



October 27, 2025

Speaker Mr. Jon Hansen
South Dakota House of Representatives
Capitol Building
500 E. Capitol Avenue
Pierre, SD 57501

President Pro Tempore Chris Karr
South Dakota Senate
Capitol Building
500 E. Capitol Avenue
Pierre, SD 57501

Re: Auditing of South Dakota Education laws

Dear Speaker Hansen and President Pro Tempore Karr:

We write to you as membership organizations focused on high quality, value-neutral education in America's schools. In conjunction with these aims, we seek to secure equal treatment and opportunity for all Americans under the law. But we are gravely concerned with the current condition of public education — a proposition that falls ultimately to the individual states, their legislators, and leaders like you.

In light of recent education-related events, including most recently the resignation of Des Moines, Iowa Superintendent Ian Roberts after a host of legal and ethical violations,¹ many of our member parents are rightly asking whether their state education provisions ensure public school employees are properly vetted.

For example, in its 2015-2016 Civil Rights Data Collection Report, the U.S. Department of Education catalogued 9,649 incidents of sexual violence in public schools.² And a 2023 report assessing that data set revealed that many school districts are under no obligation

¹ These violations included falsification of his I-9 immigration verification form, falsification of his degree, a previous weapons charge, and failure to appear for his extradition hearing in 2024. See *ICE arrests criminal alien serving as Des Moines Public Schools superintendent; prior weapons charges and in possession of loaded handgun at time of arrest*, U.S. Immigration and Customs Enforcement (Sept. 26, 2025), <https://perma.cc/P2FF-ZF5Y>; see also: Jennifer Mobilia, *Ian Roberts accused of lying about earning doctoral degree*, WJET Eerie (Sept. 30, 2025), <https://perma.cc/W8ME-7AQV>.

² 2015-2016 Civil Rights Data Collection, *School Climate and Safety*, U.S. Department of Education, Office for Civil Rights (April 2018, Revised May 2019), <https://perma.cc/F33C-57ZD>.

to notify parents or note the investigation in the employee’s personnel file.³ A public school employee who sexually abuses children is, on average, passed to three school districts and can abuse up to 73 children before they are fired or face legal consequences.⁴ Collective bargaining agreements negotiated between teacher unions and school districts are a “key contributor to the problem, as they ‘often allow for scrubbing of personnel files,’” so no record of abuse is left once an offender leaves the system.⁵ This widespread lack of transparency in educational employment is staggering and unacceptable.

Our parents are worried, too, about whether their state’s policies violate federal constitutional or statutory law and therefore put their schools at risk of losing the federal funding required to educate children like ours. As parents, we want our legislators to be fully versed in the relevant state and federal legal provisions implicated in school employment and administration decisions. And, as the Constitution’s Supremacy Clause demands,⁶ we want state provisions that violate federal law (and are thereby preempted⁷) to be rescinded.

The key federal antidiscrimination laws relevant to education include:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, or national origin in any program or activity receiving federal financial assistance. This includes most educational institutions, healthcare providers, and state and local government agencies.
- Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on or motivated by, race, color, religion, sex, or national origin, in any terms, conditions, or privileges of employment, including hiring, promotion, demotion, termination, compensation, job transfers, training, or access to employment privileges and benefits.
- Title IX of the Education Amendments of 1972, which prohibits discrimination based on sex in education programs or activities receiving federal financial assistance,

³ Paul Zimmerman, *Catching the Trash Holding Teacher Unions, School Districts, and the U.S. Department of Education Accountable for the Epidemic of Sexual Abuse in Public Schools*, Defense of Freedom Institute, (May 2023), <https://perma.cc/XKS9-J52C>.

⁴ Billie-Jo Grant et al., *Passing the Trash: Absence of State Laws Allows for Continued Sexual Abuse of K–12 Students by School Employees*, 28 J. Child Sexual Abuse, 7 (2018), <http://bit.ly/4nQVUZL> (citing *Selected Cases of Public and Private Schools That Hired or Retained Individuals with Histories of Sexual Misconduct*, U.S. Government Accountability Office (2010), <https://www.gao.gov/assets/gao-11-200.pdf>).

⁵ Zimmerman, *supra*, n. 3.

⁶ U.S. Const. Art. VI, cl. 2.

⁷ The doctrine of conflict preemption ensures that where compliance with both federal and state law is impossible (“impossibility preemption”) or where state law poses an obstacle to federal objectives (“obstacle preemption”), contrary state law must yield to federal law. *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992).

including athletic programs, admissions, and facilities, while also prohibiting sex-based harassment and sexual assault.

- The Equal Protection Clause of the Constitution’s Fourteenth Amendment, which prohibits states from denying any person equal protection of the laws and is relevant in the context of discrimination claims involving state or local government actors like public schools.

By way of example, the Des Moines, Iowa School Board hired Guyanese national Ian Roberts pursuant to Iowa Code §19B.11⁸ and the Iowa Department of Education rules in Administrative Code, 281-Chapter 95.⁹ These state laws direct the Director of the Iowa Department of Education to ensure that school districts and education agencies implement “affirmative action” plans for employees. “Affirmative Action” is defined by the Iowa code as “action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.” These types of plans encourage naked racial quotas and wouldn’t survive constitutional or civil rights scrutiny under Titles VI or VII of the Civil Rights Act of 1964, or the Constitution’s Equal Protection Clause of the 14th Amendment.

Chicago, Illinois Public Schools implemented a “Black Student Success Plan” pursuant to the Chicago Board of Education District Act codified at Illinois Code 105 ILCS §34-18.85. The Act requires schools to develop and implement strategies for Black student achievement and opportunity,¹⁰ but is silent on performance metrics for other races, despite the fact that the literacy rates of Chicago’s Hispanic students are lower than those of Blacks. Directing federal education resources to one race over another violates both federal statutory and constitutional law, including, as with the policies in Iowa, Title VI and the Equal Protection Clause. As a result of a civil rights complaint filed by Defending Education, the U.S. Department of Education’s Office for Civil Rights opened an investigation in February of this year into Chicago Public Schools for possible violations of federal law.¹¹

In Maine, the state Principals’ Association updated its policy on scholastic athletic participation in 2024 after the Maine Human Rights Act Chapter 337, Subchapter 5-B §4602¹² was amended to include gender identity as a protected class. The new policy says that maintaining separate athletic programs based on biological sex—one team for biological boys and one for biological girls—constitutes education discrimination. But these provisions violate Title IX of the Education Amendments of 1972, the Equal

⁸ Iowa Code § 19B.11, <https://perma.cc/G68V-D25R>.

⁹ Iowa Admin. Code §281-95.1(19B), <https://perma.cc/3Y5W-CW9C>.

¹⁰ Chicago Board of Education District Act, Pub. Act 103-0584 (codified at 105 Ill. Compl. Stat. Ann. §34-18.85), perma.cc/86KN-MYL4.

¹¹ The investigation has been assigned case number: 05-25-1399.

¹² ME Rev. Stat. Ann. tit. 5, § 4602, perma.cc/P24C-CNER.

Protection Clause of the Constitution's 14th Amendment, various executive orders, and agency guidance from the United States Departments of Education and Justice.

This is just a sampling of what our organizations have discovered to be widespread state conflicts with prevailing federal law in publicly funded educational programs.¹³ But as the Department of Justice recently clarified: "Entities receiving federal funds, like all other entities subject to federal antidiscrimination laws, must ensure that their programs and activities comply with federal law and do not discriminate on the basis of race, color, national origin, sex, religion, or other protected characteristics-no matter the program's labels, objectives, or intentions."¹⁴

In light of the foregoing, Defending Education and School Boards for Academic Excellence request that you audit (and rescind, if appropriate) laws that run contrary to federal constitutional and statutory law, and likewise examine state policies for vetting and hiring school employees so that dangerous individuals cannot gain access to minor children. Nothing less is required to secure educational excellence in this state, and as the nation's recently released abysmal NAEP scores¹⁵ so starkly indicate: there is not a moment to waste.

We propose the following questions to guide your state's education audit to ensure compliance with federal law and secure the safest possible classrooms for our children:

1. Are public schools permitted or instructed to use race in admissions, programming, scholarships, or benefits under state law? This includes internships, mentorships, graduation services, facilities, clubs, or events separated by race.
2. Are public schools permitted or instructed to engage in preferential hiring or promotion practices based on race, sex, color, national origin, or religion?
3. Do schools prioritize candidates from "underrepresented groups" for hiring or promotion, and bypass qualified candidates who do not belong to those groups?

¹³ As recently as September 16, 2025, the California Legislature passed and enrolled AB 7 to mandate California's public and private universities conduct their admissions programs in such a way as to preference applicants who are descendants of slavery in clear violation of Title VI and the Equal Protection Clause. It has been referred to Governor Gavin Newsom for signature. See Assembly Bill 7, 2025-2026 Reg. Sess. (Cal. 2025). bit.ly/4og5Uvl.

¹⁴ *Memorandum to All Federal Agencies; Guidance for Recipients of Federal Funding Regarding Unlawful Discrimination*, Office of the Att'y Gen. (July 29, 2025), bit.ly/4hdZSt9.

¹⁵ Sequoia Carrillo, *A new Nation's Report Card shows drops in science, math and reading scores*, National Public Radio (Sept. 5, 2025), <https://perma.cc/6KE8-ECJ9>; see also, The Nation's Report Card, *How Did Students Perform In the Nation Compared to 2019?* (Sept. 9, 2025), <https://perma.cc/E39Y-WJ5B>.

4. Are schools permitted or instructed to use potentially unlawful proxies for race, sex, or other protected characteristics in admissions, hiring, or programming? This includes selection based on criteria such as narratives on “overcoming obstacles,” or completing “diversity statements,” ensuring “cultural competence,” or requesting any candidate’s “lived experiences?”
5. May schools engage in geographical or institutional targeting geared toward unlawful preferencing of one individual over another based on protected characteristics?
6. May schools use mandatory minimums for candidate pools to ensure there are a certain number of applicants from particular races among them?
7. May a school condition the award of contracts on the basis of characteristics like sex or race?
8. Must schools conduct DEI training programs for staff? This includes but is not limited to those that through content or implementation exclude or disadvantage individuals based on protected characteristics or create a hostile environment.
9. Are public schools permitted or required to open up all educational facilities, private spaces, housing accommodations, overnight accommodations, sports teams, scholarships, or other offerings to any individual based on gender identity, regardless of that student’s underlying biological sex or the privacy and safety concerns of fellow students?
10. May public schools treat “misgendering” of students or staff as a form of sexual harassment under state anti-discrimination law? Relatedly, may schools demand all attendees use mandatory pronouns and chosen names—even if biologically inaccurate?
11. Are schools required to use e-verify to verify the identity and legal status of those applying for positions in those schools or school districts?
12. Must schools engage in routine review of employees hired prior to implementation of e-verify? Must they engage in any background review of employees after initial vetting during the entirety of that employee’s tenure?
13. How does the school board verify educational credentials on resumes of potential hires or current employees?



14. May schools retain search firms to conduct recruitment, and if so, what are the minimum requirements of those search firms? May parents of children in those schools review staff employment contracts?

15. Are schools required to include information about sexual assault or sexual harassment charges, investigations, or convictions brought against any school employee in that individual's employment file? Are schools required to report charges of sexual assault or sexual harassment to the appropriate criminal and civil authorities (such as the Department of Education's Office for Civil Rights, local police, etc.)?

Parents have myriad concerns in public education, from student privacy to abysmal NAEP scores. But now, they must also worry about the access that un-vetted adult employees may have to their minor children at school, and whether those schools themselves will be divested of federal funding for failure to follow guiding federal law. Our goal is to prevent South Dakota schools from suffering the effects of legislative malfeasance, and to ensure they are the very best in the nation. We know you join us in this aim.

The time for self-examination and legal housekeeping is now.

Sincerely,

Nicole Neily

Defending Education
Nicki Neily, President

School Boards for Academic Excellence
David Hoyt, Executive Director

Cc: Secretary of Education Joseph Graves