



## Filed Electronically

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United States Commission on Civil Rights  
1331 Pennsylvania Ave. NW, Suite 1150  
Washington, DC 20425  
Via Email: [antiasianhatecrimes@usccr.gov](mailto:antiasianhatecrimes@usccr.gov)

## Re: Federal Response to Anti-Asian Racism in the United States

To Whom It May Concern:

Parents Defending Education (“PDE”) is a national, nonpartisan, grassroots organization, whose members are parents of school children. PDE’s mission is to prevent—through advocacy, legislation, and, if necessary, litigation—the politicization of K-12 education. PDE submits these comments to raise concerns regarding discrimination in education specifically affecting Asian-American students.

Asian Americans have been the victims of horrific racial discrimination in this country. *E.g.*, *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Korematsu v. United States*, 323 U.S. 214 (1944). Unfortunately today Asian Americans continue to be discriminated against based on race and even singled out compared to other minority groups. The Department should take all allegations of discrimination seriously, including discrimination against Asian Americans in education and employment opportunities.

Here are three recent examples of discrimination against Asian Americans in education and employment opportunities.

**First, Harvard.** This term the Supreme Court granted certiorari in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 142 S. Ct. 895 (2022), to address two issues: “(1) Whether the Supreme Court should overrule *Grutter v. Bollinger* and hold that institutions of higher education cannot use race as a factor in admissions; and (2) whether Harvard College is violating Title VI of the Civil Rights Act by penalizing Asian American applicants, engaging in racial balancing, overemphasizing race and rejecting workable race-neutral alternatives.” As SFFA explains, Harvard’s “admissions process penalizes [Asian Americans] for supposedly lacking as much leadership, confidence, likability, or kindness as white applicants.” Br. of Pet’r in *SFFA v. Harvard*, 2022 WL 2918946, \*2 (U.S. May 22, 2022); *see also id.* at \*72-75 (discussing how at length). “That Harvard engages in admitted racial balancing and ignores race-neutral alternatives further proves that Harvard does not use race as a last resort.” *Id.* at \*2. Harvard’s admissions process violates the law. Yet Harvard is “supposed to be the model for how to use race,” *id.* at \*48, so one wonders how endemic discrimination is in school admissions.

**Second, Thomas Jefferson High School for Science & Technology.** To attend this high school, a student has to apply for admission. *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 2022 WL 579809, at \*1 (E.D. Va. Feb. 25, 2022). In 2020, the relevant school officials changed the applicant and mission policy; they eliminated the academic testing prerequisites, guaranteed proportional seats for students at each public middle school, and focused admissions on “certain ‘Experience



Factors,” including “attendance at a middle school deemed historically underrepresented at TJ.” *Id.* at \*2. Under this new system, there were curiously dramatic decrease in the percentage of Asians admitted (about 20 percent). As the district court found, the “overhaul of [Thomas Jefferson] admissions has had, and will have, a substantial disparate impact on Asian-American applicants to [Thomas Jefferson],” was “motivated by a racial purpose,” and “was infected with talk of racial balancing.” *Id.* at \*5, \*9-11. The district court thus concluded that the admissions policy was unlawful. *Id.* at \*9-11. *See also, e.g.,* Br. of Amicus Curiae Parents Defending Education in *SFFA v. Harvard*, 2022 WL 2919718, \*12-14 (U.S. May 9, 2022) (discussing TJ and the new admissions process); *BREAKING. TJ Papers of School Board Emails and Texts: TJHSST Admissions Changes Had “An Anti Asian Feel Underlying Some of This, Hate to Say It lol,”* Parents Defending Education (Jan. 10, 2022), [perma.cc/2FLM-QNW5](https://perma.cc/2FLM-QNW5); A. Nomani, *The Purge of Asian American Students at Thomas Jefferson High School Has Begun*, Parents Defending Education (July 2, 2021), [perma.cc/Y7NX-3A4K](https://perma.cc/Y7NX-3A4K). In short, K-12 schools are now appearing to follow Harvard’s anti-Asian admissions practices.

**Third, Pfizer’s Breakthrough Fellowship Program.** *See, e.g., Pfizer Sued for Excluding White, Asian Candidates from Fellowship*, Wash. Times (Sept. 19, 2022), [perma.cc/5AD5-2PJM](https://perma.cc/5AD5-2PJM). That Fellowship offers numerous benefits, but the Fellowship requirements appear to exclude White and Asian Americans from receiving those benefits. Thus, there seems to be a risk of discrimination against Asian Americans in employment opportunities in addition to education.

As the above three examples shows, discrimination against Asian Americans has persisted in several important aspects of society, and the Department should not hesitate to investigate and extinguish instances of race discrimination. There are, however, two other areas in the school context that the federal government should also have under a microscope.

**First, student groups and opportunities.** K-12 schools are often creating race-based affinity groups and academic programs that are open to some students who identify as “BIPOC” or “students of color,” but are not open to all students, as admission into affinity groups and accelerated academic programs is solely based on race. These policies and practices are unlawful. *See, e.g.,* U.S. Const. amend. XIV; *Brown v. Board of Educ. of Topeka*, 347 U.S. 483 (1954); 42 U.S.C. §2000d *et seq.*

When evidence indicates that discrimination based on race is present in a school district, PDE has filed Office of Civil Rights (“OCR”) complaints with the Department of Education on behalf of our members who are parents of school children across the country. Most recently, PDE has filed complaints against Newton North High School,<sup>1</sup> Newton Public Schools,<sup>2</sup> Ithaca City

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<sup>1</sup> OCR Complaint: Newton North High School,” Parents Defending Education, Oct. 4, 2021, <https://defendinged.org/complaints/ocr-complaint-newton-north-high-school/> (Accessed April 18, 2023).

<sup>2</sup> OCR Complaint: Newton Public Schools,” Parents Defending Education, March 14, 2023, <https://defendinged.org/complaints/ocr-complaint-newton-public-schools/> (Accessed April 17, 2023).



School District,<sup>3</sup> Olympia Public Schools,<sup>4</sup> Milton Public Schools,<sup>5</sup> Lower Merion School District,<sup>6</sup> and Shelburne Community School.<sup>7</sup> The Department has moved forward with investigations of Shelburne Community School<sup>8</sup> and Newton North High School<sup>9</sup> to rectify unlawful discriminatory practices and make these academic programs accessible to all students, including Asian Americans.

PDE expects the Department will thoroughly investigate the remaining open OCR Complaints because of their merit, and the Department should continue to take such complaints seriously. Often the schools with race-based groups/opportunities do not carefully define “BIPOC,” “person of color,” or other terms used to set the prerequisites to the opportunity. And although excluding any race violates the law, when a complaint is filed, it not always clear whether Asian-American students are also suffering discrimination. Thus, when investigating a complaint, the Department should scrutinize the terms the schools use.

**Second, teacher opportunities.** K-12 schools are often creating special employment opportunities along with so-called “safe spaces,” training, and affinity groups for teachers who identify as “BIPOC” or “employees of color,” but the schools do not allow all employees to benefit from the opportunities. Excluding employees from employment opportunities based on their race violates the law. *See, e.g.,* 42 U.S.C. §2000e *et seq.*; *Ricci v. DeStefano*, 557 U.S. 557, 580 (2009); *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 773 (2015).

Most recently, PDE has filed complaints with the Department and the U.S. Equal Employment Opportunity Commission (“EEOC”) regarding Jeffco Public Schools<sup>10</sup> and Portland

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<sup>3</sup> “OCR Complaint: Ithaca City School District,” Parents Defending Education, March 14, 2023, <https://defendinged.org/complaints/ocr-complaint-ithaca-city-school-district/> (Accessed April 17, 2023).

<sup>4</sup> “OCR Complaint: Olympia School District,” Parents Defending Education, Feb. 14, 2023, <https://defendinged.org/complaints/ocr-complaint-olympia-school-district/> (Accessed April 17, 2023).

<sup>5</sup> “OCR Complaint: Milton School District,” Parents Defending Education, Feb. 14, 2023, <https://defendinged.org/complaints/ocr-complaint-milton-school-district/> (Accessed April 17, 2023).

<sup>6</sup> “OCR Complaint: Lower Merion School District,” Parents Defending Education, Jan. 31, 2023, <https://defendinged.org/complaints/ocr-complaint-lower-merion-school-district/> (Accessed April 17, 2023).

<sup>7</sup> “OCR Complaint: Shelburne Community School,” Parents Defending Education, Jan. 3, 2023, <https://defendinged.org/complaints/ocr-complaint-shelburne-community-school/> (Accessed April 17, 2023).

<sup>8</sup> Rese, Reagan, “Exclusive: Biden Admin Opens Investigation Into School District That Allegedly Created Race-Based Student Group,” April 10, 2023, <https://dailycaller.com/2023/04/10/biden-admin-investigation-school-race-based-student-groups/> (Accessed April 18, 2023).

<sup>9</sup> Tietz, Kendall, “Massachusetts school under federal investigation after student play auditions to persons of color,” Mar. 3, 2023, <https://www.foxnews.com/media/massachusetts-school-district-under-federal-investigation-student-play-limits-auditions-to-persons-of-color> (Accessed April 18, 2023).

<sup>10</sup> “OCR Complaint: Jeffco Public Schools,” Parents Defending Education, Sept. 16, 2022, <https://defendinged.org/complaints/ocr-complaint-jeffco-public-schools/> (Accessed April 18, 2023).



Public Schools.<sup>11</sup> The EEOC is currently investigating PDE’s complaint against Portland Public Schools, and PDE expects the EEOC will diligently investigate all these claims. Similar to schools’ discrimination against students, schools often do not carefully define “BIPOC,” “employee of color,” or other terms used to set the prerequisites to employment opportunities. And although excluding any race violates the law, when a complaint is filed, it not always clear whether Asian-American teachers are also suffering discrimination. Thus, when investigating a complaint, the Department should scrutinize the terms the schools use.

In short, PDE and its members oppose political indoctrination and discrimination in any form. PDE supports the Department in its effort to investigate, expose, and rectify unlawful and unconstitutional practices and policies that affect our members and their children—and urges the Department to continue to vigorously investigate and rectify unlawful discrimination.

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Please contact me if the Commission would like additional information pertaining to the subject matter discussed in this comment.

Sincerely,

Caroline Moore  
Vice President  
Parents Defending Education

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<sup>11</sup> “OCR Complaint: Portland Public Schools,” Parents Defending Education, Jan. 3, 2023, <https://defendinged.org/complaints/ocr-complaint-jeffco-public-schools/> (Accessed April 18, 2023).