



UNITED STATES DEPARTMENT OF EDUCATION
Office of Postsecondary Education

U.S. Secretary of Education Linda McMahon Statement on the Office of Legal Counsel’s Opinion on the Constitutionality of Race-Based Higher Education Grant Programs

U.S. Secretary of Education Linda McMahon today released a statement regarding the Department of Justice’s Office of Legal Counsel’s (OLC) Opinion on the Constitutionality of racial quotas and preferences in the Department of Education’s Minority Serving Institution Programs:

“I agree with the Office of Legal Counsel opinion, which confirms that using race quotas and preferences to determine eligibility for federal education funding programs is unconstitutional. We cannot, and must not, attach race-based conditions when allocating taxpayer funding. This is another concrete step from the Trump Administration to put a stop to DEI in government and ensure taxpayer dollars support programs that advance merit and fairness in all aspects of Americans lives. The Department of Education looks forward to working with Congress to reform these programs.”

Background

In July 2025, the U.S. Solicitor General determined that Hispanic-Serving Institutions (HSI) programs “violate the equal-protection component of the Fifth Amendment’s Due Process Clause,” and that the Department of Justice would not defend them in litigation brought against the Department by Students for Fair Admissions and the State of Tennessee. The Department of Education asked OLC to assess whether higher education programs that determine institutional eligibility for benefits based on race are unconstitutional in light of the Supreme Court’s decision in *Students for Fair Admissions v. Harvard*.

On September 10, 2025, the Department announced that it would reprogram discretionary appropriations from MSI programs to other programs that do not present constitutional concerns. The Department did disburse approximately \$132 million in mandatory funding that could not be reprogrammed. As the Department winds down these unconstitutional programs, it does not intend to claw back from grantees previously obligated funds from prior fiscal years.

OLC issued its opinion on December 2, 2025. The opinion analyzed the constitutionality of the Department’s MSI programs and advised whether or not the unconstitutional provisions were severable from the broader authorizing statutes. The Department is currently evaluating the full impact of the OLC opinion on affected programs. The agency will provide more information at a later date.

The affected programs include:

- Developing Hispanic Serving Institutions
- Promoting Postbaccalaureate Opportunities for Hispanic Americans
- Hispanic Serving Institutions—Science, Technology, Engineering, or Mathematics and Articulation Programs
- Native American Serving Non-Tribal Institutions
- Asian American and Native American Pacific Islander Serving Institutions
- Minority Science and Engineering Improvement Program
- Predominantly Black Institutions formula grants
- Predominantly Black Institutions competitive grants
- The Ronald E. McNair Postbaccalaureate Achievement Program
- Student Support Services
- Alaskan Native and Native Hawaiian Serving Institutions
- Native Hawaiian Career and Technical Education Program