JULY 2012

TITLE VI

ENFORCEMENT HIGHLIGHTS

OFFICE FOR CIVIL RIGHTS

U.S. Department of Education

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LBJ Education Building
400 Maryland Ave., S.W.
Washington, DC 20202-1100

"The steady movement to a more fair and just society plays out every day in the classrooms, colleges and universities all across America—and I believe that the only way to achieve equity in society is to achieve equity in the classroom."

—Secretary Arne Duncan, July 14, 2010

TITLE VI ENFORCEMENT HIGHLIGHTS

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in programs and activities operated by recipients of federal funds. It states, "No person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

"There's a reason the story of the civil rights movement was written in our schools. There's a reason Thurgood Marshall took up the cause of Linda Brown. There's a reason why the Little Rock Nine defied a governor and a mob. It's because there is no stronger weapon against inequality and no better path to opportunity than an education that can unlock a child's God-given potential."

—President Barack Obama, June 17, 2009

In the education arena, Title VI's protection applies to all elementary and secondary schools, colleges and universities—public or private—that receive federal financial assistance, and to certain other institutions. Its protection extends to all aspects of these institutions' programs and activities. Title VI prohibits denial of access to college- and career-preparatory courses and programs and other educational opportunities, discriminatory discipline, harassment, and barriers to education for English learners.

As part of the Department of Education's Office for Civil Rights' observance of the 48th anniversary of the passage of the Civil Rights Act of 1964, we celebrate the nation's progress over the last half century and take stock of our work enforcing Title VI over the last three years.

We are mindful of how much work lies ahead. The Office for Civil Rights (OCR) will continue the legacy of the Civil Rights Act of 1964 by vigorously enforcing Title VI and striving to end illegal discrimination and ensure equal opportunity for all children in our nation's schools.

OCR has taken on tough issues arising under Title VI to enforce its protections on behalf of students of many backgrounds across the United States. In doing so, we have used the following tools:

Policy Guidance: OCR issues detailed policy guidance documents to help schools, colleges and the public understand what Title VI and other civil rights laws require. These documents, which we send to institutions around the country, address the legal requirements and considerations governing situations frequently encountered by schools. They provide recommendations for how institutions can meet their legal obligations. Since January, 2009, OCR has issued nine such documents, three of which address topics related to Title VI: (1) how schools and colleges may voluntarily pursue diversity, including racial diversity, in their student bodies and, in the case of K-12 schools, avoid racial isolation; (2) the equal right of every child in the United States to a public elementary and secondary education regardless of his or her citizenship or immigration status or the status of his or her parents or guardians; and (3) schools' obligations to respond to bullying and harassment based on race, color, or national origin.

Enforcement: OCR investigates allegations of discrimination and, as needed, obtains robust remedies that address the root causes of the discrimination. OCR's resolutions seek to equip educators, parents and communities to pursue educational equity as intended by Title VI. Almost 600 OCR team members lead this work from our headquarters and 12 regional offices around the country.

Complaints and Proactive Investigations: In the last three fiscal years,[1] OCR received nearly 5,500 Title VI-related complaints—more than ever before in a three-year period—and launched

over 55 systemic, proactive investigations that, collectively, address a broad range of Title VI-related issues in institutions across the nation.

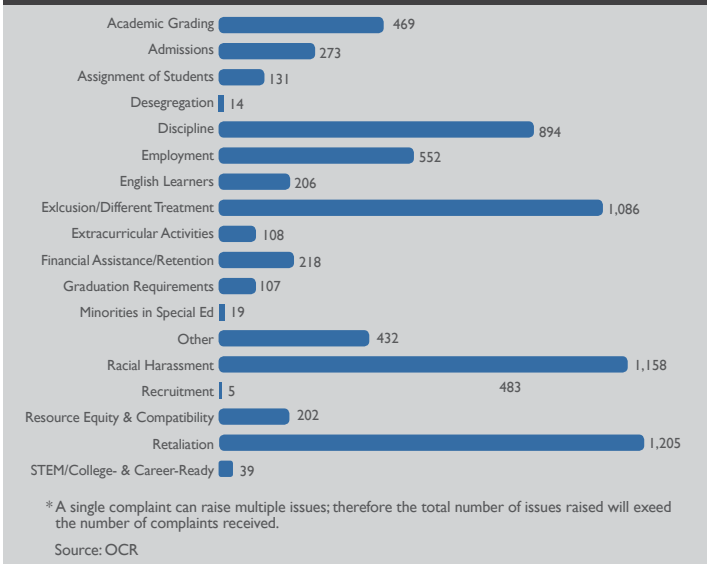
Technical Assistance: Educators, as well as parents and students, must have the knowledge and skills to identify discrimination, to prevent it, and to address it or get help when it does occur. Every year, OCR provides technical assistance to schools and communities around the country on both longstanding and emerging civil rights issues. In the first six months of FY 2012 alone, OCR delivered 47 technical assistance presentations on Title VI-related issues.

Enforcing Title VI

This document highlights a small sample of OCR's Title VI work on the following issues:

- **COMPARABLE EDUCATIONAL OPPORTUNITIES** (INCLUDING COLLEGE- AND CAREER-PREPARATORY COURSES AND PROGRAMS): Promoting equitable access to educational resources for all students, regardless of race, color or national origin. This includes strong teachers and leaders, as well as courses and other opportunities students need in order to be prepared for college and successful careers.
- **DISCRIMINATORY DISCIPLINE:** Ensuring that students are not subjected to discipline differently on the basis of race, color or national origin.
- **HARASSMENT** (INCLUDING BULLYING THAT RISES TO THE LEVEL OF HARASSMENT)**:** Requiring schools and colleges to prevent and address harassment on the basis of race, color or national origin.

Issues* Raised in Title VI Allegations
FY 2009, 2010, 2011



*A single complaint can raise multiple issues; therefore the total number of issues raised will exeed the number of complaints received.

Source: OCR

- **BARRIERS TO EDUCATION FOR ENGLISH LEARNERS:** Ensuring equal educational opportunities for students learning English.
- **EQUAL RIGHTS OF ALL CHILDREN TO ATTEND PUBLIC SCHOOL:** Affirming the equal right of all children in the U.S., regardless of their immigration status, race, color or national origin, to attend public elementary and secondary school.
- **RACIAL DIVERSITY:** Supporting school districts, colleges and universities that voluntarily pursue diversity and, at the K-12 level, strive to avoid racial isolation within the framework of Title VI and the U.S. Constitution; and enforcing legal remedies for illegal racial segregation at the K-12 and postsecondary levels.

- **THE RIGHT TO EQUAL TREATMENT:** Requiring that schools and colleges treat students equally on the basis of race, color and national origin in all programmatic areas, including grading, representation of racial minorities in special education, access to charter and magnet schools, access to extra-curricular activities, financial aid and scholarships, retaliation and employment.

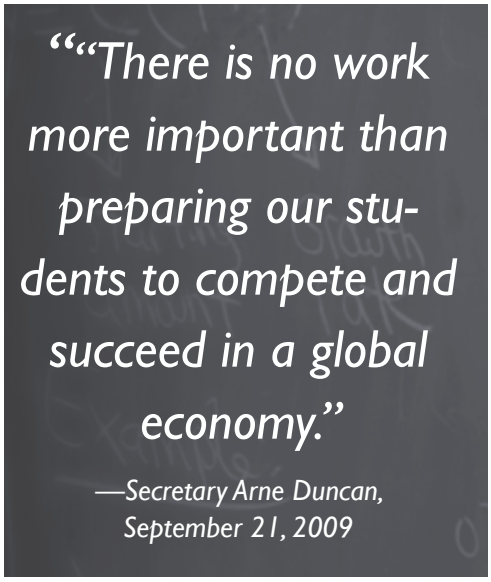
- **THE TRANSFORMED CIVIL RIGHTS DATA COLLECTION:** Providing new information about schools across the country to improve compliance with Title VI. The Civil Rights Data Collection now covers issues ranging from access to college- and career-preparatory courses to discipline to school finances, which can be analyzed and disaggregated by race, ethnicity, English proficiency status, sex and disability.

Equal Access to Comparable Educational Opportunities (Including College- and Career-Preparatory Programs)

While all students may not choose to go to college, Title VI requires that schools and school districts give students of every race, color and national origin an equal opportunity to make and pursue that choice. Yet students of color and English learners often lack opportunities to participate in challenging academic courses with quality instruction and, as a result, are less likely to be prepared for college and successful careers.

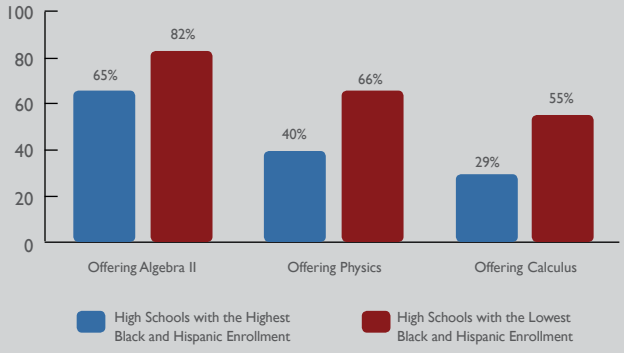
The proportion of African Americans and Hispanics with high school or college degrees has risen significantly since 1964, but these numbers remain far too low – for African Americans, Hispanics, and all students.

- Eighty-five percent of African Americans and 64 percent of Hispanics over age 24 have high school diplomas – compared to 92 percent of whites of that age group.
- Similarly, 20 percent of African Americans and 14 percent of Hispanics over age 24 have bachelor's degrees – compared to 34 percent of whites of that age group.[2]



New data from the Office for Civil Rights' transformed Civil Rights Data Collection (CRDC) reveal large opportunity gaps for children of color. For example, in racially diverse districts, less than a third of high schools serving the most Hispanic and African-American students offer calculus courses; only 40 percent offer Physics; and only two-thirds offer Algebra II. And English Learners as well as Hispanic students are significantly underrepresented among students taking the SAT or ACT tests.

Unequal Access to Math and Science Courses



Source: 2009-10 CRDC, Office for Civil Rights, 2012.

There are signs that students in schools with fewer educational opportunities do less well academically—sometimes dramatically so. For example, one OCR investigation revealed an achievement gap between white and black students, accompanied by significant opportunity gaps in courses and other available resources: only 37 to 45 percent of students in predominantly African-American schools were reading at grade level, compared to 82 to 87 percent of students in predominantly white schools.

OCR is addressing this problem by enforcing Title VI's requirement that all students, irrespective of race, color or national origin, must have access to comparable educational opportunities, including the strong teachers and leaders and challenging courses and programs

"By 2020, this nation will once again have the highest proportion of college graduates in the world."

–President Barack Obama, July 14, 2009

that students need to be ready for college and the workforce.

Enforcement: College and Career Readiness OCR's efforts to ensure equal access to meaningful educational opportunities led to 15 Title VI-related, proactive system-wide investigations around the country in FY 2009-11. These investigations involved student access to resources, curricula and opportunities that foster college and career readiness. In addition, OCR received nearly 40 complaints in this area during the same period.

In several cases, school districts were providing students in predominantly African-American middle and high schools with fewer or inferior resources and opportunities than students in predominantly white middle and high schools. As part of its investigations into whether these resource differentials were discriminatory, OCR has found inequities that include the following :

- A number of cases have revealed, among other inequities, racial disparities in the availability of and enrollment in Advanced Placement (AP), college credit, gifted and talented and other higher-level courses, as well as appropriate counseling on taking such courses. In one district, African-American students were encouraged to enroll in an ethnic literature course rather than an AP course based on the belief that the students would "connect better" and "be more comfortable" in the ethnic literature class. In another, students from a predominantly African-American high school had to find their own transportation to travel to AP classes off-site, or take such classes online, while students at the predominantly white high school could take AP classes on-site.
- Issues raised in other cases include access to instructional equipment and interactive technology such as smart boards and well-functioning computers in labs, classrooms and libraries—along with staff dedicated to computer and technology support. One predominantly African-American high school failed to fully deliver a single AP science course with a lab due to the absence of necessary lab equipment.
- Among the issues raised in other cases is access to better and more up-to-date library collections and textbooks. In one recent investigation, the average publication date of the U.S. history books in the libraries of the predominantly African-American schools was 1986.

In such cases, OCR seeks to ensure that school districts take steps to accelerate closing the achievement gap between students of different racial or ethnic backgrounds, such as the following:

- Expanding access to technology and library materials.
- Ensuring fair access to gifted and talented programs.
- Addressing gaps in language proficiency.
- Improving staff attendance.
- Providing staff professional development in academic subjects and cultural competency.
- Providing "wraparound" social services.

One agreement provided for a first-of-its-kind community school in a predominantly African-American neighborhood that will provide wrap-around health and social services and serve as a pilot project for other neighborhoods.

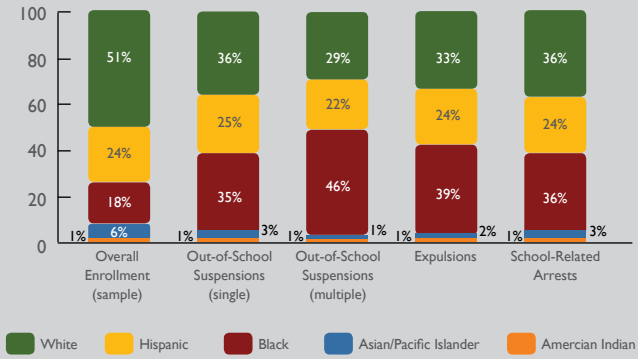
OCR's resolutions also focus on strengthening the "pipeline" of rigorous academic preparation that allows students to graduate from high school ready for college or careers, through measures such as the following:

- A review of course enrollment policies and recordkeeping practices to ensure equal access, quicker identification of disparities, and transparency to the public.
- Improved strategies to encourage middle and high school students to participate in pre-AP, AP and other higher-level courses.
- Steps to ensure that the availability of higher-level curricula, including AP courses, is comparable throughout the district, irrespective of the racial or ethnic makeup of any particular school.
- Greater availability of rigorous, effective higher-level online courses.
- Broader parental outreach concerning the benefits of honors, AP, and dual-enrollment courses.

Combatting Discriminatory Discipline

In many educational institutions, minority students are disciplined more harshly and more frequently than other students, resulting in serious, negative educational consequences, particularly when such students are excluded from school.

Disparate Discipline in Our Schools



Source: 2009-10 CRDC, Office for Civil Rights, 2012.

As examples of these discipline disparities, African-American students represent 18 percent of students in the CRDC sample but 35 percent of students suspended once, 46 percent of those suspended more than once, 39 percent of students expelled, and 36 percent of the students arrested on public-school grounds. Latino students are one-and-a-half times more likely to be expelled than their white counterparts. Additionally, in districts that showed at least one expulsion under zero-tolerance policies, African Americans represent 19 percent of enrollment but 33 percent of the students expelled.[3]

While discipline decisions are inherently local decisions about classroom management and

school culture, a district's discipline policies, procedures and practices must comply with the requirements of Title VI. As in all cases, data alone do not constitute a violation of the civil rights laws, but large disparities in the rate of disciplinary sanctions imposed on students of different races give rise to concerns about the school environment and, in some cases, possible discrimination.

Enforcement: Discipline The Office for Civil Rights has intensified its enforcement activities to ensure that students are not disciplined more severely or frequently because of their race, color or national origin. From FY 2009 to 2011, OCR launched 15 proactive investigations in schools with significant racial disparities in discipline, and an additional five in early 2012 based on data from the most recent CRDC. Additionally, OCR received almost 900 complaints during FY 2009-11 brought by parents, students or other concerned individuals about possible civil rights violations involving school discipline systems. OCR also held two major conferences with the Department of Justice on issues relating to student discipline.

Disparate discipline investigations have revealed incidents of harsher treatment of African-American students and other minority students than white students who commit similar infractions and who have similar discipline histories. These cases reveal school climates in which the expectations and consequences regarding typical juvenile behavior and misbehavior are significantly more severe for African-American and other minority children.

- In one high school, for example, two students with similar discipline histories were found to have engaged in "Unauthorized Use of Electronic Devices." A white student was assigned detention for using headphones after having been told repeatedly to put them away. An African-American student, however, was assigned a one-day suspension for using a cell phone and iPod.
- In a middle school, two students, also with similar disciplinary histories, were punished for inappropriate language. A white student said "shut the f*** up" and was assigned lunch detention. An African-American student, on the other hand, said "suck my d***" and was suspended for one day.
- Two students engaged in a pushing incident with each other at school, and a security officer took them to the office. Although the students had similar disciplinary histories, the white student received three days in-

school suspension, while the Native American student was arrested by the police and received a 10-day out-of-school suspension.

- In another case, school administrators used their discretionary authority to impose harsher punishments than the student code normally called for on African-American students as compared with similarly situated white students, with a frequency that statistical analysis showed was virtually impossible to have occurred by chance. In one instance, an African-American *kindergartner* was given a five-day suspension for setting off a fire alarm, while a white 9th-grader in the same district was suspended for one day for the same offense.

In resolving disparate discipline investigations, OCR works with school districts to design far-reaching remedies appropriate to the facts and circumstances of each case. The goal is to ensure that all students are provided schools that are safe and conducive to learning. In order to eradicate root causes of inequities, OCR may require districts to undertake steps such as the following:

- Working with an expert reviewing and modifying disciplinary policies to ensure that rules are clearly defined and easily understood by students, staff and parents and that school authorities consider alternatives to expulsion and suspension to keep students in the classroom.
- Developing and implementing strategies for teaching positive student behavior.
- Ensuring that school staff have appropriate resources and training in order to effectively manage classrooms and school campuses
- Providing supports for struggling students, including access to mentors, counselors, behavior interventionists or student advocates.
- Implementing school climate surveys for students, parents, and school staff to measure their perceptions of school safety and fairness in discipline, as well as their understanding of disciplinary rules and behavioral expectations.
- Creating the position of discipline coordinator who is responsible for ensuring that the implementation of the district's policies is fair and equitable and addressing complaints from parents, guardians, students and others regarding the implementation of the district's disciplinary policies.
- Collecting and evaluating data regarding all referrals for student discipline, including those that did not result in the imposition of disciplinary sanctions and referrals to law enforcement, at all district schools.
    - The new record-keeping system will include demographic information on all students involved (race, sex, disability and English-learner status), as well as numerous other indicators. Each record will contain a detailed description of the misconduct, a description of all approaches that were attempted in order to address the behavior at issue prior to referral for discipline, identification of witnesses of the incident, prior disciplinary history of the stu-

dent, sanction imposed, whether the student was transferred to an alternative school or to a different school site as a sanction, and whether the student was arrested as a result of the incident.

- Providing regular informational programs to families and students to explain behavior expectations, present discipline data, advise them of the availability of a discipline coordinator, and invite discussion of how the process is working.

Preventing and Addressing Harassment, Including Bullying that Rises to the Level of Harassment

All students have the right to learn in an environment free from harassment and bullying based on their race, color, or national origin. Harassment of students, whether at the K-12 or postsecondary level, can have profound educational, emotional and physical consequences for the harassed students and their peers. Harassing conduct may take many forms, including bullying and name-calling, graphic and written statements, or other kinds of physical or verbal conduct that may be threatening, harmful, or humiliating. OCR seeks to eradicate discriminatory harassment and create environments in which students of all racial and ethnic backgrounds are safe to learn.

Policy Guidance: Harassment The Department issued groundbreaking policy guidance in

Supportive School Discipline Initiative

A Joint Effort between the Departments of Education and Justice

The Departments of Education and Justice joined forces in July, 2011 to address discipline policies that push students out of school and into the juvenile justice system — the "school-to-prison pipeline." Our Supportive School Discipline Initiative brings together federal partners, foundations, nonprofits, state and local stakeholders, education and justice practitioners and advocates, and researchers to collaborate and coordinate efforts to improve school discipline practices and to dismantle the school-to-prison pipeline.

The departments are pursuing four main strategies: building consensus for action and reform through a partnership with the Council of State Governments; researching and evaluating trends and alternative strategies; issuing joint guidance to clarify federal policies and statutes relevant to school discipline practices and their impact on student access to educational services; and increasing awareness, leadership, and resources for technical assistance in this area.

One of the Initiative's projects is to develop a school discipline "toolkit" of resources that practitioners need to develop effective behavior management practices and reduce reliance on suspensions, expulsions, and school-based arrests. Further, the Department of Education will soon launch a web-based community of practice comprising state-level education and justice stakeholders to heighten awareness of this critical issue and provide opportunities for states to share best practices.

2010 explaining that, when bullying or other harassment based on race, color or national origin creates a hostile environment serious enough to limit or interfere with a student's ability to benefit from opportunities offered by a school, the harassment violates Title VI. If an institution knows or has reason to know about student-on-student harassment, Title VI requires that the school take immediate and effective action to eliminate the harassment, prevent its recurrence, and, where appropriate, address its effects on the harassed student and the school community. OCR's policy guidance provides examples of harassment and illustrates how a school should respond in each case. (The policy guidance also addresses harassment based on sex and disability, which is covered by the other statutes OCR enforces.)

The guidance also takes the important step of recognizing that harassment against students of a particular religion may violate Title VI. Although Title VI does not prohibit religious discrimination, members of religious groups who are subjected to harassment on the basis of their national origin, including their actual or perceived ancestry or ethnic characteristics, are protected by Title VI. For example, bullying of Muslim or Jewish students may be based not merely on religious bias, but also on bias relating to the students' perceived ethnic or national origin. Schools thus must determine whether harassment against members of religious groups is also discrimination based on race, color or national origin, and, if so, meet their Title VI obligations in addressing such harassment.

Enforcement: Harassment Of the over 5,500 Title VI-related complaints OCR has received in the last three fiscal years, more than a fifth pertained to harassment. During this same period, OCR has also launched four proactive systemic investigations of harassment based on race, color or national origin.

OCR investigations have addressed allegations of pervasive, severe and persistent harassment. Examples include the following:

- Epithets scrawled on school walls (for example, swastikas scrawled on walls at a university housing complex) and expressed verbally to students (calling African-American students "n***", Arab students "sand n***" and Jewish students "dirty Jew") and other derogatory and offensive comments (African-American students being told by other students to "pick cotton" and that "my people owned your people," Somali students being called "free loaders" who do not work and receive "unfair privileges" such as time off to pray and being allowed to wear religious head garb in school).

- White high school students dressing in "hip-hop" attire and referring to one of homecoming week's dress-up days as "wigger day".
- University fraternity members hosting an off-campus party advertised as a celebration of Black History Month using African-American stereotypes.
    - Participants were encouraged to attend in stereotypical garb, and some were observed at the party in blackface; additionally, a noose and a Ku Klux Klan-style hood were displayed at the school.
- High school students publicizing "Kick a Jew Day" on Facebook and other social media, and kicking Jewish students and making anti-Semitic remarks and gestures to them, including Nazi salutes.
    - OCR found the bullying in this case to be harassment on the basis of national origin based on perceived ancestry and ethnicity.

Resolutions OCR has resolved such complaints against schools and colleges through the development of innovative initiatives against racial harassment. These resolutions are designed to foster school environments in which harassment and bullying are not tolerated and where any harassment is promptly and effectively addressed. Resolutions often call for annual surveys of the school climate, revision of school policies, and better training for staff and students designed to reduce harassment and to promote tolerance and respect for other people and cultures. In addition, agreements require districts to provide, where appropriate, individual remedies for victims, such as counseling and academic support services. OCR works with schools to engage the whole school community in addressing problems such as harassment to help build a strong, lasting culture of respect and tolerance. Resolutions also require the creation of working groups of parents, students and school officials to provide on-the-ground feedback to the school on harassment issues. OCR also requires measures to allow OCR and the school to assess over time whether the school's efforts are effectively preventing and redressing racial harassment. An institution will not be released from monitoring until OCR determines this is the case.

In an agreement negotiated with a major state university, the university agreed to provide $330,000 in additional annual funding for outreach and retention programs, with the goal of recruiting students from historically underrepresented groups and providing support and assistance to help retain those students after they enroll. In addition, the university agreed to

establish a task force to identify best practices for the recruitment, support, and retention of faculty from underrepresented groups.

OCR has also provided extensive technical assistance to school districts, colleges and universities across the country on harassment-related issues. In one city, Asian-American students suffered pervasive acts of harassment, including an incident in which approximately 30 Asian-American high school students were attacked, leading many to be sent to the emergency room. OCR is now working with other federal and local organizations, including the Department of Justice's Community Relations Service, to conduct student workshops at secondary schools in that city and others that are experiencing racial or inter-group tensions.

Ensuring Equal Opportunities for English Learners

Children whose first language is not English (English learners or EL students) require language supports in order to meaningfully participate in school. Title VI requires that elementary and secondary schools take affirmative steps to ensure that English learners overcome language barriers and can effectively participate in their schools' educational programs. A school district must implement a sound educational approach in its programs for EL students and show that it is teaching EL students English and providing them with access to the district's curriculum.

Title VI also requires schools to adequately communicate with limited-English-speaking parents about important school-related information in languages they can understand.

Enforcement: English Learners OCR has sought to dramatically improve language assistance services and programs for EL students in communities across the country, so that limited English proficiency is not an obstacle for these students to fully access the school's educational opportunities. Over the past three years, OCR has launched 21 proactive, systemic investigations relating to EL programs and services. OCR has received over 200 complaints alleging discrimination against EL students.

OCR cases show that EL students and families are sometimes denied the language services they need to fully access school opportunities. Examples of the problems OCR has addressed include the following:

- School districts, and in one case an entire state, improperly excluded students from English language acquisition services because surveys or testing instruments did not consider critical factors such as the language students speak at home or a student's distinct needs in writing, reading, speaking and listening.
- A school district in which only 3 percent of the district's EL high school students were performing at grade level in both math and English language arts failed to provide an effective program for English language development and meaningful access to the core curricular content for EL students.
    - EL students were expected to acquire full proficiency in English in six

years. However, 75 percent of those students did not meet this goal, and after they exited the EL program the vast majority of these students did not have support classes or a curriculum designed to address their language deficits. Rather, they were left to languish in programs taught in English, unable to access core content and therefore failing and repeating courses.

- Parents of EL students did not understand how the EL program worked, and translation and interpretation services were sometimes inaccurate.

- A school district failed, for more than five years, to identify EL students and led parents to believe that they had to "opt out" of EL services for their children if they wanted them to enroll in particular schools or programs.
  - While 10,500 students in the district were receiving EL services, even more students – 11,000 – had been improperly denied such services.
- A school district failed to implement an effective process for identifying and meeting the language assistance needs of its limited-English proficiency parents to ensure they received important information about their children's education – despite the fact that nearly 60 percent of the district's 11,000 students identified their home language as Arabic.
- Charter schools and charter management organizations showed low enrollment of EL students and students with disabilities.
  - Proactive reviews of such schools are addressing a number of issues, including whether they have non-discriminatory recruitment and admission policies and practices with regard to EL students and students with disabilities, whether they provide equal educational opportunities to such students, and whether they adequately communicate with limited-English speaking parents.

Resolutions OCR obtains robust, systemic resolutions to help ensure that schools are meeting their Title VI obligations with respect to EL students by requiring measures such as the following:

- Testing English proficiency in each of the four language domains of speaking, listening, reading and writing.
- Providing EL students – in some cases, thousands in a single district – with language assistance services to enable them to access their core content classes, such as math, social studies and science.
- Delivering English language development instruction to EL students.
- Offering compensatory services to students who were improperly denied services and have not made adequate progress as a result.
- Helping students exit from language assistance programs, when appropriate.
- Evaluating the success of districts' EL programs in teaching students English and enabling them to perform academically at grade level.
- Implementing the means to communicate with limited-English speaking parents so that they can make informed decisions regarding their children's education.

- Clarifying that federal law does not require or condone a state to discriminatorily remove teachers who were not native English speakers under the state's claim that their English was heavily accented. As a result, the state now focuses its monitoring on whether a teacher has been certified by the local district as fluent in English.
- For charter schools or special programs that have discriminatorily denied EL students access, revising admission and recruitment policies and practices to ensure that EL students are not denied admission based on their national origin, tailoring recruitment and outreach to EL students and their parents, and ensuring that EL students can access core curriculum and appropriate language assistance and instruction.

Technical Assistance OCR has also provided hundreds of technical assistance presentations over the last three years to parents, educators, administrators and community members that have included information on the obligations schools have under Title VI to provide EL students with support and opportunities and to communicate effectively with parents whose primary language is not English. This work has included numerous technical assistance activities with state-level officials.

Equal Rights of All Children to Attend Public School Regardless of Immigration or Citizenship Status

Policy Guidance: Equal Right to Attend School The Department issued policy guidance with the Department of Justice affirming the equal right of every child in the United States to a public elementary and secondary education regardless of his or her citizenship or immigration status or the status of his or her parents or guardians. As the guidance explains, this right was established in a landmark 1982 case called *Plyler v. Doe*, in which the Supreme Court stated that denying "innocent children" access to a public education "imposes a lifetime of hardship on a discrete class of children not accountable for their disabling status." [4]

The guidance makes clear that schools' enrollment policies and practices must be consistent with Title VI's prohibition against discrimination based on race, color, or national origin. It also provides examples of permissible and impermissible enrollment practices to help districts and states meet this responsibility as well as examples of the types of information that may not be used as a basis for denying a child enrollment in a public elementary or secondary school. For example,

school districts that require children to establish age during the enrollment process should accept as proof a variety of different documents, including foreign birth certificates. The guidance notes that school districts that have proof-of-residency requirements might include utility bills or rental receipts among the accepted documents, but should not include requests for immigration papers, because such documents are not necessary to establish residency in the district. Moreover, any proof of age or residency requirements must be uniformly applied to all students.

Enforcement: Equal Right to Attend School OCR has addressed allegations of districts discriminating on the basis of race, color and national origin in the way they improperly focused on the immigration status of parents and students.

- In one case, OCR hosted a town hall meeting for the parents of English learners residing in a district. During the meeting, which was also attended by a school district representative, OCR informed parents of their rights under Title VI and of the district's responsibilities to provide services to students who are English learners. A Dominican mother with limited English proficiency explained to OCR that she was required to provide immigration papers while registering her child for school, even though they were irrelevant to the district's informational needs. The forms she was given were also in English, which she could not read. This raised a question as to whether the district was meeting its obligation to provide adequate assistance to limited-English proficient parents. She filed a complaint immediately after the meeting with OCR. As a result of the town hall meeting, the district official committed to making sure that registration forms were available in Spanish. OCR is investigating other issues the parent raised.
- In another case, a school district allegedly asked Hispanic parents for proof of residency, social security cards, and driver's licenses when they came to enroll their children, despite the fact that the district had a policy allowing 30 days to prove residency. The district agreed with OCR to change its procedures to clarify that all students had 30 days to prove residency. It also agreed to translate residency documents into Spanish, and to accept an expanded list of documents, including an affidavit, to serve as proof of residency.
- In a third case, the complainant alleged that a school district discriminated against Latino students in the enrollment process, including by asking a Latino student who presented proof of residency to also provide a passport and immigrant visa prior to enrolling in a high school. School staff allegedly made comments to the student such as "how can you be here without a passport or visa?" and "you must be an illegal." The case was resolved with a district commitment to review and, if necessary, revise its registration documents

to make clear that immigration documents and passports are not required for enrollment and to provide annual training for staff on proper enrollment procedures using OCR's guidance documents on this issue.

Supporting Schools, Districts and Colleges that Voluntarily Pursue Racial Diversity

Many educators believe – and the Supreme Court has affirmed – that schools and colleges have compelling interests in pursuing diverse student bodies. The benefits of diverse learning environments are many – for example, they help students sharpen their critical thinking and analytical skills; they prepare students to succeed in an increasingly diverse and interconnected world; they break down stereotypes and reduce bias; and they enable schools to fulfill their role in opening doors for students of all backgrounds. Yet many of America's schools remain racially isolated; indeed, research has shown that America's schools have been growing more segregated since the 1980s.[5]

Policy Guidance: Voluntary Pursuit of Racial Diversity To increase clarity on this important issue, OCR withdrew previously issued guidance that did not fully explain the legal options available to schools and colleges that choose to pursue diversity, and in December, 2011 issued new guidance jointly with the Department of Justice's Civil Rights Division. The two-part guidance—one for K-12 schools and one for postsecondary institutions—explains the Supreme Court decisions that provide the legal framework for the consideration of race and national origin by educational institutions in pursuit of diversity and avoiding racial isolation.

As a starting point, the guidance recognizes that schools and colleges have a compelling interest in increasing diversity. Institutions do not have to wear blinders – they can look at whether their decisions will deprive students of the opportunity to learn and interact with students of other races and national origins, and they can affirmatively make decisions to increase diversity. The guidance goes on to offer concrete examples of how the Supreme Court's legal framework applies to specific techniques for achieving diversity.

The K-12 guidance indicates how school districts can pursue diversity and reduce racial isolation through their decisions on locating schools, including magnet schools, and specialized academic, athletic or extracurricular programs; closing schools or programs; aligning grade and feeder patterns; drawing attendance zone lines; and designing inter- and intra-district transfer systems.

Similarly, the postsecondary guidance offers ways for colleges and universities to pursue diversity through admissions, pipeline programs, recruitment, outreach, mentoring, tutoring, retention, and student support programs.

The choice as to whether to pursue diversity and reduce racial isolation lies with educational

and civic leaders. OCR is ready to help educational leaders who make this choice.

Enforcement: Voluntary Pursuit of Racial Diversity OCR investigates and resolves a broad range of cases involving challenges to the use of race or national origin to help achieve diversity at the K-12 and postsecondary levels and in combatting racial isolation at the K-12 level. In addition, OCR investigates allegations that certain institutions covertly and discriminatorily consider race or national origin in their decision-making.

At the K-12 level, OCR's cases address whether public school districts have lawfully considered race in student assignment to schools, K-12 admissions processes, school assignment lotteries, school zoning, closures and site selection, and student recruitment, mentoring and support programs.

In one K-12 case, OCR determined that the use of family income, parental education and residence in a zip code with concentrated poverty to select students for admission to unique public school programs in order to achieve the benefits of socioeconomic diversity was not racial discrimination, even though these criteria correlated with race.

OCR also plays a critical role in the administration of the Magnet School Assistance Program (MSAP). Congress has appropriated $100 million annually to support school districts' efforts to create magnet schools that will attract racially diverse student populations and thus eliminate, reduce, or prevent minority racial isolation. No grant may be awarded until OCR determines that the applying school district will not discriminate on the basis of race, color or national origin (as well as religion, sex or disability) in pursuing its diversity and other goals. In these cases, OCR provides technical assistance concerning the lawful paths to diversity and avoiding or reducing racial isolation.

Cases at the higher education level address whether colleges are legally pursuing diversity by considering race or national origin in admissions, financial aid programs and student recruitment, mentoring and support programs. In all such complaints, OCR acknowledges the compelling institutional interest in the educational benefits of diversity. Specific complaints involve the following questions:

- Whether a highly selective university discriminatorily utilized a tougher admission standard for Asian-American applicants.

- Whether an urban university's mentoring and support program that focused on African-American males was open to all without admitting or excluding students on the basis of their race, one of the ways a race-themed mentoring and support program is permissible under Title VI.
- Whether a university admissions system that considered an applicant's race to achieve the compelling educational benefits of diversity did so in a narrowly tailored manner, consistent with Supreme Court decisions.
- Whether the use of institutional or third-party scholarships for students of color in order to further campus diversity complies with Title VI as interpreted by OCR's 1994 Financial Aid Guidance. OCR's guidance affirms each institution's right to use financial aid to pursue compelling diversity interests, and explains that scholarships limited to students of particular races or national origin are defensible so long as the opportunity to receive financial aid is narrowly tailored as required by Supreme Court precedent.

In each of these cases, OCR has acknowledged the school's or college's compelling interests in the benefits of diversity in the classroom, in avoiding racial isolation at the K-12 level, and in the preparation of future leaders as necessary to fulfilling their missions. So long as these institutions stay within the bounds of the law provided by the Supreme Court, as explained by the OCR and Department of Justice guidance, their efforts at diversity and avoiding racial isolation will not be found to violate Title VI.

Technical Assistance OCR's Title VI enforcement efforts also include technical assistance regarding Title VI standards addressing the permissible consideration of race or national origin to achieve diversity or reduce racial isolation in accordance with OCR's 2011 Guidance.

Enforcing Longstanding Desegregation Orders Building on the Supreme Court's *Brown v. Board of Education*[6] decision, Congress enacted Title VI to outlaw racial segregation and other forms of discrimination. From the law's passage in 1964 through the 1970s, OCR placed a primary emphasis on eliminating unconstitutional segregation in the Southern and Border states in elementary, secondary and post-secondary schools. OCR investigations also found that school districts in other regions violated Title VI through the operation of intentionally segregated, dual school systems. The hallmark of unlawful racial segregation was state-imposed racially separate schools and programs that were often accompanied by denials of equal educational resources and opportunities for African-American students.

As at the K-12 level, states operated racially segregated systems of higher education that barred African Americans from enrolling in white institutions – while providing inferior opportunities through public Historically Black Colleges and Universities that were constrained by limited missions, inadequate state resources, and other substantial forms of discrimination. Beginning in

the late 1960s, OCR required formerly *de jure* segregated state systems of higher education to submit plans to desegregate traditionally white institutions and to end the states' denial of equal opportunities for students attending HBCUs.

Under Title VI standards informed by Supreme Court decisions and interpreted in OCR policy, OCR requires public schools and state systems of higher education to eliminate the vestiges of past intentional segregation of students based on race. OCR leads investigations and collaborations to ensure that previously segregated schools and districts take action to further racial desegregation. In keeping with its historical mission, OCR also investigates complaints that institutions are segregating students or offering them separate and unequal educational resources or opportunities on the basis of race, color, or national origin.

K-12 Desegregation of Schools, Resources and Opportunities At the K-12 level, OCR's enforcement of Title VI to stop segregation of schools, programs, resources and opportunities by race and national origin has included actions such as the following:

- At the request of a school district seeking to avoid violating its longstanding desegregation plan by opening a new, nearly all-white charter school, OCR helped devise a plan to ensure that the new school increased its African-American student enrollment, staff, leadership and governance as well as its outreach and recruitment in the district's growing Latino community. Failure to meet the minority enrollment, staff, leadership and governance targets could jeopardize the continued existence of the school.
  - Minority parents, concerned about this possibility, pleaded with OCR to ensure the continued existence of the school, stating that the school was the best opportunity for their children.
  - Today, the charter school has increased its population of minority students and is on track to meet the goals of its desegregation agreement.
- OCR also helped a district under a longstanding desegregation plan to revise its approach to opening a new high school that would have been over 80 percent African-American (in contrast with district-wide enrollment of 34 percent African-American)
  - The revised plan combatted racial segregation and resource disparities by providing all students at the new school a range of programs and activities comparable to those provided at the district's other high schools, implementing research-based programs to improve completion and drop-out rates, and offering a sought-after early college program at the school that would attract students throughout the district.
  - This program, offered in conjunction with a local college, will allow students at the high school to earn associate degrees in a variety of high-demand

fields (including electronics/telecommunications, design technology, criminal justice, and health sciences) at the same time as their high school diplomas.

- The new high school recently received a $100,000 grant from an international company that develops educational tools, technologies and services for use by school districts. The company will create a high-tech center to develop equipment, hardware and software, as well as furniture tailored to the technology, at the new high school. Moreover, the high school will house a sophisticated education technology classroom.
- As a result of the programs implemented at the new high school, the enrollment of white students has steadily increased.

- OCR has enforced desegregation plans by addressing allegations that school districts' assignment policies and creation of new facilities violated their duty to make assignment decisions that further racial desegregation and do not perpetuate the vestiges of racial segregation.
- OCR investigates allegations that changes in school assignment criteria discriminate against students of color.
- The agency investigates allegations that school districts have closed and merged schools in a racially discriminatory manner and illegally burdened or disadvantaged African-American and Latino students in the process.
- OCR investigates the exclusion of African-American children from an allegedly "white only general education kindergarten class.

In each of these cases, OCR ensures that institutions are aware of the compelling educational benefits of diversity and, at the K-12 level, avoiding racial isolation, as well as the opportunity to pursue these benefits through a range of actions, including the lawful consideration of race and national origin.

Higher Education Desegregation At the postsecondary level, in recent years, OCR has renewed its commitment to enforce longstanding higher education desegregation plans that were adopted by six states (Pennsylvania, Maryland, Florida, Ohio, Oklahoma and Texas) that previously ran *de jure* segregated higher education systems. OCR is committed to actively monitoring the progress of these states in implementing their agreements

and eliminating the vestiges of state-imposed segregation. OCR's reinvigorated monitoring has shown positive results.

In one state, duplication of high-demand professional and doctoral programs at a Historically Black College or University and Traditionally White Institutions has been a significant problem. OCR is working with the state higher education system and the HBCU's officials to develop a plan to offset unnecessary program duplication by developing new, unique HBCU programs, among other means. Importantly, after OCR raised concerns, the state adopted a new regulation requiring that all new programs be analyzed to prevent unnecessary program duplication.

OCR sent letters to five of the governors of states with higher education desegregation plans reminding them of their obligations to provide sufficient funding to their HBCUs, notwithstanding potential higher education budget cuts in their states. After the governors received the letters, the final budgets of at least two states cut less funds from HBCUs than was originally proposed – in one state, an additional $2 million was budgeted for an HBCU.

In another state, the HBCU's operational funding, capital funding, accreditation and facilities have been major concerns during the monitoring of the state's 1998 agreement with OCR. Following a number of OCR visits to the HBCU and discussions with the state's board of higher education, the state approved $19 million from the capital budget for the construction of a new student university center, resolving one of the major outstanding commitments from the 1998 agreement.

The Right to Equal Treatment

Under Title VI, OCR works to ensure equal access to education services and benefits and to prevent acts of retaliation against those who report Title VI violations. Title VI prohibits treating individuals differently on the basis of race, color or national origin when providing services or benefits.

Enforcement: Equal Treatment OCR has investigated allegations of different treatment of students based on race, color, or national origin and addressed allegations of the denial of access to academic programs and extracurricular activities. Examples at the K-12 level include:

- Minority students not being able to participate in certain academic programs, receiving inaccurate grades and being denied the opportunity to participate on athletic teams.

- Minority students receiving unequal access to charter and magnet schools or to special education services in such schools.
- Minority students being inappropriately and disproportionately categorized as mentally retarded, emotionally disturbed and learning disabled.

Possible remedies for cases like the above include grade corrections, opportunities to participate in denied programs, compensation for lost opportunities, active encouragement of excluded minority students to enroll and participate in the programs at issue, and review of improper special education determinations.

At the postsecondary level, OCR has examined claims that students, on the basis of race, color or national origin, have received different treatment or been denied access in the following areas:

- Admissions – such as a claim that a Native American or a Hispanic student was denied admission because of race or national origin.
- Registration – such as a claim that an Asian-American student was not registered for classes as promptly as other students based on race.
- Benefits – such as a claim that an African-American student was treated rudely and dismissively based on race when seeking tutoring services.
- Programs and Activities – such as claims that students were forced to withdraw or were dismissed from programs and activities because of their race, color or national origin.

Possible remedies for cases like the above include admission or readmission of the student, reimbursement for tuition and expenses, staff training and letters of apology.

The Transformed Civil Rights Data Collection: New Information to Improve Compliance With Title VI

Information and transparency about disparities in educational opportunities and resources are powerful tools to aid schools and school districts in improving schools. The Civil Rights Data Collection (CRDC) includes many new indicators on the educational experiences of students of different racial and ethnic backgrounds, including more data on high school course offerings, course taking, discipline and resource distribution at the school and district level. For the 2011-12 school year collection (to be released in 2013), the CRDC will include every school and district in the nation.

Some of the key findings include the following:

College and Career Readiness

- African-American students represent 16 percent of the enrollment in schools offering calculus but only 9 percent of the students taking calculus.
- Hispanic students represent 21 percent of enrollment in high school but only 13 percent of students passing at least one Advanced Placement (AP) exam.
- Less than a third of high schools serving the most Hispanic and African-American students offer Calculus and only 40 percent offer Physics.

Retention

- African Americans represent 16 percent of students in grades 6 to 8 but 42 percent of the students held back a year.

Gifted and Talented Education Participation

- Hispanic students represent 25 percent of enrollment in districts offering gifted and talented education programs but only 16 percent of the students enrolled in such programs.

English Learners

- Of the students enrolled in Algebra I, 18 percent of EL students were enrolled in Algebra I in grades 7 and 8, compared to 29 percent of non-EL students.

Resources and Teachers

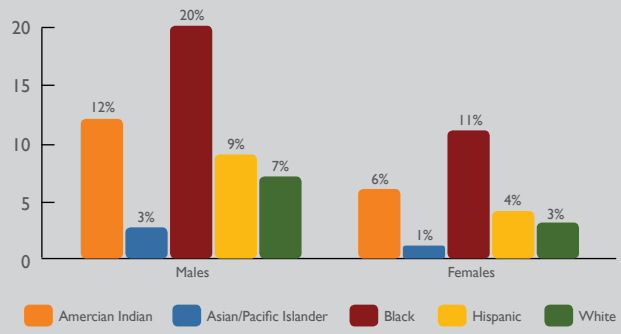
- Schools serving the most African-American and Hispanic students are nearly twice as likely to employ teachers who are newest to the profession.
- In schools with the lowest African-American and Hispanic enrollment, 8 percent of teachers are in their first or second year of learning compared to 15 percent in schools with the highest African-American and Hispanic enrollment.
- In racially diverse districts, teachers at elementary schools serving the most African-American and Hispanic students are paid on average $2,251 less per year than their colleagues in elementary schools that serve the fewest Hispanic and African-American students.

Discipline

- African-American students are over 3½ times more likely, and Hispanic students 1½ times more likely, to be suspended or expelled than their white peers.
- Of the 1700 school districts reporting zero tolerance policies, 49 districts, accounting for only 14 percent of the total enrollment of zero-tolerance districts, are responsible for nearly 50 percent of the expulsions.
- African-American students represent 19 percent of the students in zero-tolerance districts but 33 percent of the students expelled from those districts.

CRDC indicators are now capable of being cross-cut by race, English learner status, disability status and sex, revealing, for example, that although more males are disciplined by every measure (e.g., male and female students each represent about half the student population, and males

Percent of Students Receiving an Out-of-School Suspension



Source: 2009-10 CRDC, Office for Civil Rights, 2012.

make up 74 percent of the students expelled), African-American girls are suspended at higher rates than boys of most other races.

- African-American students represent 21 percent of students with disabilities but 44 percent of disabled students subjected to mechanical restraint.

While data alone cannot be a substitute for the thorough investigation necessary to establish violations of civil rights laws, this wealth of new data should help schools, districts and communities deepen their self-analysis and understanding of where change is needed.

Endnotes

1 Each federal fiscal year runs from October to September. For example, "fiscal year 2011," or "FY 2011," runs from October 2010 to September 2011.

2 Digest of Education Statistics, National Center for Education Statistics, 2011 Tables and Figures. Available at http://nces.ed.gov/programs/digest/d11/tables/dt11_008.asp.

3 2009-2010 Civil Rights Data Collection.

4 *Plyler v. Doe*, 457 U.S. 202, 223 (1982).

5 Gary Orfield, *Reviving the Goal of an Integrated Society: A 21st Century Challenge* 12-13 (The Civil Rights Project 2009).

6 347 U.S. 483 (1954).

Office for Civil Rights Mission:

To ensure equal access to education and to promote educational excellence throughout the nation through the vigorous enforcement of civil rights.

OCR's Goals:

- Protect individual complainants' civil rights through the complaint investigation and resolution process.
- Identify and eliminate any systemic violations of civil rights laws through proactive compliance reviews.
- Increase students' and their families' awareness of students' civil rights by releasing policy guidance and providing technical assistance and outreach services.
- Record-keeping and monitoring requirements that promote accurate and immediate identification and resolution of harassment-related issues, patterns and problems.
- Increase schools', colleges' and universities' understanding of their civil rights obligations by releasing policy guidance documents and providing technical assistance and outreach services

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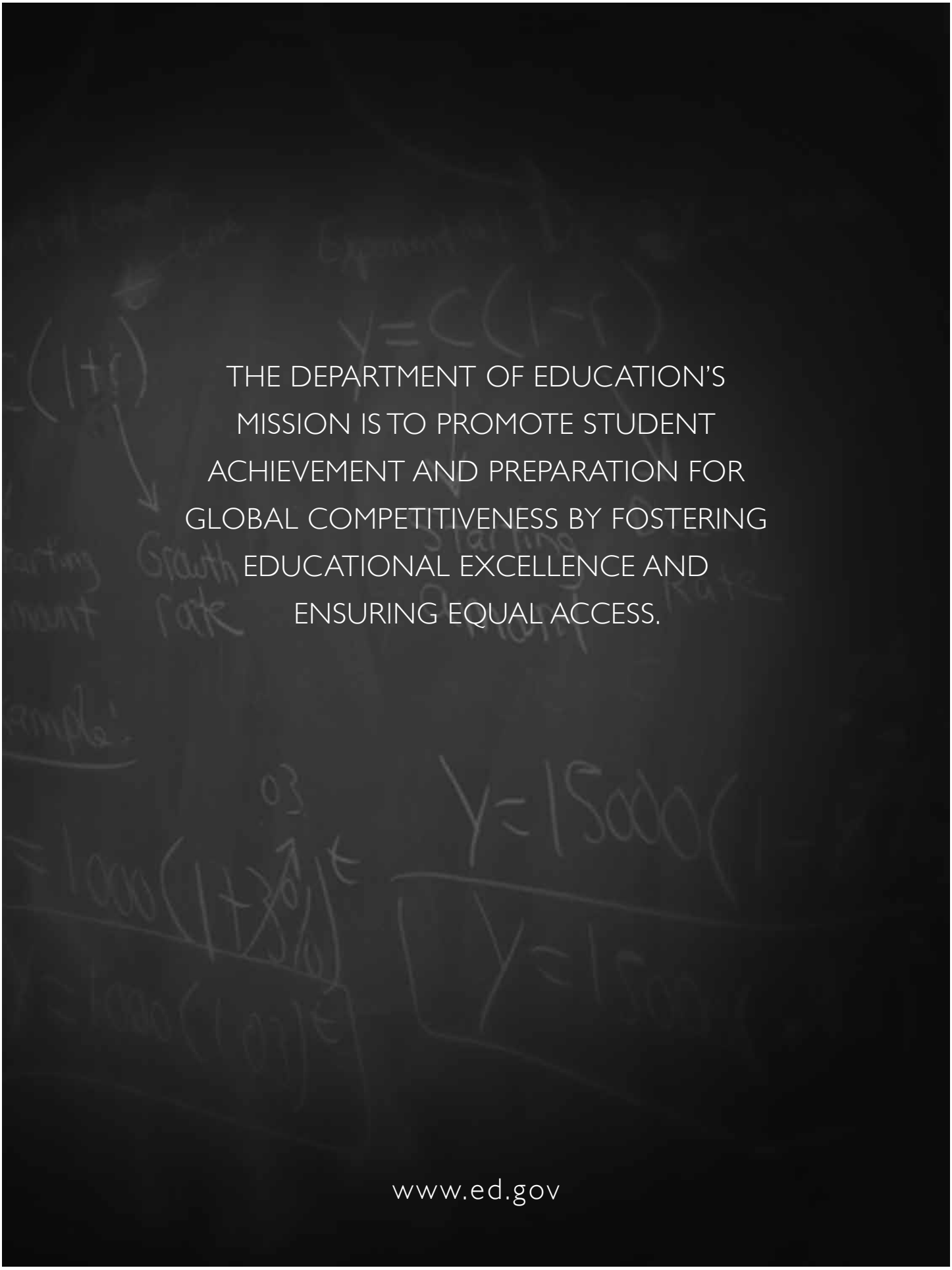

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