



# **Practical Resources for District Leaders in Protecting Students from Race, Color, and National Origin Discrimination**



SCHOOL *of* LAW  
Education Rights Institute

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# Title VI of the Civil Rights Act of 1964 for K-12 District Leaders

This summary aims to provide **K-12 district leaders**, including school board members and district staff, a brief introduction to the prohibitions of race, color, and national origin discrimination in Title VI of the Civil Rights Act of 1964, so that they can understand how this law should inform their work. A more detailed explanation of Title VI may be found in [A Primer on Title VI of the Civil Rights Act of 1964](#) by the Education Rights Institute (ERI). The page numbers throughout point you to where in the report you can find more detailed information.

## Understanding Title VI

### What is Title VI?

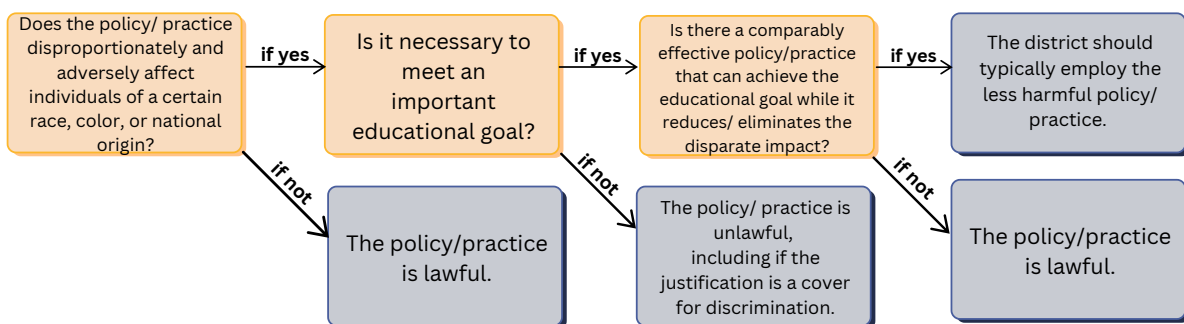
Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity that receives federal funding. School districts are required to comply with Title VI. The Office for Civil Rights (OCR) of the U.S. Department of Education and the Department of Justice have traditionally enforced Title VI. Private plaintiffs may also sue in federal court when they allege intentional discrimination occurred in violation of Title VI (pp. 5-6).

**What Does “Discrimination” Under Title VI Look Like?** There are two types of discrimination that are prohibited under Title VI.

**Disparate Treatment (pp. 11-13):** Intentional discrimination, where someone is treated differently *because of* their race, color, or national origin.

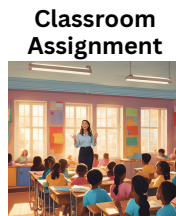
**Disparate Impact (pp. 14-16):** A neutral policy or practice has a disproportionate negative effect on individuals of a certain race, color, or national origin.

To identify an unlawful disparate impact, courts created a three-part test that asks:



Disparate impact can exist even if not malicious. Title VI also prohibits retaliation for raising a Title VI issue.

**What Programs or Activities Are Subject to Title VI?** They include but are not limited to:



# Identifying and Remediating Discrimination

## Why Should K-12 Leaders Aim to Understand Title VI?

School district leaders should be aware of what Title VI requires so that they can assist in assessing whether district and school policies and practices serve all students well and what reforms could and should be made when they do not. For example, consider whether your district:

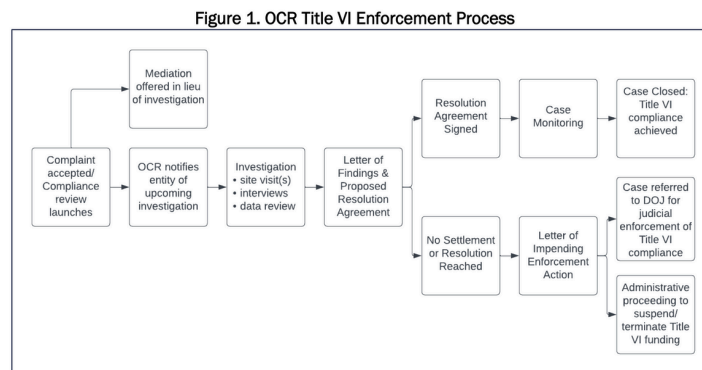
- Ensures that multilingual learners receive equal, meaningful access to school programming and services.
- Imposes disciplinary policies consistently and fairly. Schools or districts may unknowingly impose harsher penalties for students of a certain race, color, or national origin.
- Supports equal educational opportunity through access to gifted and talented and advanced courses.
- Fosters and maintains a school and district environment that signals that race, color, or national origin harassment is unacceptable and immediately investigates, remedies, and prevents its recurrence.

## What are the Benefits of Complying with Title VI?

- Each student thrives when equal educational opportunity serves as a guiding principle.
- All students benefit from supportive school environments that prevent and remedy discrimination.
- School districts avoid lawsuits and lengthy and costly investigations by OCR (pg. 21-22).

## What Happens When a District Violates Title VI?

OCR has historically processed complaints through the process outlined in Figure 1 (pp. 17-19). The district under investigation may request to settle the matter by entering into a Resolution Agreement at any time prior to the conclusion of the investigation if OCR deems such an agreement appropriate.



**Fact:** In 2023, OCR received 19,201 complaints, over double the number received in 2021. Over 12,500 complaints were K-12 related and 18% of all complaints (3,526) implicated Title VI.

## How is OCR Interpreting Title VI in 2025?

On February 14, 2025, OCR released a [Dear Colleague Letter](#) with guidance on the interpretation of Title VI and released [Frequently Asked Questions](#) to further explain this guidance on February 28, 2025. For more information, see our response, [Understanding the Dear Colleague Letter](#). We also recommend watching [this](#) webinar hosted by the Brookings Institution for education leaders in response to the Dear Colleague letter.



The Education Rights Institute provides videos and resources that aim to increase the understanding of and compliance with Title VI. You may access our resources at [law.virginia.edu/education](http://law.virginia.edu/education) and sign up for our newsletter to receive new resources as we publish them.



# Understanding the February 14, 2025 Dear Colleague Letter from the Office for Civil Rights Regarding Title VI and Race Discrimination in Schools

The Education Rights Institute (ERI) shares this brief document to assist district leaders in K-12 schools in understanding the [Dear Colleague Letter](#) issued by the U.S. Department of Education's Office for Civil Rights (OCR) on February 14, 2025. For a more complete analysis of these complex issues, we encourage you to watch the Brookings Institution's webinar: [What Do Education Leaders Need to Know about the Department of Education's New Guidance on Race and Civil Rights?](#)

## What is a Dear Colleague Letter?



Federal agencies author "Dear Colleague" letters to signal or give notice about how the agency interprets existing law. As the letter itself states, a Dear Colleague letter "does not have the force and effect of law and does not bind the public or create new legal standards."

## How Does Title VI Apply to Districts?

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, class, or national origin at any institution that receives federal funds. This prohibition applies broadly to all the programs and activities of such institutions, including but not limited to:

Academic Programs	Admissions	Athletics	Classroom Assignment	Discipline
Employment	Financial Aid	Grading	Guidance Counseling	Housing
Physical Education	Recreation	Recruitment	Student Treatment & Services	Vocational Education

For more information on Title VI, see [Title VI for K-12 District Leaders](#) and [Preventing and Remedying Race, Color, and National Origin Discrimination in Schools: A Primer on Title VI of the Civil Rights Act of 1964](#).

## What did the *Students for Fair Admissions v. Harvard* (SFFA) case decide?



In *SFFA*, the United States Supreme Court decided that considering an individual student's race when determining admission to a selective higher education institution, sometimes called affirmative action, violates the Equal Protection Clause of the U.S. Constitution.

## How does the Dear Colleague Letter Differ from Existing Civil Rights Law?

The Dear Colleague letter attempts to broaden the applicability of *SFFA* and reinterpret existing civil rights protections and thus violates its own terms in trying to "create new legal standards." For example, consider the table on the back page that compares the Dear Colleague letter and existing civil rights law.

Dear Colleague Letter	Existing Civil Rights Law
“[R]ace-based decision-making, no matter the form, remains impermissible.”	An action that considers race violates Title VI only if it intentionally discriminates or results in unlawful disparate impact discrimination. <a href="#">[1]</a>
“[E]ducational institutions may neither separate or segregate students based on race.”	The <a href="#">OCR FAQ</a> explains that programs that focus on particular cultures as well as historical and educational observances remain permissible if they are open and inviting to all students and do not create a hostile environment.
“Federal law thus prohibits covered entities from using race in decisions pertaining to admissions, hiring, promotion, compensation, financial aid, scholarships, prizes, administrative support, discipline, housing, graduation ceremonies, and all other aspects of student, academic, and campus life.”	<i>SFFA</i> affirmed that for selective admissions “nothing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.” <a href="#">[2]</a> <i>SFFA</i> did not address these other areas of educational institutions.
“It would, for instance, be unlawful for an educational institution to eliminate standardized testing to achieve a desired racial balance or to increase racial diversity.”	The Supreme Court has repeatedly reaffirmed that those who want to pursue a permissible race-related goal must give “serious, good faith consideration of workable race-neutral alternatives.” <a href="#">[3]</a> The Supreme Court has not stated that the described change would be unlawful and rejected the opportunity to review a case that upheld such an action. <a href="#">[4]</a>
The letter criticizes “diversity, equity, and inclusion” of being discriminatory and “smuggling racial stereotypes and explicit race-consciousness into everyday training, programming, and discipline.”	Many efforts to increase the diversity of schools and make them more equitable and inclusive spaces are lawful under Title VI. Such efforts can challenge stereotypes. A district should assess how its policies or practices affects students of different races as it reviews whether they impose a disparate impact that violates Title VI.
“Institutions that fail to comply with federal civil rights law may, consistent with applicable law, face potential loss of federal funding.”	Applicable federal law and policy requires a lengthy process in order for OCR to revoke federal funds. This process is discussed in <a href="#">ERI’s Title VI Primer</a> .

## What are the Next Steps for School Districts?

- District legal counsel should use this opportunity to review district and school policies and practices to ensure that they comply with Title VI, rather than the misinterpretations of Title VI in the Dear Colleague letter. Districts should avoid overreacting to the Dear Colleague letter.
- District legal counsel should provide clear explanations to district employees of what Title VI permits and prohibits. ERI provides short videos and reports to increase understanding of Title VI.
- Follow the legal challenge that has been filed against the enforcement of the Dear Colleague letter. [\[5\]](#)
- OCR may attempt to enforce the Dear Colleague letter’s interpretation of Title VI. Targeted enforcement may occur, but the longstanding underfunding of OCR along with recent staffing cuts will greatly limit OCR’s enforcement capacity.
- Districts should respond to any OCR inquiry and reaffirm applicable Title VI law, if necessary, in court.



Learn more about ERI’s work, sign up for our newsletter, and view our additional resources at [law.virginia.edu/education](http://law.virginia.edu/education).

[\[1\]](#) See [Title VI for K-12 District Leaders](#) for a succinct summary of disparate treatment and disparate impact prohibitions in Title VI.

[\[2\]](#) Students for Fair Admissions, Inc. v. President & Fellows of Harvard College, 600 U.S. 181, 230 (2023).

[\[3\]](#) Parents Involved in Community Schools v. Seattle, 551 U.S. 701, 704 (2007) (majority opinion of Chief Justice Roberts) (quoting Grutter v. Bollinger, 539 U.S. 306, 339 (2003)).

[\[4\]](#) For example, in 2023, the United States Supreme Court declined to review the decision in Coalition for TJ v. Fairfax County School Board, 68 F.4th 864 (4th Cir. 2023), in which the United States Court of Appeals for the Fourth Circuit upheld the constitutionality of the Fairfax County School Board’s decision to change its policy for admission to Thomas Jefferson High School for Science and Technology to increase diversity.

[\[5\]](#) American Federation of Teachers et al. v. U.S. Department of Education was filed in the United States District Court for the District of Maryland on February 25, 2025.



# **Preventing and Remedying Race, Color, and National Origin Discrimination in Schools: A PRIMER ON TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

*Education Rights Institute, University of Virginia School of Law*



SCHOOL of LAW  
Education Rights Institute



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## Acknowledgments

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# Introduction

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***“This Civil Rights Act is a challenge to all of us to go to work in our communities and our states, in our homes and in our hearts, to eliminate the last vestiges of injustice in our beloved country.”***

**– President Lyndon B. Johnson**

**July 2, 1964**

***Radio and Television Remarks Upon Signing the Civil Rights Bill<sup>1</sup>***

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Every school in the United States—public or private—that receives federal financial assistance is required to comply with federal civil rights laws, including Title VI of the Civil Rights Act of 1964 (Title VI). Title VI protects all students from discrimination<sup>2</sup> based on race, color, or national origin.<sup>3</sup> This means that students across America have a federally protected right to receive an education in a school that does not permit discrimination against them, regardless of whether they are, for instance, a Black student in a rural town in the Midwest, a White student in Los Angeles, a student in South Carolina who immigrated without legal documentation, or any other combination of race, color, or national origin in any locale.

Widespread racial and national origin-based disparities in educational opportunities exist across the nation, including in areas such as teacher quality, access to rigorous courses, access to technology, and funding.<sup>4</sup> Creating an educational environment free of discrimination based on race, color, or national origin requires states, districts, and schools to plan and implement professional development to help ensure that all education leaders, including teachers and staff, are aware of and comply with Title VI. Education leaders should also engage in a proactive and comprehensive review of state, district, and school policies and practices to ensure that they comply with Title VI.

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***Title VI protects all students from discrimination based on race, color, or national origin in schools that receive federal financial assistance.***

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Schools serve as engines of our nation’s democracy, society, and economy, preparing students to be college and career ready and engaged civic participants.<sup>5</sup> For schools to meet these aims, educators must create schools and districts that provide equal educational opportunities so that all students have full access to all of the benefits and programs in their schools. Our nation’s civil rights laws aim to ensure that equal educational

opportunities are not merely an aspirational goal but also the lived reality of all students.

Offering an education that is free of discrimination is one of the foundational ways to promote a high-quality education for all.

At the Education Rights Institute (ERI), we aim to increase public understanding of the wide applicability of Title VI's nondiscrimination requirements in education through explanatory Title VI reports, videos, and other resources. Increasing understanding of Title VI can help state, district and school leaders fulfill their legal obligations to remedy discrimination in ways that increase access to a high-quality education for all students. Given the breadth and importance of Title VI, education stakeholders must collaborate to ensure that each and every student can attend a school without discrimination based on race, color, and national origin.

In this primer, we begin by explaining Title VI's requirements. Then, we look at the history and purpose of Title VI to understand why the law was enacted. The subsequent section covers Title VI enforcement both at the judicial and administrative level. This includes the Title VI complaint, compliance review, and investigation processes as well as the consequences for failing to comply. Finally, we discuss why education leaders should prioritize Title VI compliance and monitoring. We conclude with ERI's role in this work.



# Title VI of the Civil Rights Act of 1964

## Requirements

Title VI of the Civil Rights Act of 1964 states that:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.<sup>6</sup>

The penalty for failing to comply with Title VI is the potential loss of federal funding, in addition to the time-consuming investigation and monitoring process and possible court litigation. To clarify Title VI compliance requirements, Congress authorized federal agencies to develop and implement regulations specific to the entities they fund.<sup>7</sup> The U.S. Department of Education (ED) enacted regulations to establish standards for determining compliance with Title VI for educational institutions.<sup>8</sup>

The implementing regulations outline the types of discrimination prohibited under Title VI, including racial harassment, permitting a hostile environment, segregation, and differential treatment.<sup>9</sup> ED prohibits any other type of race, color, or national origin discrimination that negatively affects the intended beneficiaries of its funding.<sup>10</sup> Programs or activities subject to these regulations and the nondiscrimination requirements of Title VI include, but are not limited to:<sup>11</sup>

Academic Programs	Admissions	Athletics	Classroom Assignment	Discipline
Employment	Financial Aid	Grading	Guidance Counseling	Housing
Physical Education	Recreation	Recruitment	Student Treatment & Services	Vocational Education

All agencies and institutions that receive funds from ED are required to comply with Title VI, including all 50 state education agencies, over 18,000 local education systems, approximately 6,000 postsecondary institutions, and 78 state vocational rehabilitation agencies and their sub-recipients.<sup>13</sup> If any school in a district receives federal funding, the entire district and its schools are subject to Title VI and its prohibitions.<sup>14</sup> This discrimination ban applies to all of an entity's schools, programs, and activities, not just the portions that receive federal aid.<sup>15</sup> Congress specified that Title VI's reach encompasses "all of the operations" of the school, including "traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities."<sup>16</sup>

Title VI also prohibits retaliation against any individual who brings concerns about possible civil rights violations to a school's attention or who files a complaint, testifies, or participates in any manner in a federal Title VI investigation or proceeding.<sup>17</sup>

Title VI's ban on national origin discrimination requires schools to ensure that students who are English learners receive meaningful academic instruction as well as equal, meaningful access to all school programming and services.<sup>18</sup> This protection further requires schools to make sure parents and guardians have meaningful access to all school communications and information regarding their student(s) in a language they understand.<sup>19</sup> Meaningful access includes not only free oral and written translation services, but also access that is "not significantly restricted, delayed, or inferior" to that of peer students so that English learners also have an equal opportunity to learn.<sup>20</sup>

The Office for Civil Rights (OCR) at ED enforces Title VI compliance in publicly funded educational institutions, but it does not bear this responsibility alone.<sup>21</sup> In addition to litigating on behalf of the United States to enforce Title VI, the U.S. Department of Justice (DOJ) oversees the coordination, implementation, and enforcement of Title VI regulations across all federal agencies.<sup>22</sup> This means that DOJ has the authority to review and approve each federal agency's Title VI policies.<sup>23</sup> It may also offer technical assistance to ensure proper procedures and compliance.<sup>24</sup> If a person cannot determine with which federal agency to file a Title VI complaint, the individual may file the complaint with DOJ who will refer the complaint to the appropriate agency.<sup>25</sup> DOJ may also participate in direct investigations.

To better understand Title VI and the federal government's enforcement of this law, it is helpful to look at the Civil Rights Act's origins and the rationale behind its passage.

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➤ ***Race: the idea that the human species is divided into distinct groups on the basis of inherited physical and behavioral differences. Race is a social construct.***

➤ ***Color: the primary physical criterion by which people have been classified into groups in the Western scientific tradition.***

➤ ***National Origin: a person's birthplace, ancestry, culture, or language.<sup>12</sup>***

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# The History and Purpose of Title VI

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***“Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination. Direct discrimination by Federal, State or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.”***

**– President John F. Kennedy**

**June 19, 1963**

***Special Message to the Congress on Civil Rights & Job Opportunities*<sup>26</sup>**

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To fully appreciate why lawmakers enacted Title VI, it is important to reflect on the Reconstruction Era that followed the U.S. Civil War’s end in 1865, which resulted in the ratification of the Thirteenth,<sup>27</sup> Fourteenth,<sup>28</sup> and Fifteenth<sup>29</sup> Amendments. These amendments and other federal laws aimed to provide a new set of rights for Black Americans and formerly enslaved people by outlawing their enslavement and subordination.<sup>30</sup> Unfortunately, many federal, state, and local governments, as well as private individuals, rebelled against these efforts to provide the same rights to Black people that their White peers already exercised. Communities adopted a complex web of discriminatory laws and policies, called Jim Crow, which aimed to return Black people to a subordinate status in society.<sup>31</sup>

One of Jim Crow’s central tenets included separation of Black and White Americans in all areas of life, including schools, neighborhoods, housing, public accommodations, and transportation.<sup>32</sup> Repeated acts of violence provided another hallmark of Jim Crow and included lynching and other forms of intimidation. Federal, state, and local governments and private individuals worked in concert to make Jim Crow a way of life that sought to erase and undermine the progress and legal protections from Reconstruction. Private actors contributed to these efforts through individual and collective actions of segregation, discrimination, and violence.<sup>33</sup>

Jim Crow claimed to provide “separate but equal” opportunities for Black and White people, but the Black community’s lived reality revealed that equal opportunities were not afforded. Instead, Black Americans had to “stay in their place” or risk losing their property, livelihood, lives, or all three.<sup>34</sup>

Jim Crow had devastating impacts on the educational opportunities of Black students and other students of color. The laws and policies of this era reflected many White people’s embrace of inequality in every area of American schools and systems, including facilities, teacher quality and pay, learning resources such as textbooks and supplies, and the length



of the school day and year.<sup>35</sup> As leading social scientist Rucker Johnson explains in his 2019 book, *Children of the Dream: Why School Integration Works*:

Segregation led to dramatic disparities in the school resources available to black and white children as far back as data are available between, 1900 and 1950. In 1940, for example, black schools in South Carolina had more than forty students per teacher, on average, while white schools had fewer than thirty. In Atlanta during the 1949–1950 school year, the city spent twice as much on white students as it did on African American ones. These differences account for a significant share of the vast racial differences in child literacy and numeracy during the Jim Crow era.<sup>36</sup>

The U.S. Supreme Court approved Jim Crow’s “separate but equal” scheme in the 1896 case *Plessy v. Ferguson*.<sup>37</sup> The *Plessy* ruling upheld the constitutionality of segregation in public accommodations.<sup>38</sup> This meant that business owners and government officials could require individuals from different races to remain separated as long as the segregated facilities were substantially equal.<sup>39</sup> Unfortunately, the “equal” part of “separate but equal” was rarely enforced.<sup>40</sup> Indeed, the Supreme Court signaled that “equal” resources did not have to be provided in *Cumming v. Richmond County Board of Education*.<sup>41</sup> In that case, the Court upheld the constitutionality of a high school for White students in Richmond County, Georgia, even though the County only provided Black children a primary school education.<sup>42</sup>

The Supreme Court finally acknowledged that separate schools were “inherently unequal” and unconstitutional under the Fourteenth Amendment’s Equal Protection Clause in the 1954 landmark *Brown v. Board of Education* decision,<sup>43</sup> rejecting *Plessy v. Ferguson*. The Court in *Brown* recognized that even if factors such as facilities were equal, segregation inflicted substantial harms on Black children.<sup>44</sup> One year later, the Court instructed school districts to begin to desegregate in the second *Brown v. Board of Education* case, known as *Brown II*. However, the Court simultaneously invited delay in ending segregation by instructing school districts that they could proceed “with all deliberate speed,” which translated to their own slow pace, rather than requiring immediate desegregation.<sup>45</sup> Subsequent rulings confirmed that the Constitution requires equality not only in public education facilities, but also in student, teacher, and staff assignments, extracurricular activities, busing, facilities, and quality of education.<sup>46</sup>

Though *Brown* and its progeny outlawed segregation and discrimination in schools, many states and school districts continued to resist offering equal opportunities to non-White students. For instance, the state of Virginia led the South in an effort to defy *Brown* with the 1954 development of the “Massive Resistance” strategy.<sup>47</sup> Under Massive Resistance, tactics to maintain segregated schools included revoking funding, closing schools, student assignment laws, and “freedom of choice” plans.<sup>48</sup> The Court’s equivocal response to resistance too often tolerated or failed to intervene to outlaw such efforts unless they involved outright defiance of *Brown*.<sup>49</sup> Massive Resistance was so successful that a decade after *Brown*, under two percent of Black students went to school with White students.<sup>50</sup>

In this contentious climate, as civil rights advocates expressed growing concern regarding the slow, piecemeal efforts to desegregate schools following *Brown*, President John F. Kennedy presented Title VI as a more efficient tool to desegregate America’s schools and other publicly funded programs.<sup>51</sup> President Kennedy explained that “indirect

discrimination, through the use of Federal funds, is just as invidious” as direct discrimination.<sup>53</sup> Notably, President Kennedy recommended that Congress grant authority to the federal government through DOJ to act on behalf of the American people by suing school districts that refused to adequately desegregate, removing the burden from private citizens, and providing technical and financial assistance to schools engaged in the school desegregation process through the Civil Rights Act.<sup>54</sup> Lead author of the Civil Rights Act, then-Senator and future Vice President Hubert Humphrey, shared President Kennedy’s view on Title VI’s potential to improve America’s schools, stating that, “Title VI would have a substantial and eminently desirable impact on programs of assistance to education . . . . It is not expected that funds would be cut off so long as reasonable steps were being taken in good faith to end unconstitutional segregation.”<sup>55</sup>

On June 11, 1963, in a nationally televised address, President Kennedy asked all Americans to take affirmative steps to deliver on the nation’s founding principle that “all men are created equal” by treating everyone they encounter in their daily lives equally, regardless of race, and by supporting civil rights legislation that would protect voting rights, access to public accommodations, nondiscrimination in employment, nondiscrimination in federally

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***“[T]itle VI is simply designed to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation. Moreover, the purpose of Title VI is not to cut off funds, but to end racial discrimination.”***

**– Senator Hubert Humphrey  
March 30, 1964<sup>52</sup>**

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assisted programs, and desegregated educational opportunities.<sup>56</sup> President Kennedy’s legislative proposal culminated from the heroic efforts of civil rights leaders like Dr. Martin Luther King, Jr.,<sup>57</sup> Septima Poinsette Clark,<sup>58</sup> Fred D. Gray, Sr.,<sup>59</sup> John Lewis,<sup>60</sup> Mae Mallory,<sup>61</sup> Constance Baker Motley,<sup>62</sup> Jack Greenberg,<sup>63</sup> and many other recognized and unsung heroes who protested against the entrenched

system of Jim Crow laws, which promoted segregation, discrimination, and violence towards people of color. Despite strong opposition from Southern legislators and President Kennedy’s assassination in November 1963, the Civil Rights Act of 1964 passed both houses of Congress with bipartisan support.<sup>64</sup> President Lyndon Johnson signed the Civil Rights Act of 1964 into law on July 2, 1964.<sup>65</sup>

Title VI not only cemented into federal law a ban on discrimination based on race, color, or national origin in federally funded programs, consistent with the guarantees of the U.S. Constitution, but it also sought to ensure that the national government does not directly or indirectly finance discriminatory acts.<sup>66</sup> Regarding the broader impact of the legislation, then-Senator Humphrey articulated that, “[T]itle VI is simply designed to insure that Federal funds are spent in accordance with the Constitution and the moral sense of the Nation. Moreover, the purpose of Title VI is not to cut off funds, but to end racial discrimination.”<sup>67</sup> Many federal agencies already had the authority to prohibit such discrimination as a condition of their funding before Title VI’s enactment, but some resisted utilizing this authority.<sup>68</sup> Title VI charged all federal agencies to act by instructing them to create their own regulations, rules, and orders to accomplish the goals of the law.<sup>69</sup> Title VI also

overturned federal laws that permitted funding segregated institutions.<sup>70</sup> The federal government's enforcement of Title VI played a critical role in propelling school desegregation efforts throughout the nation.<sup>71</sup> Title VI remains an important tool to address school segregation and other forms of discrimination that continue to persist.<sup>72</sup>



# Title VI Prohibitions: Disparate Treatment and Disparate Impact Discrimination

Title VI's prohibition against discrimination on the basis of race, color, or national origin not only covers actions and policies that are intentionally discriminatory, but also actions and policies by a recipient of federal funds that have a discriminatory effect. It is critical for state, district, and school leaders to understand both types of discrimination so that they can fully and effectively comply with Title VI's nondiscrimination mandate. Below, we explain both disparate treatment (intentional discrimination) and disparate impact (discriminatory effect, regardless of intent).

## Disparate Treatment

Title VI, Section 601 bars intentional discrimination, referred to as different or disparate treatment.<sup>73</sup> Disparate treatment claims under Title VI allege that the recipient of federal funds “intentionally treated persons differently or otherwise knowingly caused them harm because of their [actual or perceived] race, color, or national origin.”<sup>74</sup> Discriminatory intent still violates Title VI even if it was not the sole motivation for the actions or policies.<sup>75</sup> As long as a recipient of federal funds acted, at least in part, with intent to harm an individual or group because of their race, color, or national origin, a Title VI violation may exist.<sup>76</sup>

Disparate treatment can be proven in one of two ways: (1) direct evidence—an action or policy that expressly discriminates on the basis of race, color, or national origin and then is used to discriminate<sup>77</sup>—or (2) circumstantial evidence—indirect evidence that suggests that discriminatory intent was more likely than not the motive.<sup>78</sup> Examples of circumstantial evidence include:

- Statements by decision-makers,
- Sequence of events leading to the decision at issue,
- Legislative or administrative history,
- Departure from normal policy and procedure,
- Past history of discrimination or segregation,
- Statistics demonstrating a pattern unexplainable on grounds other than discriminatory ones, and
- Comparative evidence of more favorable treatment toward similarly situated individuals not sharing the protected characteristic.<sup>79</sup>

It is important to note that the intent to discriminate need not be malicious.<sup>80</sup>

When evaluating disparate treatment, once discriminatory intent is shown, the burden of proof<sup>81</sup> shifts to the allegedly discriminating entity, meaning that those who are accused of the discriminating action must prove that their actions are narrowly tailored to achieve a compelling government interest. Courts utilize the highest judicial scrutiny, known as strict

scrutiny, to evaluate whether a discriminatory policy or practice is lawful.<sup>82</sup> Under strict scrutiny, once a party demonstrates that a policy is intentionally discriminatory, the policy is presumed to be unlawful, unless the allegedly discriminating entity can prove that it acted in accordance with a compelling governmental interest and that the conduct was narrowly tailored to achieve that interest.<sup>83</sup> If the entity cannot provide a justification that meets strict scrutiny's high burden of proof, then the action will be found to be unlawful and in violation of Title VI.

OCR, DOJ, and private parties can invoke Title VI protections when an alleged instance of disparate treatment occurs. Table 1 explains two examples of recent complaints that were investigated due to claims of disparate treatment.

**Table 1. Examples of Disparate Treatment Investigations**

Case Profile	Case Facts
<p><u>Type of Investigation</u>: Complaint<sup>84</sup></p> <p><u>School District</u>: Deer Park Independent School District</p> <p><u>State</u>: TX</p> <p><u>Title VI Area of Concern</u>: Denial of Benefits</p> <p><u>Date Resolved</u>: 9/12/2022</p> <p><u>Type of Resolution</u>: Resolution Agreement</p>	<ul style="list-style-type: none"> <li>OCR investigated whether the District discriminated against students based on their national origin by requiring parents to present a Social Security card and birth certificate to enroll their children in school. The complaint explained that families with mixed immigration status who do not have Social Security numbers may be deterred from enrolling their student(s), even though children in America are entitled to an elementary and secondary education regardless of citizenship.</li> <li>OCR expressed concerns regarding the enrollment requirements. The District claimed it never denied enrollment to or unenrolled any student due to failure to provide a Social Security card or birth certificate and that they already amended its enrollment requirements to allow state-assigned numbers in lieu of Social Security cards. However, OCR determined that the District's former policy still resulted in national origin discrimination in violation of Title VI because it likely deterred immigrant families from enrolling their children in school.</li> <li>The District requested to resolve the matter prior to the conclusion of OCR's investigation.</li> <li>In the Resolution Agreement, the District committed to revise its enrollment policy to ensure that requested documentation does not have the effect of barring or deterring enrollment of students based on the national origin of the students or their parents/guardians. In addition, the District agreed to prepare a public statement in both English and Spanish regarding the revised enrollment policy targeted to reach parents and guardians who may have previously been discouraged from enrolling their children. The District also must provide training to District staff on Title VI's prohibition against discrimination based on race, color, or national origin with respect to student enrollment, which shall include information regarding the District's revised enrollment policy, with an emphasis on any changes to the requirements for demonstrating proof of age and identity, particularly with respect to Social Security cards and birth certificates.</li> </ul>

Case Profile	Case Facts
<p><u>Type of Investigation</u>: Complaint<sup>85</sup></p> <p><u>School District</u>: Boulder Valley School District</p> <p><u>State</u>: CO</p> <p><u>Title VI Area of Concern</u>: Differential Treatment/Denial of Benefits</p> <p><u>Date Resolved</u>: 7/28/2021</p> <p><u>Type of Resolution</u>: Resolution Agreement</p>	<ul style="list-style-type: none"> <li>• OCR investigated whether “Hispanic, Black, and Native American” students were not being properly evaluated for learning disabilities compared to similarly situated White students due to their race, color, or national origin. “The District’s approach requires school-based staff to consult with central office special education staff or MTSS coordinators (“Coordinators”) – who [were] not bilingual, who [did] not possess expertise in English learner students or second language acquisition, and who [were] not familiar with the specific students at issue – regarding evaluations and eligibility determinations for Hispanic, Black, and Native American students.” Whereas school-based staff were allowed to make their own special education determination regarding evaluations and interventions for White students, only the Coordinators in the District’s central office could make special education determinations for “Hispanic (or Latino), African American, American Indian, or Alaska Native” students. This policy led to “Hispanic (or Latino), African American, American Indian, or Alaska Native” students having to endure a longer evaluation process, delaying the provision of services for students who may have needed additional support.</li> <li>• The District denied the allegations and stated it had been working for two years with the Colorado Department of Education to refine its practices to address the identified racial and national origin disproportionality in identifying Latinx students with disabilities.</li> <li>• The Resolution Agreement requires the District to, among other things: conduct a self-audit to determine whether any “Hispanic (or Latino), African American, American Indian, or Alaska Native” student “did not have timely, appropriate disability-related evaluations, eligibility determinations, or placement decisions, or were improperly exited from special education” since August 2020, and determine if any improperly served student is entitled to compensatory services or other remedial measures; train relevant staff about Section 504, Title II, and discriminatory different treatment under Title VI; and, “maintain all documentation related to complaints or grievances filed – orally or in writing – by parents or guardians regarding improperly not evaluating, evaluating, placing, or exiting any Hispanic (or Latino), African American (or Black), American Indian (or Native American), or Alaska Native students . . . .”</li> </ul>



## Disparate Impact

Section 602 of Title VI requires each federal agency that distributes federal funding to create regulations and rules necessary to accomplish the goals of Section 601 of Title VI.<sup>86</sup> Consistent with this mandate, ED issued a regulation prohibiting disparate impact discrimination.<sup>87</sup> Federal agencies such as ED outlawed disparate impact discrimination as part of their enforcement of the nondiscrimination prohibition in Title VI because, as DOJ articulated, “[f]requently discrimination results from policies and practices that are neutral on their face but have the *effect* of discriminating.”<sup>88</sup> It is noteworthy that federal agencies enforcing Title VI uniformly included disparate impact discrimination among their prohibited actions, which reveals that federal agencies believe that prohibiting disparate treatment discrimination alone provided insufficient protection from discrimination.<sup>89</sup>

Disparate impact discrimination occurs when a recipient of federal funding “has an otherwise neutral policy or practice that has a disproportionate and adverse effect on individuals of a certain race, color, or national origin, as compared to individuals of a different race, color or national origin.”<sup>90</sup> Federal agencies’ disparate impact regulations “task agencies to take a close look at neutral policies that disparately exclude minorities from benefits or services, or inflict a disproportionate share of harm on them.”<sup>91</sup> The disparate impact regulation applies when anyone experiences a disproportionate harm based on race, including White students.<sup>92</sup> Disparate impact investigations focus on results rather than intent.<sup>93</sup>

Federal courts established a three-part test to determine whether disparate impact discrimination occurred in violation of Title VI.<sup>94</sup> First, the court or federal agency investigating the matter must determine whether the adverse outcome of the policy or practice at issue disproportionately falls on a group based on race, color, or national origin.<sup>95</sup> If a harm is found to disproportionately impact a group protected by Title VI, the entity in question must show that an “educational necessity” exists for the policy or practice. Even if the entity demonstrates an educational necessity for the policy or practice, a Title VI violation may still be found, unless the entity proves that no alternative could have achieved the same goal with less of a discriminatory impact.<sup>96</sup> Table 2 provides examples of disparate impact investigations.

**Table 2. Examples of Disparate Impact Investigations**

Case Profile	Case Facts
<p><u>Type of Investigation:</u> Complaint<sup>97</sup></p> <p><u>School District:</u> Red Clay Consolidated School District</p> <p><u>State:</u> DE</p> <p><u>Title VI Area of Concern:</u> Racial Harassment/Hostile Environment</p> <p><u>Date Resolved:</u> 1/29/2024</p> <p><u>Type of Resolution:</u> Resolution Agreement</p>	<ul style="list-style-type: none"> <li>• The Delaware Public Education Ombudsman filed a complaint on behalf of a student and her family alleging that she was subjected to harassment by classmates on the basis of national origin (shared Jewish ancestry).</li> <li>• OCR examined records submitted by the District and the Complainant during its investigation. These records included the Student Code of Conduct, disciplinary reports, witness statements regarding the alleged harassment, reports on bullying, email correspondence, suspension notices, and information about additional alleged harassment incidents. In addition, OCR conducted interviews with three teachers, the Assistant Principal, the School Dean, and the Deputy Superintendent.</li> <li>• OCR determined that other students subjected the student at issue to harassment that created a hostile environment based on her national origin (shared Jewish ancestry), including performing the “Heil Hitler” salute in the presence of the Student and drawing a swastika on her desk. OCR identified the following concerns regarding the District’s response to the reported harassment: (a) Although the District made an effort to respond to most of the incidents of harassment experienced by the student, OCR was concerned that the District’s miscoding of each incident of harassment, its failure to address repeat offenders effectively and its failure to timely implement a safety plan for the harassed student may have led to a continuing hostile environment; (b) The District also failed to keep sufficient records of its inquiries into additional instances of harassment which may have prevented the District from identifying whether a hostile environment existed for other students as well and from “taking timely, reasonable, and effective steps to eliminate any hostile environment.”</li> <li>• The District signed a Resolution Agreement to address the concerns OCR identified. The Agreement requires the District to, among other things: offer to reimburse the student’s parents for past academic, counseling, or therapeutic services the student required as a result of the harassment; review its policies and procedures to ensure that they appropriately address Title VI’s prohibition on discrimination, including discrimination based on a student’s actual or perceived shared ancestry or ethnic characteristics; revise or develop procedures for documenting harassment investigations; train all administrators, faculty, and staff at the school annually on Title VI’s prohibition of discrimination and on investigating discrimination complaints; provide an age-appropriate student informational program to address discrimination; conduct an audit of all complaints received during the 2023-2024 school year to assess the application of internal policy and procedure related to Title VI violations; conduct an audit of all incidents at the school coded as “Inappropriate Behavior” and “Abusive Language/Gestures” during the 2021-2022 and 2022-2023 school years to determine if any of the incidents were actually miscoded Title VI violations;</li> </ul>

	and conduct a climate survey with students and submit proposed corrective actions in response to the survey results to OCR for approval.
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<u>Case Profile</u>	<u>Case Facts</u>
<u>Type of Investigation:</u> Compliance Review <sup>98</sup> <u>School District:</u> Winston-Salem/Forsyth County Schools <u>State:</u> NC <u>Title VI Area of Concern:</u> Discipline <u>Date Resolved:</u> 9/20/2023 <u>Type of Resolution:</u> Resolution Agreement	<ul style="list-style-type: none"> <li>• OCR investigated whether the District discriminates against Black students by disciplining them more often and more severely than similarly situated White students.</li> <li>• OCR reviewed the District’s disciplinary policies and procedures and analyzed data and student disciplinary files provided by the District. OCR also conducted a site visit of two high schools, three middle schools, one elementary school, and one alternative program. At each school, OCR staff interviewed administrators, teachers, and other staff involved in the discipline process.</li> <li>• OCR’s investigation revealed that White students received superior treatment at both the referral stage and the sanctioning stage of the discipline process compared to similarly situated Black students. OCR also found persistent race disparities in suspension rates.</li> <li>• The Resolution Agreement requires the district to, among other things, review and revise its discipline policies, as necessary, assess its alternative school program, submit discipline data as well as annual reports to OCR, and train staff and School Resource Officers on the revised policies and procedures as well as evidence-based techniques on classroom management and de-escalation approaches.</li> </ul>

As these examples illustrate, disparate impact regulations ensure that the foundational goal of Title VI—to prohibit discrimination on the basis of race, color, or national origin, particularly with the use of federal funds—is achieved.<sup>99</sup> Furthermore, as DOJ outlines in their *Title VI Legal Manual*, disparate impact regulations provide important protection against discrimination that may occur unknowingly or that is difficult to detect:

A growing body of social psychological research has also reaffirmed the need for legal tools that address disparate impact. This research demonstrates that implicit bias against people of color remains a widespread problem. Such bias can result in discrimination that federal agencies can prevent and address through enforcement of their disparate impact regulations. Because individual motives may be difficult to prove directly, Congress has frequently permitted proof of only discriminatory impact as a means of overcoming discriminatory practices. The Supreme Court has, therefore, recognized that disparate impact liability under various civil rights laws, “permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment.”<sup>100</sup>

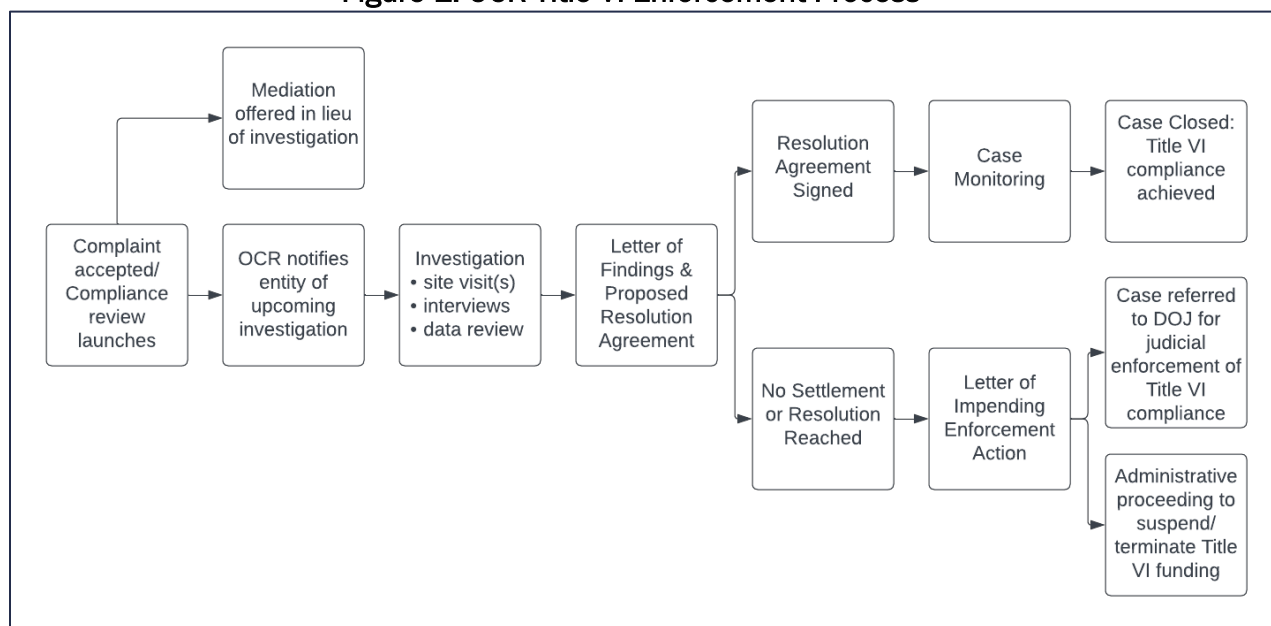
Notably, proof of disparate treatment or disparate impact alone does not automatically mean that Title VI has been violated. Rather, proof of either type of discrimination establishes a prima facie case,<sup>101</sup> meaning the inquiry into discrimination can proceed and the burden to justify its actions is shifted to the entity alleged to have discriminated.

## Office for Civil Rights Title VI Enforcement Process

OCR uses two approaches to identify Title VI violations: complaint investigations or compliance reviews. If an investigation into a complaint or compliance concern confirms a Title VI violation, the school district must develop and implement a plan to resolve the violation or be subject to litigation or the loss of its federal funding.<sup>102</sup>

Figure 1 is a flowchart illustrating the entire OCR enforcement process.

**Figure 1. OCR Title VI Enforcement Process**



*Note: The entity under investigation may request to settle the matter by entering into a Resolution Agreement at any time prior to the conclusion of the investigation.*

### Step 1: Compliance Review and Complaint Receipt

OCR may independently initiate a compliance review to identify Title VI violations.<sup>103</sup> When OCR initiates such a review and determines through data that a Title VI violation may exist, OCR can launch an investigation.<sup>104</sup> For example, if a school district's data shows that it disciplines Black students more frequently or more harshly than similarly situated White students, OCR may commence a Title VI compliance investigation.

OCR more frequently learns about Title VI violations when someone files a formal complaint, such as when OCR investigated allegations of racial discrimination regarding a professor who harassed a White student for expressing Christian conservative views in the

classroom.<sup>105</sup> Anyone who believes that an educational institution that receives federal funding has discriminated against someone on the basis of race, color, or national origin may file a complaint under Title VI.<sup>106</sup> The complaint must be in writing and include the complainant's contact information as well as (1) an explanation of the alleged discrimination that occurred, (2) the identity of the person or group harmed by the alleged discrimination, and (3) the identity of the school or institution alleged to have discriminated.<sup>107</sup> The complaint must be filed with OCR "within 180 calendar days of the date of the alleged discrimination," unless OCR determines that a timeliness waiver should be granted.<sup>108</sup> The complaint may also be considered timely if it alleges continued discrimination or a pattern of discrimination.<sup>109</sup> The individual filing the complaint does not have to be the victim of or impacted by the alleged discrimination.<sup>110</sup>

## **Step 2: OCR Notification to School District**

Upon initiating a compliance review or an investigation into a Title VI complaint, OCR mails a letter notifying the subject of the investigation, typically a school district, of the potential violation. The letter includes an explanation of OCR's jurisdiction, or legal authority, to investigate the matter, the allegation(s) OCR will investigate, details about the investigation and resolution process, and the contact information for the OCR staff person managing the matter.<sup>111</sup> The notification also includes a copy of the *OCR Complaint Processing Procedures* manual.<sup>112</sup>

## **Step 3: Investigation**

OCR's Title VI regulations require schools to keep "timely, complete, and accurate" records that include racial and ethnic data that allows OCR to determine Title VI compliance.<sup>113</sup> OCR investigations require that OCR be given access to the facilities and information of recipients of federal funds during regular business hours.<sup>114</sup> OCR requires access to a breadth of records such as the subject of the investigation's "books, records, accounts, including electronic storage media, microfilming, retrieval systems and photocopies maintained by the recipient, and other sources of information, including witnesses, and its facilities, as may be relevant, in OCR's judgment, to ascertain compliance."<sup>115</sup> OCR may conduct in-person site visits and record interviews of students and employees to complete its investigation.<sup>116</sup>

If during an investigation, OCR identifies additional compliance concerns beyond what prompted the initial investigation, OCR will use one of the following options to address the additional concerns: (a) discuss the additional violations and how they are to be resolved in the resolution letter or letter of findings (both letters describe the investigation and its outcome) as well as in the resolution agreement; (b) provide guidance to the violating school(s) on how to resolve the issue; or (c) launch a new compliance review or investigation.<sup>117</sup>

## **Step 4: Resolution**

The school system under investigation may request to resolve the matter at any time before the conclusion of the investigation as long as OCR determines that a voluntary resolution agreement, or settlement, is appropriate.<sup>118</sup> If the parties do not settle during the investigation and OCR determines that the school or district failed to comply with Title VI, OCR will prepare a letter of findings and a proposed resolution agreement. The agreement is required to contain the steps that will be taken to address the discrimination against the



individual(s) harmed in the case as well as systemic discrimination.<sup>119</sup> OCR will contact the school or district to determine if they will accept or negotiate a resolution agreement.<sup>120</sup> Once presented, the school system has ninety days to sign the resolution agreement; however, if it becomes clear to OCR that the agreement will not be signed, OCR may shorten this window.<sup>121</sup> If the school district signs the resolution agreement, OCR will monitor its implementation until the school district is in compliance with the terms of the resolution agreement and the law(s), statute(s), and regulation(s) at issue. Upon determining that the school is in full compliance with Title VI, OCR will close the case.<sup>122</sup>

If OCR confirms a Title VI violation through its investigation, but a resolution agreement cannot be reached, or the violating entity does not comply with the terms of the resolution agreement, OCR will issue a Letter of Impending Enforcement Action.<sup>123</sup> This letter describes how OCR plans to enforce Title VI against the violating party. At its discretion, OCR will enforce Title VI compliance by either (a) filing paperwork to suspend or terminate federal funding to the entity in violation of Title VI, or (b) referring the case to DOJ to file a lawsuit.<sup>124</sup> Title VI conveys to DOJ the power to represent the United States in enforcing federal laws in court.<sup>125</sup>

Private individuals may also file a lawsuit to address allegations of intentional discrimination, regardless of OCR's investigative findings.<sup>126</sup>

### **Step 5: Monitoring**

Once a school or district enters into a resolution agreement with OCR, they are required to provide sufficient information to OCR to allow it to determine compliance with the agreement.<sup>127</sup> This monitoring may include reports due to OCR as well as follow-up interviews and site visits.<sup>128</sup> During this phase, if OCR determines noncompliance or identifies new violations of federal law, it may offer technical assistance to address the issue or launch a new compliance review or directed investigation.<sup>129</sup> OCR will continue to monitor the district until it determines that the entity has “fully and effectively complied” with the resolution agreement, including any modifications to the agreement, and with all federal laws and regulations relevant to the specific case.<sup>130</sup>

### **Alternative Dispute Resolution: Mediation**

Due to the rapidly increasing number of Title VI complaints in recent years, OCR revised its *Case Processing Manual* in August 2022 to offer those filing complaints the option of confidential mediation, ideally resolving the matter in a few months, instead of an OCR investigation which can take years.<sup>131</sup> Previously, OCR only offered mediation on a case-by-case basis.<sup>132</sup> Complainants may now request mediation when filing their complaint, or OCR may contact the involved parties to offer mediation as a resolution option.<sup>133</sup> If selected, OCR serves as the impartial mediator, and all parties are expected to participate in mediation with the goal of reaching a mutually acceptable resolution.<sup>134</sup> If an agreement is not reached through mediation, OCR will commence its normal investigation process.<sup>135</sup>

## Department of Justice's Title VI Enforcement Process

Title VI grants DOJ authority to enforce Title VI through civil litigation on behalf of federal agencies and the American people.<sup>136</sup> DOJ provides pre-enforcement legal counsel to federal agencies as obstacles to Title VI enforcement arise.<sup>137</sup> Federal agencies may then refer cases to DOJ for litigation when the agency is unable to obtain Title VI compliance on its own. Additionally, DOJ may file a statement of interest or an amicus brief explaining the government's expectations regarding Title VI when a person, group, or entity files a private Title VI lawsuit.<sup>138</sup> Conversely, when a private party sues a federal agency under Title VI, DOJ serves as that agency's attorney.<sup>139</sup>

## The Elimination of a Private Right of Action to Enforce Title VI Disparate Impact Regulations and Other Recourse for Title VI Violations

In the 2001 *Alexander v. Sandoval* decision, the U.S. Supreme Court determined that while private plaintiffs may sue in federal court to enforce disparate treatment under Title VI, they may not enforce disparate impact regulations in federal court. The *Sandoval* decision was a major setback to individuals and groups working to end discrimination and advance civil rights, but relief for disparate impact remains available through the federal agency enforcement process.<sup>140</sup>

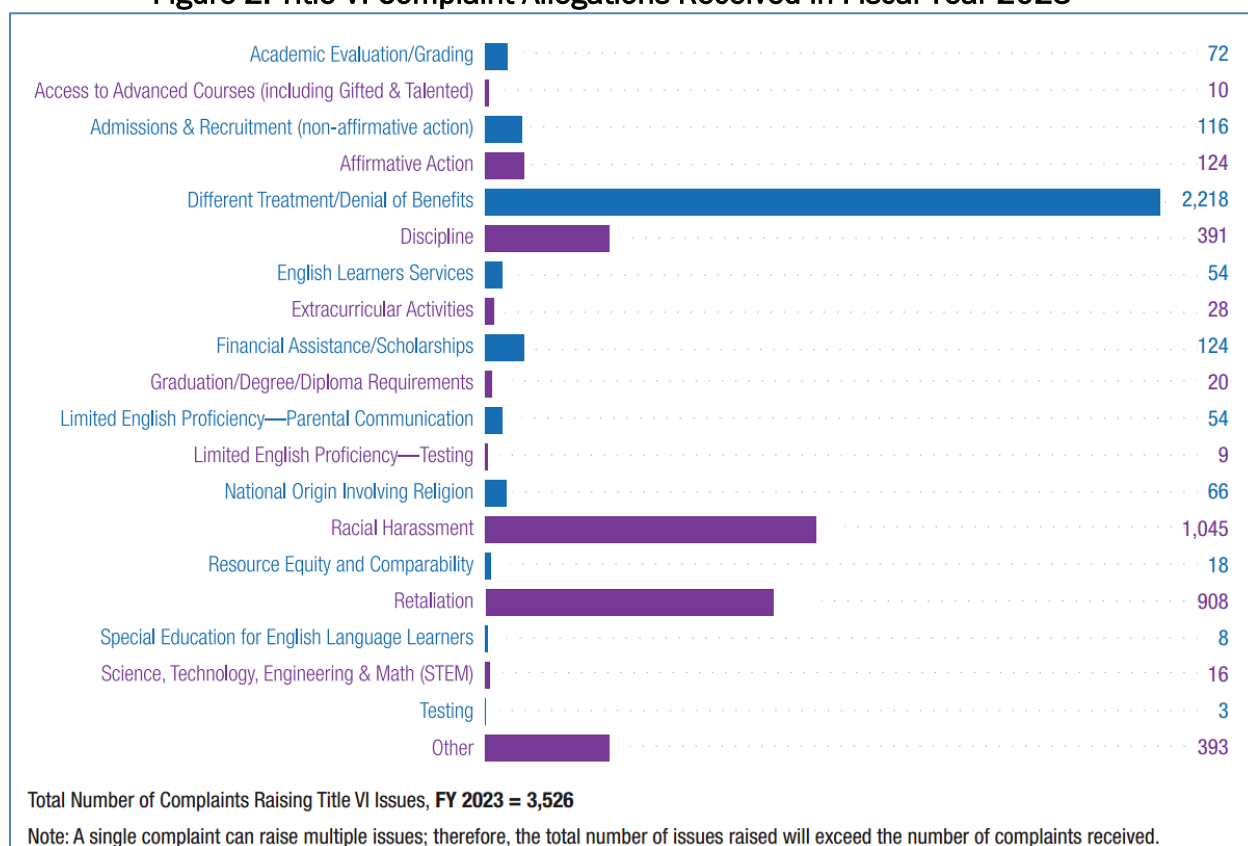
Following *Sandoval*, DOJ issued guidance reaffirming the federal government's responsibility to enforce disparate impact regulations as Congress instructed.<sup>141</sup> Thus, for individuals experiencing or observing discrimination on the basis of race, color, or national origin in schools that receive federal funding, a formal complaint can be filed with OCR that alleges disparate treatment or disparate impact discrimination. The end of the private right of action to enforce disparate impact discrimination makes OCR's complaint investigations, compliance reviews, and free technical assistance even more critical to enforce Title VI, especially as it relates to disparate impact discrimination. OCR also issues guidance on Title VI to help districts understand their obligations.<sup>142</sup>

# Why Prioritize Title VI Compliance?

Compliance with Title VI provides a concrete path for states, districts, schools, and families to advance equal educational opportunity. By examining whether a district or school's policies or practices impose disparate treatment or cause a disparate impact based on race, color, or national origin, education leaders can interrogate whether their policies and practices serve all students well and what reforms could be made when they do not. Failure to comply with Title VI also can invite a complaint or compliance review as well as an investigation and monitoring by OCR. Once OCR initiates an investigation, it may take years for a district to implement all the necessary changes and prove its compliance.

In 2023, OCR received 19,201 complaints, more than double the 8,934 received in fiscal year 2021.<sup>143</sup> Over 12,500 of these complaints were related to K–12 schools.<sup>144</sup> Eighteen percent of all complaints (3,526) specifically implicated Title VI.<sup>145</sup> The chart below, published by OCR, identifies the topics of these complaints, demonstrating the wide applicability of Title VI.

**Figure 2. Title VI Complaint Allegations Received in Fiscal Year 2023<sup>146</sup>**



OCR predicts that the 2024 civil rights complaint numbers may surpass the records set over the past two years.<sup>147</sup> According to Assistant Secretary for Civil Rights, Catherine Lhamon, OCR has seen a 26% increase in complaints in 2024 compared to the same time in 2023.<sup>148</sup>

U.S. Education Secretary Miguel Cardona emphasized ED's continued commitment to vigorously enforcing Title VI when, in November 2023, he asked Congress for additional funding to "expedit[e] investigations against antisemitism or Islamophobia" in response to increased complaints to ED regarding discrimination against students who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian.<sup>149</sup> While highlighting this issue, Secretary Cardona warned schools about the potential loss of federal funding if they fail to comply with their legal responsibility to provide all students with a learning environment free from discrimination.<sup>150</sup>

In addition to avoiding the threat of federal action, states and school districts should prioritize Title VI compliance because it is best for students. Research consistently makes clear that all students fare better in environments free from discrimination, pointing out that "[c]reating safe and supportive learning environments is essential to student achievement."<sup>151</sup> Schools that provide a high-quality education ensure that students of all races, colors, and national origins receive equitable access to learning opportunities that support their ability to thrive and prepare them to be engaged civic participants who are college and career ready.<sup>152</sup> In sum, as Na'ilah Suad Nasir, President of the Spencer Foundation, noted at the launch of the Education Rights Institute, "Our society does better when all communities and young people have the opportunity to develop their full potential."<sup>153</sup>

# The Role of the Education Rights Institute

The Education Rights Institute (ERI) aims to expand the opportunity for students in the United States to enjoy a high-quality education that empowers them to be college and career ready and engaged civic participants. ERI accomplishes this mission by: (1) producing scholarship about a federal right to a high-quality education and other law and policy reforms that increase access to a high-quality education; (2) amplifying research on the educational opportunity gap and how it disadvantages students due to their neighborhood, class, or race; and (3) expanding the capacity of school districts to capitalize on the benefits of effectively implementing existing federal laws that support a high-quality education, particularly Title VI of the Civil Rights Act of 1964. To learn more, read our first report, *A Primer on Opportunity Gaps, Achievement Gaps, and the Pursuit of a High-Quality Education*,<sup>154</sup> and watch our videos.<sup>155</sup>

ERI will publish a series of reports and videos that highlight how Title VI applies to schools and districts to increase understanding of and compliance with Title VI. ERI will also offer support and resources to districts that want to improve their compliance with Title VI. Through its work, ERI aims to strengthen our nation's education system to be the engine of opportunity that our democracy, economy, and society needs.



# Endnotes

<sup>1</sup> Lyndon B. Johnson, President of the United States, Radio and Television Remarks Upon Signing the Civil Rights Bill (July 2, 1964), in THE AMERICAN PRESIDENCY PROJECT <https://www.presidency.ucsb.edu/documents/radio-and-television-remarks-upon-signing-the-civil-rights-bill> (last visited May 30, 2024).

<sup>2</sup> Discrimination is generally defined as “[t]he effect of a law or established practice that confers privileges on a certain class or that denies privileges to a certain class because of race, age, sex, nationality, religion, or disability. Differential treatment; esp., a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.” *Discrimination*, BLACK’S LAW DICTIONARY (11th ed. 2019). As explained on pages 12-18 of this Primer, Title VI protects individual from disparate treatment and disparate impact discrimination.

<sup>3</sup> The Civil Rights Act of 1964, tit. VI, Pub. L. No. 88-352, § 601, 78 Stat. 241, 252–53 (codified as amended at 42 U.S.C. § 2000d et seq.).

<sup>4</sup> See, e.g., David S. Knight, *Accounting for Teacher Labor Markets and Student Segregation In Analyses of Teacher Quality Gaps*, 49 EDUC. RESEARCHER 454, 455 (Aug. 2020) (“Historically underserved students are more likely to be assigned to a novice teacher, a less effective teacher, one who scored in the bottom quintile on his or her certification exam, and one who received his or her undergraduate degree from a nonselective undergraduate institution.”); KAYLA PATRICK ET AL., EDUC. TRUST, INEQUITIES IN ADVANCED COURSEWORK: WHAT’S DRIVING THEM AND WHAT LEADERS CAN DO 4 (2020), <https://edtrust.org/wp-content/uploads/2014/09/Inequities-in-Advanced-Coursework-Whats-Driving-Them-and-What-Leaders-Can-Do-January-2019.pdf> (“Researchers have known for decades that Black and Latino students are assigned to advanced courses at much lower rates than their peers.”); SARAH THOMAS ET AL., CLOSING THE GAP: DIGITAL EQUITY STRATEGIES FOR THE K–12 CLASSROOM 59 (2019) (“According to the FCC, over half of rural Americans do not have access to high-speed internet access. Poor urban areas are not faring much better, with sketchy tactics often being used to justify slower speeds in these areas.” (citations omitted)); IVY MORGAN, EDUC. TRUST, EQUAL IS NOT GOOD ENOUGH: AN ANALYSIS OF SCHOOL FUNDING EQUITY ACROSS THE U.S. AND WITHIN EACH STATE 1 (2022), <https://edtrust.org/wp-content/uploads/2014/09/Equal-Is-Not-Good-Enough-December-2022.pdf> (“[T]he U.S. education system is plagued with persistent and longstanding funding inequities—with the majority of states sending the fewest number of resources to the districts and schools that actually need the most resources.”). See generally EDUCATION RIGHTS INSTITUTE, <https://www.law.virginia.edu/education/institute-scholarship-and-research> (last visited May 30, 2024).

<sup>5</sup> KIMBERLY JENKINS ROBINSON, SARAH BEACH & HELEN MIN, EDUC. RTS. INST., A PRIMER ON OPPORTUNITY GAPS, ACHIEVEMENT GAPS, AND THE PURSUIT OF A HIGH-QUALITY EDUCATION 11-14 (2024), [https://www.law.virginia.edu/sites/default/files/documents/primer-march4-2024\\_1.pdf](https://www.law.virginia.edu/sites/default/files/documents/primer-march4-2024_1.pdf).

<sup>6</sup> Title VI of the Civil Rights Act of 1964 § 601, 42 U.S.C. § 2000d.

<sup>7</sup> *Id.* at § 2000d-1.

<sup>8</sup> 34 C.F.R. § 100. Similar to the language of Title VI itself, ED’s implementing regulations states that “[n]o person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program” receiving federal financial assistance. 34 C.F.R. § 100.3(a).

<sup>9</sup> 34 C.F.R. § 100.3(b)(1)(i)–(vii).

<sup>10</sup> *Education and Title VI*, U.S. DEP’T OF EDUC.: OFF. FOR CIVIL RIGHTS (March 4, 2024), <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html> [hereinafter *Education and Title VI*]; see also *Race, Color, or National Origin Discrimination: Overview of the Law*, U.S. DEP’T OF EDUC. (Feb. 13, 2024), <https://www2.ed.gov/policy/rights/guid/ocr/raceoverview.html> [hereinafter *Race, Color, or National Origin Discrimination*] (explaining Title VI prohibits employment discrimination but only provides limited protection and further noting that most complaints OCR receives raising race, color, or national origin discrimination in employment are referred to the Equal Employment Opportunity Commission).

<sup>11</sup> *Education and Title VI*, *supra* note 10; *Race, Color, or National Origin Discrimination*, *supra* note 10.

<sup>12</sup> *Race*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/race-human/The-history-of-the-idea-of-race> (last visited May 30, 2024). “Color,” Nina G. Jablonski, *Skin Color and Race*, 175 AM. J. PHYS. ANTHROPOL. 437, 437 (2021). “National Origin,” CIVIL RIGHTS DIV., U.S. DEP’T OF JUST., Federal Protections Against National

Origin Discrimination, <https://www.justice.gov/crt/federal-protections-against-national-origin-discrimination-1> (July 11, 2023).

<sup>13</sup> OFF. FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., REPORT TO THE PRESIDENT AND SECRETARY OF EDUCATION UNDER SECTION 203(B)(1) OF THE DEPARTMENT OF EDUCATION ORGANIZATION ACT, FY 2023 (2024), <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2023.pdf> [hereinafter OCR FISCAL YEAR 2023 REPORT] (“OCR’s mandate to eliminate discriminatory barriers in education reaches more than 79 million individuals at institutions that receive federal funds[.]” Their reach also includes libraries, museums, and correctional institutions which ED also funds.)

<sup>14</sup> CIVIL RIGHTS DIV., U.S. DEP'T OF JUST., TITLE VI LEGAL MANUAL § 5, at 27 (2021), <https://www.justice.gov/crt/book/file/1364106/dl?inline> [hereinafter TITLE VI LEGAL MANUAL] (citing S. Rep. No. 64, at 17 (1988), *reprinted in* 1988 U.S.C.C.A.N. 19).

<sup>15</sup> 42 U.S.C. § 2000d-4a. The Civil Rights Restoration Act of 1987 specified that recipients of federal funds must comply with civil rights laws in all programs and services offered, Pub. L. No. 100-259, 102 Stat. 28 (1988), abrogating the Supreme Court’s ruling in *Grove City College v. Bell*, 465 U.S. 555 (1984), which had held that civil rights laws only apply to the programs intended to benefit from federal funding. See also TITLE VI LEGAL MANUAL, *supra* note 14, § 5, at 22-23.

<sup>16</sup> TITLE VI LEGAL MANUAL, *supra* note 14; see also 110 Cong. Rec. 6544 (1964) (“Title VI’s prohibitions were meant to be applied institution-wide, and as broadly as necessary to eradicate discriminatory practices in programs that federal funds support.”); see also S. Rep. No. 64, at 5–7 (1988), *reprinted in* 1988 U.S.C.C.A.N. 3, 7–9; see also *Race, Color, or National Origin Discrimination*, *supra* note 10.

<sup>17</sup> 4 C.F.R. § 100.7(e) (1980) (“No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.”); *Peters v. Jenney*, 327 F.3d 307 (4th Cir. 2003) (holding that Title VI implicitly protects against retaliation, affirming the validity of 34 C.F.R. § 100.7(e)); see also “Dear Colleague” Letter from Seth M. Galanter, Acting Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (Apr. 13, 2013), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.html> (“Individuals should be commended when they raise concerns about compliance with the Federal civil rights laws, not punished for doing so.”).

<sup>18</sup> JARED P. COLE, CONG. RSCH. SERV., IF12455, RACE DISCRIMINATION AT SCHOOL: TITLE VI AND THE DEPARTMENT OF EDUCATION’S OFFICE FOR CIVIL RIGHTS 2 (July 21, 2023), [https://www.everycrsreport.com/files/2023-07-21\\_IF12455\\_288dde59131d1d8a665053efb4db508bd38a3b2b.pdf](https://www.everycrsreport.com/files/2023-07-21_IF12455_288dde59131d1d8a665053efb4db508bd38a3b2b.pdf). See generally “Dear Colleague” Letter from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ., & Vanita Gupta, Acting Assistant Att’y Gen. for Civil Rights, U.S. Dep’t of Just. (Jan. 7, 2015), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

<sup>19</sup> COLE, *supra* note 18.

<sup>20</sup> U.S. COMM’N ON CIVIL RIGHTS, LIMITED ENGLISH PROFICIENCY PLAN: PLAN FOR PROVIDING ACCESS TO BENEFITS AND SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY, (Oct. 5, 2023), <https://www.usccr.gov/limited-english-proficiency-plan> (“Meaningful Access: Language assistance that results in accurate, timely, and effective communication at no cost to the individual with LEP needing assistance. Meaningful access denotes access that is not significantly restricted, delayed, or inferior as compared to programs or activities provided to English-proficient individuals.”); see also Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 1763, 1765 (Jan. 12, 2004), <https://www.govinfo.gov/content/pkg/FR-2004-01-12/pdf/FR-2004-01-12.pdf> (“What constitute reasonable steps to ensure meaningful access in the context of federally-assisted programs and activities will be contingent upon a balancing of four factors: (1) The number and proportion of eligible LEP constituents; (2) the frequency of LEP individuals’ contact with the program; (3) the nature and importance of the program; and (4) the resources available, including costs.”).

<sup>21</sup> *Education and Title VI*, *supra* note 10; see also OFF. FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., ABOUT OCR, (May 24, 2023), <https://www2.ed.gov/about/offices/list/ocr/aboutocr.html> (explaining that OCR also provides

training and support to help institutions achieve voluntary compliance with the civil rights laws that OCR enforces.).

<sup>22</sup> TITLE VI LEGAL MANUAL, *supra* note 14, § 3, at 1-6.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> CIVIL RIGHTS DIV., U.S. DEPT. OF JUST., YOUR RIGHTS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, <https://www.justice.gov/crt/file/703261/dl>; CIVIL RIGHTS DIV., U.S. DEP'T OF JUST., <https://www.civilrights.justice.gov/> (last visited May 30, 2024).

<sup>26</sup> John F. Kennedy, President of the United States, Special Message to the Congress on Civil Rights and Job Opportunities (Jan. 19, 1963), in THE AMERICAN PRESIDENCY PROJECT <https://www.presidency.ucsb.edu/documents/special-message-the-congress-civil-rights-and-job-opportunities>.

<sup>27</sup> U.S. CONST. amend. XIII, § 1 (“Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”).

<sup>28</sup> U.S. CONST. amend. XIV, § 1 (“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”).

<sup>29</sup> U.S. CONST. amend. XV, § 1 (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”).

<sup>30</sup> See, e.g., Presidential Proclamation No. 95 (Jan. 1, 1863), *reprinted in Online Exhibits*, Nat’l Archives (May 5, 2017), <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation/transcript.html> (Emancipation Proclamation).

<sup>31</sup> J. MICHAEL MARTINEZ, COMING FOR TO CARRY ME HOME: RACE IN AMERICA FROM ABOLITIONISM TO JIM CROW 221 (2012) (“Jim Crow laws ensured that people of color would remain politically impotent. These laws, which legally segregated blacks and whites, were enacted throughout the Southern states beginning in the 1880s. Blacks and whites had self-segregated before that time, but the new laws were far more rigid and brutal than laws and customs previously in place.”); BRANDON T. JETT, RACE, CRIME, AND POLICING IN THE JIM CROW SOUTH: AFRICAN AMERICANS AND LAW ENFORCEMENT IN BIRMINGHAM, MEMPHIS, AND NEW ORLEANS, 1920–1945, at 2 (2021) (“How police officers enforced Jim Crow ranged from writing a ticket or arresting an African American for violating segregation ordinances to acting as judge, jury, and executioner when killing black southerners who violated the many social mores and customs of Jim Crow.”). See *generally* MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY (2004).

<sup>32</sup> The separate but equal approach finds its roots in our nation’s schools and flourished there. Douglas J. Ficker, *From Roberts to Plessy: Educational Segregation and the “Separate but Equal” Doctrine*, 84 J. NEGRO HIST. 301, 305 (1999). In the 1850 decision in *Roberts v. City of Boston*, the Supreme Judicial Court of Massachusetts upheld the Boston school committee’s decision to deny Sarah Roberts admission to the White school close to her home because the committee provided a school for Black children. 59 Mass. (5 Cush.) 198 (1850). Other states built upon the Roberts case to justify the racial segregation of students in schools. See Ficker, *supra*, at 305.

<sup>33</sup> DAVID K. FREMON, THE JIM CROW LAWS AND RACISM IN UNITED STATES HISTORY 20–21 (2015) (“Those who defied white oppression faced blacklists, court charges, or vigilante ‘justice.’ ‘The laws were so rigid no one could ever think you could break them,’ recalled black journalist Vernon Jarrett. ‘There were to be no [black] victories.’ . . . A set of written and unwritten rules governed relations between whites and blacks in the South. These were intended to keep a black person in his or her place—in a social position below that of a white person. Black and white children often played together in the South. But by the teenage years, their carefree friendships ended. From then on, the white person would be dominant, the black submissive. Blacks were expected to address whites as ‘mister,’ ‘missus,’ or ‘miss.’ Whites addressed blacks as ‘boy’ or ‘girl.’ Older blacks were called ‘uncle’ or ‘auntie.’ If white people walked along a sidewalk, blacks had to step aside and let them pass. Black drivers could not pass whites who were driving a buggy. A black man was expected to take off his hat when a white person came near. He did not start a conversation with a white person. Southern blacks learned early in life to curb their ambitions.” (alteration in original)).

<sup>34</sup> See generally RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA'S STRUGGLE FOR JUSTICE* (1st ed. 1975); LESLIE V. TISCHAUSER, *JIM CROW LAWS* (2012); IDA BELL WELLS-BARNETT ET AL., *SOUTHERN HORRORS: LYNCH LAW IN ALL ITS PHASES* (1982); STETSON KENNEDY, *JIM CROW GUIDE TO THE U.S.A.: THE LAWS, CUSTOMS AND ETIQUETTE GOVERNING THE CONDUCT OF NONWHITES AND OTHER MINORITIES AS SECOND-CLASS CITIZENS* 205 (1990) ("Needless to say, the 'good Negro' in the dominant view of the Southern white community is the one who 'knows his place and stays in it.'").

<sup>35</sup> See, e.g., KATHERINE MELLEN CHARRON ET AL., *FREEDOM'S TEACHER: THE LIFE OF SEPTIMA CLARK* 51 (2009) ("In 1915–16, annual per-pupil expenditures ranged from a high of \$48.59 for white children in Sumter County to a low of \$0.95 for black children in Colleton County. The disparity ultimately hurt everyone."); RUCKER C. JOHNSON, *CHILDREN OF THE DREAM: WHY SCHOOL INTEGRATION WORKS* 25 (2019).

<sup>36</sup> JOHNSON, *supra* note 35, at 25.

<sup>37</sup> 163 U.S. 537, 551–52 (1896).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 537, 551.

<sup>40</sup> TISCHAUSER, *supra* note 34, at 35–47; Ficker, *supra* note 32, at 301–12. One exception to the lack of enforcement of the "equal" part of separate but equal can be found in *Claybrook v. City of Owensboro*, 16 F. 299 (D. Ky. 1883), in which the U.S. District Court judge in Kentucky ruled that the schools were required to be equal.

<sup>41</sup> 175 U.S. 528 (1899).

<sup>42</sup> See *id.* at 544–45.

<sup>43</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 494–95 (1954).

<sup>44</sup> *Id.* at 493–94.

<sup>45</sup> *Brown v. Bd. of Educ. (Brown II)*, 349 U.S. 294, 300, 301 (1955). The late scholar Charles Ogletree, Jr. argued that all deliberate speed is an attitude that has been interpreted as "go slow," which diminishes the impact of *Brown* to end segregation. CHARLES J. OGLETREE, *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF BROWN V. BOARD OF EDUCATION* 299 (2004); see also Carrie Jane Williamson, *All Deliberate Speed: Reflections on the First Half Century of Brown v. Board of Education*, 12 J. CATH. EDUC. 122 (2008) (reviewing CHARLES J. OGLETREE, JR., *ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF-CENTURY OF BROWN V. BOARD OF EDUCATION* (2004)).

<sup>46</sup> See *Green v. New Kent Cnty.*, 391 U.S. 430, 435 (1968); *Freeman v. Pitts*, 503 U.S. 467, 492–93 (1992) ("It was an appropriate exercise of its discretion for the District Court to address the elements of a unitary system discussed in *Green*, to inquire whether other elements ought to be identified, and to determine whether minority students were being disadvantaged in ways that required the formulation of new and further remedies to ensure full compliance with the court's decree. Both parties agreed that quality of education was a legitimate inquiry in determining DCSS' compliance with the desegregation decree, and the trial court found it workable to consider the point in connection with its findings on resource allocation. The District Court's approach illustrates that the *Green* factors need not be a rigid framework. It illustrates also the uses of equitable discretion.").

<sup>47</sup> 102 CONG. REC. 4460 (Mar. 12, 1956) (Statement of Sen. George, "Southern Manifesto"). See also KLUGER, *supra* note 34, at 752; LEGAL DEF. FUND, *THE SOUTHERN MANIFESTO AND "MASSIVE RESISTANCE" TO BROWN*, <https://www.naacpldf.org/brown-vs-board/southern-manifesto-massive-resistance-brown/> (last visited May 30, 2024); THE UNIV. OF VA.'S DIGITAL RESOURCES FOR U.S. HISTORY, *Virginia's "Massive Resistance" to School Desegregation*,

[http://www2.vcdh.virginia.edu/xslt/servlet/XSLTServlet?xml=/xml\\_docs/solguide/Essays/essay13a.xml&xsl=/xml\\_docs/solguide/sol\\_new.xsl&section=essay](http://www2.vcdh.virginia.edu/xslt/servlet/XSLTServlet?xml=/xml_docs/solguide/Essays/essay13a.xml&xsl=/xml_docs/solguide/sol_new.xsl&section=essay) (last visited May 30, 2024); EQUAL JUST. INITIATIVE, *SEGREGATION IN AMERICA* 30 (2018), <https://segregationinamerica.eji.org/report.pdf?action=purge>.

<sup>48</sup> 102 CONG. REC. 4460 (Mar. 12, 1956) (Statement of Sen. George, "Southern Manifesto"), *supra* note 47; ("We commend the motives of those States which have declared the intention to resist forced integration by any lawful means."); see also *THE SOUTHERN MANIFESTO AND "MASSIVE RESISTANCE" TO BROWN*, *supra* note 47; *Virginia's "Massive Resistance" to School Desegregation*, *supra* note 47; The Library of Virginia, *Exhibition: Brown v. Board of Education: Virginia Responds* (Dec. 2003), reprinted in *The Prince Edward Case and the Brown Decision*, <https://www.lva.virginia.gov/exhibits/brown/decision.htm>; Jerome C. Hafter & Peter M.



Hoffman, *Segregation Academies and State Action*, 82 YALE L.J. 1436, 1437–39 (1973). To implement massive resistance, white Americans subjected Black people to subhuman treatment, such as racialized violence including lynching and murder, mass incarceration, eviction, and property damage. Equal Just. Initiative, *supra* note 47, at 23.

<sup>49</sup> See generally Kimberly Jenkins Robinson, *Resurrecting the Promise of Brown: Understanding and Remediating How the Supreme Court Reconstitutionalized Segregated Schools*, 88 N.C. L. REV. 787, 787–875 (2010).

<sup>50</sup> FRANK KNORR, U.S. COMM’N ON CIVIL RIGHTS, FULFILLING THE LETTER AND SPIRIT OF THE LAW: DESEGREGATION OF THE NATION’S PUBLIC SCHOOLS 4 (1976), <http://files.eric.ed.gov/fulltext/ED128518.pdf>.

<sup>51</sup> John F. Kennedy, U.S. President, Special Message to the Congress on Civil Rights and Job Opportunities (Jan. 19, 1963), in THE AMERICAN PRESIDENCY PROJECT <https://www.presidency.ucsb.edu/documents/special-message-the-congress-civil-rights-and-job-opportunities> (last visited May 30, 2024) [hereinafter President Kennedy Speech (Jan. 19, 1963)]; R. Shep Melnick, *The Odd Evolution of the Civil Rights State*, 37 HARV. J.L. & PUB. POL’Y 113, 118 (2014).

<sup>52</sup> 110 CONG. REC. 6545 (Mar. 30, 1964) (statement of Sen. Hubert Humphrey) [hereinafter Statement of Sen. Hubert Humphrey].

<sup>53</sup> President Kennedy Speech (Jan. 19, 1963), *supra* note 51; see also Melnick, *supra* note 51.

<sup>54</sup> President Kennedy Speech (Jan. 19, 1963), *supra* note 51.

<sup>55</sup> Statement of Sen. Hubert Humphrey, *supra* note 52.

<sup>56</sup> John F. Kennedy, U.S. President, Televised Address to the Nation on Civil Rights (June 11, 1963), in *Historic Speeches*, JOHN F. KENNEDY PRESIDENTIAL LIBRARY & MUSEUM, <https://www.jfklibrary.org/learn/about-jfk/historic-speeches/televised-address-to-the-nation-on-civil-rights> (last visited May 30, 2024).

<sup>57</sup> About Dr. Martin Luther King, Jr.: “In 1954, Martin Luther King became pastor of the Dexter Avenue Baptist Church in Montgomery, Alabama. Always a strong worker for civil rights for members of his race, King was, by this time, a member of the executive committee of the National Association for the Advancement of Colored People, the leading organization of its kind in the nation. He was ready, then, early in December, [sic] 1955, to accept the leadership of the first great Negro nonviolent demonstration of contemporary times in the United States, the bus boycott.” NOBEL LECTURES, PEACE 1951–1970 (Frederick W. Haberman ed., 1972), reprinted in The Nobel Foundation, *Martin Luther King Jr. Biographical*, <https://www.nobelprize.org/prizes/peace/1964/king/biographical/> (last visited May 30, 2024).

<sup>58</sup> Referred to as the “Mother of the [Civil Rights] Movement” and friend to civil rights icons like Ella Baker, Rosa Parks, A. Philip Randolph, and Dr. Martin Luther King, Jr., Septima Poinsette Clark was the daughter of a formerly enslaved father and free mother in South Carolina whose experience as a public school teacher laid the foundation for a desire to establish Citizenship Schools to prepare members of the Black community to pass literacy tests required as a prerequisite for voting. Clark previously helped integrate the Charleston City Schools’ teaching force. CHARRON ET AL., *supra* note 35 (“Convinced that the momentum of local postwar activism could be harnessed to federal opportunities to dismantle Jim Crow, Clark took a stand for integration in 1950, an unpopular choice with most white Charlestonians and many of her Black colleagues. In 1956, when the Charleston City School Board fired Clark for refusing to conceal her membership in the NAACP, it inadvertently freed her to devote her full attention to issues that had long been on her mind. Four decades of teaching and civic organizing shaped how she perceived the fundamental problems confronting the southern black community, including the need for better schools, better health care, better job opportunities and wages, and increased voter participation—particularly among black women—in local, state, and federal affairs. The challenge this former public school teacher accepted was to find a means to solve them.”); Grace Jordan McFadden, *Septima P. Clark and the Struggle for Human Rights*, in WOMEN IN THE CIVIL RIGHTS MOVEMENT: TRAILBLAZERS AND TORCHBEARERS, 1941-1965 (Vicki L. Crawford et al., eds., 1990).

<sup>59</sup> J. Douglas McElvy, *Honoring Fred Gray*, ADDENDUM (Ala. State Bar., Montgomery, Ala.), at 1, (Feb. 2015), <https://www.alabar.org/assets/2014/09/Addendum-February-2015.pdf>. As an attorney, Mr. Gray has represented not only famous civil rights icons, but also Black schoolchildren throughout Alabama fighting to desegregate their local public schools. *Id.* (“In his first year of law practice, Fred represented Rosa Parks and Martin Luther King, who later became famous and so did he.”); American Bar Association, *Civil Rights Icon Fred Gray to Receive Prestigious ABA Medal*, (June 19, 2023), <https://www.americanbar.org/news/abanews/aba-news-archives/2023/06/civil-rights-icon-fred-gray-aba-medal/> (“Gray played a crucial role in many of the



biggest moments in civil rights history in the 1950s, '60s and '70s. He represented Rosa Parks and was the chief legal strategist during the Montgomery bus boycott of 1955 and 1956. He represented the marchers during the Selma-to-Montgomery civil rights marches of 1965. And he represented the victims of the infamous Tuskegee syphilis study, obtaining a settlement for the survivors in 1975 and an apology from President Bill Clinton, on the government's behalf, in 1997. . . . Gray's motto was 'to destroy everything segregated I could find.' His legal efforts led to the integration of the University of Alabama and Auburn University. In 1967, he won a court order that integrated all Alabama educational institutions that were not already under court orders.").

<sup>60</sup> U.S. Congressman John Lewis was the youngest speaker at the March on Washington on August 28, 1963, as the Chairman of the Student Nonviolent Coordinating Committee. Joseph R. Biden, Jr., U.S. President, Statement by President Joe Biden on the 59th Anniversary of the March on Washington (Aug. 28, 2022), in *Statements and Releases*, THE WHITE HOUSE, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/28/statement-by-president-joe-biden-on-the-59th-anniversary-of-the-march-on-washington/> (last visited May 30, 2024). In the original draft of his speech, he criticized the proposed Civil Rights Act, stating, "In good conscience, we cannot support wholeheartedly the administration's civil rights bill, for it is too little and too late. There's not one thing in the bill that will protect our people from police brutality." John Lewis, Chairman, Student Nonviolent Coordinating Comm., Original Draft of Speech at the March on Washington (Aug. 28, 1963), in *March on Washington Speech*, SNCC DIGITAL GATEWAY, <https://snccdigital.org/inside-sncc/policy-statements/march-washington-speech/> (last visited May 30, 2024); LIBRARY OF CONGRESS, *THE CIVIL RIGHTS ACT OF 1964: A LONG STRUGGLE FOR FREEDOM*, <https://www.loc.gov/exhibits/civil-rights-act/civil-rights-era.html> (last visited May 30, 2024). March organizers revised this line of the speech so as not to offend President Kennedy. In his delivered remarks, Mr. Lewis stated, "It is true that we support the administration's civil rights bill. We support it with great reservations, however." John Lewis, Chairman, Student Nonviolent Coordinating Comm., Speech at March on Washington (Aug. 28, 1963), in *VOICES OF DEMOCRACY: THE U.S. ORATORY PROJECT*, <https://voicesofdemocracy.umd.edu/lewis-speech-at-the-march-on-washington-speech-text/> (last visited May 30, 2024).

<sup>61</sup> Kristopher B. Burrell, *Black Women as Activist Intellectuals: Ella Baker and Mae Mallory Combat Northern Jim Crow in New York City's Public Schools during the 1950s*, in *THE STRANGE CAREERS OF THE JIM CROW NORTH: SEGREGATION AND STRUGGLE OUTSIDE OF THE SOUTH* 89, 104-05 (Brian Purnell & Jeanne Theoharis with Jomaiz Woodard eds., 2019). Mae Mallory was a mother and activist who used both community organizing and the legal system to fight for better school for children of color in New York City. *Id.* ("In September of 1958, nine Harlem mothers, including Mae Mallory, removed their fifteen children from junior high schools. This act violated the state's compulsory education law. These mothers, initially nicknamed 'the Little Rock Nine of Harlem,' soon became known as the 'Harlem Nine.' . . . In addition to filing suit against the BOE, the [Parents Committee for Better Education (PC)] established an alternative school in Harlem. . . . The PC demonstrated that black parents, with community support, could develop a rigorous, culturally sensitive, and diverse liberal arts curriculum, more effectively than the Board of Education. 'Recognizing the irony of the situation, they decided to end the private tutoring' and filed a \$1 million lawsuit against the city for 'sinister and discriminatory purpose in the perpetuation of racial segregation in five school districts in Harlem.'"). A group of parents prevailed in *In re Skipwith*, 180 N.Y.S.2d 852, 871 (N.Y. Dom. Rel. Ct. 1958), where Judge Justine Wise Polier, held, "So long as non-white or 'X' schools have a substantially smaller proportion of regularly licensed teachers than white or 'Y' schools, discrimination and inferior education, apart from that inherent in residential patterns, will continue. The Constitution requires equality, not mere palliatives. Yet the fact remains that more than eight years after the Supreme Court ruling in *Sweatt v. Painter* [] and more than four years after its ruling in *Brown v. Board of Education*, the Board of Education of the City of New York has done substantially nothing to rectify a situation it should never have allowed to develop, for which it is legally responsible, and with which it has had ample time to come to grips, even in the last four years." This victory led the Board of Education to relent to implementing an open transfer policy officially integrating New York City schools.

<sup>62</sup> See generally TOMIKO BROWN-NAGIN, *CIVIL RIGHTS QUEEN: CONSTANCE BAKER MOTLEY AND THE STRUGGLE FOR EQUALITY* (2022); Lawyer. Advocate. Judge. Elected Official., LEGAL DEF. FUND, <https://www.naacpldf.org/naacp-publications/ldf-blog/cbm-100/> (last visited May 30, 2024) ("Constance Baker Motley wrote the original complaint in *Brown v. Board of Education* and pioneered the legal campaigns for several seminal school desegregation cases. She was the first Black woman to argue before the Supreme Court and went on to win nine out of ten cases.").

<sup>63</sup> Theodore M. Shaw, *Tribute to Jack Greenberg*, 117 COLUM. L. REV. 1057 (2017). Jack Greenberg was a White activist in the Civil Rights Movement. *Id.* at 1057 (“I have often said that Jack Greenberg had as much influence on our country through the law as any attorney in American history. His role as one of the principal lawyers who argued for the plaintiffs in the four cases consolidated under the name *Brown v. Board of Education* guaranteed him that place in history, as did his twenty-three years as head of the NAACP Legal Defense and Educational Fund, Inc. (LDF) during the height of the Civil Rights Movement.” (citations omitted)).

<sup>64</sup> On June 2, 1963, the House of Representatives debated the Senate’s amendments to the Civil Rights Bill. The Bill passed with 289 yeas, 126 nays, 1 present, and 15 abstentions. 110 CONG. REC. 15869, 15897 (July 2, 1964). After having amended the Civil Rights Bill, H.R. 7152, the Senate passed the Bill with 73 yeas and 27 nays on June 19, 1964. 110 CONG. REC. 14409, 14511 (1964). See also U.S. SENATE, THE CIVIL RIGHTS ACT OF 1964, [https://www.senate.gov/artandhistory/history/civil\\_rights/civil\\_rights.htm](https://www.senate.gov/artandhistory/history/civil_rights/civil_rights.htm) (last visited May 30, 2024); JOHN F. KENNEDY PRESIDENTIAL LIBR. & MUSEUM, LIFE OF JOHN F. KENNEDY, <https://www.jfklibrary.org/learn/about-jfk/life-of-john-f-kennedy> (last visited May 30, 2024); NAT’L ARCHIVES, MILESTONE DOCUMENTS: CIVIL RIGHTS ACT (1964), (Feb. 8, 2022), <https://www.archives.gov/milestone-documents/civil-rights-act>.

<sup>65</sup> *The Civil Rights Act of 1964: A Long Struggle for Freedom*, LIBR. OF CONG., [www.loc.gov/exhibits/civil-rights-act/civil-rights-act-of-1964.html#obj267](http://www.loc.gov/exhibits/civil-rights-act/civil-rights-act-of-1964.html#obj267) (last visited June 3, 2024); Radio and Television Remarks Upon Signing the Civil Rights Bill, 1 PUB. PAPERS 842 (July 2, 1964) (Lyndon Johnson’s statement upon signing the Civil Rights Act of 1964). Title VI eventually provided the model for several other civil rights protections in schools. See, e.g., Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 (prohibiting discrimination on the basis of sex by educational institutions); Individuals with Disabilities in Education Act, 20 U.S.C. § 1400 (1990) (originally enacted as The Education for all Handicapped Children Act of 1975, Pub. L. No. 94-142, 89 Stat. 773) (making available a free appropriate public education to eligible children with disabilities).

<sup>66</sup> See President Kennedy Speech (Jan. 19, 1963), *supra* note 51; CIVIL RIGHTS DIV., U.S. DEP’T OF JUST., FY 2022 PERFORMANCE BUDGET 21 (2022), <https://www.justice.gov/jmd/page/file/1398356/dl> (last visited May 30, 2024) (“The Division furthers its core mission to combat segregation in schools by representing the United States in approximately 140 desegregation cases and bringing new investigations to challenge modern-day forms of segregation across the country.”).

<sup>67</sup> Statement of Sen. Hubert Humphrey, *supra* note 52.

<sup>68</sup> President Kennedy Speech (Jan. 19, 1963), *supra* note 51.

<sup>69</sup> Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d-1 (“Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.”).

<sup>70</sup> 110 CONG. REC. 2467 (Feb. 7, 1964) (statement of Rep. Emanuel Celler) (“It is for these reasons that we bring forth title [sic] VI. The enactment of title VI will serve to override specific provisions of law which contemplate Federal assistance to racially segregated institutions.”); Statement of Sen. Hubert Humphrey, *supra* note 52 (“Legislation is needed for several reasons. First, some Federal statutes appear to contemplate grants to racially segregated institutions. Such laws include the Hill-Burton Act of 1946, 42 United States Code 291e(f) for hospital construction; the second Morrill Act of 1890 for annual grants to land-grant colleges, 7 United States Code 323; and (by implication) the School Construction Act of 1950, 20 United States Code 636(b) (f). In each of these laws Congress expressed its basic intention to prohibit racial discrimination in obtaining the benefits of Federal funds. But in line with constitutional doctrines current when these laws were passed, it authorized the provision of ‘separate but equal’ facilities. It may be that all of these statutory provisions are unconstitutional and separable, as the Court of Appeals for the Fourth Circuit has recently held in a case under the Hill-Burton Act. *Simkins v. Moses H. Cone Memorial Hospital*, 323 F. 2d 957 (C.A. 4, 1963), certiorari denied, March 2, 1964. But it is clearly desirable for Congress to wipe them off the books without waiting for further judicial action.”).

<sup>71</sup> Olatunde C.A. Johnson, *Lawyering That Has No Name: Title VI and the Meaning of Private Enforcement*, 66 STAN. L. REV. 1293, 1312 (2014) (“By many accounts, enforcement of Title VI by [the Department of Health, Education, and Welfare (HEW)], the federal predecessor of the U.S. Department of Education] was a significant contributing factor in the desegregation of Southern school districts. After enactment of Title VI in 1964, HEW issued guidelines that provided federal funds only to school districts that submitted plans showing that they

had either desegregated their school systems, had submitted to court ordered plans, or would pursue voluntary desegregation plans.”).

<sup>72</sup> Gary Orfield & Ryan Pflieger, *The Unfinished Battle for Integration in a Multiracial America – From Brown to Now*, THE CIVIL RIGHTS PROJECT (2024), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/the-unfinished-battle-for-integration-in-a-multiracial-america-2013-from-brown-to-now/National-Segregation-041624-CORRECTED-for.pdf> (“By the mid-1980s, according to the data we analyzed, the proportion of Black students in majority white schools in the South reached a peak of 43%. This measure of integration has been declining steadily since then, with the proportion of Black students in majority white schools in the South around 16% as of 2021. Note that the percent of schools that were majority white has been decreasing over the last 20 years, along with the proportion of the population that is white, and some might suggest that this explains the increase in segregation (as measured by exposure to white students). Yet, the proportion of the population that is white was also decreasing during the 1950s and 1960s when we saw a rapid decrease in segregation, so a simple explanation that relies solely on demographic shifts in the population is too simplistic.”); Jared P. Cole, Legislative Attorney, Congressional Research Service, *Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of 1964* (R45665) at 5 (2019), [https://www.everycrsreport.com/files/20190404\\_R45665\\_a0ddea4244cc76cbf4e437c34e692ad73c323489.pdf](https://www.everycrsreport.com/files/20190404_R45665_a0ddea4244cc76cbf4e437c34e692ad73c323489.pdf).

<sup>73</sup> 42 U.S.C. § 2000d; COLE, *supra* note 72.

<sup>74</sup> TITLE VI LEGAL MANUAL, *supra* note 14, § 6, at 2.

<sup>75</sup> *Id.* § 6, at 3.

<sup>76</sup> *Id.*

<sup>77</sup> Cole, *supra* note 73, at 21–22; TITLE VI LEGAL MANUAL, *supra* note 14, § 6, at 6–9; Coghlan v. Am. Seafoods Co., 413 F.3d 1090, 1095 (9th Cir. 2005) (holding that direct evidence of discriminatory intent is evidence that, “if believed, proves the fact” of discriminatory intent “without inference or presumption” (citation omitted)).

<sup>78</sup> Cole, *supra* note 73, at 21.

<sup>79</sup> “Dear Colleague” Letter from Vanita Gupta, Principal Deputy Assistant Att’y Gen. for Civil Rights, U.S. Dep’t of Just., et al., (Nov. 1, 2016), <https://www.justice.gov/opa/file/903996/dl?inline>; TITLE VI LEGAL MANUAL, *supra* note 14, § 6, at 11; see also *id.* § 6, at 8.

<sup>80</sup> Vanita Gupta et al., *supra* note 79.

<sup>81</sup> The burden of proof is a party’s duty to prove a disputed assertion or charge in a legal proceeding. *Burden of Proof*, BLACK’S LAW DICTIONARY (11th ed. 2019).

<sup>82</sup> E.g., *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 291 (1978) (“Racial and ethnic distinctions of any sort are inherently suspect and thus call for the most exacting judicial examination.”).

<sup>83</sup> See, e.g., *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206–07 (2023); *Rodriguez v. San Antonio Indep. Sch. Dist.*, 411 U.S. 1, 17 (1973).

<sup>84</sup> Letter from Cristin Hedman Sparks, Supervisory Att’y/Team Leader, Off. for Civil Rights, U.S. Dep’t of Educ., to Stephen Harrell, Superintendent, Deer Park Indep. Sch. Dist. (Sept. 12, 2022) (OCR Case No. 06-21-1284), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/06211284-a.pdf>.

<sup>85</sup> Letter from Angela Martinez-Gonzalez, Supervisory Gen. Att’y, Off. for Civil Rights, U.S. Dep’t of Educ., to Rob Anderson, Superintendent, Boulder Valley Sch. Dist. (July 28, 2021) (OCR Case No. 08-21-1121), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08211121-a.pdf> (Note that while Title VI does not cover issues related to disability law, there is often overlap among federal laws in OCR’s investigations.).

<sup>86</sup> Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7.

<sup>87</sup> 34 C.F.R. § 100.3(b)(2) (2023) (“A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program, or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.”); see also Cole, *supra* note 73, at 13.

<sup>88</sup> Memorandum from the U.S. Att’y Gen. to the Heads of Dep’ts & Agencies that Provide Fed. Fin. Assistance (July 14, 1994), <https://www.justice.gov/archives/ag/attorney-general-july-14-1994-memorandum-use-disparate-impact-standard-administrative-regulations> (emphasis in original) (“Enforcement of the disparate impact provisions is an essential component of an effective civil rights compliance program. Individuals continue to be denied, on the basis of their race, color, or national origin, the full and equal opportunity to participate in or receive the benefits of programs assisted by Federal funds. Frequently discrimination results from policies and practices that are neutral on their face but have the effect of discriminating. Those [sic] policies and practices must be eliminated unless they are shown to be necessary to the program’s operation and there is no less discriminatory alternative.”).

<sup>89</sup> 34 C.F.R. § 100.3(b)(2); Cole, *supra* note 72, at 10 (“Section 602, as noted, directs agencies to promulgate regulations ‘to effectuate’ the antidiscrimination prohibition of Section 601 ‘consistent with achievement of the objectives of the statute.’ And pursuant to that directive, all Cabinet-level federal funding agencies, along with many smaller agencies, have since issued rules and guidance under Title VI outlawing disparate impact discrimination.”); COLE, *supra* note 18 (“In addition to regulations that prohibit intentional discrimination, ED and other agencies have adopted Title VI ‘disparate impact’ regulations that prohibit funding recipients from unjustified actions that have the effect of subjecting individuals to discrimination because of a protected characteristic. In other words, even if a recipient’s actions are not intentionally discriminatory, they might still violate Title VI disparate impact regulations if their effect is discriminatory.”).

<sup>90</sup> Vanita Gupta et al., *supra* note 79; see also 34 C.F.R. § 100.3(b)(2).

<sup>91</sup> TITLE VI LEGAL MANUAL, *supra* note 14, § 7, at 2.

<sup>92</sup> 34 C.F.R. § 100.3(a).

<sup>93</sup> TITLE VI LEGAL MANUAL, *supra* note 14, § 7, at 3 (citing *Lau v. Nichols*, 414 U.S. 563, 568 (1974)).

<sup>94</sup> *S. Camden Citizens in Action v. N.J. Dep’t of Env’t Prot.*, 145 F. Supp. 2d 446, 483 (D.N.J.), *modified*, 145 F. Supp. 2d 505 (D.N.J.), *rev’d*, 274 F.3d 771 (3d Cir. 2001) (“[I]n a case involving alleged disparate impact discrimination in violation of Title VI, the plaintiffs bear the initial burden of establishing a *prima facie* case that a facially neutral practice has resulted in a racial disparity. The plaintiff must demonstrate, by a preponderance of the evidence, that the disputed practice detrimentally affects persons of a particular race to a greater extent than other races. ‘It is not enough for the plaintiff merely to prove circumstances raising an inference of discriminatory impact at issue; [the plaintiff] must prove the discriminatory impact at issue.’ In other words, Plaintiffs must prove that a facially neutral practice disparately and adversely impacts them, and that the disparate impact is causally linked to the contested practice. If the plaintiff meets this burden, then the burden shifts to the defendant to come forward with a ‘substantial legitimate justification,’ or a ‘legitimate, nondiscriminatory reason,’ for the contested practice. Finally, if the defendant is able to meet its rebuttal burden, the burden shifts back to the plaintiff to ‘establish either that the defendant overlooked an equally effective alternative with less discriminatory effects or that the proffered justification is no more than a pretext for racial discrimination.’” (alteration in original) (citations omitted)); see also TITLE VI LEGAL MANUAL, *supra* note 14, § 7, at 7.

<sup>95</sup> See sources cited *supra* note 94.

<sup>96</sup> *Larry P. ex rel Lucille P. v. Riles*, 793 F.2d 969, 982 (9th Cir. 1984) (“Once a plaintiff has established a *prima facie* case, the burden then shifts to the defendant to demonstrate that the requirement which caused the disproportionate impact was required by educational necessity.”); *Elston v. Talladega Cnty. Bd. of Educ.*, 997 F.2d 1394, 1412 (11th Cir. 1993) (“[D]efendants attempting to meet the ‘substantial legitimate justification’ burden have commonly been required to demonstrate the ‘educational necessity’ of their practices, that is, to show that their challenged practices ‘bear a manifest demonstrable relationship to classroom education.’ . . . The Title VI regulations education cases tend not to explain explicitly what it means to show that a challenged practice has a ‘manifest relationship to classroom education.’ However, from consulting the way in which these cases analyze the ‘educational necessity’ issue, it becomes clear that what the cases are essentially requiring is that defendants show that the challenged course of action is demonstrably necessary to meeting an important educational goal. Such necessity is considered a substantial legitimate justification for the challenged practice.”) (internal citations omitted); see also TITLE VI LEGAL MANUAL, *supra* note 14, § 7, at 7.

<sup>97</sup> Letter from Beth Gellman-Beer, Reg’l Dir., Off. for Civil Rights, U.S. Dep’t of Educ., to Dorrell Green, Superintendent, Red Clay Consol. Sch. Dist. (Jan. 29, 2024) (OCR Complaint No. 03231373), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/03231373-a.pdf>.



<sup>98</sup> Letter from Emily Frangos, Reg'l Dir., Off. for Civil Rights, U.S. Dep't of Educ., to Tricia McManus, Superintendent, Winston-Salem/Forsyth Cnty. Schs. (Sept. 20, 2023) (OCR Case No. 11-10-5002), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11105002-a.pdf>.

<sup>99</sup> TITLE VI LEGAL MANUAL, *supra* note 14, § 7, at 2 ("The disparate impact regulations ensure 'that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.'" (quoting H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963))).

<sup>100</sup> TITLE VI LEGAL MANUAL, *supra* note 14, § 7, at 2–3 (citing *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 521 (2015)).

<sup>101</sup> A prima facie case is a "legally required rebuttable presumption." *Prima Facie Case*, BLACK'S LAW DICTIONARY (11th ed. 2019). It is "a party's production of enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor." *Id.*

<sup>102</sup> Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7.

<sup>103</sup> About OCR, U.S. DEP'T OF EDUC.: OFF. FOR CIVIL RIGHTS, <https://www2.ed.gov/about/offices/list/ocr/aboutocr.html> (May 24, 2023).

<sup>104</sup> OFF. FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., CASE PROCESSING MANUAL (CPM) 5–6 (2022), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf> [hereinafter OCR CASE PROCESSING MANUAL]. See, e.g., Letter from Emily Frangos, Reg'l Dir., Off. for Civil Rights, U.S. Dep't of Educ., to Tricia McManus, Superintendent, Winston-Salem/Forsyth Cnty. Schs. (Sept. 20, 2023) (OCR Case No. 11-10-5002), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11105002-a.pdf>.

<sup>105</sup> "Dear Colleague" Letter from Kenneth L. Marcus, Deputy Assistant Sec'y for Enf't, Off. for Civil Rights, U.S. Dep't of Educ. (Sept. 13, 2004), <https://www2.ed.gov/about/offices/list/ocr/religious-rights2004.html> (explaining that although OCR does not enforce a ban on religious discrimination, it does utilize its authority under Title VI to prevent discrimination against groups who share racial, ethnic, or national origin characteristics that overlap with religion.).

<sup>106</sup> *Education and Title VI*, U.S. DEP'T OF EDUC.: OFF. FOR CIVIL RIGHTS, <https://www2.ed.gov/about/offices/list/ocr/docs/hq43e4.html> (Apr. 24, 2023).

<sup>107</sup> OCR CASE PROCESSING MANUAL, *supra* note 104, at 5-6.

<sup>108</sup> *Id.* at 9.

<sup>109</sup> *Id.*

<sup>110</sup> About OCR, *supra* note 103.

<sup>111</sup> OCR CASE PROCESSING MANUAL, *supra* note 104, at 10-11.

<sup>112</sup> *Id.*

<sup>113</sup> 34 C.F.R. § 100.6(b) (2023); Letter from Zachary Pelchat, Reg'l Dir., Off. for Civil Rights, U.S. Dep't of Educ., to Elvin Momon, Superintendent, Victor Valley Union High Sch. Dist., (Aug. 16, 2022) (OCR Case No. 09-14-5003), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09145003-a.pdf>.

<sup>114</sup> OCR CASE PROCESSING MANUAL, *supra* note 104, at 28.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 29-31.

<sup>117</sup> *Id.* at 16.

<sup>118</sup> *Id.* at 16–17.

<sup>119</sup> *Id.* at 18.

<sup>120</sup> *Id.* at 17–20.

<sup>121</sup> *Id.* at 20.

<sup>122</sup> *Id.* at 18.

<sup>123</sup> *Id.* at 23–24.

<sup>124</sup> *Id.* at 23.

<sup>125</sup> TITLE VI LEGAL MANUAL, *supra* note 14, § 3, at 1.

<sup>126</sup> OCR CASE PROCESSING MANUAL, *supra* note 104, at 18; OFF. FOR CIVIL RIGHTS, U.S. DEP'T OF EDUC., COMPLAINT PROCESSING PROCEDURES (2022), <https://www2.ed.gov/about/offices/list/ocr/docs/complaints-how.pdf>; see also, e.g., *Bursch ex rel. T.B. v. Indep. Sch. Dist. 112*, No. 19-CV-02414, 2022 WL 3030561 (D. Minn. Aug. 1, 2022), *amended by* 620 F. Supp.3d 818 (D. Minn. 2022); *Zeno v. Pine Plains Cent. Sch. Dist.*, 702 F.3d 655 (2d Cir. 2012).



<sup>127</sup> OCR CASE PROCESSING MANUAL, *supra* note 104, at 22.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 23.

<sup>130</sup> *Id.*

<sup>131</sup> Naaz Modan, *OCR Changes Approach to Complaints Amid Record High Volume*, K-12 DIVE (Apr. 14, 2023), <https://www.k12dive.com/news/OCR-changes-approach-complaints-record-high-volume/647699/>.

<sup>132</sup> *Id.*

<sup>133</sup> OCR CASE PROCESSING MANUAL, *supra* note 104, at 13–14.

<sup>134</sup> *Id.* at 14.

<sup>135</sup> *Id.*

<sup>136</sup> TITLE VI LEGAL MANUAL, *supra* note 14, § 3, at 6.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> 532 U.S. 275, 280–82 (2001) (“[W]e must assume for purposes of deciding this case that regulations promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups, even though such activities are permissible under § 601.”).

<sup>141</sup> Memorandum from the Assistant Att’y Gen. to the Heads of Departmental Agencies, Gen. Counss. & Civil Rights Dirs. (Oct. 26, 2001), <http://www.justice.gov/crt/about/cor/lep/Oct26Memorandum.php>; see *Sandoval*, 532 U.S. at 281 (assuming for purposes of deciding the case “that regulations promulgated under § 602 of Title VI may validly proscribe activities that have a disparate impact on racial groups”); see also TITLE VI LEGAL MANUAL, *supra* note 14, § 7, at 5.

<sup>142</sup> TITLE VI LEGAL MANUAL, *supra* note 14, § 7, at 4 (“Federal funding agencies play a vital role in enforcing the prohibition on disparate impact discrimination through complaint investigations, compliance reviews, and guidance on how to comply with Title VI.”).

<sup>143</sup> OCR FISCAL YEAR 2023 REPORT, *supra* note 13, at 6, 9; Naaz Modan, *Federal Discrimination Complaints Continued Upswing in 2023 With No Signs of Slowing*, K-12 DIVE (Feb. 22, 2024), <https://www.k12dive.com/news/discrimination-complaints-increased-again-in-2023-no-signs-of-slowing-in-2/708187/>.

<sup>144</sup> Modan, *supra* note 143.

<sup>145</sup> OCR FISCAL YEAR 2023 REPORT, *supra* note 13, at 9.

<sup>146</sup> *Id.* at 16 fig.5.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Rene Marsh & Katie Lobosco, *Exclusive: Education Secretary Says Federal Funds Are at Stake If Schools Fail to Combat Antisemitism and Islamophobia*, CNN (Nov. 7, 2023, 7:00 AM), <https://www.cnn.com/2023/11/07/politics/cardona-antisemitism-schools-funding/index.html>; see also Modan, *supra* note 143 (“Biden’s FY 2024 funding proposal called for a 27% increase in funding for OCR, which [Assistant Secretary for Civil Rights Catherine] Lhamon said would allow the agency to hire 150 additional staff. Biden has yet to release a FY 2025 proposal.”).

<sup>150</sup> Marsh & Lobosco, *supra* note 149.

<sup>151</sup> NAT’L ASS’N OF SCH. PSYCHS., *READY TO LEARN, EMPOWERED TO TEACH: GUIDING PRINCIPLES FOR EFFECTIVE SCHOOLS AND SUCCESSFUL STUDENTS* 5 (3rd ed. 2020); see also Timothy Konold et al., *Racial/Ethnic Differences in Perceptions of School Climate and Its Association with Student Engagement and Peer Aggression*, 46 J. OF YOUTH & ADOLESCENCE 1289, 1298 (2017) (“[A] positive school climate characterized by high disciplinary structure, supportive teacher-student relationships, and high academic expectations for students was associated with higher levels of student engagement and lower levels of peer aggression.”); Esha Vaid et al., *The Impact of School Climate in Social-normative Expectations in Low and High SES Schools*, 51 J. OF CMTY. PSYCH. 219, 229 (2023) (“The current results regarding school climate’s influence on [social-normative expectations (SNEs)] were partially consistent with literature suggesting school climate may moderate the adverse effects of race- and [socioeconomic status (SES)]-related stressors.”) (citation omitted); Ruth Berkowitz, *School Matters: The Contribution of Positive School Climate to Equal Educational Opportunities Among Ethnocultural Minority Students*, 54 YOUTH & SOC’Y 372, 386 (2022) (“The findings suggest that schools’ prioritizing safety, positive relationships, cultural tolerance and inclusion, and additional nonacademic

goals not only ensures fulfillment of children's rights to special protection and care, freedom from discrimination, and full extraction of their natural abilities and talent, but also promotes their academic success and equal opportunity for education.”); AMY STUART WELLS, LAUREN FOX & DIANA CORDOVA-COBO, THE CENTURY FOUND., *HOW RACIALLY DIVERSE SCHOOLS AND CLASSROOMS CAN BENEFIT ALL STUDENTS* 14 (2016), [https://production-tcf.imgix.net/app/uploads/2016/02/09142501/HowRaciallyDiverse\\_AmyStuartWells-11.pdf](https://production-tcf.imgix.net/app/uploads/2016/02/09142501/HowRaciallyDiverse_AmyStuartWells-11.pdf) (“A growing body of research suggests that the benefits of K–12 school diversity indeed flow in all directions—to white and middle-class students as well as to minority and low-income pupils.”).

<sup>152</sup> ROBINSON, BEACH & MIN, *supra* note 5, at 6 (“College and career readiness for high school graduates is defined as the ability to succeed in a job or the first year of higher education without requiring remedial assistance.”). This success requires both content knowledge and soft skills, such as problem-solving and collaboration, to put those content skills to use. *Id.* at 11.

<sup>153</sup> Univ. of Va. Sch. of Law, *Launch of the Education Rights Institute, Keynote Address with Na’ilah Suad Nasir*, YouTube (Oct. 18, 2023) (keynote address of Na’ilah Suad Nasir), <https://www.youtube.com/watch?v=Cy5ZnibMM>.

<sup>154</sup> ROBINSON, BEACH & MIN, *supra* note 5.

<sup>155</sup> See, e.g., Educ. Rts. Inst., *Opportunity Gaps v. Achievement Gaps: Toward a High-Quality Education*, YouTube (Mar. 5, 2024), <https://www.youtube.com/watch?v=YvejU6Skzks>; Educ. Rts. Inst., *Introducing the Education Rights Institute*, YouTube (Mar. 5, 2024), <https://www.youtube.com/watch?v=GZjGkVrpgKw>.



**Recognizing, Preventing, and Remediating  
Racial Harassment and  
Hostile Environments in Schools**  
*Part I*

*Education Rights Institute, University of Virginia School of Law*



SCHOOL of LAW  
Education Rights Institute

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# Abstract

*Race, color, and national origin harassment regularly occurs in America's schools and inflicts harm on the students and communities that experience it. School districts that receive federal financial assistance must take steps to prevent and remedy such harassment or risk violating Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination based on race, color, or national origin in a program or activity that receives federal financial assistance, including in any public or private school that receives such assistance. This report explains key terms, such as the difference between harassment and a hostile environment, how to remedy and prevent harassment and a hostile environment, and why working to build environments free of harassment and discrimination matters. This report also includes illustrative examples of harassment drawn from the enforcement work of the Office for Civil Rights at the U.S. Department of Education and social science research regarding the harms of race, color, and national origin harassment and hostile learning environments, as well as how to remedy them.*

Warning: This report contains mentions of suicide, racial and ethnic slurs, and related sensitive content.



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# Introduction

**Discrimination** occurs when a person or group of people are unjustly or unfairly treated, often based on a characteristic outside of their control.<sup>1</sup> Unwelcome conduct based on a person's actual or perceived race or national origin is a type of discrimination termed **racial or national origin harassment**.<sup>2</sup> Title VI of the Civil Rights Act of 1964 (Title VI) protects anyone participating in a federally funded program or activity from discrimination due to their actual or perceived race, color, or national origin.<sup>3</sup> This protection covers students in public and private schools that receive federal funds.<sup>4</sup>

For example, in 2024, a group of parents filed a lawsuit in Michigan that built upon a 2012 U.S. Department of Education (ED) investigation into racial and national origin harassment within Pinckney Community Schools (PCS) in Pinckney, Michigan. The lawsuit highlights both the severity of race, color, and national origin harassment that can occur in schools as well as how it can persist over time, creating a **hostile environment**. The Office for Civil Rights (OCR) within ED began investigating PCS, after receiving a complaint in December 2012 alleging that the school district discriminated on the basis of national origin (Arab American) and race (Black).<sup>5</sup> By 2015, OCR concluded that PCS violated Title VI by failing to appropriately address the ongoing hostile environment in at least one of its schools.<sup>6</sup> OCR found that between 2011 and 2013, the school district had been made aware of at least five incidents of alleged harassment each academic year such as students being called the N-word and “a f-cking colored kid,” online racial bullying, and a student drawing a swastika on material being sent to a shelter for unhoused people.<sup>7</sup> Though OCR found that PCS investigated the incidents and disciplined involved students, they also concluded that “the disciplinary actions taken were not sufficient to adequately redress the overall hostile environment.”<sup>8</sup> Among its findings, OCR noted that even though PCS had several anti-bullying programs, they did not address discrimination and harassment based on race or national origin.<sup>9</sup>

In order to continue receiving funding from the federal government and comply with federal law, PCS entered into a Resolution Agreement with OCR to remedy the hostile environment and prevent further harassment.<sup>10</sup> This agreement required PCS to take such actions as conducting annual trainings for district personnel and all high school students regarding Title VI requirements, what Title VI violations may look like, and who to contact if violations occur.<sup>11</sup> The agreement further required the district to revise its anti-harassment policies to include information such as a description of the action steps the district will take to stop, remedy, and prevent the recurrence of discrimination, retaliation, or harassment based on race, color, or national origin.<sup>12</sup>

Yet, in July 2024, the parents of five PCS students filed a lawsuit alleging the district continued to violate Title VI and other civil rights laws at least through 2023 by causing, encouraging, tolerating, and/or failing to correct the racially hostile environment.<sup>13</sup> The lawsuit's factual allegations state that though the district's written policies outline severe consequences for harassment based on race, ethnicity, and nationality; in reality, no students were punished for discriminatory acts despite frequent complaints to district personnel alleging racial harassment.<sup>14</sup> Specifically, “[t]eachers are present when slurs are used against African American students, administrators are informed of racial behaviors, including physical assaults, and parents routinely escalate racist incidents to principals and the superintendent. Yet, Defendant has failed to take meaningful action.”<sup>15</sup> The racial harassment alleged includes students being repeatedly called names like the “N-word,” “cotton picker,” “monkey,” “hoodlum,” “a dumb Black kid,” and witnessing a request to place a “red dot” on a student of Indian ethnicity.<sup>16</sup> According to the lawsuit, a student admitted to his father that he called another student the N-word, prompting his father to ask the school why they had not notified

him regarding the incident.<sup>17</sup> The school's principal reasoned that "she did not want to bring negative attention to the situation or for the children to be labeled racist."<sup>18</sup> This comfort with the status quo and privileging of perpetrators of harm can lead to hostile environments for students upon whom the harm is being inflicted.

The severity and longevity of the harassment and hostile environment in this district serves as just one example of the harassment that occurs in our schools nationwide today. Race, color, and national origin harassment are regularly featured in news headlines and have been for some time.<sup>19</sup> Our nation still has much work to do to ensure that our schools are safe for all students and in compliance with Title VI. Policymakers at the state, district, and school level along with teachers and other education leaders must take action to create and maintain school environments that prevent, address, and remedy race, color, and national origin harassment and hostile environments. At the federal level, ED declares that "[a]n educational institution has a duty to provide a nondiscriminatory environment that is conducive to learning."<sup>20</sup> OCR enforces this obligation by partnering with the U.S. Department of Justice (DOJ) to monitor and enforce Title VI compliance.

In recent years, OCR has received a concerning rise in the number of complaints alleging race, color, or national origin harassment and/or a hostile environment, as well as allegations of other forms of discrimination in schools.<sup>21</sup> OCR notes that harassment is "too pervasive in our nation's schools."<sup>22</sup> To understand the rise in these complaints and how such discrimination might be prevented, one must first understand what constitutes racial harassment and how harassment can create a hostile environment.

To understand how to fulfill their obligation to prevent and remedy race, color, or national origin harassment and a hostile environment, education leaders, from teachers to school district leaders and state staff must understand the relevant research and legal terms. We provide a glossary at the end of this report that defines the words in bold. Any reference to harassment or racial harassment in this report series refers to race, color, or national origin harassment prohibited by Title VI.

This report is one in a two-part series dedicated to harassment and hostile environment discrimination as regulated by Title VI of the Civil Rights Act of 1964. This paper asks:

- What constitutes race, color, or national origin harassment?
- How can harassment create a hostile environment in schools?
- How do race, color, or national origin harassment and a hostile environment impact student outcomes?
- How does the U.S. Department of Education expect schools to respond when discriminatory acts such as these occur?

The next paper provides evidence-based best practices and exemplars that schools can use as models to remedy and prevent race, color, or national origin harassment or a hostile environment in K-12 schools.

*Warning: This report contains mentions of suicide, racial and ethnic slurs, and related sensitive content.*

# Understanding Harassment and a Hostile Environment Under Title VI

Illegal harassment may look like what is commonly referred to as bullying.<sup>23</sup> Race, color, or national origin harassment “denies students the right to an education free of discrimination”<sup>24</sup> and may negatively impact student outcomes, in addition to other harms.<sup>25</sup> Despite these well-documented harms to students and the learning environment, many school leaders fail to identify and appropriately address incidents of racial harassment, and may allow it to escalate to the point that it forms a hostile environment. A hostile environment occurs within a school when harassment becomes so severe that a person can no longer participate in or fully benefit from the school’s operations.<sup>26</sup> Both racial harassment and hostile environments can violate Title VI.<sup>27</sup>

OCR investigates discrimination concerns about and allegations against entities under its jurisdiction.<sup>28</sup> If it finds a Title VI violation, OCR may offer targeted guidance to the school district through a resolution agreement regarding what steps must be taken to remedy any acute or systemic discrimination.<sup>29</sup> If, however, OCR determines that a resolution agreement does not provide an appropriate remedy or if a school or district refuses to enter into or comply with such an agreement, ED will enforce Title VI compliance through other means.<sup>30</sup> ED may enforce compliance by filing paperwork to suspend or terminate federal funding to the entity in violation of Title VI or by referring the case to DOJ to file a lawsuit.<sup>31</sup> Individuals may also bring intentional discrimination claims in federal court against the offending entity.<sup>32</sup> For more about the origins of Title VI and the federal government’s enforcement process, please refer to the Education Rights Institute’s Title VI primer: *Preventing and Remedying Race, Color, and National Origin Discrimination in Schools: A PRIMER ON TITLE VI OF THE CIVIL RIGHTS ACT OF 1964*.<sup>33</sup>

## Harassment under Title VI

Within educational settings, students, faculty, staff, and visitors to schools can engage in harassment.<sup>34</sup> Harassment can take many verbal, nonverbal, or physical forms including, “slurs, taunts, stereotypes, or name-calling, as well as racially-motivated physical threats, attacks, or other hateful conduct.”<sup>35</sup> Ethnic or ancestral slurs, along with harassment toward students based on “how they look, dress, or speak in ways linked to ethnicity or ancestry (e.g., skin color, religious attire, language spoken); or stereotyped based on perceived shared ancestral or ethnic characteristics,” such as students of Sikh, Hindu, Jewish, and Muslim descent, also violate Title VI.<sup>36</sup> A person’s race, color, or national origin need not be the only basis for harassment, but such harassment remains prohibited so long as it is at least partially motivated by these factors.<sup>37</sup> Harassment that violates Title VI does not have to target a specific person, need not be repetitive, nor be intentional to cause harm.<sup>38</sup> Unlawful harassment can even be based on the race, color, or ethnicity of a friend or associate.<sup>39</sup> In cases such as this, someone might, for example, be harassed for befriending a student of a different race.

Below are examples of OCR and DOJ racial harassment investigations.

**Table 1. Examples of Racial Harassment**

Racial Harassment Case Profile A	
<p><b>Type of Investigation:</b> Complaint</p> <p><b>School District:</b> Beecher Community Unit School District 200U</p> <p><b>State:</b> IL</p> <p><b>Title VI Area of Concern:</b> Racial Harassment</p> <p><b>Date Resolved:</b> 6/5/2023</p> <p><b>Type of Resolution:</b> Resolution Agreement</p> <p><small>Letter from Marcela Sanchez-Aguilar, Supervising Atty. Off. for Civil Rights, U.S. Dept of Educ., to Jack Gaham, Superintendent, Beecher Community Unit Sch. Dist. 200U (June 5, 2023) (OCR Case No. 05-22-1177). <a href="https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05221177-a.pdf">https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05221177-a.pdf</a>.</small></p>	<p><b>Case Facts</b></p> <ul style="list-style-type: none"> <li>• OCR investigated whether the District failed to respond appropriately to complaints that a student (Student A) was harassed based on race (Black) by other students and a teacher during class during the 2021-2022 school year.</li> <li>• Two White students presented two PowerPoint presentations with a Confederate flag as the last slide of each presentation. Student A said this made her feel upset and uncomfortable. Student A's parent complained to a dean and during a 504 meeting. The dean and 504 team said they did not remember the complaint.</li> <li>• Student B made a social media post during the school day that contained the N-word. Student A said that this social media post was very upsetting, and it made her feel even more uncomfortable. Student A said that the whole school had access to the social media post. She said that at least five other Black students mentioned the post to her and were upset by it as well. Student A's parent reported the social media post to the dean the same day. The school suspended Student B. The school did not offer counseling for the impacted students.</li> <li>• When Student B returned to School from his suspension, the classroom teacher alluded to the social media matter, stating to the class, "It is the times we are living in, you cannot talk about this stuff during school hours." Student A's parent said that the classroom teacher did not denounce Student B's actions and instead just said not to do it during school hours. The parent said that she complained about the classroom teacher's comments to the dean by phone and via email. The dean said he counseled the classroom teacher that she should not make these types of comments in the classroom. He also said that he informed the parent that the comment was not about Student A. The dean said he did not confirm the classroom teacher's account with the principal because he had no reason to doubt the classroom teacher's explanation of her comment.</li> <li>• Student A informed OCR that in 2021 the classroom teacher played a song that included the N-word and Student B said, "they can say it in a song, but when I say it, it is a problem." She said the classroom teacher did not say anything in response. Student A's parent said they did not complain to the school about this incident.</li> <li>• Racial harassment at the school continued into the 2022-2023 school year, including White students using the N-word on the bus. Student A's parent also reported this incident.</li> <li>• OCR expressed concerns about how the District handled the racial harassment complaints.</li> </ul>
	<p><b>Case Resolution</b></p> <ul style="list-style-type: none"> <li>• The District requested to enter into a voluntary resolution agreement prior to the conclusion of the investigation. The agreement requires the District to, among other things: <ul style="list-style-type: none"> <li>◦ hold discrimination and harassment training for District employees,</li> <li>◦ run mandatory annual training for all students on the District's policies and procedures prohibiting racial discrimination and harassment,</li> <li>◦ conduct full investigations and responsive action into all racial harassment complaints during the 2021-22 and 2022-23 school years, and</li> <li>◦ develop and administer a school climate survey.</li> </ul> </li> </ul>

## Racial Harassment Case Profile B

**Type of Investigation:**  
Complaint

**School District:**  
Kyrene School District

**State:**  
AZ

**Title VI Area of Concern:**  
Racial Harassment

**Date Resolved:**  
8/23/2022

**Type of Resolution:**  
Resolution Agreement

### Case Facts

- OCR investigated whether the District failed to respond appropriately to complaints that a student was subjected to discrimination based on her Jewish ancestry. The Complainant alleged that the student reported antisemitic harassment to the principal, and that although the school disciplined the offenders and the principal sent a memo to staff about improving their response to antisemitism, the school put no safety plan in place to address the Complainant's concerns. As a result, the impacted student transitioned to home schooling.
- During a 2019 meeting the Complainant requested, the student informed the principal about antisemitic incidents dating back to 2018. She reported that nine students had been harassing her both in school and over social media, calling her names like, "stinky Jew," and "filthy Jew," saluting like Nazi soldiers in her presence, and making statements like, "I hear you are good at [a sexual act] because Jews are so good at gasping for air." The Complainant also provided evidence to the principal which included videos and social media messages.
- The principal investigated the allegations and disciplined harassing students for "Ethnic/Racial Hate Speech" in accordance with the District's policies, but OCR determined that he failed to address the school-wide problem with antisemitic harassment and the hostile environment it created. The principal provided antisemitic training to school staff, but not until seven months after the harassment had been reported which potentially allowed the hostile environment to persist.
- OCR also found that, despite multiple occurrences of harassing conduct, the principal failed to provide timely, specific, and clear communication to school staff regarding the harassment. Although the principal addressed staff in general terms by email and much later in a meeting, staff were not instructed to monitor the situation or identify ongoing harassment. Additionally, even after the school's investigation concluded, the principal waited to address the impacted student's schedule, which resulted in her and the harassing student attending class together at least once a day until the school changed her schedule, but not the harasser's.

### Case Resolution

- The Resolution Agreement requires the District to, among other things:
  - reimburse the student victim's family for tutoring and counseling required due to the hostile environment the victim endured;
  - review and revise policies to ensure they comply with Title VI including clearly defined harassment complaint procedures;
  - train District staff;
  - train designated staff annually on how to investigate harassment complaints;
  - provide age appropriate anti-race, color, and national origin harassment training to students;
  - audit the 2022-2023 school year to review complaints and complete a self-evaluation related to potential instances of race, color, and national origin harassment;
  - administer and assess a climate survey; and
  - notify parents/guardians regarding revised policies and expectations.

Letter from Michael D. Todd, Supervisory Atty. Off. for Civil Rights, U.S. Dept of Educ., to Laura Toerjes, Superintendent, Kyrene Sch. Dist. (Aug. 23, 2022) (OCR Case No. 08-19-1367).  
<https://www.ed.gov/sites/default/files/about/offices/list/ocr/docs/investigations/mocr08191367-a.pdf>.



## Racial Harassment Case Profile C

**Type of Investigation:**  
Complaint

**School District:**  
Madison County School District

**State:**  
KY

**Title VI Area of Concern:**  
Racial Harassment

**Date Resolved:**  
6/12/2023

**Type of Resolution:**  
Settlement Agreement

### Case Facts

- In October 2021, the United States Department of Justice, Civil Rights Division, Educational Opportunities Section, and the Office of the United States Attorney of the Eastern District of Kentucky (collectively, United States), initiated an investigation into complaints that the District failed to respond adequately to known and persistent student-on-student harassment based on race.
- The investigation found numerous incidents of race-based harassment in which Black and multi-racial students were called the N-word, among other racial epithets, and subjected to other derogatory racial comments by their peers. The District did not consistently or reasonably address the harassment, which included racial taunts and intimidation that was at times reinforced by use of Confederate flags and imagery.
- When the District did respond, it often failed to follow its own racial harassment policies and its actions were ineffective in addressing the broader hostile environment. This inaction deprived Black and multi-racial students of equal access to the District's educational opportunities and led them to conclude that the District either condoned the behavior or would not take any action to help them.
- The investigation also illuminated concerns regarding racially disproportionate discipline for Black students at some District schools and inadequate systems for recordkeeping and analysis of discipline data.

### Case Resolution

- To resolve these issues, the District entered into a settlement agreement requiring the District to, among other things:
  - review and revise its anti-discrimination, racial harassment, and discipline policies and procedures;
  - create three new central office positions to oversee effective handling of complaints of race discrimination;
  - hold staff training;
  - update its data tracking policies, including tracking discrimination complaints and the District's response;
  - conduct focus groups and surveys; and
  - analyze discipline data.

Settlement Agreement Between The United States of America and Madison Cnty. Sch. Dist. (June 12, 2023), <https://www.justice.gov/opa/press-release/file/1587111.pdf>.

Educational institutions are required to immediately investigate or otherwise address race, color, or national origin harassment that they know or reasonably should know occurred.<sup>40</sup> Ending race, color, and national origin harassment requires consistent leadership, training, and oversight from district and school personnel. District and school leaders must make clear to everyone that such harassment will not be tolerated and articulate the consequences—both legal and on student well-being—for failing to comply.

**Educational institutions are required to immediately investigate or otherwise address race, color, or national origin harassment that they know or reasonably should know occurred.**

When OCR or DOJ investigate allegations of racial harassment, they not only assess whether racial harassment occurred, but also the severity of the alleged harassment and the response by the educational institution where the alleged harassment occurred.<sup>41</sup> Using the **reasonable person standard**,<sup>42</sup> or how a person of the same age and background would objectively act, OCR will take into consideration the race, age, intelligence, and experience of the alleged harassment victim to determine if a reasonable person of the same age, race, and educational experience under similar circumstances would be adversely affected by the harassment alleged.<sup>43</sup> It is possible that an incident of alleged harassment might not be considered harmful to an older student, while the exact same act is found to be extremely harmful to a younger student.<sup>44</sup> This differentiation is due to the fact that younger students are less mature and more impressionable.<sup>45</sup>

Federal civil rights laws intended to protect students from discrimination do not run counter to the First Amendment to the U.S. Constitution which protects the freedom of speech and assembly.<sup>46</sup> Educational institutions may be able to meet their Title VI obligations by publicly denouncing stereotypes and derogatory comments, and by creating space so that all viewpoints may be expressed.<sup>47</sup> However, schools must ensure that no speech crosses the line of becoming a “direct

**Rather than being reactive to potential racial harassment discrimination, schools should proactively work to create welcoming, inclusive environments that allow for respectful discourse and disagreements while honoring all cultures and racial and national origin backgrounds.**

threat[] or actionable speech or conduct.”<sup>48</sup> Rather than being reactive to potential racial harassment discrimination, schools should proactively work to create welcoming, inclusive environments that allow for respectful discourse and disagreements while honoring all cultures and racial and national origin backgrounds.<sup>49</sup>

Schools should be spaces where students learn how to communicate across differences.<sup>50</sup> In November 2023, in the wake of increased complaints alleging national origin harassment in schools, U.S. Education Secretary Miguel Cardona noted, “We want to promote free speech and, to be frank with you, college campuses are where

students should be able to express different opinions. But when it comes to antisemitism or Islamophobia, that has no place on our college campuses or in our schools[.]”<sup>51</sup> District and school leaders must take action to end national origin and racial harassment in our schools.

Racial harassment that is “severe, persistent, or pervasive” to the point that it denies or limits a student’s ability to participate in or benefit from a school’s programs or activities may rise to the

level of creating a hostile environment.<sup>52</sup> As explained in the next section, OCR looks at the totality of the circumstances to determine if a hostile environment exists.<sup>53</sup>

## Hostile Environment under Title VI

Persistent, unaddressed racial harassment may create a hostile environment within a school that deprives the victims of a full opportunity to learn. A hostile environment occurs when a reasonable person of the same age and race, color, or national origin, under similar circumstances, would have been adversely affected.<sup>54</sup> A hostile environment typically results from persistent harassment, but a single incident of harassment may create a hostile environment “if the conduct is subjectively and objectively offensive and so severe that it limits or denies a student’s access to the education program or activity.”<sup>55</sup> To assess if a hostile environment exists, “OCR will examine the context, nature, scope, frequency, duration, and location of the race, color, or national origin-based harassment, as well as the identity, number, age, and relationships of the persons involved.”<sup>56</sup> More specifically, OCR assesses the totality of the circumstances to determine whether the harassment was “subjectively and objectively offensive; and so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the [school]’s education program or activity.”<sup>57</sup>

To establish a hostile environment that violates Title VI, OCR analyzes whether the educational institution had actual or constructive knowledge of the existence of a hostile environment, yet failed to adequately address it.<sup>58</sup> A school is considered to have constructive knowledge if, upon “reasonably diligent inquiry,” it would or should know about persistent or unreasonable harassment within its institution.<sup>59</sup> Once a school has notice about the presence of a hostile environment, Title VI establishes a legal responsibility to remedy the effects of the harassment on the victim(s), as well as take reasonable steps to eliminate the harassment and prevent its future occurrence.<sup>60</sup> OCR evaluates the sufficiency of the school’s response by evaluating whether it was timely, reasonable, specific to the circumstances, and effective.<sup>61</sup>

In addition to conduct, curriculum may also create a hostile environment if it is “subjectively and objectively offensive, and is so severe or pervasive, that it limits or denies a person’s ability to participate in or benefit from the [school’s] education program or activity,” based on the totality of the circumstances.<sup>62</sup> OCR does not regularly interfere with schools’ curricular choices, but it will investigate allegations that suggest content presented promotes negative or hateful stereotypes based on race, color, national origin, including shared ancestry, or that condones violence against a group protected by Title VI.<sup>63</sup> Examples of lessons that might violate Title VI by creating a hostile environment include asking students to discuss the positive aspects of the American slavery system<sup>64</sup> or asking students to pretend to be Nazi guards and share how they helped Germany during the Holocaust.<sup>65</sup>

**Once a school has notice about the presence of a hostile environment, Title VI establishes a legal responsibility to remedy the effects of the harassment on the victim(s), as well as take reasonable steps to eliminate the harassment and prevent its future occurrence.**

Below are examples of schools failing to remedy harassment, allowing a hostile environment to form, in violation of Title VI.



**Table 2. Examples of Hostile Environments**

Hostile Environment Case Profile A	
<p><b>Type of Investigation:</b> Complaint</p> <p><b>School District:</b> Forsyth County Schools</p> <p><b>State:</b> GA</p> <p><b>Title VI Area of Concern:</b> Hostile Environment</p> <p><b>Date Resolved:</b> 5/19/2023</p> <p><b>Type of Resolution:</b> Resolution Agreement</p> <p><small>Letter from Jana L. Erickson, Program Manager, Off. for Civil Rights, U.S. Dept of Educ., to Jeff Bearden, Superintendent, Forsyth Cnty Schs., (May 19, 2023) (OCR Case No. 04-22-1281), <a href="https://www.ed.gov/sites/edfiles/about/offices/list/ocr/docs/investigations/more/04222281-a.pdf">https://www.ed.gov/sites/edfiles/about/offices/list/ocr/docs/investigations/more/04222281-a.pdf</a>.</small></p>	<p><b>Case Facts</b></p> <ul style="list-style-type: none"> <li>• OCR investigated whether the District's removal of books from schools created a hostile environment for students based on race, color or national origin, in violation of Title VI and its implementing regulation at 34 C.F.R. § 100.3.</li> <li>• OCR reviewed District emails, board meeting summaries, and documents related to the District's Summer 2022 book review process as a part of its investigation into the complaint. OCR also interviewed the District's Chief Technology and Information Officer, the Director of Instructional Technology and Media, and the Chief Communications Officer. The investigation found that the District began receiving complaints in Fall 2021 from parents and community members regarding books in school and classroom libraries that some deemed inappropriate, particularly books by or about the LGBTQI+ community, women, and people of color. The District subsequently decided to remove or restrict fifteen book titles. It then formed a review committee to assess the nine books recommended for removal.</li> <li>• At a February 2022 school board meeting, students shared the impact book removals had on them, "One student stated that the book ban immediately made the environment more harsh for students; people like him who are not in the closet are watching their safe spaces disappear, and he is sick of being fearful at school. A student who identified herself as Asian said it is hard for her to find books with main characters who are of her race; she knows that people of other minority backgrounds have the same struggle and banning books written with diversity silences mainly minority voices. A third student -- who characterized the District's actions as singling out books by authors who are gay, supporters of the LGBTQI+ community, women and people of color -- expressed the belief that the District does not care about diversity." No additional formal complaints were filed.</li> <li>• OCR commended the District for their effort to handle the book concerns with thoughtfulness, but expressed concern that the District had notice that its "book screening process may have created a hostile environment for students, yet the District's responsive steps related to the book screening process were not designed to, and were insufficient to, ameliorate any resultant racially and sexually hostile environment."</li> </ul>
	<p><b>Case Resolution</b></p> <ul style="list-style-type: none"> <li>• The District requested to enter into a Resolution Agreement prior to OCR concluding its investigation. The Resolution Agreement requires the District to, among other things: <ul style="list-style-type: none"> <li>◦ provide impacted students with supportive measures;</li> <li>◦ release a statement to students that explains the book removal process;</li> <li>◦ at the end of each semester, submit to OCR a list detailing each complaint from any student regarding a book removal and how the Title IX/Title VI Coordinator responded to the concern;</li> <li>◦ disseminate a school climate survey at all middle and high schools to determine the prevalence of harassment, the perception of how the school handles reports of harassment, and suggestions on how to reduce harassment and improve the school's response; and</li> <li>◦ use this data from the climate survey to develop a plan to remedy all harassment.</li> </ul> </li> </ul>

## Hostile Environment Case Profile B

**Type of Investigation:**  
Complaint leading to a Compliance Review followed by an additional Complaint

**School District:**  
Kyrene School District

**State:**  
AZ

**Title VI Area of Concern:**  
Hostile Environment

**Date Resolved:**  
3/29/2023

**Type of Resolution:**  
Resolution Agreement

Letter from Michael D. Todd, Supervisory Atty. Off. for Civil Rights, U.S. Dept of Educ., to Laura Toennies, Superintendent, Kyrene Sch. Dist. (Mar. 29, 2023) (OCR Case No. 08-22-1627), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/08221627-a.pdf>.

### Case Facts

- OCR investigated allegations that the District discriminated against the Complainant's daughter and other students on the basis of race, color, and national origin by failing to respond to individual instances of harassment and the creation of a hostile environment both in the classroom and on the school bus.
- A biracial middle school student made allegations about "recurring uses of racial epithets and other racially derogatory language," such as the N-word, "monkey," "ching chong," and statements like, "Muslims are terrorists[.]" These comments were often made in front of or reported to a long-term substitute teacher. In at least one instance, the Complainant emailed the long-term substitute expressing concerns about the comments. The substitute responded dismissively and did not honor the Student's request to move seats so as not to be near "a racist kid." The substitute never reported the incidents to school leadership.
- Separately, the Student reported to a school specialist that Student B called her a "monkey" on the bus. Student B admitted to making this comment and received a one-day in school suspension and a two-day bus suspension. The Complainant informed OCR that she and the Student notified the school regarding "at least seven additional incidents of students using derogatory, race-based comments or racial epithets while on the bus."
- The District reviewed their incident tracking system to have targeted conversations with students regarding the use of race-based language on the bus. Further, they implemented lessons in social studies classes about "respectful and appropriate language," but not explicitly about race.

### Case Resolution

- A few months prior to the second complaint, the District entered into a Resolution Agreement with OCR regarding failure to adequately respond to "notice of hostile environment harassment on the basis of national origin." OCR then confirmed the additional race-based concerns in the subsequent complaint. OCR decided to address both complaints concurrently through the steps agreed to in the original Resolution Agreement. The original Resolution Agreement required the District to, among other things:
  - issue anti-harassment statements to students, employees, and families and encourage them to report all incidents of harassments;
  - review and revise its policies related to Title VI and train all staff and its investigative team;
  - hire a consultant to develop student programming to target harassment; and
  - conduct and administer a school climate survey to inform next steps.



## Hostile Environment Case Profile C

**Type of Investigation:**  
Complaint

**School District:**  
Mt. Diablo Unified School District

**State:**  
CA

**Title VI Area of Concern:**  
Hostile Environment

**Date Resolved:**  
6/15/2023

**Type of Resolution:**  
Insufficient Evidence

*Note: This complaint alleged overlapping discrimination between race, sex, disability and religion. For the purpose of this report, the details provided focus primarily on the Title VI claims.*

Letter from Ava De Almeida Law, Team Leader, Off. for Civil Rights, U.S. Dept of Educ., to Adam Clark, Superintendent, Mt. Diablo Unified Sch. Dist. (June 15, 2023) (OCR Case No. 09-22-1072), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/09221072-a.pdf>.

### Case Facts

- OCR investigated a complaint alleging that the District failed to respond in a timely, reasonable, and effective manner to notice of harassment. In October 2021, a White female student reported to school officials that she and other female students “witnessed and were subjected to harassing comments by a Latino male student (Student 1).” She alleged that Student 1 made vulgar statements based on race, national origin, and sex\* including using the N-word toward another student and making comments Student considered homophobic.
- Upon receiving the Student’s report and interviewing witnesses, the District received conflicting accounts regarding what Student 1 may or may not have said. Still, the District providing counseling to Student and Student 1 and offered a restorative circle, though Student declined the latter and told school officials that she felt the issue had been resolved. The next day, however, Student confronted Student 1 about his alleged statements and the two began to fight.
- Student received a punishment for the fight harsher than Student 1, because she confronted Student 1 and threw the first punch. OCR agreed that the punishment was fair.
- In November 2021, Student 1 again made harassing comments directed at another student. The school attempted to convene a restorative justice circle and counseling for both students, but the target of harassment was not comfortable participating. One week later students started threatening and assaulting Student 1. His mother briefly removed him from school out of fear for his safety.
- In response to these escalating tensions, counselors in the District developed and implemented a series of trainings on racial and sexual harassment, bullying, and the role of bystanders.

### Case Resolution

OCR found insufficient evidence to validate the allegations that the District violated Title VI regarding its response to a racial harassment report. “Under Title VI, OCR evaluates a recipient’s response to reports of race-based harassment to determine if steps taken were reasonable, timely, and effective to end the harassment. Here, in response to reports made by the Student about Student 1, School administrators interviewed sixteen students and three teachers, addressed the issues with Student 1 directly, developed and delivered training on racial harassment to all students, and initiated voluntary and non-exclusionary affinity groups so that students had a ‘safe space’ to discuss any issues of concern. Neither the Student nor the Complainant reported any further incidents. Based on this evidence, OCR found that the District’s response to the comments attributed to Student 1 were reasonable, timely, and effective to end any harassment based on race or national origin that occurred.”

## Why a Harassment and Hostility Free Environment Matters

Beyond a school's legal obligation to provide a learning environment free from harassment and a hostile environment, compliance protects student well-being. For instance, a 2021 federal investigation found widespread racial harassment against Black and Asian American students over a five year period in a Utah school district.<sup>66</sup> Merely two weeks after this finding, a ten-year-old Black girl in that school district took her own life.<sup>67</sup> Her peers had regularly called her the N-word, told her she was smelly (a possible racial stereotype), and made fun of her disability.<sup>68</sup> Though her school was aware of this harassment and the harassment other Black and Asian American students regularly experienced, their response to the harassment was wholly inadequate.<sup>69</sup> Although this is just one tragic outcome resulting from unmitigated racial harassment, it serves as an important reminder regarding the far-reaching effect that harassment and a hostile environment can have in schools.

Research consistently shows that racial discrimination negatively impacts academic outcomes, including decreased motivation and lower grades.<sup>70</sup> A study conducted nearly twenty years before the Utah tragedy found that academically gifted Black students who had a prior negative experience attending a predominantly White school with a hostile environment chose to forego an opportunity to attend a predominantly White magnet school out of fear that they would again experience racial harassment and a sense of being unwelcome.<sup>71</sup> Racial harassment may also lead to feelings of distress, anger, sadness, anxiety, and depression.<sup>72</sup> Students may respond in turn by disidentifying with academic achievement, not participating in class, skipping school, or engaging in behavior that leads to increased disciplinary infractions.<sup>73</sup> Students' attitude toward and identification with education are intricately connected with academic outcomes; so, when students feel unwelcome, unsafe, or that their teachers do not believe in them, these negative outcomes increase.<sup>74</sup> While protective factors such as possessing a positive ethnic identity may allow students to succeed academically despite harassment or a hostile learning environment, the onus should not be on our nation's youth to overcome a discriminatory environment.<sup>75</sup> Rather, educational institutions must transform so that all students can enjoy a safe learning environment.<sup>76</sup>

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**“In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.”**

In its longstanding guidance on racial harassment, OCR articulated its view on harassment's potential impact: “In addition to the curriculum, students learn about many different aspects of human life and interaction from school. The type of environment that is tolerated or encouraged by or at a school can therefore send a particularly strong signal to, and serve as an influential lesson for, its students.”<sup>77</sup> In 2023, Secretary Cardona shared the sentiments of a community member who told him, “Our students can't learn when they're afraid.”<sup>78</sup> He went on to instruct schools to, “be direct and unapologetic in condemning any hate in our schools and . . . do everything in our power to ensure every student is safe in their schools.”<sup>79</sup> Thus, not only do

schools risk losing their federal funding for failing to halt racial harassment or remedy a hostile environment, students suffer when their learning environment permits discrimination.

## OCR's Guidance for Remediating and Preventing Racial and National Origin Harassment and a Hostile Environment in Schools

As mentioned above, OCR measures the sufficiency of a school's response to harassment or a hostile environment based on the timeliness, reasonableness, and effectiveness of the response, ensuring they address the specific issues in that matter.<sup>80</sup> The response must also "be reasonably calculated to prevent recurrence and ensure that participants are not restricted in their participation or benefits as a result of a racially hostile environment" with policies in place that match the responsive actions.<sup>81</sup> In its role as a technical assistance provider, OCR's website offers guidance to education leaders on how to address harassment.<sup>82</sup> This guidance includes the 1999, "Checklist for a Comprehensive Approach to Addressing Harassment," that remains instructive for districts and schools today.<sup>83</sup> A copy of this checklist is included in Appendix A.

In addition to the checklist, OCR has published multiple *Dear Colleague* letters and fact sheets for schools that explain what does and does not constitute a civil rights violation and offer tips to prevent and remedy these matters.<sup>84</sup> Appendix B provides a sample of these guidance documents. OCR published a *Dear Colleague* letter on "Race and School Programming" in August 2023 that provided a comprehensive review of schools' Title VI obligations paired with examples of how OCR would address possible race-related complaints.<sup>85</sup> In July 2024, OCR published a fact sheet titled, "Harassment based on Race, Color, or National Origin on School Campuses," providing additional examples of what may or may not constitute racial harassment.<sup>86</sup> Below are two excerpts from these guidance documents.

**OCR measures the sufficiency of a school's response to harassment or a hostile environment based on the timeliness, reasonableness, and effectiveness of the response, ensuring it is tailored to the specific issues in that matter.**



Table 3. Harassment Scenarios

Harassment based on Race, Color, or National Origin on School Campuses	
<p><b>Example 4</b></p> <p>Indian students at a middle school report being mocked for their accents or English language skills. Additionally, Indian students report that their names are ridiculed and intentionally mispronounced by students and staff. Students also call an Afghan student “evil” and tell him to “go back to his country.” Students report the incidents to administrators because they have started avoiding clubs and activities where they will encounter the offending students and staff. In response, the school’s principal investigates but only interviews one student involved. In morning announcements, the principal tells students to treat each other with kindness, but the students’ conduct continues.</p> <p><b>OCR would have reason to open an investigation based on this complaint.</b> Because the complaint alleges specific facts that suggest that these students may have experienced a hostile environment based on their actual or perceived national origin, an investigation by OCR is warranted. OCR’s investigation would need to confirm that the statements directed at the students constituted harassing conduct that is subjectively and objectively offensive as well as so severe or pervasive that it limits or denies the students’ ability to participate in or benefit from the school’s education programs or activities. Additionally, if OCR’s investigation confirms that the school’s only response was to talk to one student and issue a morning announcement, and that the school failed to otherwise take prompt and effective steps reasonably calculated to (1) end the harassment, (2) eliminate any hostile environment and its effects, and (3) prevent the harassment from recurring, OCR could find a violation of Title VI.</p> <p><small>Off. for Civil Rights, U.S. Dep’t of Educ., Fact Sheet: Harassment based on Race, Color, or National Origin on School Campuses (2024)</small></p>	<p><b>Example 5</b></p> <p>In the wake of race-based violence on campus directed against Asian students, a college’s Asian American Student Alliance establishes recurring facilitated discussion groups for concerned students with a licensed counselor. The Asian American Student Alliance is a recognized student group that is open to all students. The events are advertised via flyers and on the campus intranet as a “safe space for students to discuss hate incidents against Asian students.” A white student files a complaint alleging that the college is promoting separation of students based on race by permitting the Asian American Student Alliance to establish recurring events for concerned students because all the students who participate are Asian.</p> <p><b>OCR may decline to open an investigation based on this complaint.</b> The complaint does not allege that the college treated students differently or separated students based on race. Both the Asian American Student Alliance and the events are open to all students.</p> <p><small>“Dear Colleague” Letter, Race and School Programming, from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (Aug. 24, 2023), <a href="https://www.ed.gov/about/news/press-release/us-department-of-education-office-civil-rights-issues-resource-race-and">https://www.ed.gov/about/news/press-release/us-department-of-education-office-civil-rights-issues-resource-race-and</a></small></p>

These federal resources provide essential reminders for the entities ED funds.

It is important to remember that OCR does not necessarily penalize schools for instances of racial harassment itself. Rather, schools and school districts face scrutiny regarding their response to such acts.

School leaders that want step-by-step instructions on how to maintain schools that prevent and appropriately address harassment can request free individualized technical assistance through their regional Equity Assistance Center (EAC). EACs are education nonprofits that ED funds which offer support in the areas of equity, school reform, and civil rights compliance.<sup>87</sup> EACs can be helpful with creating, administering, and analyzing school climate surveys, leading focus groups, revising policies, and providing professional development to improve the school environment. Unfortunately, the need for this support can exceed an EAC’s capacity and this can limit how many schools they can serve and may impact the service quality. Districts may also contact OCR directly for technical assistance related to civil rights.<sup>88</sup>

In addition to seeking technical support, school districts should turn to evidence-based best practices that research shows to be effective at preventing and remedying race, color, and national origin harassment and hostile environments. Part II of this report will provide evidence-based best practices that can be implemented at the local level to prevent and remedy racial harassment and hostile environments in schools.

## Conclusion

Race, color, and national origin harassment frequently occurs in U.S. schools and continues to inflict harms on the students and communities that experience it. School districts that receive federal financial assistance must take steps to prevent and remedy such harassment or risk violating Title VI of the Civil Rights Act of 1964. The Education Rights Institute is committed to closing knowledge gaps between law, research, and practice. In our effort to support school districts, we are synthesizing and amplifying current legal obligations under Title VI to assist with preventing and remedying racial harassment and hostile environments in schools, which violate Title VI of the Civil Rights Act of 1964. In addition to providing evidence-based best practices in this report's forthcoming second part, ERI will produce a webinar on this topic that can serve as a useful resource for districts and schools that are dealing with racial and national origin harassment and a hostile environment.



# Glossary

**Discrimination:** occurs when a person or group of people are unjustly or unfairly treated, often based on a characteristic outside of their control.

**Hostile Environment:** occurs when harassment has elevated to the point that a person can no longer participate in or benefit from the operations of the school.

**Racial or National Origin Harassment:** unwelcome conduct based on a student's actual or perceived race or national origin. Harassment "denies students the right to an education free from discrimination" and may negatively impact student outcomes, in addition to other harms.

**Reasonable person standard:** how a person with the same age and background would objectively respond to a situation.

# Appendix A

## Checklist for a Comprehensive Approach to Addressing Harassment

- Board members, district administrators, and the superintendent recognize the urgency of the problem of unlawful harassment and hate crime, identify people and agencies that can help them develop effective prevention and response strategies, and compile a library of useful materials
- School officials select personnel to work on creating an effective anti-harassment program in consultation with parents, students, and community groups
- Compliance coordinators are appointed and trained
- School personnel assess the school climate to determine the prevalence and types of harassment that may exist and the potential for hate-motivated violence
- School district adopts a written anti-harassment policy or reviews and revises existing policies for accuracy, clarity and legal compliance; the policy is clearly communicated to all members of the school community; and school personnel and students are held accountable for their actions
- School district develops a formal grievance procedure and takes steps to make sure it is working properly
- Instructional personnel use or supplement the district's curriculum and pedagogical strategies to foster respect and appreciation for diversity
- School sites institute, improve, or expand age appropriate student activities to prevent or reduce prejudice and conflict
- School district and individual school sites institute specific measures to respond immediately and effectively when harassment occurs to stop the harassment and prevent recurrence
- School officials flexibly apply response mechanisms to both the victim and the perpetrator, taking into account the parties' ages and the context of the behavior
- School personnel continually monitor the school climate and promptly address problems that could lead to harassment or violence or that indicate that harassment could be occurring
- Appropriate school officials become familiar with pertinent civil and criminal laws at the state, local, and federal levels, so that they are able to recognize possible civil rights violations, hate crimes and other criminal acts
- Schools develop guidelines and procedures for collaboration with law enforcement officials, make appropriate referrals to outside agencies, and designate liaison personnel
- Crisis intervention plans are in place to minimize the possibility of violence or disruption of the educational process
- District-level personnel and individual school sites form continuing partnerships with parents and the community to prevent hate crimes and harassing behaviors
- Staff training and professional development programs support the district's anti-harassment efforts
- All harassment incidents are carefully documented and incidents are reported to outside authorities as required
- District regularly assesses the effectiveness of its anti-harassment efforts

Source: Protecting Students from Harassment and Hate Crime, A Guide for Schools, January 1999

## Appendix B

Selected Guidance on Racial Harassment and Hostile Environment from the U.S. Department of Education Office for Civil Rights:

- U.S. Department of Education Office for Civil Rights, [Fact Sheet: Harassment based on Race, Color, or National Origin on School Campuses](#) (July 2024).
- U.S. Department of Education Office for Civil Rights, [Dear Colleague Letter: Protecting Students from Discrimination, such as Harassment, Based on Race, Color, or National Origin, including Shared Ancestry or Ethnic Characteristics](#) (May 2024).
- U.S. Department of Education Office for Civil Rights, [Dear Colleague Letter: Addressing Discrimination Against Muslim, Arab, Sikh, South Asian, Hindu, and Palestinian Students](#) (March 2024).
- U.S. Department of Education Office for Civil Rights, [Dear Colleague Letter: Discrimination, including Harassment, Based on Shared Ancestry or Ethnic Characteristics](#) (November 2023).
- U.S. Department of Education Office for Civil Rights, [Race and School Programming Dear Colleague Letter](#) (August 2023).
- U.S. Department of Education Office for Civil Rights, [Addressing Discrimination Against Jewish Students Dear Colleague Letter](#) (May 2023).
- U.S. Department of Education Office for Civil Rights, [Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics](#) (January 2023).
- U.S. Department of Education Office for Civil Rights, [Fact Sheet: Diversity & Inclusion Activities Under Title VI](#) (January 2023).
- U.S. Department of Education Office for Civil Rights, U.S. Department of Justice Civil Rights Division, White House Initiative on Asian Americans and Pacific Islanders, [Combating Discrimination Against Asian American, Native Hawaiian, and Pacific Islander \(AANHPI\) and Muslim, Arab, Sikh, and South Asian \(MASSA\) Students](#) (June 2016).
- U.S. Department of Education Office for Civil Rights, [Harassment and Bullying Dear Colleague Letter](#) (October 2010).

## Endnotes

<sup>1</sup> Discrimination is defined as, “Unjust or prejudicial treatment of a person or group, esp. on the grounds of race, gender, sexual orientation, etc.” *Discrimination, n.*, OXFORD ENGLISH DICTIONARY, OXFORD UNIVERSITY PRESS, [https://www.oed.com/dictionary/discrimination\\_n?tl=true&tab=meaning\\_and\\_use-paywall](https://www.oed.com/dictionary/discrimination_n?tl=true&tab=meaning_and_use-paywall) (last visited Sept. 2023). People may also face discrimination due to their color, ethnicity, national origin, socioeconomic status, age, and a host of other immutable characteristics.

<sup>2</sup> *Race, Color, or National Origin Discrimination: Frequently Asked Questions*, U.S. DEP’T OF EDUC. (May 11, 2023), <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/race-origin.html> (“Racial and national origin harassment is unwelcome conduct based on a student’s actual or perceived race or national origin.”); OFF. FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., FACT SHEET: HARASSMENT BASED ON RACE, COLOR, OR NATIONAL ORIGIN ON SCHOOL CAMPUSES (2024) [hereinafter FACT SHEET ON RACIAL HARASSMENT]; Settlement Agreement Between the United States of America and the Madison Cnty. Sch. Dist. (June 12, 2023), <https://www.justice.gov/opa/press-release/file/1587111/dl> [hereinafter Madison County Settlement Agreement] (“‘Racial harassment’ is unwelcome conduct based on a student’s race or color that may contain the use of derogatory language (including racial slurs or epithets or jokes) including images, graffiti, pictures, drawings, notes, electronic mail, social media or electronic postings, or phone messages. Racial harassment can also include intimidation, threats, unwanted physical contact, or physical violence. Racial harassment need not include intent to harm, be directed at a specific person, or involve repeated incidents.”).

<sup>3</sup> Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7.

<sup>4</sup> 34 C.F.R. § 100.13(i).

<sup>5</sup> Letter from Meena Morey Chandra, Director, Off. for Civil Rights, U.S. Dep’t of Educ., to Rick Todd, Superintendent, Pinckney Community Schs. (Apr. 21, 2015) (OCR Case No. 15-13-1083), <https://ocrcas.ed.gov/sites/default/files/ocr-letters-and-agreements/15131083-a.pdf>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* See also KIMBERLY JENKINS ROBINSON & GEDÁ JONES HERBERT, EDUC. RTS. INST., PREVENTING AND REMEDYING RACE, COLOR, AND NATIONAL ORIGIN DISCRIMINATION IN SCHOOLS: A PRIMER ON TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 17-19, <https://www.law.virginia.edu/document/title-vi-primer/view> (describing the OCR investigation and resolution process).

<sup>11</sup> Resolution Agreement, Pinckney Community Schs. (Apr. 21, 2015) (OCR Case No. 15-13-1083), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/15131083-b.pdf>.

<sup>12</sup> *Id.*

<sup>13</sup> Complaint & Demand for Jury Trial at 18, *Crowe v. Pinckney Cmty. Schs.*, No. 2:24-cv-11745 (E.D. Mich. Jul. 7, 2024); see also Sara Powers, *Lawsuit Alleges Black Students Were Racially Profiled, Called Slurs in Livingston County Schools*, CBS NEWS (July 16, 2024, 11:46 AM), <https://www.cbsnews.com/detroit/news/black-students-livingston-county-racial-discrimination-lawsuit/>.

<sup>14</sup> Complaint & Demand for Jury Trial, *supra* note 13, at 6-9.

<sup>15</sup> *Id.* at 9.

<sup>16</sup> *Id.* 9-19.

<sup>17</sup> *Id.* at 14-15; see also Powers, *supra* note 13.

<sup>18</sup> Complaint & Demand for Jury Trial, *supra* note 13, at 15; see also Powers, *supra* note 13.

<sup>19</sup> See, e.g., McKenna Harford, *Lawsuit Alleging Racial Discrimination in Douglas County Schools Goes Ahead*, DOUGLAS COUNTY NEWS-PRESS (Aug. 8, 2024), <https://coloradocommunitymedia.com/2024/08/08/lawsuit-alleging-racial-discrimination-in-douglas-county-schools-goes-ahead/> (explaining that a lawsuit against the Douglas County School District in Douglas, CO alleges Black and biracial students endured racial harassment such as discussions about bringing back the Holocaust and being called “cotton pickers”); *Stanford Health Care Worker Awarded \$10M in Racist Harassment Case*, CBS NEWS (June 25, 2024, 8:22 A.M.), <https://www.cbsnews.com/sanfrancisco/news/stanford-health-care-racist-harassment-lawsuit-worker-awarded-10m/> (explaining jury found employee had been subject to racial harassment, and that Stanford University leaders publicly defamed her after she filed a lawsuit claiming her coworkers mistreated Black

patients); Kimberlee Kruesi, *DOJ, Tennessee School Reach Settlement After Racial Harassment Investigation*, AP NEWS (June 11, 2024, 1:26 P.M.), <https://apnews.com/article/school-racial-harassment-tennessee-228e2d0907cc512e41c688790c46391c> (describing settlement agreement after school administrators allegedly showed deliberate indifference to multiple incidents of racial harassment, including students holding a mock “slave auction” in a school bathroom to “sell” a Black student to white classmates); Murry Lee, *DOJ: Settlement Reached with Hawkins County Schools in Racial Harassment Investigation*, WJHL (June 11, 2024, 11:36 AM), <https://www.wjhl.com/news/local/doj-settlement-reached-with-hawkins-county-schools-in-racial-harassment-investigation/> (explaining Hawkins County Schools in Hawkins, TN settled lawsuit filed by Department of Justice upon its finding that the district was “deliberately indifferent to known race-based harassment in its schools.”); Nicole Chavez, *Students Are Fed Up with Racist Slurs and Bullying. Now They’re Walking out of Class*, CNN (Dec. 5, 2021, 8:05 AM), <https://www.cnn.com/2021/12/05/us/racist-bullying-school-incidents/index.html> (explaining a Government Accountability Office report estimated that during the 2018-2019 school year, “there were 1.6 million students who were subjected to hate speech due to their identity. Among those incidents, half targeted students’ race and 24% related to their national origin.”); Isabel Wilkerson, *Racial Harassment Altering Blacks’ Choices on Colleges*, THE NEW YORK TIMES (May 9, 1990), <https://www.nytimes.com/1990/05/09/us/racial-harassment-altering-blacks-choices-on-colleges.html> (digitized version of article from The Times’s print archive).

<sup>20</sup> Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (March 10, 1994) [hereinafter *Investigative Guidance on Racial Incidents and Harassment*].

<sup>21</sup> OFF. FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., REPORT TO THE PRESIDENT AND SECRETARY OF EDUCATION UNDER SECTION 203(B)(1) OF THE DEPARTMENT OF EDUCATION ORGANIZATION ACT, FY 2023 (2024), <https://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2023.pdf> [hereinafter *OCR FISCAL YEAR 2023 REPORT*].

<sup>22</sup> *Protecting Students: Race and National Origin Discrimination*, U.S. DEP’T OF EDUC.: OFF. FOR CIVIL RIGHTS (July 2, 2024), <https://www2.ed.gov/about/offices/list/ocr/frontpage/pro-students/issues/roi-issue06.html>.

<sup>23</sup> “Dear Colleague” Letter from Russlynn Ali, Assistant Secretary for Civil Rights, U.S. Dep’t of Educ. (Oct. 26, 2010), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf> (not to be relied on for Title IX purposes) (“[S]ome student misconduct that falls under a school’s anti-bullying policy also may trigger responsibilities under one or more of the federal antidiscrimination laws . . . .”) [hereinafter “Dear Colleague” Letter from Ali].

<sup>24</sup> *Investigative Guidance on Racial Incidents and Harassment*, 59 Fed. Reg. at 11,448.

<sup>25</sup> “Dear Colleague” Letter Harassment and Bullying (Oct. 26, 2010): Background, Summary, and Fast Facts, U.S. Dep’t of Educ.: Off. for Civil Rights, <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/dcl-factsheet-201010.pdf>.

<sup>26</sup> Madison County Settlement Agreement, *supra* note 2 (“‘Hostile environment’ exists when harassment is objectively offensive and sufficiently serious that it interferes with or limits a student’s ability to participate in or benefit from the services, activities, or opportunities in the educational program.”).

<sup>27</sup> 34 C.F.R. § 100.3; *Race, Color, or National Origin Discrimination: Frequently Asked Questions*, U.S. DEP’T OF EDUC. (May 11, 2023), <https://perma.cc/PK42-RR7D> [hereinafter *FAQs on Racial Discrimination*]; see also *Protecting Students: Race and National Origin Discrimination*, *supra* note 22.

<sup>28</sup> 34 C.F.R. § 100.7(a)-(c).

<sup>29</sup> OFF. FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., CASE PROCESSING MANUAL (CPM) 16-18, 20-21 (2022), <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

<sup>30</sup> *Id.* at 23-24.

<sup>31</sup> *Id.*

<sup>32</sup> CIVIL RIGHTS DIV., U.S. DEP’T OF JUST., TITLE VI LEGAL MANUAL § 9 (2021), <https://www.justice.gov/crt/book/file/1364106/dl?inline> [hereinafter *TITLE VI LEGAL MANUAL*].

<sup>33</sup> KIMBERLY JENKINS ROBINSON & GEDÁ JONES HERBERT, EDUC. RTS. INST., PREVENTING AND REMEDYING RACE, COLOR, AND NATIONAL ORIGIN DISCRIMINATION IN SCHOOLS: A PRIMER ON TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, <https://www.law.virginia.edu/document/title-vi-primer/view>.

<sup>34</sup> FACT SHEET ON RACIAL HARASSMENT, *supra* note 2.

<sup>35</sup> *FAQs on Racial Discrimination*, *supra* note 27; see also FACT SHEET ON RACIAL HARASSMENT, *supra* note 2.



- <sup>36</sup> *FAQs on Racial Discrimination*, *supra* note 27 (“Although none of the laws OCR enforces expressly address religious discrimination, OCR can investigate complaints that students were subjected to ethnic or ancestral slurs.”); see also “Dear Colleague” Letter, Title VI and Shared Ancestry or Ethnic Characteristics Discrimination from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (May 7, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/05/colleague-202405-shared-ancestry.pdf>.
- <sup>37</sup> Letter from Daniel Contreras, Supervisory Team Leader, Off. for Civil Rights, U.S. Dep’t of Educ., to Jason Reynolds, Superintendent, Peoria Unified Sch. Dist. (Sept. 30, 2022) (OCR Case No. 08-221273), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08221273-a.pdf>.
- <sup>38</sup> “Dear Colleague” Letter from Ali, *supra* note 23; Madison County Settlement Agreement, *supra* note 2.
- <sup>39</sup> FACT SHEET ON RACIAL HARASSMENT, *supra* note 2; Letter from Daniel Contreras to Jason Reynolds, *supra* note 37.
- <sup>40</sup> *FAQs on Racial Discrimination*, *supra* note 27.
- <sup>41</sup> Racial Incidents and Harassment Against Students at Educational Institutions: Investigative Guidance, 59 Fed. Reg. 11,448, 11,449-50 (March 10, 1994).
- <sup>42</sup> *Baltimore & O.R. Co. v. Griffith*, 159 U.S. 603, 611 (1895) (defining the reasonable man standard which is now the reasonable person standard: “The policy of the law has relegated the determination of such questions to the jury, under proper instructions from the court. It is their province to note the special circumstances and surroundings of each particular case, and then say whether the conduct of the parties in that case was such as would be expected of reasonable, prudent men, under a similar state of affairs.”).
- <sup>43</sup> Investigative Guidance on Racial Incidents and Harassment, 59 Fed. Reg. at 11,449-50, 11,452.
- <sup>44</sup> *Id.* at 11,449.
- <sup>45</sup> *Id.*
- <sup>46</sup> *FAQs on Racial Discrimination*, *supra* note 27.
- <sup>47</sup> *Id.*
- <sup>48</sup> *Id.*
- <sup>49</sup> *Id.*
- <sup>50</sup> KIMBERLY JENKINS ROBINSON, SARAH BEACH, & HELEN MIN, EDUC. RTS. INST., A PRIMER ON OPPORTUNITY GAPS, ACHIEVEMENT GAPS, AND THE PURSUIT OF A HIGH-QUALITY EDUCATION 11-14 (2024), [https://www.law.virginia.edu/sites/default/files/documents/primer-march4-2024\\_1.pdf](https://www.law.virginia.edu/sites/default/files/documents/primer-march4-2024_1.pdf) (“[Civic engagement] requires students to be able to critically consume knowledge and determine how to communicate what they have learned with others who hold diverse perspectives. Schools are a central avenue to foster this commitment[.]”).
- <sup>51</sup> Rene Marsh & Katie Lobosco, *Exclusive: Education Secretary Says Federal Funds Are at Stake if Schools Fail to Combat Antisemitism and Islamophobia*, CNN (Nov. 7, 2023, 7:00 A.M.), <https://www.cnn.com/2023/11/07/politics/cardona-antisemitism-schools-funding/index.html>.
- <sup>52</sup> Letter from Jana L. Erickson, Program Manager, Off. for Civil Rights, U.S. Dep’t of Educ., to Jeff Bearden, Superintendent, Forsyth Cnty. Schs. (May 19, 2023) (OCR Case No. 04-2-1281), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/04221281-a.pdf>; Letter from Dawn R. Matthias, Team Leader, Off. for Civil Rights, U.S. Dep’t of Educ., to Rob Wright, Superintendent, Anna-Jonesboro Cmty. High Sch. Dist. (Dec. 15, 2021) (OCR Case No. 05-21-1298), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05211298-a.pdf>.
- <sup>53</sup> Letter from Jana L. Erickson to Jeff Bearden, *supra* note 52; “Dear Colleague” Letter, Race and School Programming, from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (Aug. 24, 2023), <https://www.ed.gov/about/news/press-release/us-department-of-educations-office-civil-rights-issues-resource-race-and>.
- <sup>54</sup> “Dear Colleague” Letter, Title VI and Shared Ancestry or Ethnic Characteristics Discrimination from Catherine E. Lhamon, Assistant Sec’y for Civil Rights, U.S. Dep’t of Educ. (May 7, 2024), <https://www.whitehouse.gov/wp-content/uploads/2024/05/colleague-202405-shared-ancestry.pdf>.
- <sup>55</sup> FACT SHEET ON RACIAL HARASSMENT, *supra* note 2.
- <sup>56</sup> Letter from Jana L. Erickson, to Jeff Bearden, *supra* note 52.
- <sup>57</sup> FACT SHEET ON RACIAL HARASSMENT, *supra* note 2 (citing Racial Incidents and Harassment against Students at Educational Institutions: Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994)) (citing OCR’s Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on Basis of Sex;

Race, Color and National Origin; and Disability at 2, 4, 6 (Oct. 2010)) (citing OCR's Dear Colleague Letter on Race and School Programming (Aug. 2023)).

<sup>58</sup> FACT SHEET ON RACIAL HARASSMENT, *supra* note 2; see also Letter from Jana L. Erickson, to Jeff Bearden, *supra* note 52 ("To establish a violation of Title VI under the hostile environment theory, OCR must find that: (1) a hostile environment based on race, color, or national origin existed; (2) the recipient had actual or constructive notice of a hostile environment based on race, color, or national origin; and (3) the recipient failed to respond adequately to redress the hostile environment based on race, color, or national origin.").

<sup>59</sup> Letter from Jana L. Erickson, to Jeff Bearden, *supra* note 52; Letter from J. Aaron Romine, Regional Director, Off. for Civil Rights, U.S. Dep't of Educ. to Jill Gildea, Superintendent, Park City Sch. Dist. (Mar. 20, 2024), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/08231193-a.pdf>.

<sup>60</sup> Letter from Jana L. Erickson, to Jeff Bearden, *supra* note 52; Letter from Dawn R. Matthias, Team Leader, Off. for Civil Rights, U.S. Dep't of Educ. to Rob Wright, Superintendent, Anna-Jonesboro Cmty. High Sch. Dist. (Dec. 15, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/05211298-a.pdf>.

<sup>61</sup> Letter from J. Aaron Romine to Jill Gildea, *supra* note 59.

<sup>62</sup> "Dear Colleague" Letter, Race and School Programming, *supra* note 53.

<sup>63</sup> *Id.*

<sup>64</sup> See Paul P. Murphy, *Homework Assignment Asks Students to List Positive Aspects of Slavery*, CNN (Apr. 20, 2018, 9:44 P.M.), <https://www.cnn.com/2018/04/20/us/homework-assignment-slavery-trnd/index.html>.

<sup>65</sup> "Dear Colleague" Letter, Race and School Programming, *supra* note 53.

<sup>66</sup> The Associated Press, *A Woman Hired to Investigate Racial Harassment in a Utah School District Says She Experienced It Herself*, NBC NEWS (Jan. 12, 2024, 12:10 P.M.), <https://www.nbcnews.com/news/nbcblk/woman-hired-investigate-racial-harassment-utah-school-district-says-ex-rcna133691>; The Associated Press, *Black Family Mourns 10-Year-Old Girl Who Died by Suicide*, NBC NEWS (Nov. 11, 2021, 12:34 P.M.), <https://www.nbcnews.com/news/nbcblk/family-mourns-black-10-year-old-daughter-died-suicide-rcna5255>.

<sup>67</sup> *Woman Hired to Investigate Racial Harassment*, *supra* note 66; *Black Family Mourns*, *supra* note 66.

<sup>68</sup> *Woman Hired to Investigate Racial Harassment*, *supra* note 66.

<sup>69</sup> *Id.*

<sup>70</sup> Alison L. Mroczkowski & Bernadette Sánchez, *The Role of Racial Discrimination in the Economic Value of Education Among Urban, Low-Income Latina/o Youth: Ethnic Identity and Gender as Moderators*, 56 AM. J. CMTY. PSYCH. 1, 2 (2015) ("The experience of racial discrimination is associated with negative academic outcomes, such as decreased academic motivation, decreased achievement motivation, and lower grade point average.") (internal citations omitted); Elan C. Hope, Alexandra B. Skoog, & Robert J. Jagers, *"It'll Never Be the White Kids, It'll Always Be Us": Black High School Students' Evolving Critical Analysis of Racial Discrimination and Inequity in Schools*, 30(1) J. OF ADOLESCENT RSCH. 83, 85 (2014) ("Experiencing discrimination has been shown to have a range of deleterious effects on Black youth. This includes undermining academic achievement and psychological adjustment . . ."); Christy Lleras, *Hostile School Climates: Explaining Differential Risk of Student Exposure to Disruptive Learning Environments in High School*, 7(3) J. OF SCH. VIOLENCE 105, 106 (2008) ("More specifically, a hostile school climate is defined as one in which students experience disruptive, physically and/or psychologically abusive situations that may directly or indirectly interfere with or draw attention away from the learning environment, resulting in a school climate that can negatively affect student engagement and performance in school.").

<sup>71</sup> Deborah A. Harmon, *They Won't Teach Me: The Voices of Gifted African American Inner-City Students*, 24 ROPER REV. 68 (2001).

<sup>72</sup> Dawn X. Henderson, et al., *A Phenomenological Study of Racial Harassment in School and Emotional Effects Among the Retrospective Accounts of Older Black Adolescents*, 52 THE URB. REV. 458, 459 (2020); Aryn M. Dotterer, Susan M. McHale & Ann C. Crouter, *Sociocultural Factors and School Engagement Among African American Youth: The Roles of Racial Discrimination, Racial Socialization, and Ethnic Identity*, 13(2) APPLIED DEV. SCIENCE 61, 63 (2009) ("For example, racial discrimination has been linked to depressive symptoms in African American youth (Simons, Murry, McLoyd, Cutrona, & Conger, 2002). Examining psychological adjustment in African American college students, Fischer and Shaw (1999) found that reports of racist events were related to poorer mental health, particularly among those with less racial socialization experience.").

<sup>73</sup> Lleras, *supra* note 70; Hope, Skoog & Jagers, *supra* note 70, at 85 (discussing the increase in problematic

behavior as a result of discrimination).

<sup>74</sup> Mroczkowski & Sanchez, *supra* note 70 at 2 (“These attitudes toward education are important to examine because they have been found to be related to GPA, attendance, and discipline referrals.”) (internal citations omitted).

<sup>75</sup> *Id.* (“Although racial discrimination is associated with several negative academic outcomes, not all Latina/o students who experience racial discrimination do poorly in school. It is likely that those students who experience racial discrimination and succeed academically experience one or more protective factors that help attenuate the negative effects of racial discrimination. In order to prevent Latina/o students from failing academically, it is important to identify protective factors that buffer the negative effects of racial discrimination on academic outcomes. One such protective factor is ethnic identity.”).

<sup>76</sup> PAUL GORSKI & KATY SWALWELL, *FIX INJUSTICE, NOT KIDS* (2023).

<sup>77</sup> Racial Incidents and Harassment Against Students at Educational Institutions; Investigative Guidance, 59 Fed. Reg. 11,448, 11,449 (March 10, 1994).

<sup>78</sup> Miguel Cardona, Sec’y of Educ., Remarks at the Leading Safe, Inclusive, and Non-Discriminatory Learning Environments Webinar (Dec. 15, 2023).

<sup>79</sup> *Id.*

<sup>80</sup> Investigative Guidance on Racial Incidents and Harassment, 59 Fed. Reg. at 11,450.

<sup>81</sup> *Id.*

<sup>82</sup> *Harassment, Bullying, and Retaliation*, U.S. DEP’T OF EDUC. (Sept. 23, 2024), <https://www.ed.gov/laws-and-policy/civil-rights-laws/harassment-bullying-and-retaliation>.

<sup>83</sup> *Checklist for a Comprehensive Approach to Addressing Harassment*, OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC. (Oct. 15, 2015), <https://www2.ed.gov/about/offices/list/ocr/checklist.html>.

<sup>84</sup> See, e.g., “Dear Colleague” Letter, Race and School Programming from Lhamon, *supra* note 53.

<sup>85</sup> *Id.*

<sup>86</sup> FACT SHEET ON RACIAL HARASSMENT, *supra* note 2.

<sup>87</sup> *Training and Advisory Services—Equity Assistance Centers*, U.S. DEP’T OF EDUC. (Sept. 20, 2024), <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/training-and-advisory-services-equity-assistance-centers/>.

<sup>88</sup> *Contact OCR*, OFF. FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., [https://ocras.ed.gov/contact-ocr?field\\_state\\_value=](https://ocras.ed.gov/contact-ocr?field_state_value=).



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