



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

ASSISTANT SECRETARY

The Office for Civil Rights in the U.S. Department of Education issues this guidance to provide elementary and secondary schools with information on how OCR assesses the use of race in assigning students to schools, consistent with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (Title VI). This guidance sets out the applicable Title VI principles, including standards enunciated by the U.S. Supreme Court in the past five years.

This guidance represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

If you are interested in commenting on this guidance, please email us your comment at OCR@ed.gov or write to us at the following address: Assistant Secretary for Civil Rights, 400 Maryland Avenue, SW, Potomac Center Plaza, Washington, D.C. 20202-1100.

AUG 28 2008

Dear Colleague:

On behalf of the Office for Civil Rights (OCR) of the United States Department of Education, I write to explain how the Supreme Court's decision in *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 127 S.Ct. 2738 (2007) (*Parents Involved*), will guide OCR's assessment of whether a school district's use of race is consistent with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (Title VI). OCR is responsible for enforcing Title VI, which prohibits discrimination based on race, color, or national origin by recipients of Federal financial assistance, including public elementary and secondary school districts.

In *Parents Involved*, the Supreme Court consolidated cases involving the Seattle, Washington, and Louisville, Kentucky, public school districts. Both had policies that denied a student's request to attend a school if that student's enrollment would cause the school's racial enrollment to exceed a predetermined percentage that was based on district-wide racial averages.

The Court reviewed the assignment plans under a "strict scrutiny" standard -- that is, the use of individual racial classifications had to be narrowly tailored to achieve a compelling governmental interest. The Court has previously held that a government interest is compelling for equal protection purposes in the school context in only two instances: to remedy the effects of intentional discrimination and to obtain a diverse student body in higher education. In those circumstances, a narrowly tailored use of race to remedy past intentional discrimination may include using race as an eligibility criterion, and a narrowly tailored use of race to achieve diversity may only use race as one factor among many, and each student must receive individualized consideration. However, compliance with the narrow tailoring standard also requires serious, good-faith consideration of workable race-neutral alternatives.

Neither Seattle nor Louisville had elected to use race in the school admission programs in question in order to remedy past discrimination or as just one factor among many to admit a diverse student body. Moreover, the school districts failed to show that they ever considered serious, good faith, and workable race-neutral alternatives to their explicit racial classification methods. Instead, the districts used race as a required factor in order to keep each school's racial enrollments within a predetermined range reflecting the district-wide averages and, thus, were using quotas to ensure a "racial balance" between school and district-wide enrollments.

Therefore, the Court invalidated the plans. The Court reiterated its holding in *Grutter v. Bollinger*, 539 U.S. 306 (2003) that the use of such measures simply to achieve racial balance is "patently unconstitutional," and it stressed that to be constitutional a program must "focus[] on each applicant as an individual, and not simply as a member of a particular racial group." *Parents Involved*, 127 S.Ct. at 2753.

The Court's response to the approaches used by the Seattle and Louisville school districts provides parameters to guide school districts through the constitutional and Title VI issues that arise when race is used in admissions to district schools. The Department of Education strongly encourages the use of race-neutral methods for assigning students to elementary and secondary schools. Unlike the assignment plans in *Parents Involved*, genuinely race-neutral measures--for instance, those truly based on socio-economic status--do not trigger strict scrutiny and are instead subject to the rational-basis standard applicable to general social and economic legislation.

When developing student assignment approaches, districts must comply with the constitutional principles of equal protection. OCR is available to provide more detailed technical assistance to individual districts on a case-by-case basis.

Thank you for your efforts on behalf of America's students.

Sincerely,

A handwritten signature in black ink that reads "Stephanie J. Monroe". The signature is written in a cursive style with a large initial 'S'.

Stephanie J. Monroe
Assistant Secretary
for Civil Rights