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Race Discrimination at School: Title VI and the Department of Education's Office for Civil Rights

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin in programs that receive federal financial assistance. While that bar applies broadly to federally funded programs of various types, historically, Title VI's application to public elementary and secondary schools has been particularly significant. All public school districts and most colleges and universities receive federal financial assistance and must comply with Title VI. The Department of Education's (ED's) Office for Civil Rights (OCR) is entrusted with enforcing Title VI in federally funded schools. This In Focus outlines requirements for schools under Title VI, with a particular focus on OCR's enforcement of the statute. (Title VI's application to universities' admissions policies intended to achieve student body diversity is addressed in CRS Legal Sidebar LSB10893, *The Supreme Court Strikes Down Affirmative Action at Harvard and the University of North Carolina*, by April J. Anderson.)

Title VI Background

The Supreme Court has described the objectives of Title VI as twofold: (1) to "avoid the use of federal resources to support discriminatory practices"; and (2) "to provide individual citizens effective protection against those practices." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704 (1979). For instance, enforcement of Title VI historically has been an important tool in desegregating public schools.

Section 601 of Title VI bars discrimination based on race, color, or national origin in federally funded programs. 42 U.S.C. § 2000d. Individuals subjected to discrimination in such a program can sue a recipient to enforce Section 601; in such cases, the Supreme Court has read the statute to bar only intentional discrimination that violates the Constitution's Equal Protection Clause. *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001).

Federal agencies also enforce Title VI. Section 602 of the statute directs federal agencies that distribute federal financial assistance to promulgate rules carrying out that mandate. 42 U.S.C. § 2000d-1. Agencies may terminate or refuse to provide funding as remedies for noncompliance. ED's Title VI regulations, for example, provide that individuals may not, on the basis of race, national origin, or color, be excluded from or denied the benefit of programs funded by the department. 34 C.F.R. § 100.

OCR Enforcement of Title VI in Schools

ED distributes substantial financial assistance to public school districts and colleges. ED's OCR can investigate complaints brought by individuals alleging discrimination based on race, color, or national origin, and interprets these categories to include discrimination based on actual or

perceived shared (1) ancestry or ethnic characteristics or (2) citizenship or residency in a country with a dominant religion or distinct religious identity. OCR also has discretion to conduct compliance reviews to find and remedy discrimination that has not been identified through the complaint process.

Title VI applies to all the operations of a school district or college that takes federal funding, including its admissions, financial aid, recruiting, academic programs, student discipline, grading, class assignment, physical education, athletics, and housing. Recipients also must not retaliate against someone for opposing or complaining about a potential Title VI violation. At the same time, the requirements of Title VI generally do not apply to a school's employment practices unless a primary objective of the federal financial assistance is to provide employment (race-based employment discrimination is banned by Title VII of the Civil Rights Act of 1964).

Responding to Complaints

According to its Case Processing Manual (CPM), OCR will review allegations of discrimination and determine whether to open an investigation. This process includes ensuring OCR has subject-matter jurisdiction over the complaint and personal jurisdiction over the target institution, meaning that the institution must receive federal financial assistance from ED (unless another agency has delegated enforcement authority to ED). Allegations must also be timely, filed within 180 calendar days after the alleged discrimination, although waiver of the deadline is possible.

Under the CPM, if OCR decides to open an investigation, it will issue notification letters to the person complaining of discrimination and the recipient institution, describing the allegations to be investigated and the basis of OCR's jurisdiction. It also is to provide contact information for the OCR staff person who will serve as the primary contact.

Allegations under investigation can be resolved through voluntary agreements. After an investigation, the CPM indicates that OCR will determine whether the preponderance of the evidence supports a finding of noncompliance. In cases of noncompliance, OCR is to propose a resolution agreement with specific steps the recipient will take to comply.

Fund Termination

While it is much more common for OCR to conclude matters with a resolution agreement, if it does not reach an agreement with a recipient, OCR may begin enforcement proceedings by either (1) undertaking proceedings to suspend, terminate, or refuse to continue federal financial

assistance; or (2) referring the case to the Department of Justice to enforce Title VI in court. Suspension or termination is only allowed after an opportunity for a hearing before the agency and a finding of noncompliance on the record.

Disparate Impact Regulations

Section 602 of Title VI directs agencies distributing funds to promulgate regulations that “effectuate” Section 601’s discrimination prohibition. 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.

In *Alexander v. Sandoval*, the Supreme Court ruled that while private plaintiffs may sue in federal court to enforce Section 601 of Title VI, they may not do so to enforce Section 602. The Court also emphasized that Section 601 only prohibits intentional discrimination that violates the Equal Protection Clause. Thus, individuals may bring Title VI claims of intentional discrimination to court but may not sue to enforce the Title VI disparate impact regulations.

In the administrative context, OCR can enforce the prohibition of intentional discrimination against recipients of assistance from ED. In addition, because the Supreme Court has not ruled that agencies are prohibited from enforcing disparate impact regulations through the administrative process, ED can enforce its Title VI disparate impact regulations in education programs it funds.

According to OCR, a facially neutral policy not intended to discriminate that has an unjust, adverse disparate impact based on a protected characteristic violates Title VI. To determine whether this is the case, OCR may examine whether the policy is necessary to meet an important educational goal. It may also consider if there are alternative policies comparably effective to meet that goal with less of a discriminatory effect, as well as whether the justification is a pretext for discrimination.

Discrimination Based on Race, Color, or National Origin

OCR investigates a variety of alleged discriminatory conduct under Title VI. Some of the most common allegations brought to OCR are differential treatment or denial of benefits based on race, including uneven application of school discipline policies; racial harassment; and retaliation claims. As part of its mandate to eliminate national origin discrimination, OCR also requires schools to provide meaningful language access for English learners.

Different Treatment/Denial of Benefits

Schools may not exclude individuals or deny them benefits from programs based on their race. Denying students the opportunity to enroll in a particular class because of their race, for instance, would violate Title VI. Dividing the

allocation of awards and benefits by race, such as Homecoming King and Queen, would also conflict with the statute.

For allegations of different treatment based on race, OCR generally examines whether a recipient treated a student less favorably than similarly situated individuals of a different race. It then determines whether there is a legitimate, nondiscriminatory justification for that treatment. OCR then examines whether the asserted reason is a pretext for unlawful discrimination.

School Discipline

A school’s disciplinary practices can unlawfully discriminate when the school intentionally subjects students to different treatment based on race. A school district that disciplines students of one race more harshly than similarly situated students of another race might violate Title VI. A facially neutral discipline policy might also have an unlawful disparate impact on the basis of race.

Harassment

Harassment based on someone’s race can create a hostile environment. A hostile environment created or left uncorrected by a school can violate Title VI. A hostile environment means racially harassing conduct that is so severe, persistent, or pervasive that it denies or limits a student’s ability to benefit from or participate in a school’s programs or activities. If a school has actual or constructive notice of such an environment, it must adequately respond by taking reasonable steps to eliminate it. (Unlike enforcement by OCR, the standard for holding a school liable for damages under this theory in federal court may require a showing that a school district responded with deliberate indifference.)

Retaliation

When persons complain to a school about a potential violation of Title VI or participates in an OCR investigation, the school may not retaliate against them, such as through intimidation, threats, or coercion.

Language Access

OCR also interprets Title VI regulations on national origin discrimination to require school districts to provide students who have limited English proficiency with meaningful access to a school’s programs. This requirement extends to providing parents or guardians with limited English proficiency meaningful access to school information in a language they can understand. Further, when elementary and secondary school districts offer advanced or specialized programs, such as Advanced Placement classes, schools must generally make sure that eligibility requirements do not screen out students with limited English proficiency.

Filing a Complaint

Individuals who wish to file a complaint with OCR may do so through the agency’s website, by mail, or email.

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