

OPINION

DEI policies in schools remain legally sound

The Supreme Court hasn't — and probably won't — ban DEI in public schools.

By **Michael A. Rebell** Updated April 18, 2025, 3:00 a.m.



Students get onto buses at the end of their first day of class on Aug. 9, 2018, in Paducah, Ky. ELLEN PRESS

Just For You

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The Trump administration is threatening state leaders, demanding that they comply with his request to abandon policies of diversity, equity, and inclusion in public schools on the false premise that Supreme Court decisions or civil rights laws require them to do so. This is bullying accompanied by misinformation.

The Department of Education recently [sent letters to state education agencies](#) requiring them, on threat of losing their federal education aid, to certify compliance with what it claims are the anti-DEI requirements of the Supreme Court's ruling in the Harvard admissions case and of Title VI of the federal Civil Rights Act. However, nothing in the Harvard decision speaks to the DEI policies that many states and school districts have implemented, and Title VI doesn't ban these practices.

The Education Department claims the Supreme Court has held that promoting diversity is not a "compelling interest" that justifies state or school district actions. This is not true. In [Students for Fair Admissions v. Harvard](#), the Supreme Court determined that the use of race to promote diversity in higher education admissions is unconstitutional because it lacks meaningful standards and discriminates against individuals who might have been admitted to the university but for these policies. But the court did not extend this doctrine to situations beyond college admissions, and it certainly did not rule that attempts by public schools to promote diversity, equity, and inclusion are unconstitutional.

On the contrary, the current state of the law regarding racial balance and diversity in K-12 education is that policies to promote diversity in school populations are a ["compelling state interest"](#) that justifies proactive governmental policies. That is what a 5-4 majority of justices held in the 2007 case of Parents Involved v. Seattle School District. Justice Anthony Kennedy, who cast the deciding vote in that case, explained:

“This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children.... [A] district may consider it a compelling interest to achieve a diverse student population. Race may be one component of that diversity, but other demographic factors, plus special talents and needs, should also be considered.”

It is possible the current more conservative Supreme Court majority may choose to overrule the Parents Involved precedent — but thus far the court has not done so. The Education Department has no basis for threatening to cut billions of dollars in federal aid based on its prediction of what the Supreme Court *may* do in the future.

It also is far from clear that the current majority that outlawed affirmative action in higher education admissions would, in fact, extend that ruling to ban efforts to diversify student populations or to promote culturally relevant curricula in K-12 schools. Chief Justice John Roberts, who was not part of the majority that held that racial balance was a compelling state interest in the Parents Involved case, [voted against the racial integration plans](#) at issue in that case. “In the present cases,” he wrote, “race is not considered part of a broader effort to achieve ‘exposure to widely diverse people, cultures, ideas and viewpoints,’ ” implying an understanding of the importance of diversity in education.

Civic education also requires students to learn how to engage in respectful discussions — even on controversial issues — with individuals holding different opinions. Current Education Department pronouncements that limit reference to certain controversial issues in the classroom are having a chilling effect on teachers’ ability to promote and conduct such discussions. Justice Neil Gorsuch might well disagree with this stance. In his book that took as its title Ben Franklin’s famous phrase “A Republic, If You Can Keep It,” he spoke of the need for people “to talk to each other respectfully; debate and compromise; and strive to live together tolerantly.”

It is, therefore, far from clear that the court would rule against the need for diversity, equity, and inclusion in education, if that issue were to come before it in a future case. The Trump administration has no business threatening to penalize states for violating nonexistent constitutional requirements.

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