



## Trump's not nixing affirmative action

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Affirmative action is back in the news, and despite what some headlines are blaring, it's not going away. At least not anytime soon.

The Trump administration announced last week that it was rescinding Obama-era guidance on racial preferences at public universities. The previous administration had outright requested that schools use race as a factor in admissions.

The Obama administration in this instance — as in many others — used “Dear Colleague” letters to schools and universities to dictate how it wanted public institutions to act. By doing so, it avoided the formal rule-making process, which takes public comment into account.

So it's no surprise that the new administration is changing course. The Education Department has rescinded numerous such Dear Colleague letters, including those regarding the use of bathrooms by transgender students and most notably the Title IX directives related to campus sexual assault.

By rolling back the guidance on affirmative action, Trump officials are signaling they want universities to rely on factors beyond race alone for creating a diverse campus. That includes looking at a prospective student's socioeconomic status.

“What the Trump administration has done is probably the right thing, but that doesn't mean the federal government shouldn't be involved,” says Neal McCluskey, director of the Cato Institute's Center for Educational Freedom. “It should continue to move away from the stance that the first line of accountability is the federal Department of Education or the Department of Justice. It should be the last line of defense.”

In a statement, Education Secretary Betsy DeVos encouraged universities to look to the courts — rather than the White House — in fashioning their admissions framework.

“The Supreme Court has determined what affirmative action policies are constitutional, and the court's written decisions are the best guide for navigating this complex issue,” she said. “Schools should continue to offer equal opportunities for *all* students while abiding by the law.”

Michigan has been at the heart of many affirmative action battles, and it has been illegal here for state universities to consider race in admissions since voters banned such practices in 2006. Jennifer Gratz led the statewide ban here, and she also sued the University of Michigan two decades ago after she was denied acceptance because of the university's point system for race. She won that case at the Supreme Court in 2003, although the High Court the same year upheld using race as a factor in admissions. It issued a similar decision in 2016.

The Supreme Court's role in affirmative action has also been reignited following Justice Anthony Kennedy's retirement. He was often the swing vote on these cases. For instance, he supported the University of Texas' use of race in admissions policies in 2016. Yet he also wrote the majority opinion to uphold Michigan's affirmative action ban in 2014.

With Kennedy gone, and the Trump administration shifting direction, some fear what the future holds for affirmative action.

And several lawsuits, including one brought by Asian-American students against Harvard University, could end up before the Supreme Court. The Justice Department has offered its support to Students for Fair Admissions, which claims Harvard has illegally limited how many Asian students get in.

President Trump is expected to announce his choice for the Supreme Court Monday, so expect to hear a lot more about affirmative action in the coming months.