

May 6, 2025

The Honorable Dana Nessel Office of the Attorney General 525 W. Ottawa Street P.O. Box 30212 Lansing, MI 48909

Request for Investigation into Discriminatory DEI Practices at Henry Ford Health in Violation of Federal and Michigan State Law

Dear Attorney General Nessel:

America First Legal Foundation ("AFL") is a national nonprofit organization committed to upholding the rule of law and the principle of equal protection under the law for all Americans.

We respectfully request that your office exercise its statutory and constitutional enforcement powers¹ to open an immediate investigation into Henry Ford Health ("HFH"), a Detroit-based healthcare system whose policies and practices reflect pervasive violations of Michigan's constitutional and statutory prohibitions on discrimination. This request is supported by substantial evidence that HFH has implemented race-, sex-, and identity-based preferences across core operations through a sweeping "Diversity, Equity, and Inclusion" ("DEI") regime—one that has subordinated merit to ideology and equal treatment to demographic quotas.

Since 2021, HFH has received nearly \$1 billion in federally obligated DEI-related grants² and has partnered extensively with Michigan's public universities to operate taxpayer-funded residency and training programs. The result is a sprawling system in which patients, employees, students, and vendors are treated not as individuals but as representatives of identity groups. HFH has implemented these discriminatory

¹ See MICH. COMP. LAWS § 37.2101, *et seq.* (Elliott-Larsen Civil Rights Act); MICH. CONST. art. I, §§ 2, 26 (guaranteeing equal protection and prohibiting preferential treatment in public employment, education, and contracting). These provisions collectively empower your office to investigate and enforce civil rights laws against discriminatory systems that affect the public interest.

² Project Grant (FAIN: UG3OD035518), USASPENDING, https://perma.cc/BVL4-2MWS (HHS award).

practices throughout hiring, promotion, contracting, medical education, and even transplant eligibility. Accordingly, your office has not only a civil rights enforcement duty, but a fiscal oversight obligation to ensure that federal funds administered in partnership with Michigan institutions are not misused to support discriminatory systems in violation of state law.³

AFL has submitted a parallel federal civil rights complaint to the U.S. Department of Health and Human Services ("HHS"), Office for Civil Rights ("OCR"), citing violations of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, Section 1557 of the Affordable Care Act, Pub. L. No. 111–148, 124 Stat. 119, 260, and Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 31, 2025).⁴ However, these same practices raise serious and independent concerns under Michigan law.

I. Violations of Michigan Law

A. Violations of the Elliott-Larsen Civil Rights Act

Michigan's Elliott-Larsen Civil Rights Act ("ELCRA"), MICH. COMP. LAWS § 37.2101, et seq., makes it unlawful for an employer to discriminate in hiring, promotion, training, or compensation on the basis of race, sex, national origin, or other protected traits. Yet HFH's internal hiring policies impose race- and sex-based quotas, enforced by an "Executive Diversity Recruitment Committee" that has the power to block the appointment of qualified white male candidates to senior leadership positions.⁵ Notably, HFH also links executive bonus compensation to DEI benchmarks, with up to 10 percent of annual incentive pay tied directly to meeting diversity targets.⁶ These incentives create systemic pressure to prioritize identity over qualifications, disadvantage otherwise qualified individuals, and violate ELCRA's express prohibition on unequal treatment in employment and education. There could hardly be a more obvious violation of ELCRA than directly tying management compensation to race- and sex-based hiring quotas.

³ See MICH. CONST. art. V, § 8 (authorizing the attorney general to "take care that the laws be faithfully executed"); MICH. COMP. LAWS § 14.28 (requiring the attorney general to prosecute actions in which the state is interested and to protect the rights and interests of the people); see also MICH. COMP. LAWS § 18.1501 (requiring state departments and agencies to ensure that the expenditure of federal funds complies with all applicable state laws).

⁴ Letter from Megan D. Redshaw, Am. First Legal, to Anthony Archeval, Acting Dir., Off. of Civil Rts., U.S. Dept. of Health and Hum. Servs. (Apr. 28, 2025), https://perma.cc/3WCG-C394.

⁵ Lola Butcher, *Henry Ford Health System Board Essential for Diversity*, AHA TR. SERVS. (Apr. 5, 2021), https://perma.cc/24NF-95EB.

Additionally, residency and clerkship opportunities are evaluated, in part, based on race, sex, and other protected characteristics, with HFH giving preference to applicants who identify with certain identity groups.⁷ HFH offers identity-restricted medical clerkship stipends only to those who identify as "racial and ethnic minorities, LGBTQI-identified or gender nonconforming individuals," categorically excluding otherwise qualified applicants on the basis of immutable characteristics.⁸

B. Violations of Michigan's Equal Protection Clause (Article I, § 2)

HFH's extensive partnerships with Michigan's public universities—including Michigan State College of Human Medicine, Wayne State University School of Medicine, and Michigan State University College of Osteopathic Medicine—further entangle its policies with state action. Under Article I, § 2 of the Michigan Constitution, public institutions and actors cannot deny individuals "equal protection of the laws" or discriminate based on race or national origin. HFH's use of public partnerships and funding to implement identity-based treatment protocols, hiring standards, and educational programming makes it subject to this constitutional constraint.

C. Violations of Proposal 2 (Article I, § 26)

These same partnerships, which include publicly funded residency and research programs operated in collaboration with state universities,⁹ implicate Article I, § 26 of the Michigan Constitution, commonly known as Proposal 2, which prohibits any public institution from discriminating against, or granting preferential treatment to, "any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." *See* MICH. CONST. art. I, § 26. While HFH is nominally a private entity, it administers core aspects of its clinical training and educational programs through publicly supported infrastructure and in partnership with Michigan's public universities. In doing so, HFH acts as an extension of those institutions and is therefore bound by the same constitutional limitations. Its identity-based employment, academic, and contracting preferences violate the plain text and purpose of Proposal 2.

D. Discrimination in Medical Services Under the Public Health Code

⁷ Orthopedic Surgery Residency: Diversity, Equity, and Inclusion, HENRY FORD HEALTH, https://perma.cc/M47A-WJ46.

⁸ Underrepresented in Medicine Visiting Clerkship Scholarship, HENRY FORD HEALTH, https://perma.cc/JX5L-6S4V (emphasis added).

⁹ Project Grant (FAIN: R01ES035740), USASPENDING, https://perma.cc/LC4M-GPDX (HHS award).

Finally, HFH's patient care and organ transplant practices raise serious legal and ethical concerns under the Michigan Public Health Code, MICH. COMP. LAWS § 333.20141(1), which prohibits licensed health facilities from discriminating in the delivery of medical services. HFH openly states that its transplant program is committed to "equitable access to organ transplantation and associated outcomes," and implies that race and social vulnerability are considered to "improv[e] equity across access to and outcomes from transplantation."¹⁰ Although the program includes a cursory disclaimer that patients are evaluated regardless of identity, the surrounding framework subordinates clinical judgment to DEI benchmarks, effectively introducing race-based prioritization into life-and-death decisions.

E. Use of 'Increasing Organ Transplant Access' Model to Advance Discriminatory Practices

HFH is also an official participant in the Centers for Medicare & Medicaid Services' ("CMS") Increasing Organ Transplant Access ("IOTA") Model, which ties federal reimbursement to equity benchmarks and requires institutions to implement formal "health equity plans."¹¹ As part of that participation, HFH is also required to identify race-based disparities, develop targeted interventions, conduct resource gap analyses, and track progress toward race-conscious performance metrics and long-term equity goals.¹²

HFH's transplant program openly embraces this framework, incorporating race and social vulnerability into eligibility metrics. These life-and-death decisions are no longer governed solely by clinical need, but by a bureaucratic equity model designed to engineer outcomes by demographic category.

Federal mandates are not a license to violate state civil rights laws. No federal model can authorize a Michigan healthcare system to embed race-, sex-, or identity-based discrimination into clinical decision-making. If HFH is weaponizing IOTA to prioritize patients based on demographic traits rather than medical need, that conduct is not just unlawful—it is morally indefensible. The Attorney General is not merely empowered but constitutionally obligated to investigate and stop any misuse

¹⁰ Diversity Equity and Inclusion Research, HENRY FORD HEALTH, https://perma.cc/T5QH-BTS2.

¹¹ Medicare Program; Alternative Payment Model Updates and the Increasing Organ Transplant Access (IOTA) Model, 89 Fed. Reg. 84128 (Dec. 4, 2024), https://perma.cc/L4YP-6PGF; *Increasing Organ Transplant Access (IOTA) Model*, CTRS. FOR MEDICARE & MEDICAID SERVS., https://perma.cc/L3E4-GTZZ.

¹² Henry Ford Health, Comment Letter on Proposed Rule Alternative Payment Model Updates and the Increasing Organ Transplant Access (IOTA) Model at 6–7 (July 3, 2024), https://perma.cc/6XKW-7NCF.

of federal programs that erodes the guarantees of equal protection under the Michigan Constitution.

II. Requested Investigatory and Enforcement Actions

These practices are not only unlawful under federal law, as detailed in our April 28, 2025, complaint to HHS/OCR, but also incompatible with the statutory and constitutional protections afforded to Michigan citizens. To the extent that individual practitioners or administrators have enforced or abided by such standards, their conduct may also warrant professional discipline under MICH. COMP. LAWS § 333.16221.

HFH has attempted to conceal these policies by removing DEI-related content from its public-facing website; however, internal job postings, grant disclosures, and policy statements confirm that race- and sex-based discrimination remain embedded across the organization. Failure to investigate and remedy these practices could expose the State of Michigan to legal and reputational risk, particularly if federal funding is shown to have supported discriminatory programs operated in partnership with public institutions under state authority.

HFH's President and CEO, Robert G. Riney, has openly acknowledged the institutionalization of these practices, stating that the organization has "embarked on an extensive, multi-year journey, guided by our Diversity, Equity, Inclusion, and Social Justice Strategic Plan."¹³ These are not isolated initiatives—they are embedded into the system's long-term governance, staffing, training, and care delivery.

Accordingly, AFL urges your office to initiate an immediate investigation into HFH's discriminatory conduct. Specifically, we request that you:

- I. Conduct a thorough review of all HFH programs, departments, and policies that incorporate race-, sex-, or identity-based criteria—including those operating under the banners of DEI, "health equity," "social determinants of health," or any other euphemism for unlawful discrimination—and take all necessary legal and administrative action to eliminate any practice that violates state or federal civil rights laws.
- II. Require HFH to rescind any policy or initiative that conditions access to care, education, employment, or advancement on an individual's race, sex, or

¹³ Henry Ford Health Named as One of 'America's Greatest Workplaces for Diversity 2023,' HENRY FORD HEALTH (Mar. 2, 2023), https://perma.cc/89ZK-ERLC.

political ideology, and to implement institution-wide corrective measures to bring its healthcare system into full compliance with Michigan's constitutional and statutory nondiscrimination mandates.

III. Although CMS mandates participation in the IOTA Model for selected hospitals, federal compulsion does not excuse state-sanctioned discrimination. Your office retains full constitutional and statutory authority to investigate whether its implementation violates Michigan civil rights laws—and to publicly oppose continued participation in any federally imposed model that incentivizes unlawful discrimination.

AFL has enclosed documentation in support of this request, including a copy of our federal civil rights complaint and accompanying exhibits. This letter places your office, including the "Diversity, Equity, and Inclusion" division within your Executive Office,¹⁴ on formal notice of Henry Ford Health's discriminatory practices and the serious legal violations they appear to present.

We expect your office to act promptly and decisively to investigate this conduct and enforce Michigan's civil rights laws. Should you fail to do so, AFL will pursue all available legal, administrative, and public avenues to ensure accountability. We also urge you to examine whether the State of Michigan—including the Office of the Attorney General—is itself supporting, funding, or institutionalizing similar unlawful policies under the banner of DEI.

The people of Michigan deserve a government that enforces the law, not ideology. Thank you for your attention to this matter.

> Sincerely, <u>/s/ Megan D. Redshaw</u> America First Legal Foundation

Cc: Elizabeth Hertel, Director, Michigan Department of Health and Human Services
John E. Johnson Jr., Executive Director, Michigan Department of Civil Rights Koula Black, Director of Diversity, Equity, and Inclusion, Executive Office,

Michigan Department of Attorney General

Steven Mitchell, Acting Regional Director, Office for Civil Rights, Region V

¹⁴ Diversity, Equity, & Inclusion (DEI), MICH. DEP'T OF ATT'Y GEN., https://perma.cc/PTS5-SRYH.

Appendix



April 28, 2025

VIA electronic portal submission

Anthony Archeval, Esq. Acting Director, Office for Civil Rights U.S. Department of Health & Human Services 200 Independence Avenue, SW Room 509F, HHH Building Washington, D.C. 20201

VIA email: OCRComplaint@hhs.gov

Steven Mitchell Acting Regional Director, Office for Civil Rights, Region V U.S. Department of Health & Human Services 233 N. Michigan Avenue, Suite 240 Chicago, IL 60601

Request for Investigation into Discriminatory DEI Practices at Henry Ford Health in Violation of Federal Law

Dear Acting Director Archeval and Regional Director Mitchell:

America First Legal Foundation ("AFL") is a national nonprofit organization committed to protecting the rule of law, due process, and equal protection under the law for all Americans.

Accordingly, AFL respectfully submits this request for investigation into Henry Ford Health ("HFH" or "the System"), a federally funded healthcare entity headquartered in Detroit, Michigan. HFH has implemented and institutionalized an organization of race- and sex-based discrimination under the banner of Diversity, Equity, and Inclusion ("DEI") across its operations, including its employment practices, residency programs, and delivery of patient services.

I. The Department of Health and Human Services Office for Civil Rights is Responsible for Ensuring the Department's Programs Comply with Civil Rights Laws

On January 21, 2025, President Donald J. Trump signed Executive Order No. 14173, titled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." This Executive Order revokes Executive Order No. 11246 and requires "all executive departments and agencies" to "terminate all discriminatory and illegal preferences, mandates, policies, programs, activities, guidance, regulations, enforcement actions, consent orders, and requirements."¹ It further orders all agencies to enforce long-

¹ Ending Illegal Discrimination and Restoring Merit-Based Opportunity, Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 31, 2025), https://perma.cc/8ASH-GVED.

⁶¹¹ Pennsylvania Ave SE #231 | Washington, DC 20003 | www.aflegal.org

Awarding Agency	Recipient	Assistance Listings (CFDA Programs)	Dates O	
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Henry Ford Health System board essential for diversity

By Lola Butcher

Henry Ford Health System, a five-hospital system in the Detroit area, routinely earns one of the top spots on Diversitylnc.'s Top 12 Hospitals and Health Systems, an annual ranking of health care organizations that are committed to diversity. To make the cut, the 30,000-employee system is continually working to improve its talent pipeline, talent development practices, supplier diversity and other things essential to an inclusive culture.

Two years ago, HFHS created an executive diversity recruitment committee that reviews the applicant pool for all executive-level positions and approves all hiring offers before they are made.

The committee is responsible for meeting goals, established each year by the HFHS board of trustees, to ensure that the value of diversity factors into hiring decisions.

Because the committee must approve every senior-level hiring decision — and it has its eyes on the annual goal for the entire organization — the priority of diversity is part of the recruitment, interviewing and hiring process for those openings.

Related story: Enhancing diversity

The board sets the organization's diversity-related goals, monitors metrics to ensure that the goals are being achieved and holds leaders accountable. Diversityrelated goals are tied to the senior leadership bonus program, which accounts for 10 percent of senior leaders' pay.

The committee monitors the hiring process - and approves hiring decisions - for all positions at the director level and above, in addition to a few high-level manager positions.

The board sets annual senior leadership hiring goals that reflect the availability of diverse candidates.

The human resources staff use U.S. Census data to calculate the "availability" of diverse candidates for senior-level positions. Availability is an HR term that means the percentage of individuals in certain job classifications within a given recruitment area who are racial/ethnic minorities, women, disabled or veterans. For example, if 33 percent of all chief financial officers in the recruitment area are women, that indicates 33 percent "availability" of female candidates for chief financial officer positions.

Orthopedic Surgery Residency

Orthopedic Resident Clinical Rotations Orthopedic Didactic Program

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Current Orthopedic Surgery Residents

Resident Life

Recent Graduates

Orthopedic Sports Medicine Fellowship

Orthopedic Sports Medicine Fellowship Faculty

Sports Medicine Fellowship FAQs

What to Expect

Research in Sports Medicine

Diversity, Equity and Inclusion

Henry Ford Health is committed to being a trusted leader in our community, acting as the example for equity and justice in healthcare, education, and research. The health system holds four core values in the domain of diversity, equity, inclusion, and justice:

1. Anti-Racism and Social Justice Advocacy 2. Diverse Workforce and Inclusive Culture 3. Community Empowerment 4. Healthcare Equity

As a member of the Henry Ford Health community, our Orthopaedic Surgery Residency is committed to creating an inclusive and welcoming training program, respecting and valuing the contributions of diverse faculty, trainees, staff, and patients to achieve excellence in patient care, education, and research. We acknowledge the importance of a diverse and equitable workforce and strive toward healthcare justice and equity for our diverse patient populations. We also acknowledge that our specialty of orthopaedic surgery stands far behind our peers in developing a future generation of diverse surgeons.

In working to create this future generation, our training program starts with a resident recruitment process that emphasizes holistic review of every application, seeking to find the unique attributes that can make future residents into productive allies in this endeavor. During training, our residents have numerous opportunities to provide care to underserved populations, receive formal education in healthcare equity, and participate in service projects to benefit our community. **Emergency Medicine Program**

EM IM Program

Combined Emergency Medicine, Internal Medicine & Critical Care Program

EMS Fellowship

Current Residents

Division of Critical Care

Division of Ultrasound

Research in Emergency Medicine

Underrepresented in Medicine Scholarship Program for Visiting Clerkships

Program Leadership

Meet the Faculty

Emergency Medicine Resident Benefits Henry Ford Health has a long-standing and deep-rooted commitment to diversity in our workforce, research and educational programs. In the Department of Emergency Medicine, we believe that this commitment to diversity both strengthens our community and ensures delivery of the highest quality patient care. We encourage inclusion of all, including those who are historically underrepresented in medicine, such as racial and ethnic minorities, LGBTQI-identified or gender nonconforming individuals, individuals from disadvantaged backgrounds, and those with special needs.

The Emergency Medicine Diversity, Equity and Inclusion Committee is pleased to sponsor a scholarship program to support underrepresented in medicine medical students who have an interest in emergency medicine. The scholarship will provide recipients \$1500 to be used for travel, lodging and other expenses associated with participating in the 4th year visiting clerkship.

Awardees will participate in the Henry Ford Hospital visiting clerkship in emergency medicine. This experience includes clinical shifts, didactics, simulation, journal club and the opportunity to develop mentoring relationships with attending physicians and residents.

Prerequisites

4th year medical student at accredited U.S. allopathic and osteopathic medical schools who plan to apply to an emergency medicine residency.

Good standing at their medical school, with completion of all their required core-clerkships prior to the rotation.

Students must also identify as a member of a group that is underrepresented in medicine.

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Transplant Services

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Diversity Equity and Inclusion Research

Diversity Equity and Inclusion Research

Henry Ford Transplant is committed to equitable access to organ transplantation and associated outcomes regardless of race, ethnicity, sex, gender identity or expression, sexual orientation, language, nation of origin, religion, or other social determinants of health. To better understand where potential barriers to equitable access and outcomes may occur, our interests focus on:

- Improved identification and tracking of social determinants of health to refine and improve processes to ensure
 equitable access across groups.
- Refine existing processes as well as implement and test new processes aimed at improving equity across access to and
 outcomes from transplantation.
- · Strategies to increase diversification of the healthcare workforce.

Increasing Organ Transplant Access (IOTA) Model

CMS selected 103 hospitals for the model and published the <u>list of participating kidney transplant</u> hospitals (XLSX).

The Increasing Organ Transplant Access Model aims to increase access to life-saving transplants for patients living with end-stage renal disease and reduce Medicare expenditures. This model focuses on providing incentives to transplant hospitals to increase transplantation. Additionally, the model is designed to support greater care coordination, improved patient-centeredness in the process of being waitlisted for and receiving a kidney transplant, and greater access to kidney transplants. Through the model payments and policies, CMS aims to increase the care delivery capabilities and efficiency of kidney transplant hospitals selected for participation, with the goal of improving quality of care while reducing unnecessary spending.

On average, <u>13 Americans die each day</u> while waiting for a life-saving kidney transplant. There are approximately 90,000 people on the <u>kidney transplant waiting list</u>, facing a wait time of 3 to 5 years or longer for an offer. The final rule for the model builds on other federal initiatives dating back to 2018 to improve care for people with kidney disease, including the Burden Reduction Rule, the updated Organ Procurement Organization Conditions for Coverage, and the <u>Kidney Care Choices (KCC)</u> and <u>ESRD</u> <u>Treatment Choices (ETC)</u> models. These efforts align with the Increasing Organ Transplant Access Model to incentivize collaboration across the transplant process and increase patient access to transplants.

The Increasing Organ Transplant Access Model is a 6-year, mandatory model that begins on July 1, 2025. Visit the Federal Register to access the final rule for the model.

Health Equity: Henry Ford Health appreciates that the focus of the health equity plan requirements is on equity and disparities within the IOTA patient population, as opposed to the community or hospital service area in general. But the requirements are extensive and will take substantial resources, including labor, on the part of the provider participant to develop and implement the plan. Specifically, CMS proposes that the health equity plan must:

- Identify target health disparities.
- Identify the data sources used to inform the identification.
- Describe the health equity plan intervention. CMS proposes to define "health equity plan intervention" as the initiative(s) the IOTA participant would create and implement to reduce target health disparities.
- Include a resource gap analysis. CMS propose to define "resource gap analysis" as the resources needed to implement the health equity plan interventions and identifies any gaps in the IOTA participant's current resources and the additional resources that would be needed.
- Include a health equity project plan. CMS proposes to define "health equity project plan" as the timeline for the IOTA participant to implement the IOTA participant's the health equity plan.
- Identify health equity plan performance measure(s). CMS proposes to define "health equity performance plan measure(s)" as one or more quantitative metrics that the IOTA participant would use to measure the reductions in target health disparities arising from the health equity plan interventions.
- Identify health equity goals and describes how the IOTA participant would use the health equity
 goals to monitor and evaluate progress in reducing targeted health disparities. CMS proposes to
 define "health equity goals" as targeted outcomes relative to the health equity plan
 performance measures for the first performance year (PY) and all subsequent PYs.

Henry Ford Health Named as One of 'America's Greatest Workplaces for Diversity 2023'

March 16, 2023

DETROIT – Henry Ford Health's success with empowerment of women, promotion of veterans, development of entry-level employees, and support of LGBTQ+ team members and overall culture has landed it on Newsweek's list of "America's Greatest Workplaces for Diversity 2023."

This particular list is Newsweek's first and is grouped by six main economic sectors and 34 industries including healthcare. Henry Ford is one of the few Michigan healthcare organizations to make the list and of those, the only one to receive a five-star rating. A total of 1,000 employers nationwide were listed.

"We are excited about this latest national recognition and acknowledgement of our ongoing commitment to diversity," said Henry Ford Health President and CEO Robert G. Riney. "We celebrate this ranking which further energizes us to continue to serve as an industry leader, community partner and innovator with a vision of equity for all. While our vision incudes diversity, it doesn't stop there. We have embarked on an extensive, multi-year journey, guided by our Diversity, Equity, Inclusion and Social Justice Strategic Plan. It is a roadmap designed to ensure our staff, patients and the communities we serve are afforded the full opportunity to participate in all aspects of economic, social and civic life."



Diversity, Equity & Inclusion (DEI)

About > Bureaus & Divisions > Diversity, Equity & Inclusion (DEI)

Creates, Initiates, & Implements DEI Initiatives

Responsibilities

The DEI section of the Executive Team is responsible for not only ensuring a diverse work environment, but one that is inclusive. As a result, their work is being implemented in every area of the department with an emphasis on Human Resources.

This section creates, initiates, and implements Department wide DEI initiatives. The DEI section keeps staff informed of nationally and statewide recognitions that affect various groups. The section also oversees employee resource groups and trainings to continue the Department's DEI initiatives.



Contact the DEI Section