

ALERTS

U.S. Department of Education Opens Inquiry Into Harvard's Legacy Admissions Policy

August 8, 2023

Following the Supreme Court's recent ruling in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, the Chicago Project, the African Community Economic Development of New England and the Greater Boston Latino Network ("Complainants") filed a complaint with the U.S. Department of Education ("DOE") against Harvard College ("Harvard") ("Complaint"). The Complaint alleges that Harvard's policy of giving preference to the relatives of alumni and donors in its admissions process violates Title VI of the Civil Rights Act of 1964 ("Title VI") because the policy disproportionately advantages white applicants and systematically disadvantages students of color without any justified educational necessity. According to the Complaint, nearly 70 percent of donor-related and legacy applicants are white. The Complaint also alleges that between 2014 and 2019, the acceptance rate for relatives of donors was about seven times higher than the acceptance rate for applicants with no relation to a donor, and the acceptance rate for legacy applicants was almost six times higher than the acceptance rate for non-legacy applicants. The Complainant's requested relief includes (1) the opening of an investigation into Harvard's legacy admissions policy; (2) a declaration that the policy is discriminatory and violates Title VI; (3) a declaration that if Harvard wishes to continue to receive federal funds, it must cease considering an applicant's relationship to Harvard alumni and/or donors as part of the admissions process; (4) ensuring that applicants have no way to identify a familial relationship in the admissions process, including in the application, essays and interviews; and (5) the

granting of any other relief deemed appropriate by the DOE. On July 25, 2023, the DOE launched a civil rights investigation into Harvard's legacy admissions policy.

In *Students for Fair Admissions, Inc.*, the Plaintiff submitted a statistical analysis to the Court which found that Harvard could come close to reaching its goal of racial diversity if it eliminated its policies giving preference to relatives of alumni, donors and faculty. In his concurring opinion, Justice Gorsuch commented on Harvard's legacy admissions policy, stating, "[i]ts preferences for the children of donors, alumni, and faculty are no help to applicants who cannot boast of their parents' good fortune or trips to the alumni tent all their lives . . . While race-neutral on their face, too, these preferences undoubtedly benefit white and wealthy applicants the most."

DOE officials declined to comment on potential outcomes of its inquiry. If the investigation by the DOE concludes that Harvard's legacy admissions policy violates Title VI, the inquiry could be referred to the Justice Department and a lawsuit could follow. The outcome of the DOE investigation, and any subsequent litigation, is likely to have widespread impact on the issue of legacy admissions in schools for years to come. A number of universities and colleges have already eliminated their policies that give preference to relatives of donors and alumni.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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