

 1023 15th St NW., Suite 500

 Washington, D.C. 20005

 phone: 202.965.3652

 fax: 202.965.8913

 bruman@bruman.com

 [www.bruman.com](http://www.bruman.com)

**The Federal Update for August 4, 2023**

From: Michael Brustein, Julia Martin, Steven Spillan, Kelly Christiansen

Re: Federal Update

Date: August 4, 2023

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## News

### Scott Asks ED to Investigate Racial Discrimination

Ranking Member of the House Committee on Education and the Workforce, Bobby Scott (D-VA), sent a letter this week encouraging the U.S. Department of Education (ED) to put out comprehensive guidance on and investigate racial discrimination in education, particularly in college admissions. Scott urges ED to clarify responsibilities of schools and colleges under Title VI of the Civil Rights Act of 1964 (Title VI).

The letter, which is addressed to Catherine Lhamon, ED’s Assistant Secretary for Civil Rights, is a response to the Supreme Court’s decision in *Students for Fair Admissions v. President & Fellows of Harvard College* and *Students for Fair Admissions v. University of North Carolina*. The Court’s decision limited the ways that race could be used in the college admissions process. However, Scott says that conservative policymakers are attempting to broaden the scope of the Court’s holding in these cases. He references a recent warning issued by the Attorney General for the State of Missouri to colleges and universities, which said that decisions for scholarships or programs that are facially race-neutral, but result in racial diversity, also violate Title VI.

While Lhamon has stated that ED will issue guidance on college admissions policies, Scott wrote that guidance is not enough and asked ED to go even further to investigate “how race unjustly permeates many other policies and practices in our educational system.” Scott suggests that the Office for Civil Rights has the authority to conduct these investigations without being prompted an initial complaint.

In the letter, Scott highlights five different practices that he says impact the admissions process at colleges and universities, have race-based discriminatory effects, and/or violate Title VI. They are (1) “Exclusionary discipline,” (2) “De facto segregation in substandard schools,” (3) “Undereducation of Black and Brown students,” (4) “The use of standardized testing,” and (5) “The use of athletic, legacy, developmental, and children of faculty and staff categories.”

While Scott suggests that it may be difficult to prove discriminatory intent in prosecuting these violations of Title VI, he argues that ED can enforce Title VI through investigations and compliance reviews under a disparate impact theory. The disparate impact theory means that the practices have discriminatory effects, even though they may not be facially discriminatory.

Scott asks Lhamon to provide ED’s plan to issue guidance on ending the discriminatory practices that he highlighted and ED’s plan to work with other agencies to investigate discriminatory practices and enforce Title VI. Scott requested a response from Lhamon by August 15th.

[Scott’s letter can be found here.](https://democrats-edworkforce.house.gov/imo/media/doc/ranking_member_scott_letter_to_ed_ocr_on_race_in_admissions.pdf?source=email)

Resources:

Bianca Quilantan ,“Scott urges Lhamon to investigate racial discrimination in college admissions and school policies,” *Politico,* August 1, 2023.

Author: BNT

### White House Announces Cyber Workforce, Education Initiative

The White House announced a new initiative this week, the National Cyber Workforce and Education Strategy, which is aimed at expanding the nation’s cyber workforce, including through better cyber education opportunities. The administration is pushing to “transform” cyber education in order to meet current workforce demands in that sector.

The four main components of the strategy as outlined in the press release include: equipping every American with foundational cyber skills, transforming cyber education, expanding and enhancing the National Cyber Workforce, and strengthening the federal cyber workforce. Specifically, the administration is seeking to expand competency-based cyber education; create more cyber education opportunities generally from the K-12 level through higher education, including at technical schools and community colleges; make cyber education opportunities more affordable and accessible; and work to improve cyber education systems. The administration also hopes to expand the cyber workforce by promoting skills-based hiring and expanding diversity in the sector.

A number of organizations, including federal agencies, corporations, and others have committed to providing funding to further the strategy announced this week. For example, the U.S. Department of Labor will provide $65 million in formula and competitive grants to develop and expand registered apprenticeships in cybersecurity.

[The full strategy on cyber workforce and education is available here](https://www.whitehouse.gov/wp-content/uploads/2023/07/NCWES-2023.07.31.pdf).

Author: KSC

### Lawmakers Question ED Guidance on BSCA

In a letter to Secretary of Education Miguel Cardona, Senators John Cornyn (R-TX) and Thom Tillis (R-NC) say that the U.S. Department of Education (ED) has “misinterpreted” a change in the law that ED says prohibits the use of certain federal funds for archery and hunter safety classes.

The Bipartisan Safer Communities Act (BSCA), passed in June of 2022, prohibited the use of funds under the Elementary and Secondary Education Act (ESEA) for weapons purchases and training, effective immediately. Tillis and Cornyn say schools have complained to them that ED is withholding ESEA funding that would otherwise go to programs like hunter safety courses and archery programs.

The [two lawmakers say](https://ukk058.a2cdn1.secureserver.net/wp-content/uploads/2023/07/Sen.-Cornyn-Tillis-letter-to-Dept.-of-Education-regarding-BSCA-Implementation-1.pdf) this is contrary to the intent of the provision, which they say was only intended to “withhold funding from training School Resource Officers (SROs) with ‘dangerous weapons,’ not enrichment programs for students.” They also say this interpretation creates a contradiction within the law where it allows the use of funding for activities that “support safe and healthy students,” which they say is the goal of archery and hunter safety classes. In the letter, the Senators praise archery programs as critical for mental health and classroom engagement and say that hunter safety programs play an “important role” in teaching wildlife management and personal responsibility.

The letter closes by asking ED to reconsider its guidance on this provision. ED has not yet released formal guidance on how the term “dangerous weapon” is interpreted but has indicated in correspondence with individual States that firearms training – even when safety related – and archery programs would fall within that prohibition, since it instructs students on the use of potentially dangerous items.

Author: JCM

*To stay up-to-date on new regulations and guidance from the U.S. Department of Education, register for one of The Bruman Group, PLLC’s virtual trainings. Topics cover a range of issues, grants management, COVID-19 relief programs, the Elementary and Secondary Education Act, and more. To view all upcoming virtual training topics and to register, visit* [*www.bruman.com/training-and-recordings/*](http://www.bruman.com/training-and-recordings/)*.*

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Contributors: Julia Martin, Kelly Christiansen, Brandi Tennant

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