Legal Update: Supreme Court, OCR, DOJ and More

AASA

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Agenda

- Supreme Court Update
- Title VI
- Students with Disabilities
- Q&A

True/False

- **True or False?** The Supreme Court has ruled that school districts may not us race as a factor in selecting students for magnet schools.
- The Supreme Court ruled in March that a school district must pay money damages to a special education student.
- **True or False?** The Department of Justice recently has required a school district to end seclusion of special education students.
- **True or False?** The Supreme Court has ruled that school board members may block parents who criticize them from their Twitter accounts.
- **True or False?** OCR has authority to investigate allegations of anti-Semitic harassment.

U.S. Supreme Court

SCOTUS – A High-level Look

- Justices serve lifetime appointments following nomination by the President and confirmation by the Senate.

- The Court decides to hear cases when at least four of the nine justices vote to grant the Petition for Certiorari (this happens less than 90 times out of out of 7,000+ requests).

- The Court hears oral arguments on cases from October through April, where each side's attorney is allocated a half hour for oral arguments.

Confirmation of Brown Jackson

“Senate confirms Jackson as first Black woman on Supreme Court

- Judge Ketanji Brown Jackson won support from all Democrats and a handful of Republicans. She will be sworn in when Justice Stephen G. Breyer retires this summer.
- By Mike DeBonis and Seung Min Kim, Washington Post, April 7, 2022
- The Senate voted Thursday to confirm Judge Ketanji Brown Jackson to the Supreme Court, felling one of the most significant remaining racial barriers in American government and sending the first Democratic nominee to the high court in 12 years.
- Jackson, a daughter of schoolteachers who has risen steadily through America’s elite legal ranks, will become the first Black woman to sit on the court and only the eighth who is not a White man. She will replace Associate Justice Stephen G. Breyer after the Supreme Court’s term ends in late June or early July.”

Swearing in of New Justice

“Ketanji Brown Jackson sworn in as first Black woman on Supreme Court

- By Robert Barnes, Washington Post, June 30, 2022
- Jackson’s accession means that four women will simultaneously serve on the Supreme Court for the first time in its history.
- Ketanji Brown Jackson was sworn in Thursday as the Supreme Court’s 116th justice and its first Black woman on the bench, a historic change for an institution that for the first time is no longer composed of a majority of White men.
- ‘I am truly grateful to be part of the promise of our great Nation,’ Jackson said in a statement distributed by the court’s public information office.
- Jackson took the dual oaths of office at a simple ceremony in the court’s West Conference Room that was live-streamed. Chief Justice John G. Roberts Jr. administered the constitutional oath, and Justice Stephen G. Breyer, the man she replaced and for whom she served as a law clerk, led her through the judicial oath. Her husband, Patrick Jackson, held two Bibles on which she rested her hand.’”

Justice Ketanji Brown Jackson and Chief Justice John G. Roberts Jr. outside the Supreme Court after Investiture on September 30, 2022

Supreme Court – October 2022 Term

Media and the Supreme Court

- ***Supreme Court Decisions on Education Could Offer Democrats an Opening (NYT, July 1, 2023)***
- ***Along With Conservative Triumphs, Signs of New Caution at Supreme Court (NYT, July 1, 2023)***
- No, the Roberts Court Is Not Moderating (Time Magazine, July 6, 2023)
- **John Roberts and Brett Kavanaugh Are Now the Supreme Court's Swing Votes (WSJ, July 7, 2023)**
- **Amid blockbuster decisions on affirmative action, student loan relief and free speech, Supreme Court's term sees Roberts "back on top" (CBS News, July 7, 2023)**
- Chief justice takes back the reins at the Supreme Court this term (NPR, July 5, 2023)
- **Supreme Court delivered big conservative wins, and a mixed message (WP, July 1, 2023)**
- **Justice Ketanji Brown Jackson's bold debut and independent streak (WP, July 2, 2023**

Education Cases in SCOTUS October 2022 Term

Special Education

IDEA/ADA: Perez v. Sturgis Public Schools

- **Cert granted on Oct. 3, 2022**
- **“US Supreme Court agrees to take up deaf Michigan man's case against school district**
- **By Todd Spangler, Detroit Free Press, Oct. 17, 2022**
- When Perez and his family first brought their claims in 2017, they filed under IDEA, ADA and other state laws. A hearing officer dismissed the ADA claim as outside his purview. Perez and his family eventually settled the IDEA claims, with the district paying to enroll him in the Michigan School for the Deaf and for other training, sign language instruction and attorney fees. Compensatory damages, however, aren't available under IDEA, so the family brought the ADA claim in federal court the following year.
- Now, the argument is whether Perez gave up his right to sue under ADA, which may provide for compensatory damages, when he and his family had settled the IDEA claims, rather than following them through the administrative review process, even though that process wouldn't have provided the additional relief they sought. In August, U.S. Solicitor General Elizabeth Prelogar filed a brief in the case, saying the 6th Circuit was mistaken when it found that Perez was required to exhaust the IDEA requirements when it was futile to do so – and that its ruling causes a conflict with rules followed in other appeals courts.
- Sturgis' lawyer argued, however, that there is no conflict and that another ruling by the Supreme Court earlier this year, which denied a claim for emotional distress damages under the same section of the federal code that contains the remedies available under the ADA, essentially settles the question in the school district's favor.”

IDEA/ADA: Perez v. Sturgis Public Schools (continued)

- Case argued on January 18, 2023.
- “Justices Seem to Lean Toward Deaf Students in Education Case
- By Jessica Gresko | AP, January 18, 2023, Washington Post
- The Supreme Court on Wednesday seemed sympathetic to the arguments of a deaf student who sued his public school system for providing an inadequate education, a legal challenge important for other disabled students and their families. The question for the justices involves a federal law that guarantees disabled students an education specific to their needs. During 90 minutes in the courtroom, liberal and conservative justices suggested they were inclined to rule for the student, Miguel Luna Perez. His lawyer, Roman Martinez, said that for 12 years, the public school system in Sturgis, Michigan, “neglected Miguel, denied him an education and lied to his parents about the progress he was allegedly making in school.”

IDEA/ADA: Perez v. Sturgis Public Schools (continued)

- Case decided on March 21, 2023 and was a 9-0 decision.
- Facts: Miguel Perez, a deaf student, attended Sturgis Public Schools ("SPS") from age 9 to 20. SPS provided an aid to translate into sign language, but the aides were unqualified or often out of the classroom for hours. SPS "allegedly misrepresented Mr. Perez's education progress . . . , awarding him inflated grades and advancing him from grade to grade regardless of his progress." As a result, the Mr. Perez's parents believed he was going to graduate on schedule. Months before graduation, SPS said it would not award him a diploma. The parents then filed a complaint alleging the District had not met is obligations under IDEA and other laws. The parties reached a settlement in which the District agreed to provide Mr. Perez the "forward-looking relief he sought, including additional schooling at the Michigan School for the Deaf." The parents then sued in federal court under the ADA seeking compensatory damages.

IDEA/ADA: Perez v. Sturgis Public Schools (continued)

Issue:

- Whether a family must exhaust IDEA administrative remedies when seeking non-IDEA claims for damages under ADA or other federal disability laws

Holding:

IDEA's exhaustion requirement does not preclude Mr. Perez's ADA lawsuit because relief sought – compensatory damages – is not something IDEA can provide.

IDEA/ADA: Perez v. Sturgis Public Schools (continued)

- “When Perez and his family first brought their claims in 2017, they filed under IDEA, ADA and other state laws. A hearing officer dismissed the ADA claim as outside his purview. Perez and his family eventually settled the IDEA claims, with the district paying to enroll him in the Michigan School for the Deaf and for other training, sign language instruction and attorney fees. Compensatory damages, however, aren't available under IDEA, so the family brought the ADA claim in federal court the following year.
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IDEA/ADA: Perez v. Sturgis Public Schools (continued)

Examples of implications of *Perez* decision:

- Families can avoid exhaustion of remedies by going directly to federal court, claiming violations of 504 and the ADA and requesting money damages.
- There likely will be an increase in the number of federal lawsuits, alleging violations of 504 and the ADA.
- Districts need to be aware that IDEA issues also may involve 504 and ADA and should involve appropriate staff when there may be IDEA, 504 and ADA issues.

IDEA/ADA: Perez v. Sturgis Public Schools (continued)

What are they saying about the Supreme Court decision?

- According to current SPS Superintendent, he could not comment on "details or outcome of the case," but "[h]aving said that, I can share that I believe that every experience provides us with an opportunity to learn and grow. . . Through this, too, we will gain knowledge, insight, and understanding that will help us maximize every student's true potential."
- According to Mr. Perez, 'he had learned construction skills at the Michigan School for the Deaf and was interested in home building as a job. He was pursuing his legal case to ensure that other deaf students are provided adequate assistance in schools."
- According to AASA (Sasha Pudelski), "[t]his is a significant ruling, and an unsurprising decision based on the oral argument . . . We have deep concerns with injecting a legal battle over money into the IDEA process and how this ruling may undermine parents' willingness to collaborate with districts in crafting an appropriate special education program for a child."
- According to Brian Wolfman, a Georgetown University Law Professor who was involved an amicus brief on behalf of Mr. Perez, that decision was "a very good one for kids."

Affirmative Action

Higher Education Affirmative Action Challenge

"Supreme Court Will Hear Challenge to Affirmative Action at Harvard and U.N.C.

By Adam Liptak and Anemona Hartocollis, Jan. 24, 2022, New York Times

- WASHINGTON — The Supreme Court agreed on Monday to decide whether race-conscious admissions programs at Harvard and the University of North Carolina are lawful, raising serious doubts about the future of affirmative action in higher education.
- The court has repeatedly upheld similar programs, most recently in 2016. But the court's membership has tilted right in recent years, and its new conservative supermajority is almost certain to view the challenged programs with skepticism, imperiling more than 40 years of precedent that said race could be used as one factor among many in evaluating applicants."

Arguments Higher Education Affirmative Action: New York Times on Harvard/UNC

- **Supreme Court Seems Ready to Throw Out Race-Based College Admissions**
- **By Adam Liptak, New York Times, Oct. 31, 2022**
- "The court's conservative majority was wary of plans at Harvard and the University of North Carolina that take account of race to foster educational diversity.
- WASHINGTON — The Supreme Court on Monday appeared ready to rule that the race-conscious admissions programs at Harvard and the University of North Carolina were unlawful, based on questioning over five hours of vigorous and sometimes testy arguments, a move that would overrule decades of precedents.
- Such a decision would jeopardize affirmative action at colleges and universities around the nation, particularly elite institutions, decreasing the representation of Black and Latino students and bolstering the number of white and Asian ones."

Case Background

- In November 2014, the Students for Fair Admissions ("SFFA") filed a lawsuit in federal court against Harvard alleging that the university impermissibly uses race in its admissions process. Specifically, the lawsuit claimed that Harvard discriminates against Asian-American applicants.
- On October 1, 2019, Judge Allison Burroughs of the United States District Court of Massachusetts ruled in favor of Harvard holding that Harvard's use of race-conscious admissions does not violate Title VI of the Civil Rights Act.
- SFFA appealed the district court decision. On November 12, 2020, the First Circuit affirmed the decision of the lower court. On February 25, 2021, Plaintiffs filed a cert petition for review by the Supreme Court. The Supreme Court granted cert on January 24, 2022.

Arguments Higher Education Affirmative Action: New York Times on Harvard/UNC

- “Questioning from members of the court’s six-justice conservative majority was sharp and skeptical. “I’ve heard the word diversity quite a few times, and I don’t have a clue what it means,” Justice Clarence Thomas said. “It seems to mean everything for everyone.”
- Justice Samuel A. Alito Jr. asked a similar question about the term “underrepresented minority.”
- “What does that mean?” he asked, adding that college admissions are “a zero-sum game” in which granting advantages to one group necessarily disadvantages another.””

Arguments Higher Education Affirmative Action: New York Times on Harvard/UNC

- "Justice Ketanji Brown Jackson said it would be odd if admissions officers could consider factors like whether applicants were parents, veterans or disabled — but not if they were members of racial minorities. That has "the potential of causing more of an equal protection problem than it's actually solving," she said.
- Justice Elena Kagan said she was worried about "a precipitous decline in minority admissions" if the court were to rule against affirmative action in higher education. "These are the pipelines to leadership in our society," she said of elite universities.
- Over the course of the argument, the justices discussed with seeming approval several kinds of race-neutral approaches: preferences based on socioeconomic status; so-called top 10 programs, which admit students who graduate near the top of their high school classes; and the elimination of preferences for children of alumni and major donors, who tend to be white."

Arguments Higher Education Affirmative Action: New York Times on Harvard/UNC

- “In general, two themes ran through questions from the court’s conservatives: that educational diversity can be achieved without directly taking account of race and that there must come a time when colleges and universities stop making such distinctions.
- The court’s three liberal members put up a spirited defense.
- Justice Sonia Sotomayor said “race does correlate to some experiences and not others.”
- If you’re Black,” she said, “you’re more likely to be in an underresourced school. You’re more likely to be taught by teachers who are not as qualified as others. You’re more likely to be viewed as having less academic potential.”

The Decision

- **“Supreme Court strikes down affirmative action programs in college admissions”**
  - By Amy Howe, June 29, 2023
- In a 6-3 decision, “the Supreme Court severely limited, if not effectively ended, the use of affirmative action in college admissions . . . .” In the decision, “the justices ruled that the admissions programs used by the University of North Carolina and Harvard College violate the Constitution’s equal protection clause, which bars racial discrimination by government entities.”
- “Writing for the majority, Chief Justice John Roberts explained that college admissions programs can consider race merely to allow an applicant to explain how their race influenced their character in a way that would have a concrete effect on the university. But a student “must be treated based on his or her experiences as an individual — not on the basis of race,” Roberts wrote. The majority effectively, though not explicitly, overruled its 2003 decision in ***Grutter v. Bollinger***, in which the court upheld the University of Michigan Law School’s consideration of race “as one factor among many, in an effort to assemble a student body that is diverse in ways broader than race.” Justices Clarence Thomas, Samuel Alito, Neil Gorsuch, Brett Kavanaugh, and Amy Coney Barrett joined the Roberts opinion.”
- Justice Sonia Sotomayor . . . “dissented, in an opinion that was joined by Justices Elena Kagan and Ketanji Brown Jackson. Sotomayor emphasized that the majority’s decision had rolled “back decades of precedent and momentous progress” and “cement[ed] a superficial rule of colorblindness as a constitutional principle in an endemically segregated society.”

The Decision (continued)

- In his opinion, Chief Justice Roberts stated that "[b]oth programs . . . consider race as part of their admissions program for commendable goals, such as 'training future leaders in the public and private sector' and 'promoting the robust exchange of ideas.'" "But those goals are too vague for courts to measure, Roberts reasoned." "How, he queried, do courts determine whether future leaders have been sufficiently trained, or 'whether the exchange of ideas is 'robust?'" "And even if courts could measure them, he continued, how would courts determine whether universities had accomplished those goals, 'and when the perilous remedy of racial preferences may cease?'"
- The Chief Justice also explained that "[t]he programs also use race in a 'negative' manner, despite the Supreme Court's admonition that 'an individual's race may never be used against him in the admissions process.'" "Although both universities contend that an applicant's race is never a negative factor, Roberts wrote, '[c]ollege admissions are zero-sum. A benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter.'" "Moreover, Roberts added, the programs also rely on prohibited racial stereotyping – the idea that minority students will always have the same views or perspectives on a particular issue."
-

The Decision (continued)

- “Roberts stressed that the court’s decision did not bar universities from ever considering race on a case-by-case basis. Schools, he indicated, can consider ‘an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.’” “However, he cautioned, a ‘benefit to a student who overcame racial discrimination, for example, must be tied to *that student’s* courage and determination. Or a benefit to a student whose heritage or culture motivated him or her to assume a leadership role or attain a particular goal must be tied to *that student’s* unique ability to contribute to the university.’” “By contrast, he complained, programs like the ones used by Harvard and UNC have ‘concluded, wrongly, that the touchstone of an individual’s identity is not challenges bested, skills built, or lessons learned but the color of their skin. Our constitutional history does not tolerate that choice.’”

The Decision (continued)

- In her dissent, Justice Sotomayor “emphasized that the ‘limited use of race’ by colleges and universities ‘has helped equalize educational opportunities for all students of every race and background and has improved racial diversity on college campuses.’ “Although progress has been slow and imperfect,” she wrote, race-conscious college admissions have advanced the Constitution’s guarantee of equality and have promoted” *Brown v. Board of Education*’s “vision of a Nation with more inclusive schools.” “The devastating impact of [this] decision, she concluded, “cannot be overstated.”
-

The Decision (continued)

- Jackson also filed a dissent in the UNC case, joined by Sotomayor and Kagan, in which she argued that American society "has never been colorblind." "Given the lengthy history of state-sponsored race-based preferences in America," Jackson wrote, "to say that anyone is now victimized if a college considered whether that legacy of discrimination has unequally advantaged its applicants fails to acknowledge the well-documented 'intergenerational transmission of inequality' that still plagues our citizenry."

- **“Civil rights complaint targets Harvard’s legacy admissions preference”**
  - By Nick Anderson and Susan Svrluga, Washington Post, July 6, 2023
- “Group asks federal government to stop the university’s practice of giving a boost to children of alumni
- A civil rights group announced Monday that it has petitioned the federal government to force Harvard University to stop giving a boost to children of alumni in the admissions process, another sign of the mounting pressure on prestigious schools to change their policies following last week’s Supreme Court ruling that rejected race-based affirmative action.
- Lawyers for Civil Rights said it filed the complaint with the Education Department, alleging that “legacy” admissions preferences at Harvard violate federal civil rights law because they overwhelmingly benefit White applicants and disadvantage those who are of color.”

Title VII

Title VII: *Groff v. Dejoy*

- Argued on April 18, 2023; decided on June 29, 2023
- In *Groff*, the issue was what is an “undue hardship” for an employer under Title VII, after a postal worker declined to work on Sundays delivering Amazon packages due to his religious beliefs. In a unanimous opinion, Justice Alito wrote that "Title VII requires an employer that denies a religious accommodation to show that the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." The Court left the context-specific application of that clarified standard in this case to the lower courts to decide.
- This decision may result in reassessment of a case of a Christian public school music teacher who requested an accommodation so he would not have to use transgender students’ preferred names and pronouns.

SCOTUS Cases for Next Term

Title VII: *Muldrow v. City of St. Louis*

- Cert. granted June 20, 2023
- Case involves a transfer of a female police sergeant in the intelligence division of St. Louis police department to a local police district. The transfer did not involve change in pay, but did result in change in duties and work environment. Muldrow claimed she had been discriminated under Title VII. Muldrow lost in the district court and 8th Circuit.
- Supreme Court granted cert on the following "limited" issue: "Does Title VII prohibit discrimination in transfer decisions absent a separate court determination that the transfer caused a significant disadvantage?"

Title VII: *Muldrow v. City of St. Louis* (continued)

- The Solicitor General argued that the Supreme Court should take the case because courts had reached inconsistent results regarding whether challenges to similar job transfers are actionable under Title VII.
- In her brief, the Solicitor General discussed transfer cases involving school employees, including an 11th Circuit case that conflicted with the 4th Circuit decision in *Muldrow*.
- In the 11th Circuit case – *Hinson v. Clinch County Board of Education* – the Court of Appeals allowed a lawsuit brought by a female high school principal who was transferred to a central office position to continue because lateral transfers resulting in "a loss of prestige and responsibility" are covered by Title IV.

Social Media

Social Media: *O'Connor-Ratcliff v. Granier and Lindke v. Freed*

Cert granted on April 24, 2023 in 2 cases

1. *O'Connor-Ratcliff v. Granier* involved 2 board members who used Facebook and Twitter to communicate with parents blocked two parents from their social media accounts because the parents criticized them. The parents sued in federal court arguing that their First Amendment rights were violated because the board members blocked them from their social media accounts. The district court ruled for the board members. The Ninth Circuit ruled that the board members blocking of the parents was government action, resulting in the board members violating the First Amendment when they blocked the parents.

Social Media: *O'Connor-Ratcliff v. Granier and Lindke v. Freed (continued)*

2. *Lindke v. Freed* involved a lawsuit filed against a city manager who blocked a resident of the city from his Facebook page. The resident did not approve of how the city manager handed the COVID-19 pandemic and left critical comments on the city manager's Facebook page. The resident sued claiming his First Amendment rights were violated by the city manager blocking him from his Facebook page. The Sixth Circuit ruled that the resident's First Amendment rights were not violated when the city manager blocked him from his Facebook page.

SCOTUS Decisions Affecting School Districts in October 2020 and October 2021 Terms

Football Coach and Prayer

Kennedy v. Bremerton School District: The Decision

The Supreme Court in a 6-3 decision ruled in favor of the football coach.

- **Background**: The Bremerton School District prohibited its football coach from kneeling in prayer at the 50-yard line after games.
- **Issue**: Did the school district violate the coach's First Amendment rights to free exercise of religion?
- **Holding**: The school district violated the coach's free exercise and free speech clauses of the First Amendment. The Free Exercise and Free Speech clauses protect an individual engaging in a personal religious observance.

Kennedy v. Bremerton School District: Decision (continued)

- According to Justice Gorsuch in the majority opinion, the coach was not engaged in speech "ordinarily within the scope" of the coach's duties. The coach was not involved in instructing players, discussing strategy, encouraging better on-field performance or engaging in any other speech for which he was paid as a coach.
- The timing and circumstances of the coach's prayers, which took place after the game when coaches were free to attend briefly to personal matters and students were engaged in other activities, confirm that the coach did not offer his prayers while acting with the scope of his duties.

Kennedy v. Bremerton School District: Decision (continued)

In the dissenting opinion, Justice Sotomayor strongly disagreed with the Justice Gorsuch. According to Justice Sotomayor:

- ”[t]he record reveals that Kennedy had a longstanding practice of conducting demonstrative prayers on the 50-yard line of the football field. Kennedy consistently invited others to join his prays and for years led student athletes in prayer at the same time and location. The Court ignores this history. The court also ignores the severe disruption to school events caused by Kennedy’s conduct, viewing it as irrelevant because . . . the District stated it was suspending Kennedy to avoid it being viewed as endorsing religion.”

Vouchers

Vouchers: Carson v. Makin

Background

- Many towns in Maine do not have public school districts. The state provides a tuition assistance program for residents of those localities to send their children to private schools, but sectarian schools are excluded. The Institute for Justice represented two families challenging the exclusion of sectarian schools from the program.
- The First Circuit said that the distinctive character and limited scope of Maine's tuition assistance program separated it from the aid programs recently considered by SCOTUS in *Trinity Lutheran* and *Espinoza*.

Vouchers: Carson v. Makin (continued)

- SCOTUS granted cert on July 2, 2021.
- **Issue**: Whether a state violates the religion clauses or equal protection clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or "sectarian," instruction.
- Chief Justice John G. Roberts Jr., writing for the majority, said the ruling did not require states to support religious education. He said, however, that states that choose to subsidize private schools, that states may not discriminate against religious schools.

Vouchers: Carson v. Makin: Press After Decision

High court opens the door to more public funding of religious schools

The Supreme Court ruled that Maine could not exclude Christian schools from its voucher program

By by Moriah Balingit, Washington Post, June 21, 2022

- "Despite its limited impact, the decision marks a victory for proponents of school privatization and school choice. In the last year, they have successfully lobbied state lawmakers to create or expand programs that send taxpayer dollars to private schools. These come in a variety of forms — and put taxpayer dollars directly in the hands of parents, who can choose what kind of education they want for their children.
- "This ruling affirms that parents should be able to choose a school that is compatible with their values or that honor and respect their values," Leslie Hiner, vice president of legal affairs for EdChoice, said in a statement. "By shutting out parents with certain values, that's discrimination run rampant."
- "Faith-based are really critical to their success because they have a very proven track record of educating disadvantaged kids."
- Legal scholars and advocates say the case itself will have little immediate impact, but they worried the case signals that the court will continue to open the door for religious institutions, including schools, to access public funds."

Vouchers: Carson v. Makin: Press After Decision

How Supreme Court ruling lays groundwork for religious charter schools

By Valerie Strauss, Washington Post, June 21, 2022

- "As my colleague Robert Barnes reported, the Supreme Court on Tuesday struck down that program with a 6-to-3 vote, saying it must allow tuition given by the state to go to religious schools as well as nonsectarian private schools. The ruling was the latest by the court in recent years that have been eroding the constitutional separation of church and state, including a 2020 5-to-4 decision that a Montana tax incentive program that indirectly helps private religious schools is constitutional.
- The reaction was what you would expect: Those who support the privatization of public education were thrilled, and those who don't were appalled.
- The nonprofit Center for Education Reform said it was "a victory for students across the nation" and a validation of "parents' right to direct the education of their children." Richard Kahlenberg, a senior fellow and leading K-12 education expert at the nonprofit Century Foundation, echoed others in saying the court "further divided Americans by requiring Maine's state tuition program to fund private religious schools that openly discriminate against LGBT people and non-Christians" — and said it 'undercuts the venerable goal of promoting e pluribus unum.'"

Board Censure of Board Member Speech

Board Censure: Houston Community College System v. Wilson

Background

- A community college board censured a board member after he made divisive remarks regarding a proposed campus in Qatar. The board member sued claiming that the censure move violated the First Amendment. The District Court dismissed his case. The Fifth Circuit reversed, holding:
  - A reprimand against an elected official for speech addressing a matter of public concern is an actionable First Amendment claim.
- The community college board appealed to the Supreme Court, noting that the Fifth Circuit's decision splits from established precedent in other circuits. Case law in other circuits states that censure motions by the government are protected speech under the First Amendment and cannot themselves create a First Amendment harm.

Board Censure: Houston Community College System v. Wilson (continued)

- Supreme Court decided case on March 24, 2022.
- In a unanimous decision written by Justice Gorsuch, Supreme Court reversed the 9th Circuit decision and held that the defendant did not have an actionable First Amendment claim.
- In his opinion, Gorsuch stated that opinion was "a narrow one" about "purely verbal censures."
- Gorsuch also said that court does not "mean to suggest that verbal reprimands or censures can never give rise to a First Amendment retaliation claim. It may be, for example, that government officials who reprimand or censure students, employees or licenses may in some circumstance materially impair First Amendment freedoms," but "those cases are not this one."

Student Speech

Student Speech: Mahanoy Area School District v. B.L.

Background

- A school district disciplined a student for posting a vulgar message on Snapchat while located off-campus. The message did not reference the school or any specific individuals.
- The student alleged that the school violated her First Amendment rights. The District Court agreed, and the Third Circuit affirmed.

Source: New York Times

Student Speech: Mahanoy Area School District v. B.L. (continued)

Background

- **Issue**: Whether the First Amendment prohibits public school officials from regulating off-campus student speech
- **Holding:** Schools may regulate some off-campus speech if that speech "materially disrupts classwork or involves substantial disorder or invasion of the rights of others." However, B.L.'s Snapchat did not meet this standard, so her suspension was unconstitutional.
  - Geographically speaking, off-campus speech will normally fall within the zone of parental, rather than school-related, responsibility. However, SCOTUS refers back to the key tenets of *Tinker*, allowing schools to regulate speech that causes substantial disruption in school.
  - Off-campus speech regulations coupled with on-campus speech regulations would mean a student cannot engage in the regulated type of speech at all.
  - The school itself has an interest in protecting a student's unpopular off-campus expression because the free marketplace of ideas is a cornerstone of our representative democracy.

Student Speech: Mahanoy Area School District v. B.L. (continued)

Breyer Examples

“Unlike the Third Circuit, we do not believe the special characteristics that give schools additional license to regulate student speech always disappear when a school regulates speech that takes place off campus. The school’s regulatory interests remain significant in some off-campus circumstances.” Examples include:

- Severe bullying or harassment targeting individuals
- Threats aimed at teachers or other students
- The failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities
- Breaches of school security devices

Student Speech: Mahanoy Area School District v. B.L. (continued)

Takeaways

- Supreme Court did not rule that schools cannot regulate off-campus speech. However, for a school to regulate off-campus speech, speech must relate to substantial disruption or invade the rights of others.
- Majority opinion seems to indicate that the bar for showing substantial disruption or invasion of the rights of others is higher for off-campus speech than for on-campus speech.
- When punishing off-campus speech, administrators should ensure that they have sufficient evidence to show how speech was disruptive or invaded rights of others. Supreme Court did not set a clear line for how disruptive speech must be.

Challenges to Admission Criteria for Schools and Programs in School Districts

Impact of Harvard/UNC Decision to School Districts

- “Admissions fights have extended to high schools, and Mobilized Asian Americans”
- By Amy Qin, New York Times, Oct. 31, 2022
- “The pitched battles over admissions at selective schools have not only been playing out at universities: They have also been waged at high schools in states like California, Virginia and New York. And these fights have helped mobilize Asian Americans to organize and become more politically active than ever before.
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Examples of Challenges to Schools with Admission Criteria

- Fairfax County Public Schools – Thomas Jefferson High School
- Loudon County Public Schools – Academies of Loudon
- Montgomery County (MD) Public Schools – Middle School Magnet Schools
- New York City Public Schools – Selective Schools
- Boston Public School – Exam Schools

4th Circuit Decision -- Thomas Jefferson High School

"High School Did Not Discriminate Against Asian American Students, Court Rules"

By Stephanie Saul, Washington Post, May 23, 2023

- "The U.S. Court of Appeals for the Fourth Circuit ruled on Tuesday in favor of a new admissions process at one of the most prestigious public high schools in the country, and found that it had not discriminated against Asian American students in its admissions policies.
- Thomas Jefferson High School for Science and Technology, in Alexandria, Va., had replaced the admissions exam with an essay and began admitting students from a cross-section of schools, with weight given to poorer students and those learning English.
- The appellate court, in a 2 to 1 ruling, found that there was not sufficient evidence that the changes were adopted with discriminatory intent.
- Writing for the majority, Judge Robert B. King, an appointee of former President Bill Clinton, said that the school, widely known as T.J., had a legitimate interest in "expanding the array of student backgrounds."

Office for Civil Rights and Department of Justice

About OCR

OCR is part of Department of Education.

What does OCR do?

1. Regulations
2. Policy guidance
3. Technical assistance
4. CRDC
5. Enforcement
   - Complaint process
   - Compliance revies
   - Voluntary resolutions
   - Administrative hearings
   - DOJ referral

“Strife in Schools: Education Depart. Logs Record Number of Discrimination Complaints”

- By Erica Green, NYT, January 1, 2023
- Almost 19,000 complaints filed with OCR between Oct.1, 2021 and Sept. 30, 2022, which was more than double than what filed previous year
- Majority of complaints involved discrimination against SWD
- Some of highest-profiles complaints “show how culture years waged by adults affect the nation’s children”
  - Example of high-profile complaints involve Southlake, Texas, alleging harassment based on race, sexual orientation and gender identity
  - Another example are complaints filed by Parents Defending Education, challenging diversity, equity and inclusion
- Sharp increase alleging transgender and gender-identity discrimination

About DOJ

- What does DOJ do?
  - Equal Education Opportunities (“EEO”) section in DOJ responsible for enforce civil rights laws.
- DOJ has authority to:
  - Review complaints from OCR
  - Investigate complaints and file lawsuits
  - Intervene in private lawsuits

Title VI and Equal Educational Opportunities Act of 1974

Title VI

- **Title VI of the Civil Rights Act of 1964 –**

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 education program or activity receiving Federal financial assistance . . .

Discipline

OCR Resource on Student Discipline

- On May 2023, OCR issued resource guide on dealing with racial discrimination in student discipline. The Resource demonstrates the departments' ongoing commitment to the vigorous enforcement of laws that protect students from discrimination on the basis of race, color or national origin in student discipline. The Resource provides examples of the departments' investigations over the last 10 years, reflecting the long-standing approach and continuity in the departments' enforcement practices over time and the continuing urgency of assuring nondiscrimination in student discipline in our nation's schools.
- "Discrimination in school discipline can have devastating long-term consequences on students and their future opportunities," said Assistant Attorney General Kristen Clarke of the Justice Department's Civil Rights Division. "The Justice Department Civil Rights Division uses our federal civil rights laws to protect students from discriminatory discipline, including discrimination in suspensions and expulsions, law enforcement referrals and school-based arrests. The investigations that we describe demonstrate how students may experience discrimination based on multiple facets of their identities and reflect our joint commitment to fully protect all students."

OCR Resource on Student Discipline (continued)

Resource guide summarizes OCR resolution agreements and DOJ agreements. These include:

- August 16, 2022 OCR agreement with Victor Valley Union High School (CA)
- July 6, 2022 DOJ agreement with Madison County School District (AL)
- Oct. 21, 2021 DOJ agreement with Davis School District (UT)
- July 31, 2020 DOJ agreement with Toledo Public Schools (OH)
- Nov. 20, 2018 OCR agreement with Wake County Public Schools (NC)
- Feb 12, 2028 OCR agreement with Durham Public Schools (NC)
- Dec. 23, 2017 OCR agreement with East Side High School District (CA)

OCR Resource on Student Discipline (continued)

Additional agreements include:

- Dec. 23, 2017 OCR agreement with East Side High School District (CA)
- Dec. 14, 2017 OCR agreement with Paramount Academy (AZ)
- Nov. 22, 2017 OCR agreement with Loleta Union Elementary School District (CA)
- Jan. 19, 2017 DOJ agreement with Wicomico County Public Schools (MD)
- August 24, 2016 OCR agreement with Lodi Unified School District (CA)
- April 19, 2016 OCR agreement with Oklahoma City Public Schools (OK)
- Nov. 13, 2014 OCR agreement with Minneapolis Public Schools (MN)
- Feb. 28, 2014 OCR agreement with Christina School District (DE)

U.S. Department of Education's Office for Civil Rights Reaches Settlement with Victor Valley Union High School District in California

AUGUST 16, 2022

As a result of its investigation, OCR found that District discipline practices disproportionately harmed African American students and that implementation of these practices departed from district policies and state law.

OCR Voluntary Resolution Agreement with Victor Valley Union High School: Disproportionate Discipline

OCR found that:

- administrators, teachers, and student witnesses reported discrimination in multiple areas, including suspensions, expulsions, truancy, and issuance of law enforcement citations;
- reported discrimination was consistent with statistical evidence of racial disparities in student discipline;
- reported discrimination was consistent with district records reflecting specific instances of harsher discipline of Black students as compared to white students who engaged in similar behavior; and
- failure by district to maintain and produce timely, complete, and accurate records regarding school discipline to demonstrate its compliance with Title VI.

OCR Voluntary Resolution Agreement with Victor Valley Union High School: Disproportionate Discipline

District's commitments in the resolution agreement include:

- examining the causes of racial disparities in district's discipline and implementing a corresponding corrective action plan;
- employing a director with expertise in nondiscriminatory discipline practices to help district implement the corrective action plan and agreement;
- establishing stakeholder equity committee to inform implementation of plan;
- revising discipline policies and procedures, including regarding law enforcement involvement in school discipline;
- Analyzing student discipline data to identify and, as needed, address possible areas of discrimination;
- providing training to staff on revised discipline policies and practices;
- reporting publicly disaggregated discipline data;
- conducting school climate surveys to assess perceptions of fairness and safety; and
- providing compensatory education to students subjected to discriminatory practices.

DOJ Agreement with Davis (Utah) School District

Agreement Requires Davis School District to Address Racially Hostile Environment and Discriminatory Discipline, October 2021

- "The Department of Justice's Civil Rights Division and the United States Attorney's Office for Utah announced a settlement agreement with Davis School District in Utah to address race discrimination in the district's schools, including serious and widespread racial harassment of Black and Asian-American students. The department opened its investigation in July 2019 under Title IV of the Civil Rights Act of 1964.

- The investigation revealed persistent failures to respond to reports of race-based harassment of Black and Asian-American students by district staff and other students. The department's review, which focused on 2015-2020, found hundreds of documented uses of the N-word, among other racial epithets, derogatory racial comments, and physical assaults targeting district students at dozens of schools. The department concluded that for years, Davis's ineffective response left students vulnerable to continued harassment and that students believed the district condoned the behavior. The department also found that Davis disciplined Black students more harshly than their white peers for similar behavior and that Davis denied Black students the ability to form student groups while supporting similar requests by other students. Black and Asian-American students are each roughly 1 percent of the approximately 73,000 students enrolled in the district."

“Pervasive racial harassment and other forms of racial discrimination in public schools violate the Constitution’s most basic promise of equal protection,” said Assistant Attorney General Kristen Clarke of the Civil Rights Division. “This agreement will help generate the institutional change necessary to keep Black and Asian-American students safe. We look forward to Davis demonstrating to its students and school community that it will no longer tolerate racial discrimination in its schools.”

DOJ Agreement with Davis (Utah) School District (continued)

Under the agreement, Davis will retain a consultant to review and revise anti-discrimination policies and procedures and support the district as it undertakes significant institutional reforms. Among other steps, Davis will:

- create a new department to handle complaints of race discrimination;
- train staff on how to identify, investigate, and respond to complaints of racial harassment and discriminatory discipline practices;
- inform students and parents of how to report harassment and discrimination;
- create a centralized, electronic reporting system to track and manage complaints and Davis's response to complaints;
- implement student, staff, and parent training and education on identifying and preventing race discrimination, including discriminatory harassment;
- analyze and review discipline data and amend policies to ensure non-discriminatory enforcement of discipline policies; and
- develop a districtwide procedure to assess requests for student groups and treat such requests fairly.

OCR: Wake County Public Schools and Discipline

- On February 16, 2023, Wake County Public Schools ("WCPS") entered into a Resolution Agreement Reached During an Investigation to resolve in part a complaint that alleged WCPS discriminated against African American students based on race by disciplining African American students more harshly than white students. During investigation:
  - OCR received information suggesting that definitions of certain offenses were subjective and overlapping;
  - OCR received information that WCPS' data systems did not require inclusion of all disciplinary referrals and did not distinguish referrals from other information;
  - OCR's analysis of WCPS data showed African American students referred for discipline at higher rates than white students and were overrepresented among frequently referred students;
  - OCR's analysis showed African American first-time offenders were suspended at higher rates than white first time offenders for some offenses; and
  - District staff reported uneven implementation of ALCs and overlap of Alternative Learining Centers (ALCs) and ISS.

OCR: Wake County Public Schools and Discipline (cont.)

- Pursuant to Section 302 of OCR's Case Processing Manual, WCPS agreed to:
  - Clarify definitions of certain offenses in Code and provide training on revisions;
  - Clarify data collection practices to ensure that it collects data on all disciplinary referrals and that disciplinary referrals are identified in data system;
  - Analyze current data for evidence of unlawful racial discrimination regarding disciplinary referrals and consequences and implement corrective actions to address any concerns identified;
  - Provide training to prevent unlawful discrimination when referring students for discipline and determining appropriate consequences; and Review and revise procedures for assignment student to ALCs, including to clarify difference between ISS and ALCs.

Diversity & Inclusion

OCR Fact Sheet: Diversity & Inclusion Under Title VI

- OCR issued January 2023.
- OCR said purpose to assist in "understanding that diversity, equity and inclusion training and similar activities in most factual circumstance are consistent with Title VI . . . ."
- A district violates Title VI if it intentionally treat individuals differently or causes harm because of their race or creates or is responsible for creating a racially hostile environment.
- There is a hostile environment where there is conduct that is sufficiently severe, pervasive or persistent so as to interfere with or limit ability of an individual to participate in or benefit from services or activities provided by the district.
- Determining whether activity or program – including diversity, equity and inclusion – results in a violation of Title VI requires assessing circumstances in each case.

OCR Fact Sheet: Diversity & Inclusion Under Title VI (cont.)

- Title VI does not "categorically" prohibit activities, such as:
  - Diversity, equity and inclusion training
  - Instruction in or training on impact of racism or systemic racism
  - Cultural competence or nondiscrimination training
  - Efforts to assess or improve school climate
  - Programs focused on antiharassment or antibullying
  - Investigations of and issuance of reports regarding causes of racial disparities
  - Use of specific words – such as equity, discrimination, inclusion, racism – in policies, programs or activities

OCR Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics

- OCR issued in January 2023.
- Fact sheet describes ways Title VI protests students who are perceived to be Jewish, Christian, Muslim, Sikh, Hindu, Buddhist or of another religious group.
- Title IV protects students based on their accrual or perceived
  - Shared ancestry or ethnic characteristics or
  - Citizenship or residency in a country with a dominant religion or distinct religious identity
- Title VI prohibits discrimination when involves
  - Racial, ethnic or ancestral slurs or stereotypes
  - How a student looks, including skin color, physical features or style of dress that reflects ethnic and religious traditions
  - A foreign accent, foreign name, including names commonly associated with particular shared ancestry or ethnic characteristics or speaking a foreign language

- Title VI does not protect students from discrimination based only on religion, such as denial of student's request to miss class for a religious holiday. OCR refers complaints of discrimination based only on religion to DOJ, which has jurisdiction on this issue.

May 25, 2023 OCR Dear Colleague Letter

- On May 25, 2023, OCR issues a Dear Colleague Letter regarding Title IV's requirement the "all students, including Jewish students" an environment "free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics.
- DCL references Fact Sheet and states that "OCR may investigate complaints that students have been subjected to ethnic or ancestral slurs; harassed for how the look, dress or speak in ways linked to ethnicity or ancestry . . . or stereotyped based on perceived shared ancestral or ethnic characteristics."

OCR Agreement with Kyrene School District #28: Anti-Semitic Harassment

"U.S. Department of Education's Office for Civil Rights Announces Resolution of Anti-Semitic Harassment Investigation of Kyrene School District #28

- AUGUST 23, 2022
- OCR entered into agreement with the resolution of a complaint with Kyrene School District #28 in Arizona to resolve complaint of anti-Semitic harassment.
- "As we see a distressing rise in reports of anti-Semitism on campuses across the country, I commend Kyrene School District #28 for committing today to take essential steps to ensure that no other students will have to suffer anti-Semitic harassment or other harassment based on their shared ancestry," said Assistant Secretary for Civil Rights Catherine E. Lhamon.

OCR Agreement with Kyrene School District #28: Anti-Semitic Harassment

OCR found that:

- student was subjected to months of harassment, both in school and on social media, by numerous classmates;
- harassment included calling student anti-Semitic slurs and disparaging and joking about student's Jewish heritage, over a period of five months;
- harassment student experienced and district's failure to provide the student with a safe school environment caused student to suffer significant and enduring academic and emotional harm; and
- harassment the district failed to address persisted school wide.

OCR Agreement with Kyrene School District #28: Anti-Semitic Harassment

District's commitments in voluntary resolution agreement include:

- addressing student's academic and counseling needs resulting from the harassment;
- reviewing and revising policies and procedures to address Title VI's prohibition of harassment based on race, color, or national origin, including shared ancestry, including by clarifying in its policies and procedures that the prohibition against harassment includes harassment based on Jewish ancestry;
- providing training to district staff regarding district's obligation to respond to complaints of harassment based on race, color, or national origin;
- providing age-appropriate information programs for students to address harassment based on race, color, or national origin; and
- conducting climate survey to assess prevalence of harassment in student's former school and provide suggestions for effective ways to address harassment.

OCR Agreement Beecher Community School District: Racial Harassment

- On June 5, 2023, OCR entered into a Resolution Agreement with Beecher Community Unit School (Illinois) District to resolve complaints regarding harassment of African American students by other students and by a teacher during a class. Examples of incidents and issues:
  - Two white students presented Powerpoints – one on native tribes and one on diseases – with confederate flag posted on last page of each presentation. Student A reported made her upset and uncomfortable and one offered her counseling or services. Student A's parent called the Dean to complain and the Dean said he would investigate, but he did not do so. Student A's parent complained during 504 meeting. Special Education teacher and counselor at meeting said they did not recall parent complaining.
  - Student A posted a snapchat during school day that contained the "N" word. Student A's parent reported to Dean. Dean did not inform parent of any action taken.
  - Teacher alluded to snapchat incident stating that "you can not talk about this stuff during school hours." Student A's parent complained to the Dean who said he would investigate and get back to her, but he never did.
  - Superintendent told OCR that District had not formal recordkeeping systems to keep track of complaints and monitor resolutions.

DOJ Settlement Agreement with Madison County Schools: Racial Harassment

Justice Department reaches settlement with Kentucky school district over racial harassment of students

By Meron Moyes-Gerbi, CNN, June 14, 2023

- The Department of Justice announced Monday it reached an agreement with Madison County Schools in Kentucky to settle a federal investigation "into complaints of serious and widespread racial harassment of Black and multi-racial students."
- Authorities launched an investigation into the district, located just south of Lexington, in October 2021, and found that racial slurs and derogatory racial comments were directed at students of color by their peers, the Justice Department said in a news release. The investigation was conducted under Title IV of the Civil Rights Act of 1964, which allows the federal government to address violations of equal rights protections in public schools.
- The harassment was "at times reinforced by use of Confederate flags and imagery," the department said, adding the school district did not "consistently or reasonably" address it.

DOJ Settlement Agreement with Madison County Schools: Racial Harassment

- “Madison County Schools has fully cooperated with the investigation conducted by the United States Department of Justice regarding race-based harassment in our schools. The district will continue working closely with the US Department of Justice to implement policy and procedure changes outlined in the agreement, particularly those that pertain to the tracking and analyzing of data pertaining to racially motivated incidents in the district,” the district said in a statement to CNN.
- The school district agreed to hire one or more consultants to comply with the agreement as well as hire three people to investigate and resolve complaints of racial harassment or other racial discrimination, according to the settlement agreement.
- In addition, the school district agreed to train its staff on how to identify and handle incidents of racial harassment among students. It also agreed to track complaints and efforts taken in response, and submit an annual report to federal officials on the effectiveness of its anti-harassment and nondiscrimination efforts, according to the settlement.

DOJ Settlement Agreement with Madison County Schools: Racial Harassment

- The settlement also requires the district to implement focus groups, surveys, and educational events as a way to prevent race discrimination.
- Carlton S. Shier IV, US attorney for the Eastern District of Kentucky, said the investigation's principles and the settlement are "straightforward."
- "All young people are entitled to seek their educational opportunities without facing racial harassment and abuse, and schools simply must adequately protect those entrusted to their care and instruction from that offensive, harmful behavior," Shier said. "With this settlement, Madison County Schools are now taking an important step consistent with those basic principles."

OCR Agreement Beecher Community School District: Racial Harassment (continued)

- The District resolved the complaint and agreed to the following:
  - Provide all administrators, faculty and staff with annual training to address racial discrimination and harassment;
  - Provide training to all employees involved in processing, investigation or resolving complaints or other reports of discrimination and harassment;
  - Provide annual, age-appropriate orientation session for all students on policies and procedures prohibiting racial discrimination and harassment;
  - Take prompt and appropriate responsive action to investigation allegations of Student A and other African American students who were harassed; and
  - Maintain documents of specific complaints and other reports of racial harassment.

OCR Investigation of STEM Summer Program

June 23, 2023 OCR Letter to Caroline Moore, Parents Defending Education

"On May 3, 2023, the U.S. Department of Education, Office for Civil Rights (OCR) received your complaint against the North Carolina School of Science and Mathematics. You alleged that the School's Step Up to STEM summer program discriminates on the basis of race by excluding applicants who are not African American, Hispanic American, or Native American.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance from the Department of Education. The School receives federal financial assistance from the Department of Education, so OCR has jurisdiction over it pursuant to Title VI. Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR is opening the complaint for investigation."

Racial Affinity Groups Lawsuit in Massachusetts

Lawsuit forces school district to end racial affinity groups

By ALEC SCHEMMEL February 8th 2022

- "BOSTON (TND) — A Boston-area public school district will end racially segregated "affinity groups" after settling with nonprofit Parents Defending Education (PDE).
- The nonprofit, which says it empowers concerned citizens to become more engaged in the U.S. education system, sued the district last year. In the suit, PDE argued Wellesley Public Schools' use of racially segregated "affinity groups" violated the First and Fourteenth Amendments, Title VI of the Civil Rights Act of 1964 and the Massachusetts Students' Freedom of Expression Law.
- This settlement sends a clear message that racially segregating students in public schools is wrong – and there will be consequences," said the president of PDE Nicole Neily. "We have spent decades teaching our kids that racial segregation was and will always be wrong. We will not tolerate a return to segregation in 2022."

Settlement in ***Parents Defending Education v. Wellesley Public Schools***

- Settlement includes following provisions:
  - "WPS will not exclude students from affinity-based group sessions or any other school-sponsored activities on the basis of race.
  - "WPS will not identify affinity-based group sessions or any other school-sponsored activities as intended only for certain racial groups. For example, WPS will not identify an affinity-based group session as "for Black and Brown students" or "for Asian American students."
  - "When any affinity-based group session is held, WPS will provide notice of the event to all grade-eligible students, regardless of their race."
  - "In all announcements of affinity-based group sessions (whether through email, school calendars, bulletin board postings, or otherwise) the posting will contain the following disclaimer: 'This event is open to all students regardless of race, color, sec, gender identity, religion, national origin, or sexual orientation.'"

DOJ: English Learners

Thursday, September 15, 2022

“Justice Department Secures Agreement with Massachusetts School District to Ensure Equal Educational Opportunities for All Students, Including K’iche’ Speakers

“The Justice Department today announced a settlement agreement with New Bedford Public Schools to resolve the department’s investigation into the school district’s practices for communicating with limited English proficient parents and guardians, including speakers of K’iche’, an Indigenous Mayan language.

Among other steps, the district will implement effective measures to correctly identify the languages spoken by students, as well as parents and guardians, so that school staff do not assume K’iche’ speakers are native Spanish speakers based on their country of origin. The district has also agreed to improve its practices and professional development to address the specific needs of English learner students who speak K’iche’ so that they can access the same educational opportunities as other students in the district.”

DOJ: English Learners

“Students and families from Indigenous Maya communities often face unique barriers to accessing educational opportunities,” said Assistant Attorney General Kristen Clarke of the Justice Department’s Civil Rights Division. “This comprehensive agreement ensures that the district recognizes and addresses the needs of its substantial population of K’iche’-speaking students, and empowers parents to participate fully in their children’s education. The Civil Rights Division is committed to protecting every child’s right to equally participate in school.”

The agreement results from the department’s investigation under the Equal Educational Opportunities Act of 1974, opened in 2020. The district cooperated at every stage of the investigation and committed to improving its programs through revised practices and professional development. The Justice Department will monitor the district’s implementation of the settlement agreement for at least three full school years to ensure that the district complies with its obligations.

The enforcement of the Equal Educational Opportunities Act of 1974 is a top priority of the Justice Department’s Civil Rights Division. Additional information about the Civil Rights Division is available on its website at www.justice.gov/crt.”

Students with Disabilities

OCR Definitions: Seclusion and Restraints

OCR defines “mechanical restraint” as the use of any device or equipment to restrict a student’s freedom of movement. The term does not include devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed.

OCR defines “physical restraint” as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.
OCR defines “seclusion” as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. The term does not include a timeout, which is a behavior management technique that is part of an approved program involving monitored separation of the student in a non-locked setting and is implemented for the purpose of calming.

Department of Justice: Seclusion and Restraint

Monday, September 12, 2022

“Justice Department Secures Settlement with Iowa School District Concerning Discriminatory Seclusion and Restraint Practices

- **Cedar Rapids Community School District Will Protect Students with Disabilities by Dismantling Seclusion Rooms and Prohibiting Discriminatory Restraints**

“The Department of Justice’s Civil Rights Division and the U.S. Attorney’s Office for the Northern District of Iowa announced today a settlement agreement with the Cedar Rapids Community School District in Cedar Rapids, Iowa, to address the discriminatory use of seclusion and restraint against students with disabilities.

“Students with disabilities should not be subjected to discriminatory and abusive seclusion and restraint practices that deny them equal access to education,” said Assistant Attorney General Kristen Clarke of the Justice Department’s Civil Rights Division. “When schools isolate and unlawfully restrain children with disabilities, rather than provide them with the supports needed for success in the classroom, they violate the promise of the Americans with Disabilities Act. Our agreement puts the Cedar Rapids Community School District on a path to significant institutional change and reform. We will continue working to ensure that school districts across the country are taking all steps needed to provide every student access to a safe and supportive learning environment.”

Department of Justice: Seclusion and Restraint (continued)

- DOJ found that the district:
- inappropriately and repeatedly secluded and restrained students with disabilities as early as kindergarten in violation of Title II of the Americans with Disabilities Act (ADA);
- instead of meeting the needs of students with disabilities that affect their behavior, the school district subdued them through unnecessary restraints and improper confinement alone in small seclusion rooms, sometimes multiple times in one day and often for excessive periods of time;
- as a result of these practices, some students lost hundreds of hours of instructional time;
- did not end seclusion where students showed signs of crisis or trauma, or when there was no longer any threat of harm. Under the settlement agreement, the Cedar Rapids Community School District has voluntarily agreed to end the use of seclusion, reform its restraint practices, and improve its staff training on anticipating, appropriately addressing and de-escalating students' disability-related behavior through appropriate behavioral interventions.

Department of Justice: Restraint and Conclusion (continued)

The settlement agreement includes:

- end its use of seclusion;
- limit its use of restraints, revise its restraint procedures and practices, and consistently implement those procedures and practices in all schools;
- report all instances of restraint and evaluate if they were justified;
- offer counseling and other services to students who are restrained;
- adopt policies and procedures to assess suicide risk, prevent suicide and self-harm, and implement immediate crisis intervention for students who threaten or engage in self-harm;
- designate trained staff to collect and analyze restraint data and oversee the creation of appropriate behavior intervention plans;
- deliver appropriate training and resources to help schools implement the agreement; and
- hire two new administrators to oversee schools' use of restraint, if any, and ensure the district's compliance with the agreement and Title II of the ADA.

"Each and every child deserves an equal opportunity to learn and thrive," said U.S. Attorney Timothy T. Duax for the Northern District of Iowa. "Our office, in partnership with the department's Civil Rights Division, will vigorously investigate allegations of discrimination on the basis of disability in all settings, including in our public schools. I am heartened by the district's commitment to this landmark agreement, which will undoubtedly improve the education and everyday lives of many students in our community."

DOJ Investigation of Restraints/Seclusion in MD District

Federal civil rights officials find Frederick County's public schools engaged in improper use of restraints, seclusion for disabled students

By Fredrick Kunkle, Washington Post, December 1, 2021

- "Frederick County Public Schools staff made pervasive and improper use of restraints and seclusion when handling children with disabilities, federal civil rights officials said Wednesday, following an investigation into about 2½ years of data and documentation of the practice.
- The investigation found more than 7,250 instances involving 125 students as young as 5 years old who were improperly isolated or restrained by staff in non-emergency situations when other, less-intrusive or harmful interventions should have been used. Every instance of seclusion involved a student with disabilities, although disabled students account for only 11 percent of the district's 45,000 students, the officials said. Of the students who were restrained, all but one was disabled."

DOJ Investigation of Restrains/Seclusion in MD District (continued)

- "The Frederick County, Md., investigation, which was opened in October 2020, reviewed school data on behavioral interventions and focused primarily on school years 2017-2018, 2018-2019 and the first half of 2019-2020, officials said in a statement.
- Eighty-nine percent of the reported seclusions and restraints occurred at Lewistown Elementary School and Spring Ridge Elementary School — the only district schools with programs to serve students with "significant social and emotional needs" — and at Rock Creek School, which is designed to serve students with severe intellectual or physical disabilities.
- Under the settlement announced Wednesday, Frederick County school officials agreed to take corrective actions that include prohibiting the use of seclusion; reporting all instances of restraints and evaluating whether the use of restraints was justified; and provide additional training for staff to intervene in a more appropriate manner."

OCR Resolution of Compliance Review Regarding Restraints/Seclusions in Michigan District

U.S. Department of Education's Office for Civil Rights Reaches Agreement to Resolve Restraint and Seclusion Compliance Review of Michigan's Huron Valley Schools

JANUARY 19, 2022, **Contact:** Press Office, (202) 401-1576, press@ed.gov

- "The U.S. Department of Education's Office for Civil Rights (OCR) today resolved a compliance review of the Huron Valley Schools near Detroit. The district entered a voluntary resolution agreement to take steps necessary to ensure that students with disabilities receive the free appropriate public education (FAPE) to which they are entitled, including requiring the district to review its use of restraint and seclusion; assessing whether students with disabilities who were subjected to restraint and seclusion require additional remedies or services, including compensatory education; and developing new systems for documenting the use of restraint or seclusion.

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OCR Resolution of Compliance Review Regarding Restraints/Seclusions in Michigan District (continued)

- "The district's voluntary agreement to change its practices with respect to the use of restraint and seclusion, and its commitment to examine and remedy prior instances where restraint and seclusion of its students may have denied them a FAPE, reflect the district's willingness to address the civil rights of its students. The district made significant commitments in the agreement, including, for example:
- Assessing whether students with disabilities who were subjected to restraint and seclusion from September 2017 through January 2022 were denied a FAPE and require compensatory education.
- Implementing a policy regarding the appropriate use and documentation of restraint and seclusion.
- Implementing a monitoring program to assess the district's use of restraint and seclusion on a monthly basis and developing a policy and forms for documenting and tracking the restraint and seclusion of district students. And,
- Providing training to staff on restraint and seclusion, the district's documentation policy and forms, and the requirements of Section 504 and Title II."

OCR Resolution Agreement Re Restraint and Seclusion in Horry County Schools

U.S. Department of Education's Office for Civil Rights Reaches Agreement to Resolve Restraint and Seclusion Compliance Review of Horry County Schools in South Carolina

MAY 24, 2022, **Contact:** Press Office, (202) 401-1576, press@ed.gov

- "The U.S. Department of Education's Office for Civil Rights (OCR) on Monday resolved a compliance review of the Horry County Schools in South Carolina. The district committed to take steps necessary to ensure that students with disabilities receive the free appropriate public education (FAPE) to which they are entitled without unnecessary restraint or seclusion or missed instruction.
- OCR's investigation identified concerns that students who were repeatedly subjected to restraint or seclusion lost educational time and services, and that the district did not re-evaluate students who were repeatedly restrained or secluded to determine whether they should receive additional supports or compensatory services.
- The district's agreement to change its practices with respect to the use of restraint or seclusion, and its commitment to examine and remedy prior instances where restraint and seclusion of its students may have denied them a FAPE, reflect the district's willingness to address the civil rights of its students."

OCR Resolution Agreement Re Restraint and Seclusion in Horry County Schools

"The district's commitments to resolve the investigation include:

- Revising its procedures and guidance documents on the use of restraint or seclusion.
- Clarifying the roles and responsibilities of those involved in monitoring and oversight of the district's use of restraint or seclusion.
- Modifying its recordkeeping system.
- Creating a plan to accurately report data to the Civil Rights Data Collection.
- Training staff on the district's procedures and new recordkeeping system.
- Reviewing files of currently enrolled students who were restrained or secluded since the start of the 2017-2018 school year to determine, in part, whether any student requires compensatory education for educational services missed due to incidents of restraint or seclusion. And,
- Implementing a monitoring program to assess the district's use of restraint or seclusion."

OCR Resolution Agreement Re Restraint and Seclusion in Davis Joint Unified School District

- December 7, 2022
- OCR found that the district placed 3 SWD in nonpublic schools and violated their rights under 504 and Title II. Examples of finding include:
  - Failure to ensure that district staff making placement decision had access to and carefully considered information about use of retraint and seclusion with these students
  - Failure to ensure that those making decisions for these students regarding behavioral interventions for these students were knowledgeable about each student, meaning of evaluation data and placement
  - Failure to reevaluate students to determine whether repeated use of restraint and seclusion denied FAPE and if additional aids ad services were appropriate to provide FAPE
  - Denial FAPE to all students based on above failures and resulting harms

OCR Resolution Agreement Re Restraint and Seclusion in Davis Joint Unified School District (continued)

Examples of commitments in resolution agreement include:

- Revising policies on the use of restraint or seclusion.
- Distributing revised policies
- Developing and implementing a process and form to create and maintain records
- Providing training staff on revised policy
- Ensuring staff at nonpublic schools were students are place receive training
- Providing individual remedy to individual students subjected to restraint and seclusion
- Conducting a review to identify any district students who were restrained or secluded and implement responsive remedies
- Implementing a monitoring program to assess the district's use of restraint or seclusion in district schools and nonpublic schools

Ban on Restraints/Seclusions by Virginia District

FCPS expands ban on restraints, set to fully end student seclusions

Angela Woolsey, FFX Now, March 17, 2022 at 11:15am

- "Fairfax County Public Schools will officially end the use of seclusion as a tool for managing student behavior when the next school year begins on Aug. 22.
- The practice of confining a student to a room is **already prohibited** in most schools, but the Fairfax County School Board approved **an update** on March 10 that expands the ban to include the **Key Center School**, **Kilmer Center**, and private day and residential schools, starting with the 2022-2023 school year.
- Key Center in Franconia serves students with intellectual disabilities, severe disabilities, and autism, while Kilmer Center, located in Dunn Loring, is for students aged 5 to 21 with severe disabilities and autism. Their enrollment for the current school year is **60** and **62 students**, respectively."
-

OCR Resolution with LAUSD Re SWD during COVID-19

Office for Civil Rights Reaches Resolution Agreement with Nation's Second Largest School District, Los Angeles Unified, to Meet Needs of Students with Disabilities during COVID-19 Pandemic

APRIL 28, 2022

- "The U.S. Department of Education's Office for Civil Rights (OCR) today resolved an investigation of the Los Angeles Unified School District in California with an agreement requiring it to take steps necessary to ensure that students with disabilities receive educational services, including compensatory services, during and resulting from the COVID-19 pandemic.
- OCR investigated the district's provision during the pandemic of the free appropriate public education (FAPE) to which federal civil rights law entitles students with disabilities. OCR's investigation found that the district failed to provide services identified in students' Individualized Education Programs (IEPs) and Section 504 plans during remote learning. For example, OCR found that during remote learning, the district:
- Limited the services provided to students with disabilities based on considerations other than the students' individual educational needs.
- Failed to accurately or sufficiently track services provided to students with disabilities.
- Directed district service providers to include attempts to communicate with students and parents—including emails and phone calls—as the provision of services, documenting such on students' service records.
- Informed staff that the district was not responsible for providing compensatory education to students with disabilities who did not receive FAPE during the COVID-19 school closure period because the district was not at fault for the closure. And,
- Failed to develop and implement a plan adequate to remedy the instances in which students with disabilities were not provided a FAPE during remote learning.
- The district agreed to resolve these violations by creating and implementing a comprehensive plan to address the compensatory education needs of students with disabilities due to the COVID-19 pandemic."

OCR Resolution with LAUSD Re SWD during COVID-19

"Through implementation of the resolution agreement the district will:

- Develop and implement a plan to appropriately assess and provide compensatory education to students with disabilities who did not receive a FAPE during the COVID-19 pandemic.
- Designate a plan administrator to implement the plan for assessment of compensatory education.
- Convene IEP and Section 504 teams to determine whether students were not provided the regular or special education and related aids and services designed to meet their individual needs during remote learning and determine compensatory education.
- Track and report to OCR the implementation of the plan for compensatory education. And,
- Conduct outreach to parents, guardians, students, and other stakeholders to publicize the plan for compensatory education and the role of the plan administrator."

New Guidance to Help Support SWD and and Avoid Discriminatory Discipline

- New Guidance Helps Schools Support Students with Disabilities and Avoid Discriminatory Use of Discipline
- JULY 19, 2022

- “New guidance released today from the Department of Education’s Office for Civil Rights (OCR) and Office of Special Education and Rehabilitative Services (OSERS) helps public elementary and secondary schools fulfill their responsibilities to meet the needs of students with disabilities and avoid the discriminatory use of student discipline.
- These newly released resources are the most comprehensive guidance on the civil rights of students with disabilities concerning student discipline and build on the Department’s continued efforts to support students and schools through pandemic recovery.
- The new resources include:

- Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 and an accompanying Fact Sheet.
- Questions and Answers Addressing the Needs of Children with Disabilities and the Individuals with Disabilities Education Act's (IDEA's) Discipline Provisions.
- Positive, Proactive Approaches to Supporting the Needs of Children with Disabilities: A Guide for Stakeholders. And,
- A letter from Secretary Cardona to our nation's educators, school leaders, parents, and students about the importance of supporting the needs of students with disabilities.”

New Guidance to Help Support SWD and Avoid Discriminatory Discipline (continued)

- “The new guidance makes clear that providing the individualized services and supports required by Section 504 can help prevent or reduce disability-based behaviors that might otherwise lead to student discipline. Additionally, the guidance:
- Outlines how Section 504’s requirements to provide a FAPE apply to long-term disciplinary sanctions, such as out-of-school suspensions and expulsions.
- Explains Section 504’s general nondiscrimination requirements, in the context of discipline, which applies to school staff and to the conduct of everyone with whom the school has a contractual or other arrangement, such as security staff and school police.
- Makes clear that Section 504 requires schools to provide reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination.
- Section 504 does not prohibit a school from responding to emergency circumstances, such as contacting law enforcement or crisis intervention specialists, or from taking appropriate, nondiscriminatory steps to maintain safety and support students in learning how to be accountable for the impact of their actions on others.”

True/False

True/False

- **True or False?** The Supreme Court has ruled that school districts may not us race as a factor in selecting students for magnet schools.
- The Supreme Court ruled in March that a school district must pay money damages to a special education student.
- **True or False?** The Department of Justice recently has required a school district to end seclusion of special education students.
- **True or False?** The Supreme Court has ruled that school board members may block parents who criticize them from their Twitter accounts.
- **True or False?** OCR has authority to investigate allegations of anti-Semitic harassment.

Wrap Up/Questions

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