public schools have some authority to regulate speech that causes disruptions in an educational environment.

Who does the Free Speech Clause apply to?

All public schools and their officials, including teachers, principals, school boards, and state education agencies, must abide by the Free Speech Clause of the First Amendment.

How is the Free Speech Clause used?

In education, the Free Speech Clause has been used to challenge school rules that unfairly limit student speech or ban access to certain books and ideas.



Chilling Effect Defined:

Sometimes schools create rules that are very broad or too vague or confusing, which can scare students and teachers into staying silent—even when their speech is legal and protected. This is called a chilling effect, and courts have ruled that schools cannot make unclear rules that make people afraid to speak, or chill speech.



Example: A school district removes books from the library because officials disagree with the ideas they express. See *Island Trees School District v. Pico* (1982) (The Supreme Court ruled that schools cannot remove books simply because they dislike their content.)

Example: A school has a vague speech policy that bans “offensive” speech without defining what qualifies as offensive. Courts have struck down overly broad rules like this, recognizing that unclear policies can discourage students from speaking out due to fear of punishment.



How do I use the Free Speech Clause in my education **advocacy?**

Challenge vague or overbroad policies that chill speech.

Example: A district publishes a policy that bans “classroom discussions on race, gender, or history” without clear guidance on what those terms mean or what topics would fall under those categories. This policy is broad enough that it could mean that individuals could be punished for celebrating Black History Month or teaching sex education in health class. Teachers might avoid certain topics, such as these, out of fear of punishment. Here, you can argue that the policy is too vague and chills free speech.

Protect students’ right to protest or express opinions

Example: A school suspends students for wearing pro-LGBTQI+ or Black Lives Matter shirts, claiming they are controversial. However, the students wearing these shirts had normal school days, and the shirts did not cause other changes or disruptions for others at the school. Courts have ruled that unless speech causes a major disruption, it is protected. The students should not be suspended just for wearing their shirts.

Actionable Steps:

- Meet with school administrators or the school district, attend school board meetings, or write the school or district a letter to demand clear rules that do not violate First Amendment rights.
- Work with students to educate them about their rights.
- Use media or public campaigns to pressure your school to reverse unfair punishments for students expressing their opinions.



This section highlighted:

How federal laws like the DEOA, the Supremacy Clause, and the First Amendment protect schools from government overreach while safeguarding students' rights to speak up, learn freely, and access inclusive curricula—powerful tools for pushing back against censorship and promoting educational equity.

Landmark Cases Addressing Censorship & Free Speech

TINKER V. DES MOINES INDEPENDENT SCHOOL DISTRICT (1969) CONSTITUTION

What was the U.S. Supreme Court trying to figure out?

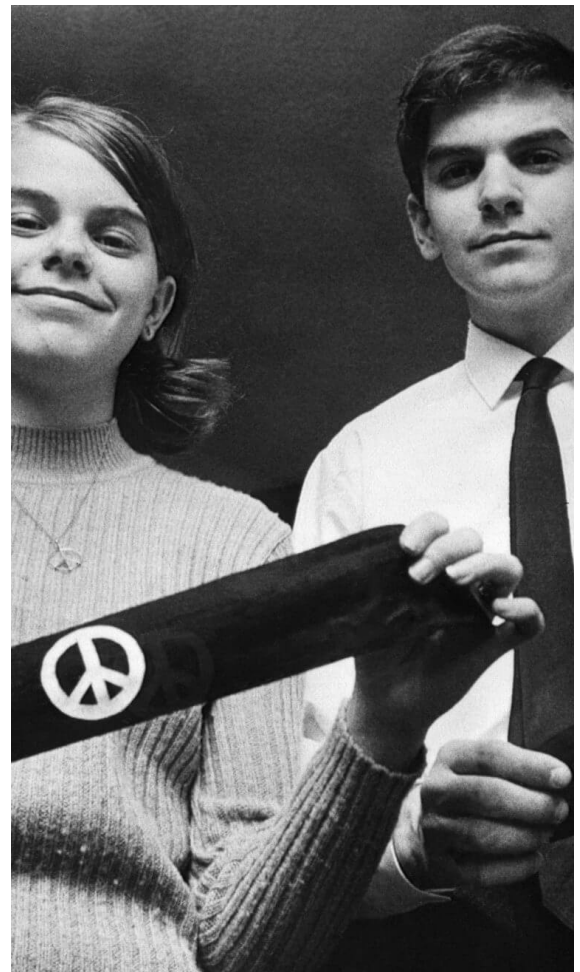
Do students have a First Amendment right to express themselves in school?

What did the Court decide?

Yes. The Court ruled that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Schools can only restrict student speech if it “materially” and “substantially” disrupts the educational environment.

What impact does *Tinker* have on K-12 education?

- Establishes that students have First Amendment rights in schools.
- Limits a school’s ability to censor speech unless it causes a significant disruption.
- Provides a basis for challenging censorship laws that suppress discussions on race, gender, or other sensitive topics.





How can I use *Tinker* in my advocacy?

Challenge restrictions on student discussions about race, gender, and systemic inequality.

Example: A school prohibits students from discussing racial justice or gender equality in class, claiming these topics are too divisive. Under this policy, a group of high school students is no longer allowed to give their presentation on the impact of Reconstruction on systemic racism in the U.S., a topic they selected. *Tinker* established that students do not lose their First Amendment rights in school unless their speech causes a substantial disruption, so it's likely this policy violates the First Amendment.

Push back against overly broad policies that chill student expression.

Example: A district enacts a vague policy banning “controversial topics” without defining what that includes. Unsure if the policy covers conversations about the Holocaust, the Jewish Student Association at the local high school has canceled its annual Holocaust Remembrance event. This vague policy has caused students to self-censor out of fear of punishment, which means it has likely illegally suppressed their speech under the First Amendment.

Actionable Steps:

- Demand that schools provide clear, lawful policies that do not infringe on student free speech rights.
- Use public pressure—such as media coverage and advocacy campaigns—to highlight how vague, broad policies silence students.
- Support students in understanding and asserting their right to express opinions on social and political issues.
- Educate your community on how an open forum for diverse thoughts and opinions benefits students, including teaching them to think critically and be more accepting of others who are not like them.
- When appropriate, consult with legal organizations about additional options, such as filing an administrative complaint or a federal lawsuit.

MILLER V. CALIFORNIA (1973)

What was the U.S. Supreme Court trying to figure out?

Are “obscene” materials protected under the First Amendment, and, if not, what constitutes obscenity under the First Amendment?

What did the Court decide?

- The Court decided that obscene materials are not protected under the First Amendment.
- The Court established the three-pronged “*Miller* Test” to determine whether materials are obscene, and, therefore, not protected under the First Amendment.
- **When applying the *Miller* Test, courts ask three questions:**
 - Would an average person, using the local community standards, think the material is meant to create or appeal to sexual interest?
 - Does the material show or describe sexual content in a clearly offensive way according to state law?
 - When looked at as a whole, does the material have no serious literary, artistic, political, or scientific value?

What impact does *Miller* have on K-12 Education?

- The *Miller* Test clarifies the difference between obscene content (not protected under the First Amendment) and content that may be controversial or explicit but is protected.
- This case redefined the standard for obscenity, limiting what can legally be censored.



How can I use *Miller* in my advocacy?

Push back against book bans based on “obscenity” claims.

Example: A school bans a book with LGBTQI+ characters, saying it is “obscene.” *Miller* sets a high bar for what counts as obscenity. A book is only obscene if it meets all three parts of the *Miller* Test (see above). Most books targeted for bans likely do not meet this test and are protected by the First Amendment.

Actionable Steps:

- Ask the school to prove the book meets all three parts of the *Miller* Test.
- Research other legal precedent to come up with examples of what has passed or failed the *Miller* test, and use to show the school that the books they have banned do not pass the test.
- Show that the book has educational value, meaning it cannot be legally considered obscene.
- Use media and public pressure to challenge unfair book bans.

ISLAND TREES UNION FREE SCHOOL DISTRICT V. PICO (1982)

What was the U.S. Supreme Court trying to figure out?

Can a school board remove books from school libraries based on their content?

What did the Court decide?

The Court held that, while school boards have some discretion, removing books solely because officials dislike their ideas violates the First Amendment.

What impact does *Pico* have on K-12 Education?

Reinforced the principle that students have a constitutional right to access diverse ideas in educational settings.



How can I use *Pico* in my advocacy?

Challenge efforts to remove books or materials that target specific ideas.

Example: A school removes several books with LGBTQI+ characters from the library, claiming they are inappropriate, but one school board member sent emails to parents ensuring them that she will ban any book that doesn't reflect her family values.

In *Pico*, the Supreme Court ruled that schools cannot remove books just because officials dislike their ideas. Schools can decide what books to add but removing books for political or ideological reasons can violate students' First Amendment rights.



A Note on Pico

While schools have some discretion to remove materials that are not age-appropriate, they cannot do so simply because they disagree with the ideas presented. The Supreme Court in *Pico* recognized that book removals based on political or ideological reasons may violate students' First Amendment rights. In advocacy, be aware that districts may frame removals as concerns about “age appropriateness” to justify censorship.

Actionable Steps:

- Demand the school explain why books are being removed.
- If the school claims certain books or materials are not age-appropriate, have them explain and cite to the parts of the books that may not be suitable for the age of certain students. If content is actually not age-appropriate, ask the school to consider less restrictive options than banning, like separating books by age in the library and not allowing younger students to check out books for older audiences.
 - Argue that banning books for their viewpoints is unconstitutional under *Pico*.
 - Organize students, parents, and community members to speak at school board meetings.
 - Use media and public campaigns to raise awareness about censorship.

BETHEL SCHOOL DISTRICT V. FRASER (1986)

What was the U.S. Supreme Court trying to figure out?

Can schools discipline students for speech that is considered vulgar, lewd, or plainly offensive?

What did the Court decide?

Yes. The Court ruled that schools can prohibit speech that is vulgar or inconsistent with the educational mission, even if it does not cause a substantial disruption (*Tinker* standard).

What impact does *Fraser* have on K-12 education?

- Allows schools to regulate student speech that is deemed inappropriate.

- Does not extend to ideological speech—meaning schools cannot ban speech simply because they disagree with its message.
- Opponents may wrongly apply this precedent to suppress discussions about race, gender, or sexual orientation.



How can I use *Fraser* in my advocacy?

Ensure that schools do not confuse controversial speech with vulgar or disruptive speech.

Example: A high school punishes a student for giving a speech about how the history of slavery contributes to the mass incarceration of Black men today, claiming it is “offensive.” Issues of racial justice may be difficult topics, but they are not lewd or vulgar in and of themselves. In *Fraser*, the Court ruled that schools can limit lewd and vulgar speech—but not speech that simply makes people uncomfortable or challenges authority.

Push back against policies that use *Fraser* as a justification for banning discussions on race, gender, or systemic injustice.

Example: A district bans students from discussing the gender binary in class, saying *Fraser* allows them to create this ban. This is a misinterpretation—the case only allows schools to regulate vulgarity, not suppress political or social discussions.

Actionable Steps:

- Push back if schools or district use *Fraser* to silence students or educators discussing race, gender, or inequality.
- Educate students and parents about their First Amendment rights and when *Fraser* does—and does not—apply.

Examples of when schools can limit student speech under *Fraser*:

- A student speech at a school assembly is filled with sexual innuendos. (See Section 3 of *Fraser*).
- A student is wearing clothing with explicit sexual imagery or profanity. (See Section 2b of *Guiles v. Marineau* (2006)).

Examples of when student speech is protected from *Fraser* limits:

- A student wears a shirt that is not lewd or vulgar but contains an anti-war message and is critical of the sitting President. (See Section 3b of *Guiles*).

- “A student posts profanity about school on social media off-campus. (See Section 3 of *Mahanoy Area School District v. B.L. by & through Levy* (2021)).
- A student peacefully protests by wearing symbolic items, such as a black armband. (See Section 2 of *Tinker*).
- Use public pressure, legal advocacy, and school board meetings to challenge policies that wrongly apply *Fraser* to censor student voices.

HAZELWOOD SCHOOL DISTRICT V. KUHLMEIER (1988)

What was the U.S. Supreme Court trying to figure out?

Do schools have the authority to control the content of school-sponsored publications?

What did the Court decide?

Yes. The Court ruled that schools may regulate school-sponsored speech, such as newspapers or theatrical productions, if the restrictions are “reasonably related to legitimate pedagogical concerns.” In other words, the restrictions must exist for some valid educational purpose.

What impact does *Hazelwood* have on K-12 education?

Gives schools greater control over student expression in school-sponsored activities.

Allows for some level of censorship if a school can justify it, based on valid educational reasons.

Can be misused to justify the removal of controversial topics from school curricula.





How can I use *Hazelwood* in my advocacy?

Distinguish between personal student speech (*Tinker*) and school-sponsored speech (*Hazelwood*) to argue for broader First Amendment protections.

This applies to things like school newspapers, theater shows, and yearbooks if they are part of a class or school program. *Hazelwood* does not apply to speech that students create and share on their own, outside of school control.

Example: A group of students forms a racial justice club that meets after school, not officially endorsed or paid for by the school. They independently create a newsletter discussing racial equity issues and distribute it among peers. The school censors the newsletter's discussion of race, claiming it is "controversial."

- Under *Tinker*, the students' speech is protected because it is personal student speech and does not substantially disrupt school operations.
- *Hazelwood* does not apply because the newsletter is not produced as part of a class, funded by the school, or supervised by faculty. *Hazelwood* only applies to school-sponsored speech, like official school newspapers or class projects.
- If the speech is student-led and independent, schools cannot use *Hazelwood* to justify censorship. Plus, the school did not give a legitimate reason for banning the newsletter based on educational concerns.



School Sponsored Speech Defined:

Under *Hazelwood*, schools can regulate speech that is:

- Part of a class or school assignment.
- Created using school resources under a teacher's supervision.
- Something that people might think represents the school's views.
- Restricted for a valid educational reason.

Advocate for clear policies that prevent the misuse of *Hazelwood* to silence important educational discussions.

Example: A district bans students from discussing systemic racism in a school-sponsored debate, claiming that the topic is too controversial and makes some students uncomfortable. Under *Hazelwood*, schools can only regulate school-sponsored speech if they have a legitimate educational reason, like ensuring age-appropriate material or maintaining academic standards. A vague claim that a topic is "controversial" or "politically sensitive" is not a valid justification for censorship.

Actionable Steps:

- Challenge overbroad censorship by showing when *Tinker* (stronger student protections) applies instead of *Hazelwood*.
- Raise awareness through legal advocacy, media, and school board meetings to prevent the misuse of *Hazelwood*.



This section highlighted:

The pivotal court cases that define students' free speech rights in schools—empowering advocates to challenge censorship, defend student expression, and ensure schools remain places of open dialogue, not silenced voices.

General Advocacy Tips for Censorship

- **Challenge censorship that disproportionately harms marginalized students.**

If a school district's censorship policies disproportionately harm students based on a protected identity, such as race or gender, talk to a legal professional about options for taking federal legal action.

- **Use state-specific legal challenges as precedent.**

Example: *Tennessee Education Association v. Reynolds* (2024): In this case, advocates challenged Tennessee's "divisive concepts" law as vague. While still ongoing, this case is significant because the district court denied the state's request to dismiss the lawsuit.

- This ruling means the advocates have a valid legal argument and that the law's vague language can be legally challenged. It also strengthens the arguments that censorship policies create unconstitutional chilling effects.

- **Refer to the section on education civil rights under Trump 2.0 in the appendix.**

Stay grounded in the law, as censorship efforts rely on fear and misinformation to push unlawful restrictions. Refer to resources discussing the legal limits of the second Trump administration's actions on school censorship.

CHAPTER

03

RESOURCES

Appendix

EDUCATION CIVIL RIGHTS UNDER TRUMP 2.0

The Trump administration has signaled a shift in federal civil rights enforcement in education, rolling back protections and limiting federal oversight. To best advocate for the protection of the students most impacted by this shift, it's important to stay aware of emerging federal developments.

- Here are some actions taken, so far, by the administration that deeply impact K-12 public education:

Executive Orders

The Trump administration has used executive orders to weaken efforts that promote diversity, equity, inclusion, and accessibility (DEIA) in schools. These orders threaten to take away funding and protections for programs that help students:

- [Executive Order 14242: Attempting to Dismantle the Department of Education](#)

This EO aims to transfer key functions of the U.S. Department of Education to state governments and other federal agencies, arguing that education policy should be left entirely to states and local communities. While the administration frames this as an effort to reduce federal overreach, it would have widespread consequences for public education, particularly for civil rights enforcement and federal education funding.

Trump cannot fully dismantle the Department without congressional approval. Although this EO signals an aggressive attempt to weaken the department, Congress would need



Executive Order (EO) Defined:

is a rule or directive issued by the president that tells federal agencies how to carry out existing laws. Although an EO cannot create new laws or override existing laws Congress has passed, it can still have a big impact on how the government enforces policies. Courts can block executive orders if they go against the Constitution or federal law, and a future president can cancel them.

to pass legislation to formally eliminate it. That said, the administration can still take significant actions to gut the Department’s effectiveness.

- [Executive Order 14151: Undoing Equity Programs Across the Government](#)

This EO aims to eliminate DEIA programs in federal agencies, banning efforts to consider race or gender when hiring, training, or awarding federal grants. It tells federal agencies, including the Department of Education, to stop funding programs that try to close racial gaps or promote diversity in K-12 schools.

- [Executive Order 14173: Further Undermining DEIA in the public and private sectors](#)

This EO aims to ban affirmative action and any policies that consider race in schools or federal programs, claiming they are discriminatory. It also tells the Department of Education to review and possibly cut funding for programs that recognize racial or gender gaps.

- [Executive Order 14190: Censoring Teachers and American History](#)

This EO aims to restrict discussions on race, gender, and systemic inequality in classrooms, reinforcing state-level censorship laws and the chilling of speech in schools.

Agency Guidance

The Trump administration has also used the Department of Education’s enforcement powers to scare schools into weakening civil rights protections and inclusive programming for students.

- [“Dear Colleague Letter” issued by the Department of Education, Office for Civil Rights on February 14, 2025](#)

This letter explains the administration’s position on education civil rights enforcement, showing that it will step back from cases involving book bans and curriculum restrictions. It also threatens to cut funding for schools that promote DEIA.

After receiving backlash and challenges on the legality of this guidance, the Department of Education released this FAQ document to clarify its position. However, the FAQs do not walk back the problematic aspects of the Dear Colleague Letter (DCL) and may still pose concerns for advocates.



“Dear Colleague Letter” Defined:

is formal guidance from a federal agency (like the Department of Education) that explains how the agency interprets and plans to enforce laws under its jurisdiction (like Title VI or Title IX).

Changes in investigation priorities

Like executive orders can reshape federal policy, shifts in enforcement priorities at the Department of Education can impact civil rights protections in schools. The Department of

Education's Office for Civil Rights (OCR) has the power to investigate discrimination complaints and issue guidance on how civil rights laws apply in education, but its approach can change dramatically between administrations.

- On [January 24, 2025, OCR announced](#) its dismissal of existing complaints that challenged book bans. OCR also rescinded Department guidance on how removing books from school libraries may violate federal civil rights laws. OCR stated it has no role in such cases—a complete 180 from OCR's interpretations in the previous administration. This leaves many students and families without a way to get federal relief if their schools are using book bans to discriminate.
- Upon Trump's inauguration, the Department of Education halted all civil rights investigations except those initiated by the Department. In late February, the Department [lifted its freeze—but only for disability-related cases](#). This means that thousands of pending complaints alleging racial or gender discrimination remain stalled or were dismissed.

Advocacy Considerations

Weigh the pros and cons of filing complaints with OCR.

- While OCR may be less responsive under the new administration, filing complaints can still document civil rights violations and build a record for future legal challenges. However, advocates should be aware of limitations. Under the current leadership, OCR may delay or dismiss complaints that do not align with the administration's priorities. Even when OCR opens an investigation, enforcement actions may be weaker or take longer to resolve. It's also possible that the Trump administration may use your complaint to target you or your school for its own political goals. Additionally, under any administration, filing a complaint does not guarantee immediate relief for impacted students, and in some cases, it may be more strategic to look into other advocacy approaches alongside or instead of an OCR complaint.

Consider alternative advocacy strategies.

- You could point out civil rights violations through advocacy campaigns, coalition-building, and public education efforts.
- You can also take action at the state or local levels, such as filing a complaint with your state's civil rights or human rights agency, if it has one.
- You can consult with a legal professional or organization about what legal options you have in state and federal court.

Despite the appearance of federal rollbacks, students' civil rights remain protected under the Constitution and federal civil rights laws, in addition to state civil rights laws. To ensure government compliance, advocates have to remain strategic and persistent in challenging discrimination and censorship at the local, state, and federal levels.

Further Discussion and Additional Resources

On the impact of the Anti-DEIA EOs:

[ACLU: Trump's Executive Orders Rolling Back DEI and Accessibility Efforts, Explained](#)

On the impact of EO 14190:

[EdCounsel: "Consistent With Applicable Law": Critical Statutory Constraints on President Trump's Executive Order about K-12 Curricula](#)

[EdSource: How to resist Trump's order imposing classroom censorship and discrimination](#)

On the EO on Dismantling the Department of Education

[NWLC on Trump's Order to Destroy Public Education](#)

[Advancement Project statement: Closing Department of Education Will Resegregate Schools](#)

[EdTrust statement: Dismantling the Department of Education Will Have a Disastrous Impact on Civil Rights and Learning of Underserved Students](#)

[Statement from Education Law Center Executive Director Robert Kim on Executive Order Dismantling U.S. Department of Education](#)

[NEA President: "Trump's continued actions will hurt all students"](#)

On legality of the February 14th Dear Colleague Letter issued by The Department of Education's OCR:

[EdCounsel: Overreaching and Misleading: An Analysis of the U.S. Department of Education's February 14, 2025 "Dear Colleague" Letter on Diversity, Equity and Inclusion Policies and Programs](#)

[LDF: Setting the Record Straight The U.S. Department of Education's Anti-Opportunity "Dear Colleague Letter" What Schools and Students Need to Know](#)

[Memo from Law Professors, "DEI Programs Are Lawful Under Federal Civil Rights Laws and Supreme Court Precedent"](#)

[Press Release: ACLU and NEA Sue U.S. Department of Education Over Unlawful Attack on Educational Equity](#)

[Press Release: AFT, AFT-MD, American Sociological Association file to challenge administration's "Dear Colleague Letter" in defense of students nationwide](#)

Trackers on Executive Actions Taken by Federal Administration

[Democracy 2025: Real-time analysis of Trump-Vance administration actions, to support legal challenges and provide resources for the pro-democracy community.](#)

[EducationCounsel's Summary and Analysis of Trump Administration Executive Actions Impacting Education](#)

Glossary

Chilling effect	When people stop speaking out or expressing themselves because they fear punishment, even if the punishment might not actually happen.
Concurring Opinion	When a judge agrees with the final decision in a case, but has different reasons for why they reached that decision.
Dear Colleague Letter	A public message from a government agency, like the U.S. Department of Education, that explains how laws will be enforced. While it does not create new laws, it helps schools understand their legal responsibilities.
De jure	Something that is required by law. For example, a law that says schools must be racially segregated would be <i>de jure</i> segregation.
De facto	Something that happens in practice, even if it's not required by law. For example, schools that are mostly one race because of housing patterns, not because of a law, are de facto segregated.
Disparate impact	When a rule or policy harms a group of people more than others, even if it wasn't meant to. For example, a school policy that requires students to have a certain hairstyle might disproportionately affect Black students.
Disparate treatment (Intentional discrimination)	When a person or group is treated unfairly on purpose because of race, gender, or another protected category. For example, if a school refuses to let only Latino students enroll in an advanced class, that is <i>disparate treatment</i> .

Executive Order	A rule or policy made by the President or a governor that tells government agencies what to do, without needing approval from the legislature.
Preemption	When a higher level of government (like the federal government) overrules a lower level of government (like a state or school district) on a legal issue. For example, if a federal law protects student speech, a state law that tries to restrict it might be <i>preempted</i> .
Racial Segregation	When schools or other places separate people based on their race, often leading to unfair treatment and fewer resources for some groups.
Retaliation	When someone is punished for speaking up about discrimination or another legal violation. For example, if a student reports racist bullying and the schools suspends them instead of addressing the bullying, that's <i>retaliation</i> .
School sponsored speech	School-sponsored speech is speech that a school is responsible for, like articles in a school newspaper, plays, or assemblies. Since it is connected to the school, administrators can set rules about what is allowed, if those rules have a good educational reason and don't unfairly silence certain opinions.
State actor	A government entity, like a public school or a school district, that must follow constitutional rights, including free speech and equal protection laws.
Student assignment policy	The rules a district uses to decide which students go to which schools, like zoning based on home addresses or special programs for school choice programs.

Title VI: Understanding “disparate treatment” and “disparate impact”

Disparate treatment (aka intentional discrimination)

Example: A school implements a policy, intentionally capping the number of Black and Latino students who can enroll in AP courses, while placing no such limits on students of other racial backgrounds.

- This would qualify as intentional discrimination because it explicitly treats Black and Latino students differently than it treats other students.
- Black and Latino students at this school and their families can file a Title VI disparate treatment lawsuit that claims their school intended to discriminate, using the AP course policy as evidence.



Disparate Treatment (aka Intentional Discrimination) Defined:

Within the context of Title VI, a policy or action that is explicitly based on race, color, or national origin.

Disparate impact

Example: A school district implements a strict suspension policy, where students are automatically suspended for offenses like “defiance” or “disrespect.” Data collected on the district show that Black students are suspended for “defiance” and “disrespect” more than any other group of students.

- This would qualify as disparate impact because, although the policy applies to all students, data shows that Black students are suspended at higher rates than their peers for the same behaviors.
- Black students at this school and their families cannot bring individual lawsuits that claims this race-neutral policy results in unequal outcomes for them based on their race.



Disparate Impact Defined:

Within the context of Title VI, when neutral policies or practices result in unequal outcomes for different groups based on race, color, or national origin, even when there’s no intent to discriminate.

Although individuals cannot sue for disparate impact, federal agencies can investigate and enforce compliance with Title VI through administrative processes, which include:

- Administrative complaints - Individuals can file complaints with federal agencies, such as the U.S. Department of Education's Office for Civil Rights. The agency will then investigate whether the school's neutral policies had a disparate impact on those with a protected race, color, or national origin under Title VI.
- Federal Oversight – In cases where federal agencies find disparate impact during their investigation, they can require specific actions to ensure that schools or districts follow the law moving forward.

Retaliation

All of the federal civil rights laws enforced by the U.S. Department of Education, Office for Civil Rights (OCR) prohibit retaliation.

Why It Matters

Retaliation protections ensure that those who exercise their civil rights, oppose discrimination, report discrimination, or participate in civil rights investigations can do so without fear of punishment.

Examples

The U.S. Department of Education, Office for Civil Rights provides the following examples of retaliation in their resource for school communities on Civil Rights Protections Against Retaliation (2024):

- After a parent filed repeated complaints with her child’s school alleging that her child experienced racial harassment at school and requested that her child be transferred to another school in the school district to avoid the harassment, the school principal requested that Child Protective Services visit the student’s house to question the parent.
- A school administrator initially informed a parent that their child would receive a verbal warning for alleged misconduct during school, but after the parent raised concerns of racial harassment relating to use of racial epithets by a teacher, the school administrator increased the student’s punishment to a multiple-day suspension.
- A Jewish high school student sent several emails to the school’s principal complaining that he observed his classmates drawing swastikas in the bathroom. After the principal spoke to the classmates, his classmates started following the Jewish student around school and shoving him in the hallways, using anti-Semitic slurs and commenting that he and his “Israeli relatives should stop terrorizing Gazans.” The student again emailed the principal about the shoving and comments. The principal took no action to address the conduct of the classmates, which continued for the remainder of the school year.

If situations like these occur after filing an OCR complaint, advocates and families can document the retaliation and report it to OCR as a separate violation.



Retaliation Defined:

Retaliation occurs when a person is effectively punished for taking actions protected by civil rights laws. This may take the form of intimidation, threats, coercion, or another adverse action that would stop a reasonable person from exercising their civil rights protected under the laws enforced by OCR.

Additional Resources for Advocates

[Meeting the Moment: A Guide to Defending Civil Rights in Our Schools](#)

- A practical guide outlining the goals, actions, and harmful effects of the anti-civil rights campaign and highlighting successful strategies and key resources for local advocates seeking to defeat censorship attacks and preserve civil rights and education in our country.

[The Education Trust: #SaveOurStudents: Advocacy Toolkit to Organize for Success](#)

- A toolkit equipping advocates with resources to mobilize communities to resist attacks on public education.

[The Education Trust: Can't Be Erased Campaign Toolkit](#)

- Resources and messaging guidance to support advocacy for inclusive, honest education in the face of book bans and other restrictions on students' access to honest history and diverse voices

[Southern Poverty Law Center's Learning for Justice: Understanding the Role and Responsibilities of the Department of Education](#)

- A guide explaining how the U.S. Department of Education protects students' rights and how advocates can leverage federal enforcement tools to ensure accountability and promote equal access to education.

[RALLY: We Believe Campaign](#)

- A communications toolkit to help advocates protect children's access to quality, honest public education.

[Education Rights Institute, University of Virginia School of Law: Preventing and Remedying Race, Color, and National Origin Discrimination in Schools: A Primer On Title VI of the Civil Rights Act Of 1964](#)

- A legal primer on how Title VI protects students from race, color, and national origin discrimination in federally funded schools.

For Advocates in Tennessee:

[The Education Trust- Tennessee: Tennessee Coalition for Truth in Our Classrooms](#)

- A resource hub for a coalition of students, education advocates and community leaders who believe in promoting the teaching of truthful history in Tennessee schools, and honoring and valuing the diversity of students, staff, and institutions.

Index of Laws, Statutes, and Constitutional Provisions

Department of Education Organization Act (DEOA) – 20 U.S.C. § 3403

Elementary and Secondary Education Act (ESEA), as amended by the Every Student Succeeds Act (ESSA)

20 U.S.C. § 7906a

20 U.S.C. § 7907

20 U.S.C. § 6303

20 U.S.C. § 6613

20 U.S.C. § 7118

Equal Protection Clause of the Fourteenth Amendment


Free Speech Clause of the First Amendment

Supremacy Clause (Article VI, Clause 2 of the U.S. Constitution)

Title VI of the Civil Rights Act of 1964

Index of Landmark Cases

<i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001).	<i>Bethel School District v. Fraser</i> , 478 U.S. 675 (1986).
<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954).	<i>Guiles ex rel. Guiles v. Marineau</i> , 461 F.3d 320 (2d Cir. 2006).
<i>Hazelwood School District v. Kuhlmeier</i> , 484 U.S. 260 (1988).	<i>Island Trees Union Free School District v. Pico</i> , 457 U.S. 853 (1982).
<i>Keyes v. School District No. 1, Denver, Colorado</i> , 413 U.S. 189 (1973).	<i>Lau v. Nichols</i> , 414 U.S. 563 (1974).
<i>Mahanoy Area School District v. B. L. by & through Levy</i> , 594 U.S. 180 (2021).	<i>Miller v. California</i> , 413 U.S. 15 (1973).
<i>Parents Involved in Community Schools v. Seattle School District No. 1</i> , 551 U.S. 701 (2007).	<i>Plyler v. Doe</i> , 457 U.S. 202 (1982).
<i>San Antonio Independent School District v. Rodriguez</i> , 411 U.S. 1 (1973).	<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard College</i> , 600 U.S. 181 (2023).
<i>Tenn. Educ. Ass’n v. Reynolds</i> , No. 3:23-cv-00751, 2024 WL 1942430 (M.D. Tenn. May 2, 2024).	<i>Thomas v. Sch. Bd. St. Martin Par.</i> , 544 F. Supp. 3d 651, 722 (W.D. La. 2021), aff’d in part, rev’d in part and remanded sub nom. Borel on behalf of AL v. Sch. Bd. Saint Martin Par., 44 F.4th 307 (5th Cir. 2022).
<i>Tinker v. Des Moines Independent Community School District</i> , 393 U.S. 503 (1969).	



Alyssa Wilson is an Equal Justice Works Legal Fellow with a focus on education at the National Center for Youth Law. Alyssa's fellowship project is built around challenging classroom censorship policies by equipping students and community advocates with tools and trainings to advocate for equitable education.

Beyond the info

A critical element of the guide is its many actionable steps and advocacy tips that complement the legal information. These tips — such as outlining specific ways to use policies like Title VI or the Equal Protection Clause, or several key court cases, in advocacy efforts — offer practical ways to incorporate legal doctrine in day-to-day advocacy.

Whether you're a student, parent, educator, or advocate, this guide and its recommendations will help you to better understand existing rights, as well as offer tangible steps to protect those rights, when necessary. No one should miss out on the education they deserve.



Need Help?

If you or your students are experiencing discrimination, censorship, or other civil rights violations in school, reach out to the Education Team at the National Center for Youth Law for guidance (edteam@youthlaw.org) on potential legal or advocacy strategies or to connect you with other resources.

Legal Disclaimer

This document does not constitute legal advice, and you should not rely on it as legal advice. If you need legal assistance, speak with a lawyer or contact a civil rights organization for support with your specific situation.