

LEGAL UPDATE

October 28, 2014

New Guidance From OCR: Equal Access To Educational Resources

On October 1, 2014, the United States Department of Education's Office for Civil Rights ("OCR") issued a "Dear Colleague" letter ("Letter") addressing a school district's obligation under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.* ("Title VI"), to provide students with educational resources in a way that does not discriminate, or have the effect of discriminating, based upon race, color or national origin. OCR issued the Letter to clarify a district's legal obligations and identify proactive steps that can be taken for Title VI compliance.

1. How OCR Assesses Equal Access.

Title VI prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal financial assistance. Budget constraints and instructional needs may lead school districts to spend limited resources in a certain manner, but these decisions cannot produce inequitable results for minority students. In its Letter, OCR focuses on providing equal access to resources in these areas:

- Courses, Academic Programs and Extra-Curricular Activities - including early childhood programs, AP and International Baccalaureate courses, gifted and talented programs, career and technical education programs, online opportunities, performing and visual arts, athletics, and extra-curriculars such as college-prep programs, clubs and honor societies;
- Strong Teaching, Leadership and Support - including teacher effectiveness, qualifications and experience, and the stability of a teacher workforce involving questions such as rates of absenteeism, turnover and use of substitute teachers;
- School Facilities - including the physical environment (such as lighting, cleanliness and temperature) and type and design of facilities (quantity and quality of specialized spaces such as laboratories, auditoriums and athletic facilities); and
- Technology and Instructional Materials - including the availability of technology in and out of school, as well as school district support for students who lack internet access at home.

School districts may not intentionally discriminate in the allocation of educational resources, and districts also may not implement policies that have the unintentional effect of discriminating against students based on race, color or national origin (known as a disparate impact). OCR's analysis of each of these types of alleged discrimination is discussed below.

2. Intentional Discrimination.

OCR will apply the following analysis to determine whether a school district intentionally discriminated in the allocation of educational resources:

- a. Did the district treat a student, or group of students, differently with respect to providing access to educational resources as compared to another similarly situated student, or group of students, of a different race, color or national origin?
- b. Can the district articulate a legitimate, nondiscriminatory educational reason for the different treatment? If not, OCR will find that the district has engaged in intentional discrimination.
- c. Is the allegedly nondiscriminatory reason a pretext for discrimination? If so, OCR will find that the district has engaged in intentional discrimination.

3. Unintentional Discrimination (Disparate Impact).

OCR will apply this analysis to determine whether a district's policy, which is not intended to be discriminatory, has a disparate impact on students based on race, color or national origin:

- a. Does the school district have a facially neutral policy or practice that produces an adverse impact on students of a particular race, color or national origin when compared to other students?
- b. Can the district demonstrate that its policy or practice is necessary to meet an important educational goal? OCR will consider both the importance of the goal and tightness of the fit between the goal and the policy or practice used to achieve it. If the policy or practice is not necessary to serve an important educational goal, OCR will find that the district engaged in discrimination.
- c. Are there comparably effective alternative policies or practices that would meet the district's goal with less of a discriminatory effect on the affected racial group, or is the district's justification a pretext for discrimination? If the answer to either question is "yes," OCR will find that the district engaged in discrimination.

4. OCR's Suggestions For Avoiding Title VI Non-Compliance.

In order to avoid Title VI liability, OCR recommends that districts take these steps:

- Self-assess and monitor Title VI compliance - assign an employee to oversee the district's Title VI compliance. A self-assessment should review policies that govern how the district's resources are distributed to its schools and within those schools.

- Remedy funding inequities affecting minority students - if a disparity is discovered, develop remedies to effectively end the discrimination and eliminate its impact.
- Prioritize the allocation of resources - give priority to schools where disparities exist. In some instances, this may be more appropriate than a strictly equal allocation of funds.

5. Conclusion.

In its “Dear Colleague” letter, OCR signaled its intent to focus on the equitable allocation of educational resources. OCR has authority to conduct on-site inspections and request data, even if no one has filed a Title VI complaint. If OCR finds a district to be non-compliant, it will issue a Letter of Findings and order corrective actions, which may be costly and burdensome. If a district continues to be non-compliant, OCR may seek to withhold federal funding. For these reasons, it makes sense for districts to take steps not only to mitigate liability exposure, but also to reduce the risk of having to respond to a complaint or an investigation in the first place. Basic steps, such as updating policies and practices, designating a compliance officer, engaging in a self-assessment (perhaps within an ongoing strategic planning process) and remedying funding inequities, may be effective and efficient preventive measures. By taking these steps and documenting them, districts may avoid the time and expense of an OCR investigation and the risk of a non-compliance finding.

If you have questions about this “Dear Colleague” letter or other OCR issues, please contact any of our attorneys at (614) 222-8686 or via their emails below.

This Legal Update is intended as general information and should not be relied upon as legal advice. If advice is required, please contact us at (614) 222-8686 or via email:

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