



WestEd

**Western Educational
Equity Assistance Center**

**Ensuring Equity and Excellence for Educating All Students in the Face of Challenges:
A Conversation with School Leaders and a Legal Expert**

**Proceedings from the Spring 2024 Advisory Council Meeting of the
Western Educational Equity Assistance Center (WEEAC)**

K-12 education leaders are presented with numerous challenges: Limited funding, staff shortages, staffing issues, lack of confidence from the communities they serve, and negative student outcomes. And yet, men and women committed to making a difference in the lives of students, regardless of their race, national origin, gender, or religion, continue to step up to these challenges.

Currently, leaders are also faced with the challenge of ensuring high quality education for students while complying with federal and state laws that may be contradictory or in conflict. Recently, our WEEAC staff received several inquiries from educators across the region seeking clarity on how to meet their obligations in the face of these contradictions.

In response, the WEEAC Spring 2024 Advisory Council meeting focused on how to address this challenge. We invited two of our WEEAC Advisory Council members who have vast experience at the local, state and national levels, Dr. Melissa Sadorf and Dr. Christina Kishimoto, to discuss what education leaders can do. We also invited Attorney Art Coleman, one of the nation's leading legal voices supporting access, diversity and inclusion in education, to present information about current federal and state laws and to clarify leaders' responsibilities. This meeting was the first of several WEEAC activities to commemorate the 70th anniversary of the Brown Decision and the 60th anniversary of the Civil Rights Act.



PRESENTERS



Dr. Christina Kishimoto is a native of the South Bronx in New York City. She is a bold advocate for social justice and a national leader on education policy and equity matters. Prior to founding Voice4Equity, Christina led education systems in Hartford Connecticut, Gilbert Arizona, and most recently as the State Superintendent of Education for the State of Hawaii. She has served on a number of boards including the Council of Chief State School Officers, the Association of Latino Administrators and Superintendents where she served as President, the Nellie Mae Education Foundation, and she is a national Chief for Change. Christina has a daughter who is serving as an officer in the U.S. Air Force, and lives in Vancouver, Washington with her husband.



Dr. Melissa Sadorf is Superintendent of the Stanfield Elementary School District in Arizona. In her rural district, she also serves as the business manager, federal grant programs director, and HR director. Prior to her work with Stanfield, Melissa was a teacher, literacy coach, assistant principal, and principal. Melissa is the executive director of the Arizona affiliate of ASCD and for the Northern Arizona University Rural Schools Resource Center. She facilitates monthly roundtables for rural superintendents, has created a Rural Leaders Network that spans 16 Western states, and produces and hosts a podcast called The Rural Scoop, which highlights best practices in rural school systems. She is also an assistant teaching professor for Northern Arizona University, teaching educational leadership and principal preparation courses. Most recently, she has released a book, *The Resilient Rural Leader: Rising to the Challenges of Rural Education*, in which she makes clear the rewards of serving in a rural school district.



Attorney Art Coleman is a founding partner of EducationCounsel, LLC, where he provides policy, strategic, and legal counseling services to national non-profit organizations, postsecondary institutions, school districts, and state agencies throughout the country. Atty. Coleman previously served as deputy assistant secretary for the U.S. Department of Education's Office for Civil Rights (OCR) where, in the 1990s, he spearheaded the development of the department's Title VI policy on race-conscious financial aid, and OCR's first comprehensive Title IX sexual harassment policy guidance. He was instrumental in the establishment of the College Board's Access and Diversity Collaborative (ADC) in 2004, which he has helped lead since its inception. He has authored amicus briefs in major U.S. Supreme Court cases, and a former litigator, he has testified before the U.S. Senate and the U.S. Commission on Civil Rights. Atty. Coleman is currently an adjunct professor at the University of Southern California's Rossier School of Education, where in 2022, he received the Rossier School's Adjunct Faculty Teaching Award, with the recognition that he is "one of the nation's leading legal voices supporting access, diversity and inclusion."

Ensuring Equity and Excellence for Educating All Students in the Face of Challenges: A Conversation with School Leaders and a Legal Expert

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Welcome from the WEEAC Co-Directors: Dr. Tina Tranzor and Dr. Niki Sandoval

Welcome, welcome. I am Dr. Tina Tranzor, the Co-director of the WEEAC here at West Ed. We are so pleased to see all of you here and thank you for coming. I'd now like to hand it over to my Co-Director Dr. Niki Sandoval, to welcome you.

Dr. Niki Sandoval

Thank you so much Dr. Tranzor, and welcome to all of you. We're so delighted to see you. I invite Dr. Rose Owens-West to get us started.

Dr. Rose Owens-West: Occasion and Presenter Introduction – Dr. Melissa Sadorf

Good afternoon everyone, and thank you. My name is Rose Owens-West and I am the Strategic Advisor for the Equity Assistance Center. Recently, our WEEAC staff have fielded a number of inquiries from educators across the region, seeking clarity on how to educate students while complying with both federal and state laws that may appear to be contradictory. So, our panel today will discuss what leaders can do to address this challenge. We are fortunate to have a member of our council to speak today as she brings the perspectives of the small, rural, and remote districts from the local, regional, and national levels of our education system. She works at all of these levels, and can address this challenge. So, I'd like to begin by introducing Dr. Melissa Sadorf, who is Superintendent of the Stanfield Elementary School District in Arizona.

In her rural district, she also serves as the business manager, federal grants program director, and HR director. Prior to her work with Stanfield, Melissa was a teacher, literacy coach, assistant principal and principal. She is the executive director of the Arizona Affiliate of ASCD and for the Northern Arizona University Rural Schools Resource Center. She facilitates monthly roundtables for rural superintendents and has created a rural leaders network that spans 16 western states. She also produces and hosts a podcast called The Rural Scoop, which highlights best practices in rural school systems.

She's also an assistant teaching professor for Northern Arizona University, teaching educational leadership and principal preparation courses. Most recently, she released a book, *The Resilient Rural Leader: Rising to the Challenges of Rural Education*, in which she makes clear the rewards of serving in a rural district. We are very fortunate to have her join us today.

Dr. Christina Kishimoto also graciously accepted our request to speak today. Our partner, Dr. Melly Wilson, Pacific Resources for Education and Learning, (PREL) will introduce her.

Dr. Melly Wilson: Presenter Introduction – Dr. Christina Kishimoto

Thank you, Rose. Good afternoon everyone. My name is Melly Wilson, and I'm the Director of Research Policy and Government Relations at PREL. I've had the pleasure of working with Dr. Kishimoto when she served as the Hawaii State Superintendent for Education. Welcome. We're very excited to have you with us today. Prior to coming to Hawaii, Christina led education systems in Hartford, Connecticut and Gilbert, Arizona. Currently, she is a clinical professor in the Rossier School of Education at the University of Southern California. She's a bold advocate for social justice and a national leader on education policy and equity matters. She has served on a number of boards including the Council of Chief State School Officers, the Association of Latino Administrators and Superintendents, where she served as president, and the Nellie Mae Education Foundation.

Christina founded *Voice4Equity* in 2021 to foster collaboration that would help make educational policy more equitable and inclusive. Through leadership building policy implementation and community outreach programs, voice for equity works towards making tangible improvements in education reform, both on a national and international scale. I'll now turn over to our panelists and Dr. Sadorf will begin. Thank you everyone.

Dr. Melissa Sadorf

Well, hello everybody. I'm really pleased to be able to join my colleague, Christina, and all of you today to have a conversation around being culturally responsive in terms of our equity work as leaders in our different school communities. Really, we do want this to be a conversation with you, not just to sit and get. So, as things rise to the surface for you, please feel free to raise your hand, put them in the chat. We'll be stopping at certain points during our conversation over the next 50 minutes to see what you're thinking and get your feedback and your ideas around what this work looks like for you, and some ideas that you might have that you can share with the leaders that are here with us in the virtual room. Go ahead and move to the next slide. So, I'm going to kick us off and Christina and I are going to play off of each other, and so Christina, feel free to jump in at any point during my slide here, but cultural responsiveness, I think, is really where we want to ground our conversation.

We asked you to read an article written by Pedro Noguera and Joaquin Noguera that and helps frame our conversation for today, but that lack of clarity that Rose mentioned around equity and what leaders need to be doing and thinking about in terms of leading equity work at their schools and in their districts, and that lack of progress that many are facing is really opening up schools to a very vulnerable situation in terms of criticism and backlash to that. That's definitely something that they addressed in their article and if you haven't yet had a chance to read it, I encourage you to do so. But we're going to go a little bit deeper even than that article did, just to really get into some of the things that are facing our leaders right now, whether they're rural or urban, suburban, doesn't matter.

I think we all are facing some challenges around doing some equity work in our systems. So, that centering of the leader within the context of the people that we lead, that shifting of focus back to our students and to our staff and community that is most affected and impacted by the policies and procedures that we're putting out as a school system, and ensuring that we're understanding those unique backgrounds, their stories, their cultural competencies, their experiences that they're bringing to our school systems is important. I strive to, and encourage my other leaders in my system, to be an empathetic leader so that we're prioritizing those voices that they're bringing to our communities and those experiences that really have a very important place in the work that we do with them in the interactions that we have with them. Every decision that I'm making, and that I'm encouraging those around me to make, is reflective of what they're bringing to the space, as well as responsive to the diverse needs that they have. That requires me to be really reflective personally, and ensure that I know what my biases are, that I'm engaging in that reflection not only of my personal assumptions, but I'm learning about how my cultural experiences intersect with those of the ones that I'm communicating with and leading in my district, as well as serving within my community. It affects my decision making and those interactions and ensuring that I'm being responsive to that.

I also want to make sure that I'm being aligned to the community that I'm serving. So, is what they need, what we're offering? That's a very basic question to ask, but I think it's a grounding question. Are we making sure that we're regularly assessing what those needs are, and that we're providing the services and programs that are required? That really does involve dialogue with our community members and with the people that we're leading within our school systems. One of the things that we've noted here at Stanfield is making sure that our curriculum is inclusive. 20% of my population is coming from a native Indian reservation.

The Tohono O'odham culture is very rich and robust and brings a lot to our school system, and I want to make sure that students in our classrooms have those histories and those perspectives, and the contributions that their culture is able to make to the system overall highlighted and promoted so that they have a sense of belonging that their culture and the values that they bring are respected. So, fostering that equitable environment that they can all learn in.

It also forces a conversation around equitable resource distribution and ensuring that all students have what they need both academically, but then socially, as well, and ensuring that we're building a responsive system when those become barriers that we're putting in place, whether it's policies, practices, the norms that we operate by. If I was a new parent coming into my system, would I feel like I was welcomed? If I'm a new student, would I feel like I was able to navigate that space? Are there any barriers that I might need to think about removing or easing so that was not the case that they were not feeling like they could be included? Staff members, as well, need to feel that same thing. Christina, is there anything that you want to chime in about with this?

Dr. Christina Kishimoto

No, that's fantastic.

Dr. Melissa Sadorf

Okay. The other thing I want to just briefly mention before we move on is the importance of ensuring that my staff has professional development on, not only my expectations for what I would like to see happening with interactions with students as well as each other and then our community members. So, to that end, in my particular situation, we've invited our tribal council elders to come and provide context support, tell their stories so that our staff members are very familiar, not only with some of the different cultural positionality that they have as students in our classrooms, and some of our teachers for that matter, because they're also Tohono O'odham, but also what that does is it opens doors of communication so that my teachers then have someone that is able to provide feedback, or to serve as a conduit to a family conversation, or to connect with the community at large if there's something that potentially we might be able to collaborate on.

Dr. Christina Kishimoto

I'd like to give us a framework for having this deeper conversation about equity and this cultural responsiveness framework. We know the work of public education is the work of equity. You can't separate the two. It is about ensuring the access to excellence for all students, which means that you have to pay attention to whether there's equitable access for all students. We know throughout the history of our nation that we've had different experiences with that, and we have been at this work of equity for as long as our nation has had a public school system. What it looks like today, looks different from what it looks like in the past. We have a different political environment, but we've always had a political environment around public education. We have a much more diverse student body. For the first time over the last 10 years, we have had a majority student of color population in public school seats.

It is at 54% across the nation, students of color in public school seats. So, what that tells us is, as we look at shifting demographics and we look at shifting family constitutions, we have this increasing diversity in our student population that we are accountable for serving. We also know that we have varied history also around poverty and what poverty looks like, and where those concentrations of poverty are. So, all of those matters are relevant to this conversation around how do we create this highly responsive, culturally responsive school system? What I'm providing you here is a lens by which to look at the issue of equity in your school districts or with the school districts you're working with, that allows for a deeper conversation and a much more targeted approach to how we solve some of these really difficult problems that we have to have better solutions for, so that all students

are doing well and all students are ready for their post-high school career path, educational path, their contribution to the economy, their contribution to the civic life of this nation.

So, to do that, we start at the way you really use this is looking at the center. We first look at who has policy knowledge and who has policy voice, who has knowledge about how policy decisions are made. Of course, policy is important because policy is the construct by which all decisions are based. So, we start with policy to look at what are the rules we have set to really support equity of access and when is policy not responsive, whether it's the most obvious historical time period that we can look at, which is whether it's the turn of the century or whether it's the civil rights movement of the 1960s and into the ways in which we went back and forth with equity policies well into the '70s, and then push-backs that we've seen since. So, this give and take constantly of looking at who has the knowledge base, who do we share that knowledge base with?

Who do we bring in, and who gets to have a voice at that table to make decisions about how schools and school districts are designed and how those policies are put together? The other half of that is the way in which as decision makers and as empowered teachers and leaders, we create a network of people we work with to do the important equity policy work. Then, finally, how do we leverage all of those players, those policy wins, those policy losses? How do we manage that entire equity policy ecosystem to be responsive to our community? The six equity areas you see around are the areas of cultural responsiveness that we can use to look at a couple of things, to look at opportunities and how do we lean into those opportunities to look at challenges and areas that are, in this point in time, causing you stress.

Where are those push-backs and how do we leverage the opportunities while recognizing where there are some challenge areas? The reason we use these six areas is to be able to be very intentional around how we design our equity and get ready for that equity conversation within our communities, because every community is in a different place. Some communities, LAUSD in California is pushing hard into and has an equity policy around the experiences very specifically on black students. Other communities would never be able to call out one racial or ethnic or identity group, right? So, depending on where your community is, you leverage these different areas. It's understanding the power structures in place at this point in time, understanding the culture of your community, looking at how justice is defined, or not defined in your community, looking at the various perspectives that drive decision-making, looking at how systems are constructed to either be equitable or to be stubbornly inequitable and really understanding those, and then having a good understanding of the leading stories in our communities.

If you attend any board meeting, you can very quickly learn which stories drive the conversation, and whose stories drive the conversations, and whose stories are not told. So, I led in three very different school districts. I was in Hartford, Connecticut as the superintendent, a high poverty, 97% students of color district in the second most affluent state in the nation, and it was considered a district that was really devastating by the concentration of poverty there. Then I went and I led in Gilbert Public Schools, a middle-class community with some interesting identity features, where there were some prominent identities, but there were lots of other hidden identities in that district. So, how do you lead through that and how do you still have the equity conversation, even though the context is very different?

Then in Hawaii, a very diverse, the most diverse state in the nation with incredible historical significance to this country with different groups trying to work together to have a public school system that provides opportunities for the native Hawaiians and honoring the Ōlelo Hawai'i language while also honoring the large military group of students there, while also being welcoming and supportive of the Micronesian population that has a right on the federal law to all the same benefits as all students, and then to the diversity of every other student that was in that population.

Yet, I will say that having a sound equity policy construct to use across all districts allowed me to think about when I use certain language, and when I say from certain away from certain language, right? There are words that cause people to react, but at the same time, making sure that we still

lean into equity. So, what I'm going to ask you to do right now is to spend a few minutes thinking about the whole political environment under which this lies and the ways in which you can leverage a system that really helps you to think about opportunities and challenges to lean into the equity work in your districts. So, I think we have a couple of districts here, and I'd love for you to see if there's anyone who would like to share quickly ways in which you leveraged a cultural responsive framework like this or might use it in the context of your own political environment. Is there anyone that would like to share? I don't know if we can see hands up.

Audience Member #1:

I think you're absolutely right, that context matters and the history matters, and what leverage that gives you. I'm trying to think of a specific example in response. No examples bring to mind, but absolutely, every place we go into, it's a different state, it's a different history and there's always a power structure, and how quickly you can figure out what it is and who has power and who has leverage and whose voice has been systematically shut out is part of what we do when we're going in and doing our work, as technical assistance providers. So, that's my short reflection.

Dr. Christina Kishimoto (

Thank you. Really appreciate it. Do we have time for a second one or...? Yes. Anyone else? Ron, I see Southern California next to your name, so I can't help but call you out because California has a very different context for this work than when I go into Tennessee, or...

Dr. Christina Kishimoto

Then when I go into Tennessee or Texas right now, there's different political context, but we all need to have this conversation. Any reflection?

Audience Member #2

Well, yes. Now since I've retired, I'm mentoring superintendents. And one of the things, my big aha has been to learn that a lot of the superintendents moving into their roles, are coming in with a lack of experience and knowledge, so they're trying to learn on the job. And when it comes to cultural responsiveness and equity policies, they are not as equipped as those that have been in the business for an extended period of time. And it's a dynamic that they're working with, and it's a challenge for many of them.

Dr. Christina Kishimoto

Absolutely. And one of the reason we use the framework is to help leaders think about, where are those kind of live wires? How do you name them? How do you identify them? How do you think about ways in which you may want to stay away from some of that? If there is a power struggle now that's externally based, right? It's out with legislators and others that's outside of your school system. That's not a space to be going into, you need to work with all your legislators. But if there's an internal power, because there's a inability or an unwillingness, I should say, to shift power, to share power, to work in the collective. Then as the leader, you need to prepare yourself to be able to educate on the powerful impact of collective leadership around some of these decisions, and the importance of not holding knowledge and information within small groups.

So there's a real difference in kind of understanding what I would call those live wires, and also where are those opportunities? And I'm going to very quickly say, in the area of perspectives, a community that appears to not have a readiness to talk about equity, and yet there is something in the data that shows that they haven't historically done very well with a group of students. And you have a few people raising that, it may seem that they're not ready to kind of hit on talk about that

from a racial perspective, or gendered perspective, or an identity perspective. But if they're not comfortable with that data, you actually have an in, right?

You have an in to actually address that. You just have to be careful about the language you're using around the fact that as a district, we take great pride in having an excellent education for all students, and we can see in the data that not all students are performing at a high level. So you couch the language in a way that's very inclusive, and also allows for the political dynamics that are in place in that district, or in the greater community outside the district that's putting pressure inside.

Dr. Melissa Sadorf

I see a hand raised, do you want to go ahead and ask your question or make a comment?

Audience Member #3

I sure will. And thank you so much for recognizing my hand. As others were sharing, what kept drawing me to a certain aspect of the framework was the word voice. And I wanted to be sure that I'm understanding it correctly in the context of the framework. And I'll frame my question more as a statement. What I've noticed from... And I'm at the state level, the state board of education level, but I've also been at the County Office of Education, so I've seen this in California play out in multiple ways. It seems that voice has a very huge piece in how policies are shaped or undone, if you will, in a political environment.

And it seems that at times, that voice is not always as strong for those that when we use the lens of equity, which is for everyone, and for all students, it seems to be a smaller faction of people that have a stronger voice. And as a result, things start to shift politically, and as a result, shift policy-wise. I think I was making more of a statement than a question. But in the context of what I've said, which is a lot, and I apologize for that. Am I understanding voice in the framework correctly?

Dr. Christina Kishimoto

Absolutely, absolutely.

Audience Member #3

Thank you.

Dr. Christina Kishimoto

So, I think one of the important things here is to think about ways in which as empowered leaders within a district, we are bringing in new voices, and how we do that, that's one level. The other is providing direction to some equity work, knowing that as leaders, we can guide it, but if we're going to truly do collective voice, we don't control the outcome. The collective voice means that something's going to be co-created. And so as leaders, we have got to develop a mindset of this co-creation, that's really powerful. And so that's that shared voice. So there's different ways to look at voice.

I think training ourselves up as leaders and training others as leaders to think about how voice is leveraged, but also how voice can be manipulated. You talked about the fact that when there's only the same few voices that are speaking up, and seem to have control of the agenda, you have to bring a group together to say, "Why is this happening? What can we change in the conditions so that there are other voices?" And I will say in one of my districts, they were very loud voices and very quiet voices, and they were along racial lines. And I was very curious about why that was. Or across races, they were all very engaged. But when it was controversial, then certain groups became very quiet.

And once I started to get to know more deeply and understand the community, I started to see that it was about survival. It was about the throughline of a deeper history that was over a hundred years

old with two particular racial groups in one community. Who survived and were thriving economically by not speaking out, and not being contrary to kind of the leading voices in that community. And so you've got to then try to work those voices in differently, because there's something else that's driving that silence that they're going into. You can't force that voice. And if you're not paying attention to that historical throughline, you miss those things. So I'm glad you kind of honed in on voice. I think that's a really powerful way. The way we did in that community is, we engaged the kids. The kids were ready to voice, even though the parents, for survival reasons and to thrive, were not going to voice. And that's okay. We focused on student agency instead, and brought out some of those voices.

Audience Member #3

Thank you.

Dr. Christina Kishimoto

Thank you for that comment. That was great.

Dr. Melissa Sadorf

Is there anything else that anyone would like to add or contribute before we move away from this? Okay, well, let's move to the next slide then. That was a great conversation. Thank you for that input to all of you. One of the questions that Christina asked me to think about, and I'm going to ask you to think about it too. I know that all of you work with school systems in some way. And so if you had an opportunity to talk to students that are in the communities in which you work and live, what would they say about their experience with justice in school? And what about the curriculum? How would they respond to these questions?

That goes back to the conversation that our speaker just brought up about student voice and agency. Are they being heard, but even more than that, then is there something that happens as a result of them giving that input? Are their opinions acted on, and are things changing as a result of them having provided that input? Some of the things that as a leader, I'm focusing on are, are they talking about fairness? I mean, whether it's about disciplinary action, or it's about recognition, or it's about the ability to participate in things that are happening on campus or within the district. Is there fairness around that level of access? Are they seeing themselves represented in the materials that we're using, or in the curriculum, or in the examples that are being used in classroom instruction? Is that something where they can see themselves? And if not, then why not?

And how does that then impact their engagement in the learning that should be happening in the classroom? Does that have an impact on their outcomes? When there's action taken in a disciplinary event, are those things fair and consistent? Is there consistency applied? And if there are disparities, have we really taken a look and seen where are those disparities, why are they there? What barriers might we need to be addressing? As far as that teacher-student relationship, which is obviously key in all of those interactions. Is the teacher really reaching out and engaging the student in relationship building? And that's foundational to any classroom environment.

And are we ensuring that our teachers know how to develop relationships that are effective and impactful in a positive way for the students in their classrooms? Because ultimately what we want to ensure is happening for all of our students is that they are in an environment where they can learn safely and effectively. And the teacher is who sets the tone for that to be able to happen or prevents that from happening.

And so making sure that teachers are recognizing the importance of that engagement and relationship building where students are seen, and they're respected and valued. Christina mentioned poverty, and I think that to underestimate the impact of poverty in some of the issues around access and equity, would be not fair to those students. And so if we are not recognizing that

potentially there is a barrier there for how we engage our students and their families around access and poverty concerns. I mean, I'll give you an example. We live in an area, my district is 600 square miles. We go down an hour south into the reservation to pick up students, so they're on a bus for an hour. And in those villages, there are very few families that have access to transportation to get to the school other than the bus. And so if a student misses the bus, they are not coming to school that day. That is a barrier.

That also means that we have to be considerate of how we engage families to come into the school site. One of the silver linings of COVID was we went to virtual parent-teacher conferences, and we were able to connect with more families from that part of our district boundaries than we ever had before, because they didn't have to travel. So are those access issues something that we should be addressing differently in our school communities? Language is also an issue that I want to make sure that students are recognized with, as far as their needs, their family's needs. 65% of my population is Hispanic, and over half of my students come into kindergarten with lower proficiencies of English. Which means that they are receiving services in our ELL SEI programming. And we want to make sure that we're being respectful that they are dual language learners. They are not just English learners, they are dual language learners. And we are extending then that access to their families who typically in those communities, in those parts of our communities, they don't speak English, they speak Spanish.

And so are we making sure that language is not a barrier for them when we're trying to communicate to school or from school, so that they're able to engage us, the students are able to be successful because we've engaged the family correctly. I think peer relationships is another area where we hear about justice with students that we've spoken with. And those interactions and social dynamics can contribute or detract from a sense of justice and fairness. So the bullying policies, are we following them? Are we recognizing that there are clear pathways? If there's feedback that students want to provide, are we engaging them in ensuring that they have the capacity to have good conflict resolution skills if there's conflict in their peer groups? Because that's something that's really important for them as well.

And then last thing I'll say is, recognition of achievements. Are we ensuring that it's not just the extracurriculars, but it's the academics and the character qualities, that we're recognizing the whole child? But we're doing it in a way that's culturally impactful for them and sensitive to their needs as a learner within our environment, and that we're celebrating all children, not just our high-flyers. Christina, anything you want to add?

Dr. Christina Kishimoto

I think just in an example of the last piece you talked about with recognitions is that, the research has shown that when adults are designing recognitions for schools, we tend to think about these absolutes of attaining an achievement level that's fixed. And when students are asked to design recognitions, they look at recognizing one another for growth in areas. And so we talk about growth, but we work in different ways. Which is why this question to students about justice is so important, and not everyone's comfortable with asking the question because of what they might receive. And if your students are telling you that there are some areas of injustice in your school, you end up with that, right? You need to do something about that. And so it puts that responsibility right back to you as the leader, as the educator in that school.

Dr. Melissa Sadorf

Right. And building trust, keeping trust is not only asking the question but following up. Otherwise, you do have a breakdown of that relationship, that trusting relationship. Next slide. So just some thoughts on getting voice to hidden disparities. And Christina, if you want to ping-pong back and forth with me about this, I have some things that I want to rise to the surface but want to make sure that you do as well, because you've done this work just probably even longer than I have. But I think the

number one thing that comes to mind for most of us that are in leadership positions are, have we done an equity audit? I mean, that's kind of the place where a lot of this work can start. Reviewing your policies, your procedures. Are you walking your facilities? If I were a non-English speaker and coming into my community to enroll their student, would I be able to navigate the building?

Would I have somebody at the front of the office that was able to welcome me in a way that made me feel like I was being seen and heard and recognized? So those equity audits are a great place to start. And getting information then and being able to act upon it. Another way that is probably something that all of our leaders are doing, but are they doing it with an equity lens? Is hosting community forums, or community events where we can dialogue with our families, our students, our community members, our staff members, and really engaging in conversations. And we talked about who's quiet and who's willing to speak. Are we making sure that we are inclusive of that, so that we are getting those hidden voices? And then again, making sure that we're empowering that student voice, but also our teachers' voices as well, because we want to make sure that the classroom environment is engaging. Christina, anything you want to highlight?

Dr. Christina Kishimoto

One of the things about education is, we love to take on new things, but we don't necessarily like to change. And so we just layer and layer and bring on new things. And the fundamental question here is, when disparities are recognized, identified, to what extent are we as a district willing to change the fundamental issue that's driving, and supporting that disparity to continue in our district? We all have long-standing disparities in our district. And the mindset of the community and the district over time becomes one of, this is kind of the structure and the restrictions within which the limitations that we live with. But we live with those because we have to change the fundamental system, the structure that contributes to that.

And the hard question for us is, as we bring these disparities to light, what do we do about it? In Hartford Public Schools, we had amazing leaders, and teachers, and support staff all over the place, but there were a lot of complaints that would come in about our facilities. And so we asked the school, teams that were in charge of facilities, we told them that instead of having some top-down approach where we were going to tell them the things we weren't happy with, which is typically what we do, is that we were going to ask them to identify an area that parents were raising that they weren't happy with. Have some parents on the team and the actual workers that do the work, and they would once a month, do a walk-through and focus on one thing.

And what that did is it created a deeper relationship between those who do the work and the parents who live in that community to create greater pride, without the system setting up a whole set of indicators, and rules, and timelines, which is how we work, right? How do we change up how we work to address disparities, especially when we see them just repeated year after year?

Dr. Melissa Sadorf

Okay, next slide.

Dr. Christina Kishimoto

So I would just bring us to some points that we've already touched upon, which is we know that the research says, inequities are largely caused by... inequities in public education by two major areas or major factors. One is the wealth disparities in our country, and the ways in which those wealth disparities create the haves and have-nots even within public education that is supposedly focused on equitable access and equitable distribution of resources. But we know that's not always true. And so when you don't have that ability to walk away from a district that's not serving you well, and you have to live within that district, there are different ways in which parents and communities then

survive those conditions, and attempt to thrive within those conditions without having the empowerment to have impact. So those wealth disparities really obviously matter.

The other is power and how power is distributed within a community, in terms of who is making the decision around how resources are distributed? I would say in every three of the districts that I've led as superintendents, there's been components of those that have more wealth and more social capital, and more political power, got better resources. And the question is, how does that happen? Well, it's the political construct is such that those are the ones that came to the board meetings and called legislators, and knew how to use the system. And so it was not always well-received that I was constantly doing parent empowerment training around understanding the policy system.

How do you show up at the legislature? What does it mean to have 60 seconds or two minutes, or three minutes of testimony? What do you focus on? You can't tell long stories. How do you prepare for that? And how do you speak to the policy disparity, and not to, "My child needs this," because the legislator is not necessarily able to address that. But you can come to a board meeting and talk about that. And you can come to your superintendent and your principal, right? So just understanding the governance structure that distributes power, and how to leverage that.

And our responsibility as leaders, whether we're training leaders of leaders, or whether we're the leaders who are on the front line in schools or districts, is to look at how we empower other voices to be actively engaged, and not fear those voices. I will say that most communities are really terrified when they start hearing that there's a lot of parent voices coming out around an issue, because it can be destabilizing. But you've got to trust the process of engagement, of voice, and collective action. You've got to trust those voices to then come out with a better decision.

So if we move on to the next slide, I'd like to push your thinking on two questions to think about. One is, how do I break through the status quo? Which is, there are things that are just fixtures in our school system. We find the same systems today that we had when we were children in the public school system that still happen the same way. And the question is, are those good things that should continue, or are those things that should have been replaced by now? And how do we get thought leadership around replacing, modernizing, thinking differently about the work, about the systems to get the work done?

One of the things we did in Hawaii for the Hawaii Public Schools is that we created a strategic plan where we sent out training and packets, and process descriptions to anyone in the community that wanted to have a planning, or a thought leadership meeting to contribute to the strategic plan. So instead of controlling, essentially we said, "What do you want of your public school system? Give us the information here, use whatever process, but here's a process idea." And we had thousands of inputs. And then we gave it to our students, and we had them look at the inputs, and we created a strategic plan that was primarily put together with student voice. And then instead of having the students reflect on what we as adults thought should be in the strategic plan, we had the adults reflect on what the students said should be in the strategic plan.

We ended up with a strategic plan, and someone wrote it in the comments earlier about Na Hopena A'o, and the whole Hawaiian framework and mindset for engagement. We've built it all around that cultural way of thinking about things differently, and we built it around student agency. So I'll give you one quick example of what that meant. One of the things that came out of that was that students could create curriculum. So one of the things that students talked about was, "Why are we only the receivers of curriculum? Why can't we initiate a design of a curriculum?" Knowing that teachers are the expert, right? So the teachers would ultimately vet it and write components of it, but we had student-led curriculum rewrites. And it was really powerful, it got covered by the papers. There was a rewrite of some of our history strands.

And so you think about the pushback now on US African American history, or I should say US AP African American history, and imagine if the pushback was against students who had created it instead of adults and organizations that typically create it. So turning some things on its head and

thinking differently. Let's go to the last slide so we can get some reflection on that one. This is kind of a hard truth that we as decision makers have to confront. To what extent do I believe that I have the power to create an equitable system of education? We all talk equity, but do we really believe that we can create it? So we see a lot of tinkering around the edges of some new programs or new approaches, or something we're willing to change.

But do we really believe that we have the power to fundamentally change the system and the things that haven't worked? And are we willing to jump in to feed into this, right? When in Hawaii, I took a set of dollars, took a million dollars, and distributed it to leaders... Actually, not leaders, staff members at any level who wanted to innovate around ideas. Well, no one thought that was a good idea who was kind of outside the system. They said, "You're going to lose control." And I said, "No, we didn't lose control. We're going to fund innovation."

... And I said, "Oh, we didn't lose control. We're going to fund innovation. We said we want to innovate, so we have to fund it. I'm going to put a million dollars of public dollars into that, and I'm asking the private sector give me a match of a million dollars." We came up with all kinds of incredible ideas. So the question for you, and I'd love to have one or two people maybe reflect. Another person wants to speak from the audience.

Audience speaker #4

Hi. Hi everyone. Yeah. In terms of the question, so do I believe or to what extent do I believe that I or others I work with, I guess, have the power to create an equitable system of education? Yeah, I think it's definitely within our scope to support more equitable systems in education.

And earlier you were talking... I'm part of the service provider group. I'm not representing any particular school or district, but when you were talking earlier, I was thinking about a particular principal that I had been in conversation with recently. The context that I was in a discussion with him, we were collaborating on newcomer support services. So at an elementary school, some of the conversations we had been having previously, he and I were about how does he as a principal in the community that he's in really support the families and the students with just feeling more welcome on campus, feeling like this is their place now that they're in the community.

And over the last couple of months we've been having these conversations, and he's been wanting to start, and he actually did, which is really exciting, starting a parent group and inviting parents on campus. At the beginning it was just to share, but it was really cool to be in discussion with him, to hear his thought process, like, "How do I time this out so that the parents feel welcome, it works for their schedule, and how do I kind of open the discussion so that they get started, but then they are in charge of creating this agenda over time? Because we want to get together with them. This isn't going to be like a one-time thing, but I want to get them started so that I can start asking, 'What are you interested in talking about? What is important for your kids?'"

But yeah, it was exciting to hear from a principal that he's wanting to set aside time on a monthly basis with his parents. And I think that's so important in creating that sort of equitable space on his campus where he's wanting to see his parents contributing to the space, contributing to the curriculum, contributing to the discussion.

But yeah, anyway, I was thinking about that earlier while you were talking. I wanted to share that with the group.

Dr. Christina Kishimoto

That's great. And I think one of the things that we can really help with when we're coaching leaders helping to reflect with them is the fact that the work of creating these equitable systems doesn't lie with that leader. It lies with the community. So I may be doing some things as the school principal, but am I willing to hand over these parent rooms or parent centers to the parents and just let them

lead it, provide them support, ask them what kind of training they may want, support them in those ways.

It's just like with the newcomer centers in Hawaii, we turned a lot of those over to the students. So the students who were in Hawaii longer were now the ones staffing the newcomer center for the students who were new arrivals. And then they decided to redefine newcomer as not just new to the United States, not just new to Hawaii, but also the military students who were constantly moving states and systems and even countries.

And so they went into a place that we couldn't go to because we weren't thinking that way. And that's the beauty of this kind of collective leadership that we need to engage in to truly change systems. So I love that example. Thank you for sharing. I know we're out of time. Melissa is incredible. I'm glad to have had this time with her. I think if you go to the next slide, you'll have our contact to reach out to either one of us. And just a great pleasure, Melissa. Anything you want to end with?

Dr. Melissa Sadorf

No, I appreciate the input and hopefully, those that are working directly with schools and students and their families and communities, this was helpful for you and really appreciate that we were given the opportunity to talk with you a little bit about some of the things that I'm doing as a practitioner and that Christina's is doing in the equity space as well with her organization. So thank you very much.

Dr. Christina Kishimoto

Thank you everyone.

Dr. Melissa Sadorf

And Rose, I think I'm turning it back over to you.

Dr. Rose Owens-West

Well, thank you. Thank you. So I did see a comment in the chat. Did you all see the commen?

Dr. Melissa Sadorf

For the growth, Christina, this was around your comment about recognizing and celebrating student growth rather than the end-all.

Dr. Christina Kishimoto

Yes.

Dr. Melissa Sadorf

That's great. Absolutely. So thank you for that comment.

Dr. Rose Owens-West

All right then. Well, thank you so much for a very rich conversation and sharing from your wealth of experience.

Dr. Niki Sandoval

We are so delighted to welcome our next presenter, attorney Art Coleman, who will help us understand our responsibilities in observing federal and state laws. And to be clear, attorney Coleman will not be providing legal advice today.

Attorney Coleman previously served as Deputy Assistant Secretary for the US Department of Education's office for Civil Rights, where he spearheaded the development of the department's Title VI policy on Race-Conscious Financial Aid and the first comprehensive Title IX Sexual Harassment Policy Guidance. He was instrumental in establishing the college board's Access and Diversity Collaborative in 2004, which he continues to help lead. He's authored amicus briefs in major US Supreme Court cases, and as a former litigator, he's testified before the US Senate and the US Commission on Civil Rights.

Attorney Coleman is currently an adjunct professor at the University of California's USC's Rossier School of Education. And in 2022, he received the Rossier School's Adjunct Faculty Teaching Award with a recognition that he's one of the nation's leading legal voices supporting access, diversity, and inclusion.

We're really fortunate to hear from him today because he is recognized as a national leader who supports nonprofit organizations and higher education institutions in their efforts to advance DEI aims in legally sustainable ways with a focus on mission-aligned objectives and principles of innovation. In our K through 12 world. We translate that as doing what's best for our kids. So we're really delighted to welcome you today, Art, welcome.

Attorney Art Coleman

Thanks so much, Niki. It's nice to be with all of you. I'm pleased to be able to share some information with you. Frankly, I wish it were not all the substance that I'm going to be sharing. It's challenging times to be sure, but what I want to do very briefly is just give you my sense of the relevant landscape. And I'm going to go slightly beyond the K through 12 setting specifically because I think there are reverberations in the higher education space that have implications for the work ahead in the K through 12 space as well. And so if we can go to the next slide, what I want to do really is to ground us in what was an earthquake of a decision back in June of last year where the Supreme Court eliminated the consideration of an applicant's racial status to advance the educational benefits of diversity. I want to talk about that with a K through 12 angle the implications of that decision and the political fallout which has resulted in a new wave of anti-DEI legislation around the country among other things, and then just offer a little bit of perspective on thinking through navigating really challenging times.

I would say let's go to the next slide. As Niki has flagged, I don't want to go to jail, so I'm not giving you specific legal advice, but I'm hoping some of the principles and the facets of the conversation we're having this afternoon will be useful to you as you go back and consult with your counsel on issues of relevance.

And I would also say that notwithstanding the challenge and the seemingly daily onslaught of attack, whether it's in courtrooms or on the legislative front, I am more convinced than ever, having spent the better part of three decades of my professional career in this space, that this is a moment for leadership and strategic engagement, not retrenchment. And so I think that means looking with fresh eyes, looking at new avenues and new ways of doing business with some innovation and some reflection on what we might have been doing all along that frankly we weren't doing and could be.

So we're navigating very clearly a new legal landscape. Legal compliance is important, obviously, but as I remind folks ,and I'll come back to this at the end, for me and the work that we do at EducationCounsel, which I helped form 16 years ago with the leadership of former Secretary Dick Reilly, the work we do is so grounded in the notion of what institutional mission is as the North Star. We think about law as a design parameter, but I never lose sight given the policy, strategy, and legal intersectionality of our work about the importance of mission.

So let me start. Let's go to the next slide. I'm going to give you a very, very brief overview of the SFFA case in part because I think, as I said, it's got implications in part because I think the prevailing conventional wisdom and rhetoric around the case is demonstrably wrong. And I think it's really

important that we understand that as bad as I think the decision was, and I think it was a horrendous decision in my... I said before in the class I teach, if the Chief Justice had been in my class, he would've gotten a D minus if he had had nine months to write this opinion. I think it is a horrible opinion. But we are missing some of the forest for the trees with some avenues of opportunity in the context of the opinion, and I want to elevate that.

So let me start with the case itself. Let's go to the next slide. The foundation for the decision just very quickly and as a reminder to us all is literally 45 years of history with the Supreme Court, that regardless of whether cases went north or south, and there's a mix of wins and losses reflected on this visual, the Supreme Court in a very steady, consistent, aligned way for 45 years said the educational benefits of diversity improved teaching and learning, workforce benefits, civic enhancement, elimination of stereotypes, on and on and on, could justify the limited consideration of race in admission.

And by the way, that foundation comes even with a K through 12 case. Some of you may remember parents involved in community schools in 2007 where the court reaffirmed those principles even as it was striking down the precise admissions policies at issue in that case.

And so it is against this backdrop, we'll go to the next slide, that the Supreme Court issued its ruling in June of last year. And I'm not going to go into all of the details here. You'll have access to this deck if you like to have it. But the big point I want to elevate is notwithstanding the fact that the Chief Justice purported to follow 45 years of precedent, he actually did no such thing. And it is consequential both in a higher ed setting, it is consequential in a K through 12 setting, because the foundation far forward-looking, mission-driven educational outcomes associated with diversity on which you could premise some policy designs that considered an applicant's racial status was literally wiped out. The court basically took the interests that the courts had consistently recognized from that previous slide and said, "These are insufficiently concrete." They're insufficiently specific and incapable of being evaluated for purposes of our legal doctrine," referred to as strict scrutiny.

So the court has really undertaken a major reversal of precedent even though it did not technically overrule that sort of past case history. And I think that's the most consequential element of the foundations for the decision. So it's a bad decision. I think they've mischaracterized the history and reversed it without acknowledging it. I think their factual construction is questionable in light of the record that was established by Harvard and UNC. And frankly, the notion that the Constitution is colorblind I think is demonstrably wrong if you look at the history surrounding the Constitution and the 14th amendment in particular.

I'm not going to spend time on my attack on... I'll write an article to do all of that. What I want to spend time on is the practical implications of the decision. And so I want to go to the next slide and I want to elevate here. I'm using these colors with some intentionality because I think when you look at the practical implications of the decision, independent of what the legal landscape now looks like as a consequence of the legal analysis, the more immediate practical implications present more of a balanced picture.

Yes, the court said, "Harvard and UNC, you can't consider an applicant's racial status." But in the very same breath, this very conservative majority said, "By the way, we are not indicting your goals associated with diversity. In fact, we think they are commendable and laudable. We just think they're insufficiently precise to justify the consideration of racial status in admissions." That's important, I think, in our political climate, where there is so much of an attack on DEI efforts across the board. This case does not give support for those who would say these are bad goals, just to put it simply, because this very conservative court was willing to recognize the power and importance of the goals. Just concluding as a technical but important legal matter, they were insufficiently concrete to justify the consideration of race and admissions.

And as importantly, and this is really critical, not only from the lens of higher education and how higher education leaders navigate this space moving forward. It's really important for high school

counselors who are giving advice to students about how to respond to questions that institutions may be posing, how to think about answering interview questions if they're going for interviews.

And what was notable about this decision was even as the court was striking down the consideration of racial status, it was very specifically elevating the ability of colleges and universities to consider an individual applicant's racial background, experience, perspective, or goals associated with their lived experience, saying nothing in this decision should affect the ability of an institution to consider how an applicant views their aims for college, how the applicant views their life history and the role they might play on a college campus, even where it is very specifically tied to their racial status.

That's an important point because I think the conventional wisdom and sort of the top line that we've seen from the case over months has been the courts eliminated race from admissions. It absolutely did no such thing. It eliminated the consideration of racial status even as it was very expressly preserving, with some elaboration over the course of two paragraphs, the ways in which applicants could tell their story.

And this in my mind, as someone whose studied the law forever, goes back to sort of the small C conservative principle of the 14th amendment being about preserving the dignity of the individual. How can you have and preserve the dignity of the individual if that individual cannot tell their full authentic story? So one of the messages we are working to deliver to high school counselors around the country is don't worry about SFFA. That's the job of the post-secondary institution. They've got to navigate this. There's a lot of rules or a lot of things that they've got to do differently than they were doing before. But from a K through 12 standpoint, get your students to tell their full, real, interesting, authentic story, and if it ties to something related to their racial background, go for it. It will be up to the institution of higher education regarding how to navigate that space.

So that's big picture on the case itself. Let's go to the next. We can go to talk about a little bit the implications and fallout. I want to elevate as well here just a sort of technical point on the coverage of the case. The ruling was issued pursuant to both the 14th amendment that applies to state actors and Title VI of the Civil Rights Act, which applies to recipients of federal funds. That's going to be every public school district in the country is going to be subject to these rules.

You're going to see, and we've begun to see already, some beginning litigation challenging even purely private actors that are not recipients of federal funds. The nonprofits that are working in this space that may have race-elevated policies and programs under some other less well-developed but no less real statutes that deal with the making and enforcement of contracts that discriminate on the basis of race.

So the landscape is sort of vast here, but let me pivot from the more technically legal side of this and I want to reflect on now what I know is consuming so much of your time, is navigating the relevant state landscape, which I think is nothing but the proverbial Wild West at the moment.

And I want to go, if we can go to the next slide just to elevate how I think about this particular moment given our history. Because I'll remind us all in the mid to late '90s into the early 2000s, there was a wave of state legislation principally focused on higher education but not exclusively so that was passed mostly by voter initiative. I think there are nine states that have these laws. You'll remember California Proposition 209 being the most notable, passed a law that basically said public institutions within state systems, within the relevant state systems, could not consider an applicant's race, ethnicity, sex or gender in admissions and in contracting and in other facets of doing business. So this was a beginning wave, then some of you may remember Ward Connerly who was spearheading that effort.

We then, I think, saw very much in a K through 12 focused arena, the big push not that long ago, I think hitting a high mark in '21 and '22 around the anti-critical race theory movement, where you had significant state legislation often with a district focus attempting to prohibit certain discussion of race in a K through 12 setting, notwithstanding the fact that critical race theory is actually not a curriculum for K through 12 education. We don't want to let facts get in the way of legislation. So you

had that, and I think what's happened is this is actually morphed into a broader anti-DEI landscape. We are sort of given the ammunition, the fuel in the tank, if you will, from the SFFA decision.

We are now seeing, I think from '21 and really quite earnestly to present, if we can go to the next slide, a landscape that shows just a remarkable range of states in which there are either efforts to pass bills, actual success, I think by latest count there are 15 states that have passed some sort of anti-DEI legislation, and there are a lot have been defeated as well in this context. And so I would argue that's the relatively important good news in this landscape we shouldn't lose sight of. But the effort and the time and the energy to really navigate this space is becoming, as many of you well know because you're living it on the ground, really quite consuming.

And if we can go to the next slide, I've just distilled here my sense of at least a broad synthesis of the kind of prohibitions we are seeing in legislation that typically is reaching public school districts, institutions of higher education, or the contractors and other public agencies. And I've elevated the top two in red because I think these are the two most relevant in the K through 12 setting, where in a number of states, I know some folks around this virtual table today have now legislation that's prohibiting the teaching of divisive concepts, are prohibiting the teaching or instruction around issues of systemic racism or sexism in America. And so we've got this sort of new wave.

I will say, and I've not captured it here, there are beginning pockets of some states that are attempting to do the exact opposite, to acknowledge the importance of these issues and of teaching history from soup to nuts in this context. But I think the overwhelming sort of energy and wave still right now is in those states that have passed these relevant laws.

And so when we were preparing for this session, I was in a conversation with Rose and Alicia about thinking through the kind of just practical questions that can surface in the context as you are navigating this space. And if we can go to the next slide, I just want to elevate a couple of sets of issues that I think are critically important to keep in mind as we think about these laws on the books. Because number one, and most simply, the fact that a law may be on the book does not mean it is a law that will stand the test of time. There have been and there will be more challenges to a number of these laws. I think we're going to see most likely the vast majority of challenges, and I think, from my lens anyway of just evaluating the landscape, the best chance of success in striking down some of these laws comes in two arenas. One, a kind of combination of first and 14th amendment argument where the essence of the claim is, "You've got a prohibition against public school teachers, and we frankly don't know what's in and what's out." Literally the law is so vague and so amorphous, we can't tell what's permissible and what's not.

That very simple concept is a foundation for both first and 14th amendment arguments that have been successful in the past because you're arguing, in essence, you don't have sufficient notice to know what to do and the court says the law is unconstitutionally or inherently vague and can't be meaningfully enforced, and so it strikes it down.

There are already some decisions I think one dealing with sort of "don't say gay" issues in Florida where the 11th Circuit, notably with all three former President Trump appointees, struck down a law on similar grounds. And so I think this is a theory that sort of has teeth broadly.

I know as well that a number of you are working through and with existing requirements under long-standing Title VI obligations with respect to sometimes agreements with the Office for Civil Rights, where I spent six and a half years of my career. And what I want to elevate there is just to remind us all that there is this principle of federal supremacy and that the basic principle is that where there is a conflict between federal law and state law, federal law trumps, federal law wins. But it's often the challenge there, it's easy in concept, it's not so easy sometimes in application because the application of that principle really requires that there be an absolute irreconcilable way to evaluate and implement state law in the context of what federal legal requirements are. And here, obviously the basic requirement would be Title VI's requirement, that every state system, every school district, every school operate to provide equal opportunity to all students regardless of race and ethnicity. To

the extent that runs into some of the prohibitions that we are finding in state law, you've at least got the argument of supremacy, but the details will matter. And it may even be, and I had some experience years ago in this, where frankly if you run into a state law, it's not as simple or categorical for OCR to say, yes, we are the feds, therefore we win. OCR's obligation practically is then to say, is there any avenue where we can actually acknowledge the legitimacy of a state law, even if we hate it and navigate compliance with Title VI around that so that we're not running into an irreconcilable conflict.

So, in essence, the job that judges often do in this context is to see if there is any conceivable way to harmonize federal law and state law. If not, if there is this sort of irreconcilable conflict tied to an absolute binding statutory analysis, then there is a foundation for saying that the state law is unlawful. But I think those are the kinds of claims that are likely to see some of moving forward, but still relatively early days on some of those. I would just wrap up and then we can open it up for reactions and questions, which I'm happy to feel on the final segment. I just want to elevate, I've been very focused, go to the next slide, the question is surfacing right, left and in between now, sort of risk management. Risk management, how do we manage risk? And I want to just elevate the important point.

I think that as important as it is to understand the law with clarity, to make sure we're navigating it with fidelity, even if we hate it, that that's the obligation we've got as law-abiding organizations, institutions and citizens. In the context of that sort of legal assessment, what I wanted to elevate is the fact that the question of legal risk is not a one dimensional exercise. I've been working with clients and partners for decades. I've never been in a conversation where we're navigating legal risk and the only question is one of legal risk. It is also the question of, what is this going to do in terms of my mission? My goals? What's the cost of not acting? What are the variations in which I might mitigate risk and maybe not get a 100% of what I'm looking for, but I can navigate it lower risk and still achieve 85% of my goal?

Those are the kind of questions that I think are sort of real and present in this current landscape moving forward. Recognizing the political overlay and the political challenge even independent of just the legal question in and of itself. And it brings me back to the point that I began with, if we can go to the next slide, that I think it is really critical and you see this in cases involving education law across the board. The power importance of having a very clear mission that is the grounding for the decisions we make, because that becomes in essence the fundamental baseline on which a court is going to evaluate policy, practice and ultimate decisions. A strong compelling mission doesn't guarantee success, but I will tell you the absence of clarity around alignment on mission, can often be an impediment to success. And so I think it's just important to keep that point in mind as we think through these questions. So, let me pause there and we'll turn it up over to questions and answers. Niki and Rose, thank you.

Dr. Rose Owens-West

Thank you, Art. Are there comments? Questions? Please feel free.

Speaker #3

Thank you. And Art, thank you so much for such a clear and informative presentation. Truly appreciate everything you've shared with us this afternoon. My question is really on how can those of us in the field ensure that there's a clear understanding of what is okay and what is not okay? And I say okay, knowing that's not a legal term. But what is okay and what is not okay? Because I believe there is some misinterpretation on the Supreme Court ruling, just as you have pointed out, and some of these other areas. How do we communicate what is okay? And also how do we communicate how to navigate, as you had shared with us ways to continue working towards the mission that has been established?

Attorney Art Coleman

Thanks for the comment and the question. I would say with respect to the case, and Rose, I'll send this to you afterwards and you can circulate it. EducationCounsel has actually done, and there are other pieces of guidance out there too, including from the Department of Justice and Education, which I thought were sound as far as they went. I don't think they went as far as they should have frankly, and we could talk about that. But I think the essence of what I've elevated in the slides previously are the points to be most focused on in terms of that sort of clarity with respect to the prohibition on the consideration of racial status, but the permission to think about racial experience in the way that you've just defined it. If I go down to the nub of what's the immediate practical impact, that's where I land every time.

And EducationCounsel put out pretty comprehensive guidance that talked about implications for financial aid and like in the immediate wake of the decision. I can have that elevated and I'll look that up, and you can have it. It's about a six-page document that this distills the case to its essence. So, it may be a good sort of cheat sheet for you in that context. I will say the Department of Education put out question and answers in the wake of the decision, and I think as far as the department went, it was a perfectly unobjectionable document. I think they didn't provide all the guidance in the world that they might have, but it's a useful document. It's much longer than our draft, but it's another document as well. But I continue to sort of come back to when I hear, let me just make a couple of points.

One, when people are saying that the court wiped out affirmative action, this case wasn't about affirmative action. This was about a forward-looking, mission-driven educational set of goals, that colleges and universities had been pursuing since 1978. In the wake of the Bakke decision, which I'll remind some of us are on this call who are old enough to remember, it was a civil rights loss. Justice Powell elevated out of that civil rights loss. This theory about the educational benefits of diversity, interestingly tied to a Harvard amicus brief that was filed in the case, and higher education took that and ran with it for 45 years quite successfully. And so, I think it is really important to recognize that foundation here and the consequential impact really is, when you step back and understand that the baseline rules did not change. If I'm going to consider an applicant's racial status or ethnic status, the law treats them the same. In any policy that confers an individual opportunity or benefit.

And that's sort of the threshold. When some student is getting something that some other student may not and where race and ethnicity status play a role in that decision, the law says, you've got to have a really good reason, a compelling interest, and you've got to have a good program design, narrow tailoring, which gets into a whole set of factors. The practical reality and the shock waves most fundamentally from this court decision is, the 45 years of research, policy, practice and legal authority on the benefits of diversity was wiped out with one fell swoop. So, if I wanted to advance a racial status conscious policy on some grounds tomorrow, I've got no authority to point to at this moment in time about what could be a compelling interest. We're going to have to be patient as we go through the cycle of actually creating, I'm literally working on creating new compelling interests that could be tested in court, and see where the courts take us.

So, I don't think this wiping out racial status is the courts waved a magic wand, and we are done. I don't think we're done at all but I think we've got to have to have some patience as we navigate this space because it's going to take some time to establish new legal foundations. I'll just remind us all, if you go back to that slide where you've got the history and the Ruder and Grass case in particular involving the University of Michigan in 2003, everyone knew that the other side was going to win that case. It was a shock to the field that in fact a moderate to conservative court at the time, sustained the consideration of race and admissions. What did the other side do? They didn't go, oh, we lost and go bury themselves away. They dusted themselves off the next day and they got busy creating a legislative strategy that still faced further loss before they finally won this case. I think there is a lesson for us in the field to take from that playbook, that there are new days ahead. It's not a great

time right now but we need to look not just with the short-term lens, with a midterm and long-term lens as well.

Dr. Rose Owens-West

I'd like to go to your point about a fundamental that the law has established for decades. That if there are resources from which some students benefit, but that are not available to or don't benefit other students, the law has been very clear that this is unacceptable. You said that there must be a very compelling reason for that to be acceptable.

Attorney Art Coleman

When you are drawing lines based on race and ethnicity. When you are drawing lines based on other factors, different standards will apply.

Dr. Rose Owens-West

So, in the case of many of our K-12 districts here, there's been an effort to improve curricula by making sure that diverse populations are represented in the curriculum. So, here in California we've recently passed some state requirements around ethnic studies. In Tucson for example, at one time, part of their desegregation agreement was that they would offer history for Mexican-American history and African-American history, and other cases and other situations where there's an effort to make sure that students and communities are represented in the curriculum.

Attorney Art Coleman

Right.

Dr. Rose Owens-West

And we find that districts are struggling. Some districts are beginning to struggle with that. Where it appears that there may be state policies that say, we're not going to do that. Can you speak to that? Can you help us understand how what you said might apply or just help us think through that?

Attorney Art Coleman

Yeah. And I would say most, it's a complicated area to be clear. And I would say the principles and rules that I talked about that really elevate the claims of discrimination where some student is getting something as tangible and concrete as an admissions decision in higher education, are access to a course. If I'm drawing lines based on race, I think that kind of decision-making would be likely thrown out on its ear because in fact, this is one area of the department was very clear in the wake of SFFA, you can have, and they made this point from a sort of federal lens, from a federal non-discrimination standpoint, you can have themes associated with race, you can have curriculum associated with race, you can have programs associated with racial equity on sort of any topic de jure. What you can't do is tell students of a certain race or ethnicity, you get access to that and others don't.

And so, there is a real distinction between the question of curriculum from a legal vantage and the benefit and opportunity that I'm talking about here, unless you're somehow drawing a line about who gets access to a class and who doesn't, based on race or ethnicity. I would say more pointedly going to the question you're posing, as a general rule, and all I can do is sort of really broadly generalize because state laws are very sort of complex and idiosyncratic. But I think that sort of general realm of curriculum tends to be that arena where certainly from a federal court standpoint, the courts don't want to get involved into something they don't have expertise on. And if you've got, the question is

who is the authentic responsible policymaker charged with deciding what the curricular decisions could be? Is it your state board of education?

Has the responsibility in some way been delegated to a district? Those are very facts specific questions, but that is not an arena. A federal court is going to be excited or I would argue likely to get into because that's a real judgment call. But it gets to the politics of the moment. What are we valuing? What stories do we want to tell? What is the kind of exposure to a full and complete history that we want our students to be equipped with? And so, I think the less elegant answer here may be some of this is going to be a function of politics and where we land at this moment in time. And I'm actually watching, what I've characterized here as sort of this third anti-DEI wave, trying to assess... the anti-CRT movement, at least from my perspective, ran out of gas pretty quickly.

There are a lot of reasons for that. It's still present, but it lost its energy and its prominence. I'm beginning to see some indications that we could be beginning to hit rock bottom because you've got, I'll just put it this way. There are emerging legal challenges. People are going to walk with their decisions about where they live and where they go to school, frankly tied to some of these questions as well. And they're just consequences toward the kind and quality of education we're looking for. So, I think we are in a zone where there's been a lot of incoming, we're still digesting, but I think the fundamental question on curriculum is likely to be more of a political one. Which can translate into legal because you then have what a state legislature says or what a state board of education says. But pretty fundamentally divorced from the more traditional civil rights equal opportunity question. Is that right?

Dr. Rose Owens-West

Thank you. That's very helpful. Anyone else? Final question or comment?

Dr. Tina Tranzor

I just want to say I appreciate the lens in which you offer today and putting the information into perspective, because for those of us sometimes who are challenged with supporting districts who are saying, no, no, no, we can't do that. We can't talk about that. Supporting LEAs, supporting states or saying, no, no, no, we can't talk about that. This gives a different or a lens in which we can enter and approach that space. And so, I am greatly appreciative for that perspective today for sure. And just wanted to offer that in this space. And so I've read and I've analyzed a lot of these areas, but it's really refreshing and greatly appreciated to hear your perspective and what's work, and what you're working on from your part in your corner of the world. Which is-

Attorney Art Coleman

Thanks Tina, I appreciate that. I was supposed to be in semi-retirement by now, but that's just not happening. There's too much to do and I get discouraged, but I'm charged. I'm frankly ticked off. And I think I will tell you, from the work we are doing nationally, and that includes not just state actors, district actors, institutions of education, lots of nonprofits, but lots of philanthropies too. I think there's a level of energy and renewed commitment, including with institutional leaders who have not always been the most vocal on the DEI front or where it's been sort of a convenient presence, but other things were more important. This has a different, I'm very focused on the moment of psychology we are in, as much as the policy and practice that's emanating from this. And it has a different feel to me. And I don't think that energy is going away. So, I remain broadly speaking, not withstanding my bad days, optimistic about the work ahead.

Dr. Rose Owens-West

We just want to say thank you so much. All of you have just really, really fed us today. And again, we also want to say thank you for what you're doing on behalf of students. Your work directly and

indirectly benefits students, and certainly all of the students that we serve. So, thank you to each of our speakers and my heartfelt thanks to everyone for your participation today.