



**MOUNTAIN STATES LEGAL
FOUNDATION**
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**MEMORANDUM
REGARDING DURANGO'S
"EQUITY" COMMITTEE AND HIRING EFFORTS**

To: Craig Trainor, Acting Assistant Secretary for Civil Rights in the U.S. Department of Education

CC: Denver Regional Office, U.S. Department of Education Office for Civil Rights

From: William Trachman, General Counsel, Mountain States Legal Foundation
Abbey Obourn, Fellow, Mountain States Legal Foundation

Date: July 9, 2025

RE: Durango School District 9-R's Discriminatory Committee and Equity Hiring Efforts

Background Facts

Shortly after President Biden took office in 2021, Durango School District 9-R in Colorado (Durango School District) embarked on several new aggressive policies related to "Diversity, Equity, and Inclusion."

First, the School District Created a Racial Equity Committee. That committee was specifically designed to have a "Majority and leadership by people of color." See Exhibit 1.¹

¹ This document was provided by a local citizen who presumably filed an Open Records Request pursuant to Colo. Rev. Stats. § 24-72-203.

Second, the District embarked on a campaign to engage in race-based hiring, through its “Operational Expectations Policy—4.” (OE 4). That policy, which is directed at the Superintendent of the School District, originally stated that the District’s hiring needed to reflect the diversity of the student population. But after advice from their legal counsel that has since leaked, it is clear that the policy’s language was watered down in order to avoid a direct legal challenge under Title VII. Exhibit 2 (e-mail containing counsel of Darryl Farrington regarding potential legal exposure). But the message to the Superintendent was clear—hire more non-Whites. And that message was so clear that it subsequently became the basis for the Superintendent’s performance review. Exhibit 3 (Superintendent review).

After one of the Superintendent’s recent annual performance reviews became public, local advocates in Durango took notice. *See Howell, Racial hiring at Durango School District 9R appears discriminatory*, Press for Transparency (Feb. 8, 2025) (“A racial hiring policy at Durango School District 9R is being cloaked as diversity, and it appears to be a potential target of an Executive Order from President Donald Trump.”) (Exhibit 4).² And just months after President Trump took office, OE—4 was apparently amended in April 2025, in what appears to be an obvious effort to avoid this Administration’s Executive Orders and the Department of Education’s policy guidance regarding unlawful DEI measures. *See, e.g.*, Ending Radical and Wasteful

² <https://pressfortransparency.com/2025/02/racial-hiring-policy-at-durango-school-district-9r-appears-discriminatory/>

Government DEI Programs and Preferencing, Exec. Order No. 14151, (Jan. 20, 2025).³

But there is no doubt about it: Durango School District’s Racial Equity Committee and its hiring efforts violate Title VI of the 1964 Civil Rights Act, and must be amended or ended in order for the District to receive federal funds.

Short Analysis

Both the racial quotas involved in the Racial Equity Committee, and the School District’s hiring efforts violate Title VI.

First, Exhibit 1 describes various aspects of Durango School’s District’s Racial Equity Committee. They include:

- That the committee would be made up of “[a] Majority and leadership by people of color.”
- That one goal of the District ought to relate to the Human Resources Division of the School District: “Equity in hiring practices, employee diversity.”
- That another goal of the committee would to become a permanent board committee—presumably with School District Board of Education members sitting on the committee: “Form a permanent Board

³ <https://www.whitehouse.gov/presidential-actions/2025/01/ending-radical-and-wasteful-government-dei-programs-and-preferencing/> (putting under the microscope various “Federal grantees who received Federal funding to provide or advance DEI, DEIA, or ‘environmental justice’ programs, services, or activities since January 20, 2021.”).

committee, the leadership and majority of which will be people of color, charged with making recommendations to the board for systemic, meaningful, and long-lasting changes to ensure we create equitable, inclusive, safe, and high-performing learning and working environments for all our students, staff, and families.”

(emphasis added).

Second, the School Board then took action to incorporate the use of race in its hiring policies. Originally, the Board proposed OE-4 to state as follows: “The Superintendent will ... [a]ctively recruit employees who reflect the diversity of the student population.” The District’s Legal Counsel got involved, acknowledging that the effort was designed to “engag[e] in recruitment practices aimed at creating a workforce that better ‘reflects’ the racial or ethnic diversity of the student population.” *See* Exhibit 2. And it justified concluding that the program was legal, where “as is the case here, the reason for the policy is to address a historic lack of diversity.” *Id.*

None of this was correct. Employers may not engage in race discrimination, even in the context of a “historic lack of diversity.” And doing something unlawful through the use of proxies—like trying to recruit based on race—is never permissible under Title VI. *See SFFA v. Harvard*, 600 U.S. 181, 230 (2023) (“What cannot be done directly cannot be done indirectly.”).

In any event, the District’s legal counsel advised the School Board that it could reduce its exposure to a lawsuit if it added the words “more closely” to the proposed

change to OE—4, to state that the Superintendent had the duty to... [a]ctively recruit employees who more closely reflect the diversity of the student population.” See Exhibit 5 (emphasis in original). The language was then enacted by the School Board.

What followed was unsurprising—the Durango Superintendent paid close attention to a direct instruction from the School Board. In one of his performance reviews, which has been made public, he noted explicitly:

We also continue to recruit and attract an increasingly diverse candidate pool resulting in a more ethnically and racially diverse workforce. When we look at staff newly hired in the 2023-2024 school year as compared to the new hire staff data from the 2022 EEOC reporting cycle we show the following increases:

- Hispanic or Latino new hires increased 243%
- American Indian or Alaska Native new hires increased 50%
- Two or More Races increased from 0 new hires in 2002 to 6 new hires in 2023-2024.
- Black or African American increased from 0 new hires in 2002 to 4 new hires in 2023-2024

Exhibit 3, at 4; *accord* Howell, Racial Hiring at Durango School District (“While attorney Darryl Farrington said that his advice to the District would help blunt any assertion that the board is trying to establish a racially proportionate workforce, the District itself boasts of its success at hiring a more racially diverse workforce.”) (Exhibit 4).

The natural inference is that the Superintendent was bragging to his Supervisors to demonstrate that he has followed their implicit demand for racial preferences in hiring.

Note that in April 2025, in apparent reaction to President Trump’s Executive Orders and the Department of Education’s policy guidance on DEI, OE—4 has been amended again, to absurdly state parsimoniously that the Superintendent shall “[a]ctively recruit employees.” See Exhibit 6. It now contains no reference to diversity at all.

But this is likely a mere smokescreen for the truth: that racial preferences continue to be part of the hiring process within the Durango School District.

Relevant Law and Guidance

As you know, Title VI of the Civil Rights Act of 1964 was enacted to prohibit race, color, and national-origin discrimination in programs or activities that receive federal financial assistance. OCR, *Questions and Answers for K-12 Public Schools In the Current COVID-19 Environment* (Sept. 28, 2020), at 1 (“[A]ny school policy ... that prioritizes, otherwise gives preference to, or limits programs, supports or services to students based on their race, color, or national origin— regardless of how that plan is formulated—would likely violate Title VI of the Civil Rights of 1964.”); *id.* (“[A]ny classification based on race is presumptively invalid ...”).⁴ Employment policies are included in a school’s programs and activities. See 35 C.F.R. § 100.13(g)(2)(ii) (“The term *program or activity* and the term *program* mean all of the operations of ... [a] local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system.”); U.S. Dep’t of Educ., Off. for Civ. Rts., ANNUAL REPORT TO THE SECRETARY, PRESIDENT, AND THE CONGRESS,

⁴ <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/qa-covid-20200928.pdf>

at 8 (2021) (“In certain situations, the laws also protect persons who are employed or seeking employment at educational institutions from unlawful discrimination.”); *id.* at 46 (referring to a “teacher in a Chicago-area school district [who] filed a complaint with OCR alleging that the district implemented a series of racial ‘equity’ policies and programs that discriminated against staff, students, and job applicants.”)⁵

Durango School District is a recipient of federal funds.

In violation of Title VI, Durango School District hosts a committee—the Racial Equity Committee—that either already does, or at least aspires to, maintain a racial quota on membership and leadership roles. That committee also offers advice to the school board on how to engage in discrimination involving School District staff.

Similarly, the logical inference from the documents mentioned above is that Durango School District also uses race as a factor in hiring, offering preferences to non-White teachers and other potential employees. This, too, violates Title VI.

Conclusion

OCR should open an investigation and swiftly reach resolution with the School District to end its discriminatory misconduct. We are open to early resolution of this matter if Durango School District is willing to come into compliance with Title VI.

Also, please note that we object to referring any portion of this OCR Complaint to the EEOC. First, this complaint is not lodged under Title VII, but solely Title VI. Second, the allegations related to Racial Equity Committee fall outside of the EEOC’s

⁵ <https://www.ed.gov/sites/ed/files/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2020.pdf> (2021 Annual Report).

jurisdiction. And undersigned counsel (Mr. Trachman) has previously represented clients that were subject to OCR complaints based on employment issues under Section 504 of the Rehabilitation Act, even when the EEOC might have had concurrent jurisdiction over such claims under federal civil rights statutes. In short, this is an OCR complaint—not a request for the EEOC to initiate a Commissioner’s charge.⁶

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⁶ The 2021 OCR Annual Report indicates that for FY 2020, OCR received 109 employment-related cases, and resolved 103 employment related cases. *See Annual Report*, at 36.