

# Legal Update: SCOTUS, DOJ, OCR and More

AESA Advocacy in Action Conference

September 27, 2024

Maree Sneed

# Agenda

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- ❑ Supreme Court
- ❑ E-Rate
- ❑ Title IX
- ❑ Title VI
- ❑ Section 504 and Title II
- ❑ Q&A

# True/False

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- True or False?** All school districts are required to implement the new Title IX regulations in the 2024-25 school year.
- True or False?** Title IV provides that districts may not discriminate based on shared ancestry or ethnic characteristics.
- True or False?** The Supreme Court has ruled that school board members may block parents who criticize them from their social media accounts.
- True or False?** OCR has authority to investigate allegations regarding sexual or racial harassment without a complaint from a parent or third party.
- True or False?** OCR and DOJ have authority to investigate Title IX complaints.

SCOTUS

# Supreme Court – October 2024 Term

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# Supreme Court Justices

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- Chief Justice John G. Roberts
- Associate Justice Clarence Thomas
- Associate Justice Samuel A. Alito, Jr.
- Associate Justice Sonia Sotomayor
- Associate Justice Elena Kagan
- Associate Justice Neil M. Gorsuch
- Associate Justice Brett M. Kavanaugh
- Associate Justice Amy Coney Barrett
- Associate Justice Ketanji Brown Jackson

# SCOTUS – A High-level Look

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- ❑ Justices serve lifetime appointments. They are nominated by President and confirmed by Senate.
- ❑ SCOTUS decides to hear cases when at least 4 of 9 justices vote to grant Petition for Certiorari.
- ❑ SCOTUS hears oral arguments on cases from first Monday in October through April and attorneys for each side are allocated half hour for oral arguments.
- ❑ Monday, October 7, 2024 is first day of 2024 term.

# SCOTUS Headlines from End of 2023 Term

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## *“In a Volatile Term, a Fractured Supreme Court Remade America”*

“Amid signs of dysfunction and disarray, Chief Justice John Roberts reasserted his authority, while the influence of Justices Clarence Thomas and Samuel Alito waned.”

By Adam Liptak, New York Times, July 2, 2024

“Former President Donald J. Trump had a very good year at the Supreme Court. On Monday, the court ruled that he is substantially immune from prosecution on charges that he tried to subvert the 2020 election. On Friday, the court cast doubt on two of the four charges against him in what remains of that prosecution. And in March, the justices allowed him to seek another term despite a constitutional provision barring insurrectionists from holding office.

Administrative agencies had a horrible term. In three 6-to-3 rulings along ideological lines, the court’s conservative supermajority erased a foundational precedent that had required courts to defer to agency expertise, dramatically lengthened the time available to challenge agencies’ actions and torpedoed the administrative tribunals in which the Securities and Exchange Commission brings enforcement actions.

The court itself had a volatile term, taking on a stunning array of major disputes and assuming a commanding role in shaping American society and democracy. If the justices felt chastened by the backlash over their 2022 abortion decision, the persistent questions about their ethical standards and the drop in their public approval, there were only glimmers of restraint, notably in ducking two abortion cases in an election year.”



# SCOTUS Headlines from End of 2023 Term

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## “The Major Supreme Court Decisions in 2024”

By [Adam Liptak](#), [Abbie VanSickle](#) and [Alicia Parlapiano](#), New York Times, July 2, 2024

“In a momentous term that ended in July, the Supreme Court issued major victories for former President Donald J. Trump, a sustained attack on the power of administrative agencies and mixed signals on guns and abortion.

No term in recent memory has featured so many major cases, including ones on topics as varied as homelessness, the opioid crisis, voting rights and the environment.

In recent years, some of the court’s biggest decisions have been out of step with public opinion.”

# SCOTUS Cases Impacting Education Last Term-- October 2023 Term

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

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

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- 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 it 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 8<sup>th</sup> 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)

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- 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 11<sup>th</sup> Circuit case that conflicted with the 4<sup>th</sup> Circuit decision in *Muldrow*.
- In the 11<sup>th</sup> 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 VII.

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

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## ***“Supreme Court Backs Police Officer in Job Bias Case”***

“The officer, Jatonya Muldrow, said she had been transferred to a less desirable position based on her sex. Lower courts ruled that she had failed to show concrete harm.”

By Adam Litpak, New York Times, April 17, 2024

“The Supreme Court unanimously ruled on Wednesday that a female police officer in St. Louis may sue for employment discrimination based on her sex over a forced lateral transfer to another position in the police department.

The ruling will open the courthouse doors to more employment discrimination suits. Justice Elena Kagan, writing for six justices, said that “many cases will come out differently” under the court’s decision. But she added that “there is reason to doubt that the floodgates will open” to allow “insubstantial lawsuits.”

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

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## **“Supreme Court makes it easier to file workplace discrimination claims”**

“The justices unanimously ruled that employees do not need to prove harm to career prospects or a change in salary or rank to win a discrimination claim.”

- By Ann E. Marimow and Julian Mark, Washington Post, April 17, 2024

” The Supreme Court on Wednesday made it easier for works to pursue employment discriminations claims over job transfers, unanimously siding with a female police sergeant in St. Louis who said she was reassigned to a less prestigious role because she is a women.”

”Although an employee must show some harm from a forced transfer to prevail,” Kagan wrote, “she need not show that the injury satisfies a significance test.”

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

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- What are the implications of *Muldrow v. City of St. Louis*?
  - Case will impact school districts because school districts often transfer employees.
  - Unclear from decision when a transfer leaves an employee “worse off” or when an employee has experienced some harm as a result of the transfer.
  - It is likely that there will be litigation to determine whether a person is “worse off” or has experienced some harm.



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# First Amendment: Social Media

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

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Cert granted on April 24, 2023 in 2 social media cases – *O'Connor-Ratcliff and Lindke*

*O'Connor-Ratcliff and Lindke* to be argued on October 31, 2023

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.

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 handled 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.

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

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### ***“Supreme Court Sets Rules for Blocking Citizens From Officials’ Accounts”***

“In two unanimous rulings, the justices tried to distinguish between private conduct, which is not subject to the First Amendment, and state action, which is.”

By Adam Liptak, New York Times, March 15, 2024

“The Supreme Court, in a [pair of unanimous decisions](#) on Friday, added some clarity to a vexing constitutional puzzle: how to decide when elected officials violate the First Amendment by blocking people from their social media accounts.

Justice Amy Coney Barrett, writing for the court in the lead case, said two things are required before officials may be sued by people they have blocked. The officials must have been empowered to speak for the government on the issues they addressed on their sites, she wrote, and they must have used that authority in the posts in question.

The court did not apply the new standard to the cases before them, involving a city manager in Port Huron, Mich., and two members of a school board in California. Instead, it returned the cases to lower courts to perform that task.”

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

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### Supreme Court ruling could give school board members more freedom to block critics on social media

By [Erica Meltzer](#), Chalkbeat, March 20, 2024, 12:26pm EDT

“But a recent U.S. Supreme Court decision lays out a new standard. The most important question, Associate Justice Amy Coney Barrett [wrote in a unanimous opinion released Friday](#), is not whether a public official is discussing public business. It’s whether the public official is posting on social media in their official capacity. The key question is: Are they authorized to speak on behalf of the government and are they exercising that authority in their posts?

If they aren’t operating in their official capacity, then their posts about public business are like those of any private citizen posting about their job. Their personal social media accounts aren’t public forums — and they can block and ban who they like without violating anyone else’s First Amendment rights.

The decision seems to give more leeway to school board members and other officials who want to block critics on social media. It comes at a time when school board officials sometimes face personal attacks and harassment from members of the public they represent, and as laws and norms have struggled to keep up with the ways technology is transforming the public sphere.

But the justices also cautioned that each case requires careful consideration of the facts. Public officials who are acting in their official capacity in their social media posts can still be sued for blocking people, even if those official posts appear on a personal page next to family photos and cat videos.”

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

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- What are the implications of *O'Connor-Ratcliff v. Granier and Lindke v. Freed*?
  - As Justice Barret stated in her opinion, “[t]he distinction between private conduct and state action,” she added, “turns on substance, not labels: Private parties can act with the authority of the state, and state officials have private lives and their own constitutional rights. Categorizing conduct, therefore, can require a close look.”
  - School board members should keep separate accounts – an official account for school business and a personal account for personal business.
  - School districts should work with their legal counsel to develop policies regarding the use of social media accounts.
  - Accounts that are labeled personal or contain disclaimers that “the views expressed are strictly my own” are likely to be considered personal.

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# Deference to Agency Determination of Law

## Deference to Agency Determination of Laws: *Loper Bright Enterprises v. Raimondo*

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“What the Supreme Court’s Chevron Decision Could mean for Biden’s Title XI Rule”

By Mark Walsh, Education Week, June 28, 2024

“In a decision that may be felt in schools and colleges across the country, the U.S. Supreme Court on Friday overruled a major precedent on when courts should defer to federal agencies’ interpretation of the laws that apply to them.

The 6-3 decision in *Loper Bright Enterprises v. Raimondo* could have near term implications on matters such as the U.S. Department of Education’s recent final regulation interpreting Title IX to protect transgender students. The rule, scheduled to take effect Aug. 1, has been challenged in multiple lawsuits and has already been blocked from taking effect in 10 states.”

Chief Justice Roberts in the majority opinion overruled Chevron U.S.A., Inc., v. Natural Resources Defense Council, which required “courts to give deference to federal agencies’ reasonable interpretations of statutes when those laws are ‘silent or ambiguous.’”

“*Chevron* is overruled, Roberts said. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the [Administrative Procedure Act] requires.”



# SCOTUS Cases: October 2024 Term

# *E-Rate: Wisconsin Bell Inc. v. United States*

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## **Why the \$4.5 Billion School E-Rate Program Is Headed to the Supreme Court**

By Mark Walsh, Education Week, June 17, 2024

“The U.S. Supreme Court on Monday agreed to take up a potentially important case involving the \$4.5 billion federal E-rate program that provides discounted internet and other telecommunications services to schools. The court agreed to hear the appeal of a Wisconsin telecom provider facing a civil trial under a federal fraud statute for allegedly overcharging schools under the program.

The telecom case, [\*Wisconsin Bell Inc. v. United States ex rel. Heath\*](#), involves the Schools and Libraries Universal Service Support Program, or E-rate, which is funded by telecom providers and administered by a private company, the Universal Services Administrative Co., under the auspices of the Federal Communications Commission. In 2023, some 1,600 telecom providers performed \$2.46 billion worth of reimbursable work for the 132,000 schools and libraries enrolled in the program, court papers say.”

## *E-Rate: Wisconsin Bell Inc. v. United States (continued)*

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“The E-rate program requires service providers to charge schools and libraries the “lowest corresponding price”—the price a provider charges for similar services to a similar nonresidential customer in terms of geography, traffic volume, contract length, and other cost factors. After telecom companies provide services to eligible schools and libraries, either the providers or recipients submit reimbursement requests to USAC for the amount of the discount.

Todd Heath, a Wisconsin resident who ran businesses helping schools uncover telecom billing errors, sued Wisconsin Bell, a regional telecom provider owned by AT&T, under the False Claims Act, a Civil War-era statute designed to root out fraud in federal contracting. Under that law, those found liable for fraud are subject to triple damages and other penalties, and the statute allows private citizens with knowledge of alleged fraud in federal programs to pursue claims and receive a portion of the government’s recovery.

Heath alleged that Wisconsin Bell did not comply with the lowest-corresponding price requirement from 2008 to 2015 and that the company failed to train its sales representatives about the rule or put in place any mechanism to comply with it until 2009. To give an example of price differentials cited in the case, Wisconsin Bell allegedly charged Bruce Guadalupe Community School in Milwaukee \$1,110 a month per circuit for an Integrated Services Digital Network product, which provides voice, data, images, and video over a single line. Meanwhile, it charged Messmer High School, also in Milwaukee, just \$743 for the same product.”

## *E-Rate: Wisconsin Bell Inc. v. United States (continued)*

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- The Court will hear this case on November 4, 2024.
- The issue is whether schools' reimbursement requests submitted to the Federal Communication's ("FCC") E-rate program are "claims" under the False Claims Act.
- Wisconsin Bell claims that the False Claims Act does not to apply to E-rate reimbursement requests.

# Exhaustion of Administrative Process: *Williams v. Washington*

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The Court will hear argument in this case on October 7, 2024.

The issue is whether administrative remedies must be exhausted before bringing a lawsuit against local government officials for violating civil rights.

Alabama residents brought unemployment claims with the Alabama Department of Labor (“DOL”). After excessive delays from the the Alabama DOL, the residents sued the Alabama DOL, claiming the state violated their federal constitutional rights. The Alabama Supreme Court dismissed the case because the residents had not exhausted the administrative appeals process.

While not directly related to special education cases, this case could have implications for school districts. This case involves a slightly different issue than was addressed in *Sturgis*. The issue in *Williams* is whether individuals can sue a government agency or official for violating their civil rights, rather than for financial compensation as in *Sturgis*, before pursuing all state remedies.

# School District Cases in Which SCOTUS Denied Certiorari for 2024 Term

## Cases in Which Supreme Court Denied Cert. for 2024 Term

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### Gender Identity: *John and Jane Parents 1 v. Montgomery County Public Schools*

#### Wtopnews

By Katy Ryan, May 21, 2024

“The U.S. Supreme Court will not be taking up a legal challenge to the Montgomery County Public Schools (MCPS) system’s policy on gender identity first drafted in the 2020-2021 school year.

A group of Montgomery County parents and their attorneys argued that [the school system’s adoption of what it called a “gender support plan”](#) violated parents’ 14th Amendment rights.

The MCPS policy allows for what the school system terms a “student-centered” approach if and when a student decides they want to change their gender identity, [including a change of name and pronouns](#). The school system policy includes a provision for student privacy “and recognizing that providing support for a student is critical, even when the family is nonsupportive,” according to the [latest draft on the school system’s website](#).

The parents who challenged the school system called it a “parental preclusion policy” in their petition to the Supreme Court and asserted that the school system’s action violates the parents’ “fundamental rights to direct the care and upbringing of their children.”

## Cases in Which Supreme Court Denied Cert. for 2024 Term (continued)

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### Transgender Bathrooms

- SCOTUS denied cert. in *Metropolitan School District of Martinsville v. A.C.*, which involved the issue of whether school districts may require transgender students to use bathrooms that align with their sex assigned at birth, as opposed to their gender identity. In *Metropolitan School District v. A.C.*, the 7th Circuit held that students may use the bathroom that aligns with their gender identity. This applies to school districts in Illinois, Indiana and Wisconsin.
- Note: The 4<sup>th</sup> Circuit, which covers Maryland, Virginia and West Virginia also has held that students may use the bathroom that matches their gender identify, but the 11<sup>th</sup> Circuit has ruled that school districts may prohibit students from using the bathroom for the gender with which they identify. The 11<sup>th</sup> Circuit decision applies to school districts in Alabama, Florida and Georgia.



## Cases in Which Supreme Court Denied Cert. for 2024 Term (continued)

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### Excessive Force in Disciplining Student with Disability:

- SCOTUS denied cert. in *J.W. v. Paley*, which involved a school resource officer's using a Taser on a student with a disability. Lawyers for student argued in their cert. petition that case presented important issue regarding whether excessive force claims should be analyzed under Fourth Amendment or 14<sup>th</sup> Amendment.

### Admission Criteria for Thomas Jefferson High School:

- SCOTUS declined to hear *Coalition for TJ v. Fairfax County Public Schools*, in which the Coalition challenged use of race-neutral criteria to select students for admission to Thomas Jefferson High School (“TJ”). The Fourth Circuit ruled that the race-neutral criteria used by TJ did not discriminate in admitting students to the school.

E-Rate

# 5<sup>th</sup> Circuit E-rate Decision and AASA Advocacy

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## “5th Circuit Court Rules Universal Service Fund (Which Covers E-Rate) Unconstitutional”

By Noelle Ellerson Ng, July 25, 2024

“On Wednesday, the 5th Circuit Court handed down its decision in the case Consumers Research et. al vs. the FCC, where the plaintiffs argued that using E-rate funds for Wi-Fi on school buses exceeds the FCC’s authority to provide internet access in schools and libraries.

**Quick Summary:** In its decision, the 5th Circuit just ruled that the universal service fund mechanism is unconstitutional because it violates something called the nondelegation doctrine. Basically, the ruling says that Congress delegated tax authority to the FCC and the FCC delegated that tax authority to a private entity and the force of those two delegations was an impermissible delegation of legislative authority. The 5th circuit covers Louisiana, Mississippi and Texas.”

# 5<sup>th</sup> Circuit E-rate Decision and AASA Advocacy (continued)

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**“Looking Ahead:** What does it mean for E-Rate? It is unclear. We are fairly certain this will NOT jeopardize E-Rate funds for the 24-25 school year. Beyond that, AASA will be on a call with the FCC on Thursday and update the blog accordingly. There are three scenarios:

- The decision could be applied nationally, meaning all USF programs would be halted.
- The decision could be applied to only the 5th circuit (beneficiaries of the program in TX, LA, and MS)
- The decision is stayed pending appeal to the Supreme Court.

Anything short of a stay will be very disruptive to all programs, including education, and comes just as schools are coming online (pun intended) for the 2024-25 school year. This decision may be considered in a broader context. In the past year, both the 11th and 6th circuits issued decisions that upheld the USF structure, making it likely/possible this moves to SCOTUS (as SCOTUS will sometimes weigh in to provide a uniform answer when there is confusion or competing answers between different circuit courts).”

# 5<sup>th</sup> Circuit E-rate Decision and AASA Advocacy (continued)

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## “AASA Joins EdLiNC Coalition in Expressing Deep Frustration with 5th Circuit E-Rate Decision”

By Noelle Ellerson Ng, July 25, 2024

*“Yesterday, the 5th Circuit **struck down the funding mechanism** for the universal service fund, which includes the E-Rate program. **E-Rate provides** \$4.7 billion annually for schools and libraries to receive broadband and Wi-Fi services. This is an extreme decision that contradicts two rulings from other circuits as well as a previous three judge panel of the 5th circuit. We anticipate that this will be heard by the Supreme Court. Below is EdLiNC’s statement on this issue; AASA co-chairs EdLiNC and is committed to the work to protect the E-Rate program.*”

We are outraged by the 5th Circuit Court of Appeals’ decision in Consumers’ Research et al. v FCC that the funding mechanism of the Universal Service Fund is unconstitutional. If this decision stands, the E-Rate, Rural Health Care, High Cost and Lifeline programs, which comprise the Universal Service Fund, will come to an abrupt halt. In the case of E-Rate, this decision could lead to cutting off broadband access for tens of millions of students, educators and library patrons. We cannot let that happen.

EdLiNC, which represents the major K-12 public and private education associations and the American Library Association that helped enact and implement the E-Rate program, rejects the 5th Circuit’s absurd decision and vows to fight it. We will not allow a narrow two vote majority decision to upend the E-Rate, which has almost single-handedly made ubiquitous broadband access a reality in our nation’s schools and libraries over the last 25 years.”

# “AESA Joins EdLinc Coalition in Expressing Deep Frustration with 5<sup>th</sup> Circuit E-Rate Decision”

“We plan to work with FCC Chairwoman Rosenworcel and our allies in Congress to reverse the 5th Circuit’s ruling and ensure that E-Rate will continue to provide all students educators and library patrons with access to the online world as envisioned by the bipartisan Congressional authors of this program.”

# 5<sup>th</sup> Circuit E-rate Decision and AASA Advocacy (continued)

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## **“Court Grants FCC Request for Stay (for E-Rate and Universal Service Fund)”**

By Noelle Ellerson Ng, August 28, 2024

“On the heels of last month’s 5<sup>th</sup> circuit court decision which challenges the constitutionality of the funding mechanism for the universal service fund . . . , the 5<sup>th</sup> circuit has granted the FCC its requested stay. (A stay is a ruling by the court in civil and criminal procedure that halts further legal process, meaning that the USF program can carry on unimpacted until the stay expires and/or another court ruling, like that of the Supreme Court, is handed down). The FCC had submitted its request on Friday, as it looks for the Supreme Court to consider the ruling. The FCC indicated it will file its petition seeking the SCOTUS review by the end of September. The stay will expire on October 1, but if the FCC files its petition on or before September 30, the stay will remain in effect until SCOTUS hands down a decision. ”

# Office for Civil Rights



# The Press and OCR Workload

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## “Education Department civil rights cases eclipse prior year’s record high”

“A report confirming an unprecedented caseload comes as U.S. Secretary of Education Miguel Cardona and civil rights groups plead for more funding.”

By Naaz Modan, K-12 Dive, May 28, 2024

“The U.S. Department of Education’s Office for Civil Rights once again saw a record-breaking number of complaints in 2023 against K-12 and higher education institutions, surpassing the previous all-time high set just a year prior, according to its [annual report](#) released Wednesday.

- **9,201** -- The total number of complaints in FY 2023, representing a 2% increase from 2022 and nearly triple the number of complaints in 2009.
- **42%** -- The portion of complaints related to Title IX, totaling 8,151 — a decrease of six percentage points from the year prior.
- **35%** -- The portion of complaints related to disability, an increase of 282 cases from the year prior, totaling 6,749.
- **16,448** -- The number of resolved cases in 2023, the third-highest number of resolutions per year in OCR history.”

# September 2024 OCR Resource Guide

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U.S. Department of Education  
Office for Civil Rights

# September 2024 OCR Resource Guide (continued)

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## A Message from the Assistant Secretary for Civil Rights

As the 2024-2025 academic year begins, I write to share our up-to-date compendia of Office for Civil Rights (OCR) policy resources to support elementary and secondary schools, colleges, and universities in fulfilling their obligations to protect students' civil rights.

The promise and possibility of this new school year coincide with the 60th anniversary of the passage of the Civil Rights Act of 1964 and the 70<sup>th</sup> anniversary of the U.S. Supreme Court's landmark decision in *Brown v. Board of Education*, striking down as unconstitutional racial segregation by law of children in public schools. Congress created OCR on the heels of the passage of the landmark 1964 law and charged us with ensuring equal access to education through the vigorous enforcement of Title VI – and, later, other federal civil rights laws.

So, as we celebrate this year's return to school as well as the anniversaries of the landmark 1964 legislation and historic 1954 Supreme Court decision, I invite you to join me in renewing our commitment to ensuring that every student has access to a learning environment free from discrimination, addressing profound inequities still persisting and newly proliferating in our nation's schools and colleges.

Our back-to-school resource binders include fact sheets, Dear Colleague Letters, and other policy documents to assist school communities with meeting their responsibilities under the following federal civil rights laws: Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin, including shared ancestry or ethnic characteristics; Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex; and Title II of the Americans with Disabilities Act (Title II) and Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibit discrimination on the basis of disability. We have crafted these resources to advance public knowledge of the law and describe how OCR applies the law to facts through enforcement.

We have also produced two back-to-school videos for the 2024-2025 academic year, available on our YouTube channel and on our website. The first [video](#) explains how OCR protects students from discrimination under the civil rights laws that OCR enforces. The second [video](#) focuses specifically on the Title VI protection for students on the basis of shared ancestry and ethnic characteristics, including Jewish, Muslim, Arab, Palestinian, and Israeli students.

Seventy years after the *Brown* decision and six decades since the Civil Rights Act of 1964, many millions of students across the United States continue to experience discrimination in schools. OCR remains steadfastly committed to using all the tools legally available to ensure that education is provided to all, on equal terms. Thank you as always for your commitment to ensuring every student learns in an educational environment free from discrimination.

Sincerely,



A handwritten signature in black ink, appearing to read 'C. Lhamon', written over a light blue horizontal line.

Assistant Secretary Catherine E. Lhamon  
Office for Civil Rights, US Department of Education

# September 2024 OCR Resource Guide (continued)

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Resource Guide provides guidance on:

- Title VI
- Section 504 and Title II of ADA
- Title IX
- CRDC Data

# OCR: Title IX

# Title IX

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- **Title IX of the Education Amendments of 1972** (20 U.S.C. § 1681) –  
*No person in the United States shall, on the basis of sex, 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 . . .*
- Title IX prohibits sex discrimination in education and in employment.

# OCR Press Release of Final Title IX Regulations, April 19, 2024

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## “U.S. Department of Education Releases Final Title IX Regulations, Providing Vital Protections Against Sex Discrimination”

The final regulations, which are scheduled to go into effect on August 1, 2024:

- **“Protect against all sex-based harassment and discrimination.** The final rule protects all students and employees from all sex discrimination prohibited under Title IX, including by restoring and strengthening full protection from sexual violence and other sex-based harassment. The rule clarifies the steps a school must take to protect students, employees, and applicants from discrimination based on pregnancy or related conditions. And the rule protects against discrimination based on sex stereotypes, sexual orientation, gender identity, and sex characteristics.
- **Promote accountability and fairness.** The final rule promotes accountability by requiring schools to take prompt and effective action to end any sex discrimination in their education programs or activities, prevent its recurrence, and remedy its effects. The final rule requires schools to respond promptly to all complaints of sex discrimination with a fair, transparent, and reliable process that includes trained, unbiased decisionmakers to evaluate all relevant and not otherwise impermissible evidence.
- **Empower and support students and families.** The final rule protects against retaliation for students, employees, and others who exercise their Title IX rights. The rule requires schools to communicate their nondiscrimination policies and procedures to all students, employees, and other participants in their education programs so that students and families understand their rights. The rule supports the right of parents and guardians to act on behalf of their elementary school and secondary school children. And the rule protects student privacy by prohibiting schools from making disclosures of personally identifiable information with limited exceptions.”

# The Press: New York Times and Title IX Regulations

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## *“Biden Administration Releases Revised Title IX Rules”*

By [Zach Montague](#) and [Erica L. Green](#), New York Times, April 19, 2024

“The new regulations extended legal protections to L.G.B.T.Q. students and rolled back several policies set under the Trump administration.

The Biden administration issued new rules on Friday cementing protections for L.G.B.T.Q. students under federal law and reversing a number of Trump-era policies that dictated how schools should respond to cases of alleged sexual misconduct in K-12 schools and college campuses.

The new rules, which take effect on Aug. 1, effectively broadened the scope of Title IX, the 1972 law prohibiting sex discrimination in educational programs that receive federal funding. They extend the law’s reach to prohibit discrimination and harassment based on sexual orientation and gender identity, and widen the range of sexual harassment complaints that schools will be responsible for investigating.

The Biden administration’s rules struck a balance between the Obama and Trump administration’s goals. Taken together, the regulation largely provides more flexibility for how schools conduct investigations, which advocates and schools have long lobbied for.”



## The Press: New York Times and Title IX Regulations (continued)

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“[The new regulations] replaced a narrower definition of sex-based harassment adopted under the Trump administration with one that would include a wider range of conduct. And they reversed a requirement that schools investigate only incidents alleged to have occurred on their campuses or in their programs.

Still, some key provisions in the Trump-era rules were preserved, including one allowing informal resolutions and another prohibiting penalties against students until after an investigation.

Among the most anticipated changes was the undoing of a provision that required in-person, or so-called live hearings, in which students accused of sexual misconduct, or their lawyers, could confront and question accusers in a courtroom-like setting.”

# The Press: K-12 Dive and Title IX Regulations

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## “Final Title IX rule enshrines protections for LGBTQI+ students”

By Naax Modan, K-12 Dive, April 19, 2024

“The U.S. Department of Education on Friday issued its [long-awaited Title IX rule](#), which for the first time enshrines [protections for LGBTQI+](#) students and employees, as well as pregnant students and employees, under the civil rights law that prevents sex-based discrimination in federally funded education programs.

Among other changes, the new rule defines sex-based harassment as including harassment based on sex stereotypes, sex characteristics, pregnancy and related conditions, and gender identity and sexual orientation. It cements federal protections for LGTBQI+ students and employees that have swung between administrations for over a decade.

The regulations also broaden the conditions triggering Title IX protections by changing the definition of sex-based harassment from conduct that is “severe, pervasive, and objectively offensive,” to either “severe or pervasive” conduct that must be considered both “subjectively and objectively offensive.””

# Examples of Changes to Title IX Regulations

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- Clarifies that sex discrimination includes discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation and gender identity
- Broadens definition of hostile environment harassment to include “unwelcome sex-based conduct that is based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education or program or activity.”
- Requires that a recipient with knowledge of conduct that may constitute sex discrimination in its education program or activities respond promptly and effectively

# Examples of Title IX Regulations (continued)

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- Allows an individual to serve as decision-maker and Title IX investigator
- Permits offering informal resolution if appropriate whenever district receives complain of sex discrimination or has information about conduct that reasonable may constitute sex discrimination
- Modifies definitions and requirements for complaints to allow oral requests and not require signatures
- Requires districts to provide breast feeding rooms for students and employees
- Provides protection for students and employees with medical conditions related to, or who are recovering from, termination of pregnancy

# OCR Title IX Resources for New Regulations

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OCR has developed and published a number of Title IX resources for new regulations.. They include:

- The Federal Register [official publication](#) of the Final Rule (April 29, 2024)
  - Unofficial version of the Department's 2024 Title IX Final Rule
  - Press Release
  - Fact Sheet
  - Brief Overview of Key Provisions of the Department of Education's 2024 Title IX Final Rule
- Technical Assistance
  - 2024 Title IX Regulations: Impact on Title IX Coordinator Duties
  - 2024 Title IX Regulations: Nondiscrimination Based on Pregnancy or Related Conditions & Parental, Family, or Marital Status
  - 2024 Title IX Regulations: Pointers for Implementation
  - 2024 Title IX Regulations: Resource for Drafting Nondiscrimination Policies, Notices of Nondiscrimination, and Grievance Procedures <https://www.youtube.com/watch?v=PcKNMB0eJDw>

# The Press: Implementation of Title IX Regulations

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## ***“Biden’s Title IX Rule Goes Into Effect in 24 States as Legal Challenges Continue”***

“The regulations, which broaden sex discrimination to include gender identity and sexual orientation, remain blocked by lawsuits across much of the country.”

By **Zach Montague**, **New York Times**, August 1, 2024

“Biden administration **Title IX** regulations that strengthen protections for L.G.B.T.Q. students went into effect in 24 states on Thursday, but the rule remains blocked in the rest of the country because of legal challenges.

The new regulations broaden the scope of Title IX, the **landmark 1972 law** that prohibits discrimination based on sex in institutions that receive federal funding. They extend the law’s reach to include discrimination based on sexual orientation and gender identity, as well as unequal treatment of pregnant students, significantly expanding the scope of complaints schools must investigate.”

# The Press: Implementation of Title IX Regulations

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**“Biden rules protecting trans students take effect — but not everywhere”**

**By Laura Meckler, Washington Post, , August 1, 2024**

“Federal Title IX regulation bars discrimination on the basis of gender identity in schools, but it has been blocked by 26 states.

A controversial Biden administration regulation protecting transgender, gay and lesbian students from discrimination took effect Thursday in 24 states but remains on hold in the rest of the country amid pending litigation.

The patchwork is the result of lawsuits filed by Republican-led states across the country against the administration’s Title IX regulation, a sweeping set of rules that address how schools must enforce the law banning discrimination on the basis of sex. The regulation was issued in April and meant to be in place ahead of the new school year.

In a half-dozen separate cases, federal courts granted injunctions blocking enforcement of the regulation in 26 states, including Texas, Florida and Ohio, while the cases are litigated. But those rulings do not affect the regulation’s status in the rest of the country — generally Democratic-leaning states such as California, New York and Illinois, as well as the District of Columbia and Puerto Rico.

On Thursday, officials at the federal Education Department said that its Office for Civil Rights would begin enforcing the new rules for schools in states without court injunctions in place. Others should continue to follow rules published in 2020 by the Trump administration, they said.”

# The Press: Implementation of Title IX Regulations

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## **“Districts balk at 2024 Title IX rule amid legal turmoil”**

“The regulation’s complicated implementation has led some districts, even where the rule is legally in effect, to forego compliance.”

— By Naaz Modan, K-12 Dive, Sept. 24, 2024

“Federal complaints against school districts for not implementing the U.S. Department of Education’s 2024 Title IX rule are trickling in weeks after the Aug. 1 rule protecting LGBTQ+ students went into effect.

Until an injunction from a Kansas federal district court came down in July, Scott Kelly, a school board member for Wisconsin’s Kettle Moraine School District, was prepared to implement the 2024 Title IX regulations. At least four individual schools across the district, which serves 3,400 students across 12 schools, were implicated in a court order enjoining the rule in over 400 schools nationwide. ”



# The Press: Implementation of Title IX Regulations

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## “Districts balk at 2024 Title IX rule amid legal turmoil” continued

- However, the 2024 Title IX rule remains in effect across the remainder of the district. Despite this, the board chose not to change its Title IX policies, including in schools where the rule is technically in effect.
- “Prior to this Kansas case, I was prepared to propose additions to our current policies that would have complied with the letter of Title IX,” said Kelly during a [July 16 school board meeting](#). Others agreed.
- “So this is evolving. This is changing,” said Carl Millard, another board member for the district. “I think the safest thing at this point is just hold on. Let’s not change anything, and let’s just let this thing play out, and then we’ll move from there.”
- The decision, however, led two Wisconsin-based LGBTQ+ advocacy organizations to file a Title IX complaint against the district with OCR on Sept. 9. Kettle Moraine School District’s lack of a 2024 policy led to a hostile environment, say Fair Wisconsin and GSAFE in their complaint, citing statements from transgender students and their parents at public school board meetings that “highlighted a pattern of ongoing hostility.”

## 26 States Where Courts Have Blocked Implementation of New Title IX Regulations

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- Alabama
- Alaska
- Arkansas
- Florida
- Georgia
- Idaho
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Mississippi
- Missouri
- Montana
- Nebraska
- North Dakota
- Ohio
- Oklahoma
- South Carolina
- South Dakota
- Tennessee
- Texas
- Utah
- Virginia
- West Virginia
- Wyoming

# Recent OCR Compliance Review: Redlands (CA) Unified School District

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## ‘U.S. Department of Education's Office for Civil Rights Announces Resolution of Sexual Harassment Compliance Review of Redlands Unified School District in California’

— April 25, 2024

As part of the compliance review, OCR, for example, found the district:

- Had no system to monitor whether responses complied with Title IX requirements or to identify patterns or systemic problems in district or schools;
- Did not provide evidence that it took actions to address effects of harassment on students and to prevent recurrence;
- Failed to investigate or redress employee-to-student and student-to student sexual harassment allegations after reporting to law enforcement or other state agencies;
- Did not take required investigation steps to reported sexual harassment;
- Failed to determine if relationship or sharing on nude photos was sexual harassment and allowed the employees to resign without investigating if the conduct created hostile environment; and
- Did not have recordkeeping system to track incidents of sexual harassment that complied with Title IX.

## Recent OCR Compliance Review: Redlands (CA) Unified School District (continued)

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### Examples of resolution agreement obligations:

- Ensuring district coordinate Title IX compliance through Title IX coordinator;
- Notifying parents, students and employees of designated Title IX coordinator;
- Revising Title IX policies and procedures to comply with Title IX obligations;
- Training staff and students on revised Title IX policies and procedures, how to identify sexual harassment and report sexual harassment;
- Improve recordkeeping of reports and complaints of sexual harassment; administering an annual climate survey; and
- Reviewing case files for reported incidents for previous 3 years to determine if further action is necessary to provide equitable resolution of each incident.

## Recent OCR Compliance Review: San Diego Unified School District

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### “U.S. Department of Education’s Office for Civil Rights Announces Resolution of Sexual Harassment Compliance Review of San Diego Unified School District”

— AUGUST 9, 2024

“The U.S. Department of Education’s Office for Civil Rights (OCR) today announced that the San Diego Unified School District in California entered into a resolution agreement to remedy violations OCR found of Title IX of the Education Amendments of 1972. The agreement also resolves a concern that OCR identified about the district’s fulfillment of its obligations under Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II).”

## Recent OCR Compliance Review: San Diego Unified School District (continued)

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“After examining 253 reports and complaints of sexual harassment of students over three school years, OCR found that the district more often than not did not fulfill its Title IX regulatory requirement to equitably respond to allegations of sexual harassment of its students. These failures led to serial perpetration of harassment with insufficient district response, leaving district students vulnerable to the sex discrimination in school that Title IX forbids.

“In addition, the district failed to evaluate whether allegations of sexual harassment, including sexual assault, violated Title IX and caused discrimination on the basis of sex for affected students; failed to redress effects of confirmed sexual harassment on affected students; and failed to provide notice of outcomes of investigations on an equitable basis to all parties.”

## Recent OCR Compliance Review: San Diego Unified School District (continued)

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Examples of requirements of resolution agreement:

- Conducting a review of previous incidents or reported student-to-student and employee-to-student sexual harassment to determine whether further action is needed to provide an equitable resolution of the incidents;
- Providing training to all students in grades 3-12 regarding recognizing and reporting sexual harassment and receive supportive measures and remedies;
- Administering annual climate surveys of parents, students, and district employees regarding sexual harassment;
- Ensuring its policies prohibiting sex discrimination, including sexual harassment, and its Title IX grievance procedures comply with Title IX;
- Providing annual training to district employees on Title IX obligations to respond to reports of complaints of sex discrimination, including sexual harassment, as well as their Section 504 and Title II obligations for students with disabilities; and
- Implementing an OCR-approved system and policy for maintenance of data and records related to reports, complaints, and investigations of sexual harassment.

# Recent Compliance Review: Memphis-Shelby School District

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## “U.S. Department of Education’s Office for Civil Rights Resolves Sexual Harassment Compliance Review of Memphis-Shelby County School District in Tennessee”

— AUGUST 30, 2024

“Today the U.S. Department of Education’s Office for Civil Rights (OCR) resolved a compliance review of the Memphis-Shelby County School District with a resolution agreement to address the district’s handling of sexual assault cases, including those involving student and staff misconduct. Memphis-Shelby County is the largest school district in Tennessee.

District documents reflect reports that teachers or substitute teachers sexually assaulted students in seven incidents across three school years at all school levels in the district: elementary, middle, and high school. District documents reflect 53 more cases of reported staff-to-student sexual harassment, not including sexual assault, as well as a total of 88 cases of student-to-student sexual harassment during the same time period.”



## Recent Compliance Review: Memphis-Shelby School District (continued)

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Examples of OCR findings that the district violated Title IX, include:

- “Not having a designated Title IX coordinator for substantial portions of OCR’s compliance review period;
- Not coordinating its response to reports of sexual harassment, including sexual assault, through its Title IX coordinator as required during the time that a Title IX coordinator was designated;
- Not involving the Title IX coordinator in the majority of sexual harassment files reviewed for this investigation, including not involving a Title IX coordinator in any of the staff involved incidents;
- Not maintaining a nondiscrimination statement and harassment policies that comply with Title IX; and
- Not fulfilling the Title IX obligation to maintain records sufficient for the district or for OCR to make compliance determinations, including with respect to inconsistent reporting to OCR for the Civil Rights Data Collection and for this compliance review.”

## Recent Compliance Review: Memphis-Shelby School District (continued)

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The resolution agreement requires the District to:

- “Adopt and publish a compliant notice of nondiscrimination:
- Designate, train, and publicize the contact information for, its Title IX coordinator(s):
- Revise all policies that describe the district’s response to sexual harassment to ensure the policies are compliant with the requirements of Title IX and consistent with each other:
- Review all complaints of student and staff involved sexual assault during the 2022-2023 and 2023-2024 school years to ensure each complaint was resolved in compliance with Title IX, and if not, offer appropriate remedies:
- Conduct training on the Title IX process and its revised grievance procedures for district staff:
- Develop or revise its procedure for documenting or tracking complaints of sexual assault, including the steps taken as part of the district’s investigation into such complaints:
- Conduct a survey of students and parents to determine if the district needs to take additional steps to address sexual harassment in its schools, with OCR approval for any next steps; and
- Develop a plan to ensure timely submission of complete and accurate data to the CRDC in the future and ensure that all employees who are responsible for reporting data to the CRDC receive instructions regarding how to report data to the CRDC in accordance with the plan.”

# OCR Investigation of Athletics: Minneapolis Public School District

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## “U.S. Department of Education’s Office for Civil Rights Announces Resolution of Title IX Athletics Investigation of Minneapolis Public School District”

— AUGUST 8, 2024

“The U.S. Department of Education’s Office for Civil Rights (OCR) today announced that the Minneapolis Public School District in Minnesota has entered into an agreement to ensure compliance with Title IX of the Education Amendments of 1972 with respect to the district-wide athletics programs at its high schools. OCR investigated whether the district failed to effectively accommodate the interests and abilities of female students in its interscholastic athletics program and whether it provided equal opportunity in the provision of competitive and practice facilities and locker rooms to its female athletes.”

## OCR Investigation of Athletics: Minneapolis Public School District (continued)

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### OCR found:

- disparities between the female enrollment rate and their interscholastic athletics participation rate at several district high schools and overall:
- district acknowledged that it has not completed a student athletic interest survey in the past ten years:
- district confirmed that it does not have written policies, procedures, or criteria for the addition of sports and/or levels to the interscholastic athletics program:
- disparities in the district's provision of practice and competitive facilities and locker rooms:
- some girls teams have inferior practice and competition facilities compared to the boys teams. For instance, overwhelmingly, the various softball facilities used by the district's softball teams are not regulation for fast pitch softball, lack adequate fencing, and lack amenities, while the district boys baseball teams generally practice and compete at higher quality baseball fields with better amenities that are regulation for competition:

## OCR Investigation of Athletics: Minneapolis Public School District (continued)

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OCR also found:

- girls softball teams are regularly displaced from competitive events because their facility was not available to them after 6 p.m. due to the recreational adult men's softball leagues using the facility at that time, which prevented the girls teams from completing their competitions:
- a higher proportion of female athletes have preparation responsibilities for their sports practices and competitive events. For example, several girls volleyball teams are responsible for setting up their nets for practices, competitions, or both, and several girls badminton teams reported responsibility for setting up their nets for practices and competitions, as well as seating at their competitive events. Additionally, the girls softball teams at two high schools have to set up outfield fencing because their facility lacks fencing: and
- female student athletes at several high schools are not provided equivalent access to quality locker rooms. For example, female athletes at two high schools reported their locker rooms lacked hot water and OCR observed that the female locker rooms at one high school were poorly maintained. Additionally, the male athletes at one school have an additional separate locker room for exclusive use by the male athletic participants and the male football participants at another school had an additional locker room at the stadium for their use, with no offsetting benefit to female participants. Female athletes at multiple schools also reported that their locker rooms are locked during the day, whereas the boys locker rooms are open and available to them.

## OCR Investigation of Athletics: Minneapolis Public School District (continued)

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- Conduct a full assessment of how the district can equally and effectively accommodate athletic interest and abilities to provide equal opportunities for female students in its high school athletics program.
- Develop a plan, with timeframes, to increase participation opportunities for female students as necessary to demonstrate compliance with Title IX.
- Create a Stakeholder Committee to work collaboratively with the district to create district-wide policies and procedures for the interscholastic athletics program including grievance procedures, and on other Title IX compliance issues.
- Assess and develop a plan with respect to the provision of locker rooms, practice and competitive facilities at each high school in the district.
- Equally and effectively accommodate the athletic interest and ability of all students by providing equal opportunities in the provision of locker rooms, practice, and competitive facilities.
- Training its Title IX coordinators, athletic directors, principals, and coaches on their responsibilities under Title IX and its application to athletics, including how funding from any source can affect the balance of equivalent benefits for male and female athletes.

OCR: Title VI and Discrimination Based on Race, Color or National Origin, including Shared Ancestry or Ethnic Characteristics

# Title VI

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- **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 . . .*



# May 7, 2024 Dear Colleague Letter (“DCL”)

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On May 7, 2024, OCR issued a DCL to provide information about federal civil rights obligations of school districts regarding nondiscrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics, under Title VI of the Civil Rights Act of 1964.

The DCL states that “[t]hese protections extend to students and school community members who are or are perceived because of their shared ancestry or ethnic characteristics to be Jewish, Israeli, Muslim, Arab, Sikh, South Asian, Hindu, Palestinian, or any other faith or ancestry.”

The DCL provides two legal frameworks – hostile environment and different treatment -- for evaluating alleged harassment and hypotheticals with a legal analysis of the hypotheticals.

# May 7, 2024 Dear Colleague Letter (“DCL”) (continued)

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## 1. Hostile Environment Analysis

- The existence of hostile environment based on race, color or national origin that is created, accepted, tolerated or left uncorrected, can constitute discrimination in violation of Title VI.
- OCR would find a violation if it determines that:
  - A hostile environment based on race, color or national origin exists;
  - The district had actual or constructive knowledge of the hostile environment; and
  - The district failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment and its effects and prevent the harassment from recurring.

# May 7, 2024 Dear Colleague Letter (“DCL”) (continued)

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“ Example 2: The mother of an Arab Muslim elementary school student files a complaint with OCR alleging her daughter who wears a hijab to school was harassed by other students when several classmates pulled her daughter’s hijab off, threw it on the playground, started stomping on it, and called her a terrorist while teachers witnessed the incidents and did nothing. In a separate incident, a teacher said that because the girl did not wear loose fitting clothing every day, she should not be concerned because she was already being a bad Muslim. For these reasons, the student felt unsafe at school and could not concentrate in class.”

- Would OCR open an investigation?

# May 7, 2024 Dear Colleague Letter (“DCL”) (continued)

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## Analysis of Hypothetical

- OCR would have reason to open a complaint. Clothing, such as wearing a hijab, is an expression of standard of dress within an ethnic community and a religious practice. To the extent that the hijab is not exclusively a religious practice or an expression of faith, but shows membership in a group that shares or is perceived to share ancestry and ethnic characteristic and the student is subject to slurs related to her actual or perceived race and national origin, OCR would have reason to open a complaint.
- If OCR confirms the allegations, OCR would find that the harassing conduct created a hostile environment that limited the student’s ability to participate in schools. OCR then would determine whether the district promptly and effectively took steps reasonably calculated to end the harassment, eliminate its effect and protect it from recurring. If it did not, OCR would find a violation of Title VI.

# May 7, 2024 Dear Colleague Letter (“DCL”) (continued)

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## 2. Different Treatment Analysis

- If a school district representative treats a student differently based on their actual or perceived race, color or national origin, including shared ancestry or ethnic characteristics, OCR will make a fact-specific determination regarding whether discrimination occurred.
- OCR may find discrimination if there is direct evidence that the district limited or denied services, benefits or opportunities to a student or group of students. For example, a district may have a policy that on its face, subjects students to different rules based on race, color or national origin. Discrimination may be stated that the student’s race, color or national origin was the reason the student was treated differently.

## May 7, 2024 Dear Colleague Letter (“DCL”) (continued)

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- If there is no direct evidence, the OCR will consider the following questions:
- Does the district limit or deny service, benefits or opportunities to a student or group of students of a particular race, color or national origin by treating them differently from similarly situated student or group of another race, color or national origin?
- Can the district provide a legitimate, nondiscriminatory reason for the different treatment?
- Is the district’s explanation for the different treatment a pretext?

# May 7, 2024 Dear Colleague Letter (“DCL”) (continued)

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- Examples of different treatment include:
- School disciplines Somali Muslim students more harshly than other white classmates based on fear that such students present greater safety concern;
- A teacher gives Jewish students lower grades than non-Jewish students out of disdains for perceived stereotypical claims about Jewish students; and
- A school refused to investigate allegations of national origin discrimination from students who are Kurdish or Hmong.

# May 7, 2024 Dear Colleague Letter (“DCL”) (continued)

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“Example 9: A high school world history class includes weekly discussions on current events. One week, a teacher asks the class to discuss the Israel-Hamas conflict. The teacher asks the only Jewish student in the class, who he assumes is Jewish based on her last name, to explain her position on the conflict. The teacher demands that the student condemn Israel, and when the student says she is uncomfortable speaking about the issue publicly, the teacher tells her that she must write an essay explaining why Israel should be condemned. The teacher threatens the student with detention if she does not turn in the essay by the end of the week. No other student is required to take a position on the conflict or to write an essay outlining their opinions. The student reports the teacher’s behavior to the school’s principal. The principal tells the student that she ‘should not have issues answering such an easy question.’”

- Would OCR open an investigation?



# May 7, 2024 Dear Colleague Letter (“DCL”) (continued)

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## Analysis of Hypothetical

- OCR would have reason to open a complaint.
- There are specific allegations that the school treated the Jewish student differently from non-Jewish students based on her race, including her shared ancestry and ethnic characteristics.
- The teacher singles out the only Jewish student, demanding that she condemn Israel and requiring her to complete an additional assignment not required of other students, seemingly because of her perceived ancestry.
- If OCR confirms that the student was treated differently, OCR would determine if there was a legitimate, non-discriminatory reason to treat the student differently. If there is no legitimate nondiscriminatory reason, OCR could support a finding of intentional discrimination. Here the principal did not provide a reason for why the student was given an additional assignment.

# May 25, 2023 OCR Dear Colleague Letter

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

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- OCR issued in January 2023.
- Fact sheet describes ways Title VI protects 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.

# Open OCR Title VI Shared Ancestry Investigations: 56 School Districts

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- Bellmore-Merrick Central High School (NY)
- West Contra Costa Unified School District (CA)
- Dallas Independent School District
- Lenape Regional High School (NJ)
- Medford Township School District (NJ)
- Berkley Unified School District
- Commack School District (NY)
- Dorchester County Public Schools (MA)
- Los Angeles Unifies School District
- Evanston Township School District (IL)
- North East Independent School District (TX)
- Montclair School District (NJ)
- Central Bucks School District (PA)
- School District of Philadelphia
- Howard County Public Schools (MD)
- South Orange—Maplewood School District (NJ)
- Roseville City School District (CA)
- Seekonk Public Schools (CA)
- Yonkers Public Schools (NY)
- Montgomery County Public Schools (MD)
- Eden Prairie Public Schools (MN)
- Chicago Public Schools (IL)
- Natick Public Schools (MA)
- Jefferson Parrish Schools (LA)
- Edina Public Schools (MN)
- Ann Arbor Public Schools (MI)
- Oakland Unified School District (CA)
- San Francisco Unified School District (CA)

# Open OCR Title VI Shared Ancestry Investigations: 56 School Districts (continued)

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- Teaneck Public Schools (NJ)
- Placentia-Yorba Linda Unified School District (CA)
- Seneca School District (MO)
- Lammersville Unified School District (CA)
- City Schools of Decatur (GA)
- Newark Public Schools (NJ)
- Springfield Public Schools (IL)
- Chandler Unified District (AZ)
- Cobb County School District (GA)
- New York Department of Education
- Clark County School District (NV)
- Maize Unified School District (KA)
- Wilson County Schools (TN)
- Naples Classical Academy
- Urbana School District (IL)
- Atlanta Public Schools
- Fullerton Elementary (CA)
- Pearl River School District (NY)
- Catalina Foothills Unified School District (AZ)
- Baltimore City Public Schools
- South Windsor Board of Education (CT)
- Bloomfield High School District (MI)
- Fairfax County Public Schools (VA)
- Riverside Brookfield Township District (IL)
- Township of Ocean Schools (NJ)
- Carroll Independent School District (TX)
- Irving Independent School District (TX)
- Cajon Valley Unified School District (CA)

# OCR Investigation of Antisemitism: Berkley Unified School District

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ADL Press Release, May 7, 2024

“U.S. Department of Education Opens Investigation into Anti-Semitism at Berkley K-12 Public Schools”

“The U.S. Department of Education’s Office for Civil Rights (OCR) announced today it has opened a formal investigation into a [complaint](#) that the Berkeley Unified School District (BUSD) failed to address non-stop “severe and persistent” bullying and harassment of Jewish students in classrooms, hallways, schools yards, and walkouts since October 7, 2023.

The organizations first filed the [complaint](#) in February calling on the Department of Education to intervene. They documented numerous incidents including anti-Semitic comments, such as “kill the Jews,” non-Jewish students asking Jewish students what “their number is,” referring to numbers tattooed on Jews during the Holocaust, Jewish students being told “I don’t like your people” and being derided for their physical appearance, and Jewish students being blamed and demonized. The complaint also documented how students have had to endure anti-Semitic teacher rants and class activities and teacher-promoted “walkouts” that praise Hamas. In fact, during an unauthorized teacher-promoted walkout for Palestine, no teachers intervened as students shouted, “Kill the Jews,” “KKK,” “Kill Israel,” and “From the river to the sea, Palestine will be free.”

“Yesterday, the organizations expanded the complaint, advising OCR that in the last three months, anti-Jewish bigotry and harassment has only escalated and the environment has become even more hostile and threatening. Some of the new incidents described in the expanded complaint include, “Kill Jews” scrawled at Berkeley High School, “Kill all Zionists” written at the bus stop used by many Berkeley High School students to get to and from school, children on the playground saying “Jews are stupid,” a ninth-grader bullied after his parent reported anti-Semitic incidents, teachers continuing to teach one-sided anti-Israel propaganda disguised as education, and removal of posters condemning anti-Semitism and supporting Israel’s right to exist, while anti-Israel and pro-Hamas posters remain undisturbed.”



# OCR Investigation of Antisemitism: Red Clay Consolidated School District

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## “U.S. Department of Education's Office for Civil Rights Reaches Agreement to Resolve Antisemitic Harassment in Red Clay Consolidated School District”

– JANUARY 29, 2024

“The U.S. Department of Education’s Office for Civil Rights (OCR) resolved a complaint of antisemitic harassment of a student filed against the Red Clay Consolidated School District in Delaware in June 2023. The district entered into an agreement to ensure it complies with Title VI of the Civil Rights Act of 1964 when responding to discrimination based on race, color, and national origin, including antisemitic harassment of its students.

OCR’s investigation established that peers targeted the student for harassment because she is Jewish, including classmates throwing a paper airplane at her with “Blood of the Jews” and multiple swastikas as well as bloody imagery scrawled on it. Approximately ten minutes later, in the same area of the school, classmates raised their arms in a “Heil Hitler” salute apparently towards the student. One week later, the student discovered a swastika drawn on her desk. During the same school year, swastikas were drawn on a desk that the student used in a classroom on two separate occasions.”

The OCR found that the districts responses were: often haphazard; inconsistently enforced; inconsistently reflected in district documentation; did not consistently include effective or timely steps to mitigate the effects of the harassment on the student or other students; and did not appear to respond to escalating and repeated incidents.

# OCR Investigation of Antisemitism: Red Clay Consolidated School District (continued)

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To resolve complaint, District agreed to implement a number of activities, including:

- Reimburse student's parents for past counseling, academic or therapeutic services as a result of the antisemitism;
- Publicize anti-harassment statement; Revise policies and procedures to ensure that they adequately address prohibition on discrimination based on race, color, and national origin, including actual or perceived shared ancestry or ethnic characteristics;
- Develop or revise procedures for document investigations of reports of harassment;
- Train annually all administrators regarding prohibition on discrimination based on race, color, and national origin, including actual or perceived shared ancestry or ethnic characteristics;
- Train annually staff involved in processing, investigating and resolving complaints and reports of discrimination based on race, color, and national origin, including actual or perceived shared ancestry or ethnic characteristics;
- Provide an age-appropriate information program to students regarding discrimination based on race, color, and national origin, including actual or perceived shared ancestry or ethnic characteristics;
- Conduct an audit of past complaints regarding discrimination based on race, color, and national origin, including actual or perceived shared ancestry or ethnic characteristics; and
- Conduct a climate survey.

# OCR Investigation of Antisemitism: Carmel Unified School District

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## “U.S. Department of Education's Office for Civil Rights Reaches Agreement to Address Antisemitic Harassment in Carmel Unified School District in California”

— JULY 26, 2024

The U.S. Department of Education’s Office for Civil Rights (OCR) announced today the resolution of a complaint alleging antisemitic harassment of students at a school in the Carmel Unified School District in California. The district entered into an agreement to ensure its compliance with Title VI of the Civil Rights Act of 1964 (Title VI) when responding to discrimination based on race, color, and national origin, including antisemitic harassment of its students.”

OCR’s investigation found that:

- In the 2021-2022 and 2023-2024 school years, district knew of 15 instances involving swastikas or other vandalism or harassment at the school that created a hostile environment for students based on their race, color, or national origin, including shared Jewish ancestry:
- during the 2021-2022 school year, administrators knew of 9 incidents involving the use of swastikas and/or the n-word, including graffiti in a bathroom, swastikas written or etched on two classroom desks, the “SS” symbol drawn on a classroom desk, a swastika on a ruler handed out to students in class, and a swastika visible on the skin of a student;
- in the 2023-2024 school year, administrators received reports of more swastikas in the school and a student expressing wanting “to kill all Jews and burn them in their homes,” among other incidents.
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## OCR Investigation of Antisemitism: Carmel Unified School District (continued)

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OCR also found that the district violated Title VI by failing to:

- take effective steps reasonably calculated to eliminate the known hostile environment and to prevent its recurrence;
- to evaluate whether a hostile environment existed for affected students and if they needed remedies to address the effects of that environment; and
- to maintain the records related to the district's responses to notice of antisemitic harassment.

## OCR Investigation of Antisemitism: Carmel Unified School District (continued)

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Examples of activities that the District agreed to implement to resolve the complaint include:

- Review incidents involving students subjected to harassment based on race, color, or national origin from 2021-2022 through 2023-2024 school years to determine what further action is needed to equitably resolve these incidents for students;
- Revise, and disseminate districtwide policies and procedures for responding to reports of harassment and maintaining related records to ensure they satisfy Title VI and train administrators and faculty on revised policies and procedures;
- Issue written guidance to staff on the updated harassment policies and procedures;
- Notify all students and parents that discrimination based on race, color, and national origin, including shared ancestry, is prohibited in the district and how to report harassment on these bases;
- Implement a plan to educate students and parents about reporting harassment;
- Conduct a districtwide assessment of school climate, including specifically regarding antisemitism; and
- Train all school administrators who are responsible for processing, investigating, and/or resolving complaints of discrimination on how to investigate and document them; and

# OCR Investigation of Harassment: Park City School District

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## “U.S. Department of Education's Office for Civil Rights Announces Resolution Addressing Responses to Harassment Based on Race, Sex, and Disability and to Antisemitic Harassment in Park City School District in Utah”

— MARCH 20, 2024

On March 20, 2024, the Park City School District in Utah signed a resolution agreement to resolve the U.S. Department of Education’s Office for Civil Rights (OCR) investigation of seven complaints of unlawful harassment filed in 2023. The complaints alleged that ongoing harassment based on race, national origin (including antisemitic harassment), disability, and sex created hostile environments for students at the district’s middle school, junior high, and high school (the three schools).

## OCR Investigation of Harassment: Park City School District (continued)

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OCR found that:

- the district received more than 180 reports of students harassing other students based on race, national origin, sex, and disability for the 2021-22 and 2022-23 years;
- the district took some action to address this harassment, such as disciplining harassing students;
- the district's responses to repeated harassment of Black, Asian, and Jewish students and to harassment based on sex — including slurs, threats, name-calling, gestures, symbols, and assaults, among other actions that negatively affected their access to education — did not meet the district's federal civil rights obligations; and
- the district repeatedly failed to investigate allegations of race-based and antisemitic harassment, to take effective steps to end hostile environments based on race and antisemitic harassment that the district confirmed, and to provide complainants information about the availability of supportive measures and how to file a formal complaint of sexual harassment.

# OCR Investigation of Harassment: Park City School District (continued)

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To resolve the violations and compliance concerns OCR identified, the district agreed to take a number of actions, including:

- Reviewing incidents of harassment based on race, national origin, sex, and disability in school year 2022-23, using a list of specific incidents provided by OCR, to determine for OCR's approval what further action is needed to provide an equitable resolution of each incident:
- Revise, and disseminate districtwide policies and procedures, including for handling reports of harassment and maintaining records related to harassment:
- Implement new forms for tracking reports of harassment and the district's responses:
- Coordinate the district's compliance with Title IX through the Title IX coordinator:
- Notify students and parents about the district's prohibitions of harassment based on race, national origin, sex, and disability and how to report harassment on these bases;
- Conduct a districtwide climate assessment focused on student-to-student harassment;
- Train all employees on Title IX coordination and related policies, procedures, and forms.
- Implement a plan to educate students and parents about reporting harassment; and
- Report to OCR about how the district responded to reports and complaints of harassment based on race, national origin, sex, or disability in school years 2024-25 and 2025-26.



# OCR: Title VI and English Learners

# OCR Investigations of EL Programs: Legacy Charter Schools

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“U.S. Department of Education’s Office for Civil Rights Announces Resolution of Title VI Compliance Review of Legacy Traditional Schools in Arizona”

— SEPTEMBER 12, 2024

“The U.S. Department of Education’s Office for Civil Rights (OCR) today announced that Legacy Traditional Schools (LTS), a network of 22 charter schools in Arizona, entered into a resolution agreement to comply with Title VI of the Civil Rights Act of 1964 (Title VI) and its regulations by providing language assistance to national origin minority students and parents with limited English proficiency (LEP) to ensure their meaningful access to LTS’ programs and activities.”

## OCR Investigations of EL Programs: Legacy Charter Schools (continued)

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OCR found that LTS:

- failed to timely identify English learner (EL) students or to adequately notify their parents of their EL status and their ability to receive or opt out of LTS' English Language Development (ELD) program;
- failed to provide some EL students with ELD services and did not have enough teachers who were trained and qualified to deliver such services;
- failed to train administrators to evaluate teachers who provide ELD services and did not periodically assess the effectiveness of the ELD program or take steps needed to ensure its success;
- did not adequately monitor the academic progress of current and former EL students to determine if they were able to participate meaningfully in LTS' standard instructional program both during and after exiting the EL program; and
- failed to notify some parents with LEP in a language they understand of essential information about LTS programs and activities called to the attention of other parents.

## OCR Investigations of EL Programs: Legacy Charter Schools (continued)

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LTS agreed to implement a number of activities to resolve the complaint, including

- Timely identify of EL students and place in LTS' ELD program;
- Notify EL students' parents of their child's language needs and ELD program option:
- Provide all EL students with daily targeted ELD based on their level of English and integrated ELD to help them meaningfully access core content instruction:
- Train teachers of targeted and integrated ELD to instruct EL students effectively;
- Ensure that ELD instructional materials are appropriate and comparable in quality, availability, quantity, and age or grade level to those provided for non-EL students; and
- Monitor the academic progress of all current EL students, including those who opted out of EL services, and offer struggling opt-out students a chance to opt in and monitor the academic progress of each former EL student consistently on a form to identify any persistent language barrier that may merit offering EL services again.

# OCR: Section 504 and Title II and Students with Disabilities

# OCR Compliance Review of Restraint Policies/Practices: Denton Independent School District

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## “Denton Independent School District in Texas has entered into a resolution agreement”

— APRIL 11, 2024

“Today, the U.S. Department of Education’s Office for Civil Rights (OCR) announced that the Denton Independent School District in Texas has entered into a resolution agreement to ensure that its restraint policies and practices do not deny students with disabilities a free appropriate public education (FAPE).

OCR’s review identified a number of concerns with the district’s compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) and their implementing regulations with respect to district restraint practices.”

# OCR Compliance Review of Restraint Policies/Practices: Denton Independent School District (continued)

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## OCR found:

- students ultimately identified as students with disabilities were restrained multiple times before the district initiated an evaluation to determine whether the students may need special education or related aids and services. For example, the district restrained one student 18 times before conducting an evaluation that resulted in the district classifying the student as a student with a disability for whom appropriate supports could obviate a need for restraint;
- concerns with frequency and duration of student restraints. For example, district restrained at least 12 students 10 or more times per student and the district restrained one student 43 times; in another example the district restrained a student on two separate occasions for more than an hour each time. District documentation often did not indicate that the district considered the impact of the restraints on the student's receipt of FAPE from the district;
- district permitted School Resource Officers (SROs) to restrain students with disabilities without having been properly trained on student restraint in educational settings or on the district's obligations regarding the provision of FAPE to students with disabilities and OCR also found that district staff lacked a consistent understanding of when it would be appropriate for an SRO to assist with student restraints. This inconsistency is reflected, for example, by SROs' frequent involvement in restraints even in the absence of probable cause to believe a crime was being committed, contrary to the district's stated position that SROs should only be involved in criminal matters;

# OCR Compliance Review of Restraint Policies/Practices: Denton Independent School District (continued)

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## OCR also found:

- district's documentation of restraint incidents contained significant gaps, hindering the district's capacity to evaluate its satisfaction of its Section 504 and Title II obligations to its students;
- many restraint forms provided by the district lacked clear identification of the staff members involved, start and end times of restraints, or the underlying behavior necessitating the restraint, which could hinder the district's ability to consider this information in re-evaluating the students' individual educational and behavioral needs;
- district staff reported inconsistent understanding regarding whether and/or when a restraint by an SRO should be documented, raising concern about whether district records accurately reflect these restraints and allow for district evaluation of them; and
- district did not provide clear notice to parents/guardians of the individual(s) designated by the district to coordinate its efforts to comply with Section 504 and Title II, thereby hindering parents' and guardians' ability to request re-evaluations as necessary to ensure their children receive a FAPE.



# OCR Compliance Review of Restraint Policies/Practices: Denton Independent School District (continued)

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The resolution agreement requires the district to carry out a number of obligations, including:

- Convening Section 504 and/or Admission Review and Dismissal (ARD) committees to re-evaluate the needs of students identified during the review who may have been denied a FAPE as a result of the district's use of restraint and timely providing any compensatory services identified as necessary for identified students;
- Reviewing and revising as necessary the district's policies and procedures governing restraint, including the involvement of SROs in restraint incidents:
- Developing a process for the creation, maintenance, and review of records documenting each incident of student restraint;
- Developing a process to ensure accurate reporting of all restraint incidents to the Department's Civil Rights Data Collection ;
- Reviewing each incident of restraint in which an SRO was involved between 2022-23 and 2023-24 school years to assess the impact on individual students restrained and to inform the district's policies and practices regarding SRO involvement in restraint incidents:
- Reviewing the district's policies regarding the involvement of SROs in restraint incidents, including revising Memoranda of Understanding and district policy as necessary to ensure all policies and agreements include clearly defined roles and areas of responsibility for SROs, including when staff may involve SROs in restraints and how such incidents should be documented:

# OCR Compliance Review of Restraint Policies/Practices: Denton Independent School District (continued)

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## Resolution agreement obligations continued:

- Establishing an annual review process for SRO involvement in student restraints;
- Establishing a monitoring program to monitor the use of restraint in students in all district schools to safeguard student rights under Section 504 and Title II;
- Ensuring that all staff who may be involved in student restraints receive training regarding the use of restraint on students, including the district's policies and procedures relating to the recording of all incidents of restraint;
- Ensuring that all staff receive training regarding the District's obligation to provide a FAPE to students with disabilities pursuant to Section 504 and Title II; and
- Offering training to all SROs contracted by the District to serve on District campuses regarding the District's policies and procedures regarding restraint, including recordkeeping procedures, as well as the District's nondiscrimination obligations pursuant to Section 504 and Title II.

# Compliance Review of Disciplinary Practices: Four Rivers Special Education District

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## “Resolution of Compliance Review of Disciplinary Practices for Students with Disabilities in Four Rivers Special Education District in Illinois”

— SEPTEMBER 5, 2024

“The U.S. Department of Education’s Office for Civil Rights (OCR) today announced that the Four Rivers Special Education District in Illinois has entered into an agreement to ensure its disciplinary practices do not deny students with disabilities a free appropriate public education (FAPE) and comply with civil rights obligations to students with disabilities under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act.

The district reports that it “houses intensive, supportive special education classrooms to meet the needs of children when the home districts cannot provide the necessary level of supports.” Notwithstanding the district’s stated purpose to effectively serve students with disabilities who require intensive supports, OCR’s review established otherwise, raising serious civil rights compliance concerns.”

# Compliance Review of Disciplinary Practices: Four Rivers Special Education District (continued)

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The OCR found that:

- the district routinely referred students to law enforcement for non-criminal behaviors, referring students 96 times in one school year, which was more than the total number of students enrolled that year;
- these law enforcement referrals were often for behavior that could have been based on disability such as “disruption,” “inappropriate language,” and “phone violation” notwithstanding the district’s advertised specialization in meeting the needs of students with disabilities; and
- several students spent extensive time out of the classroom – one student went to the school crisis room 143 times during a single school year, spending as long as four hours and 20 minutes there in a single day – but district records did not reflect evaluation of whether this non-instructional time merited reevaluation to determine whether different or additional supports may be necessary for a student or evaluation whether a student needed compensatory services to ensure that student’s equal access to education.

# Compliance Review of Disciplinary Practices: Four Rivers Special Education District (continued)

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The resolution agreement requires the District to:

- Convene an IEP meeting for each student with disabilities who missed instructional time resulting from law enforcement contact or use of the crisis room in the 2021-2022 through 2023-2024 school years in order to revise and/or more clearly define the use of law enforcement or the crisis room in the student's IEP as appropriate to meet the individualized needs of the student, and determine whether its use of law enforcement or the crisis room for the student resulted in a denial of a FAPE, then, if so, determine and provide necessary compensatory education and/or remedial services to provide the student a FAPE;
- Develop and implement policies and procedures regarding use of the crisis room to ensure that all students with disabilities receive a FAPE;
- Develop and implement policies and procedures governing contacts with law enforcement for students, to ensure that all students with disabilities receive a FAPE, including criteria for contacting law enforcement that is limited to criminal behaviors that cannot be effectively managed by the district and steps consistent with Section 504 and Title II that must be taken prior to a law enforcement contact;
- Develop and implement a record-keeping system and procedures to ensure accurate, complete and timely documentation of each law enforcement contact and each use of the crisis room, and
- Train administrators, teachers, paraprofessionals, and social workers on the requirements of Section 504 pertaining to the district's obligation to provide a FAPE to students with disabilities, and when a student's IEP team must convene to address the repeated use of law enforcement and/or the crisis room.

# OCR Compliance Review of AP Courses: Colonial School District

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“U.S. Department of Education's Office for Civil Rights Resolves Compliance Review of Colonial School District in Delaware, Examining Access of Students with Disabilities to Advanced Placement Courses”

— JULY 18, 2024

“The U.S. Department of Education’s Office for Civil Rights (OCR) today announced that the Colonial School District near Wilmington, Delaware, has entered into a resolution agreement to ensure the district’s compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II) with regard to providing students with disabilities equal access to Advanced Placement (AP) courses.”

OCR determined that the district:

- had not taken steps to ensure equal access to high rigor courses for students with disabilities, although knew for years that students with disabilities participate in AP courses at rates well below their enrollment rates and
- had practices, such as promoting AP courses among students in courses in which students with disabilities under-enroll and an absence of district guidance for ensuring inclusion of students with disabilities may contribute to under-enrollment of these students.

## OCR Compliance Review of AP Courses: Colonial School District (continued)

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The District agreed to:

- Do a review and assessment of the district's AP course offerings for the 2023-2024 school year and develop recommendations for ensuring equal access to AP courses for students with disabilities, including whether adjustments to its AP course enrollment practices would increase enrollment for students with disabilities:
- Review its communication with students and their parents, including students with disabilities and their parents, regarding the availability of AP courses and develop a protocol for ensuring that all students in 8th through 11th grade and their parents are provided with notice of AP courses, how to enroll in these courses, and significance given to AP courses by colleges in the admissions process:
- Evaluate its academic counseling services at its middle and high schools and make changes, as necessary, to ensure that students with disabilities receive counseling that informs them of available AP course options:
- Provide training to all middle and high school guidance counselors and teachers of eligibility requirements for AP courses, and the importance of inclusion of students with disabilities in AP course enrollment; and
- Develop a record-keeping system to identify number of students with disabilities who participate in AP high school course offerings and ensure accurate reporting of data to OCR's Civil Rights Data Collection.

# DOJ: Title VI, Section 504 and Title II and Students with Disabilities



## DOJ Settlement on Race, Disability and Discrimination: Wichita Public Schools

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“DOJ, Wichita schools reach settlement in race, disability, discrimination investigation”

By Mathew Kelly, Wichita Eagle, July 2, 2024

- Wichita Public Schools and the U.S. Department of Justice have reached a settlement after an investigation into Kansas’ largest school district uncovered race and disability discrimination in how discipline is dealt out.
- “The department’s investigation revealed, among other things, that the district’s Black students were disciplined more frequently and more severely than white students who engaged in similar conduct and had similar backgrounds and disciplinary histories,” a Tuesday DOJ release states.
- “This pattern was most evident when it came to subjective offenses such as insubordination, and was especially stark when it came to discipline of Black girls, whose behavior was repeatedly characterized using stereotypical terms like ‘attitude’ or ‘drama.’”

# DOJ Settlement on Race, Disability and Discrimination: Wichita Public Schools (continued)

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Under the terms of the agreement, USD 259 agrees to:

- “Develop a district-wide code of conduct, standardize dress code policies and create a behavior intervention protocol to ensure the nondiscriminatory administration of discipline and prohibit unnecessary exclusion of students from the school environment;
- Create a system of district-level monitoring of schools’ administration of discipline to ensure nondiscrimination;
- Ensure that school security and law enforcement only become involved in student misbehavior in appropriate circumstances and thereby avoid criminalizing routine school discipline matters;
- Eliminate the use of seclusion;
- Restrain students only when their behavior poses an imminent danger of serious physical harm to the student or another person, properly document all restraints and provide students who are restrained or secluded with required interventions;
- Ensure that only professionals with the requisite expertise and training run and staff specialized schools for students with disabilities;
- Provide counseling and compensatory education to students who have been repeatedly secluded; and
- Create an office to monitor the district’s restraint practices (and seclusion until it is eliminated) to ensure compliance with the agreement and assist district staff in providing required interventions and supports.”

# DOJ: Title II and Students with Disabilities

# DOJ Title II Settlement for Students with Disabilities: Pasco County School District

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## **“Justice Department Secures Agreement with Florida School District to Protect Civil Rights of Students with Disabilities”**

“The Justice Department announced today a settlement agreement with the Pasco County School District in Florida to resolve the department’s investigation into alleged discrimination against students with disabilities in school discipline, threat assessment practices and referrals of students to law enforcement. The department conducted its investigation under Title II of the Americans with Disabilities Act (ADA).”

DOJ found:

- That district routinely suspended students or called police for disability-related behavior that could have been addressed through proper support and de-escalation:
- problems with how district conducted threat assessments (a process to identify, evaluate and respond to potential school security concerns);
- district systematically failed to consider relationship between a student’s disability and their behavior, and whether appropriate support for student would address behavior that prompted assessment: and
- district often unnecessarily referred students to law enforcement to be arrested or to start process for an involuntary admission into a mental health facility under Florida’s Baker Act.

# DOJ Title II Settlement for Students with Disabilities: Pasco County School District (continued)

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The district entered into settlement agreement with DOJ, and among other actions, under the agreement, the district will:

- “Ensure that district personnel accurately assess disability-related behaviors, identify appropriate interventions for those behaviors and monitor the implementation of those interventions;
- Hire a consultant with expertise in behavior interventions who will assist in updating its policies and practices;
- Update its student code of conduct, threat assessment process and process for calling law enforcement to ensure that the district is adequately considering disability-related behaviors and modifying its policies and procedures to avoid discrimination based on disability;
- Develop appropriate trainings to help schools implement the agreement and respond appropriately to student behavior and
- Improve data collection and analysis systems and regularly evaluate data to ensure students with disabilities are not excluded from school for disability-related behaviors through the district’s discipline, threat assessment and law enforcement referral practices.”

# DOJ: Title II and Students with Disabilities

### **“Justice Department Secures Agreement with Tennessee School District to Protect Students from Racial Harassment”**

— June 10, 2024

“The Justice Department announced today a [settlement agreement](#) with Hawkins County Schools in Tennessee to resolve its investigation into allegations of race-based harassment and other discrimination targeting Black students.

The investigation, conducted jointly by the Justice Department’s Civil Rights Division and the U.S. Attorney’s Office for the Eastern District of Tennessee, found that the incidents of harassment — including a mock “slave auction” to sell Black students to their white counterparts, white students’ repeated and open use of the N-word and a “monkey of the month” campaign to ridicule Black students — collectively created a racially hostile environment. Although the district took steps to acknowledge some of the harassment, their response was not sufficient to protect the Constitutional rights of Black students.”

## DOJ Settlement and Racial Harassment; Hawkins County Schools (continued)

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The District entered into a settlement agreement. The agreement requires the District to “implement significant reforms, including:

- “Hiring a compliance officer to oversee the effective resolution of race discrimination and harassment complaints;
- Retaining a consultant to support the school district in implementing the agreement and creating a discrimination-free learning environment for all;
- Creating a new electronic reporting portal to track and manage complaints and the district’s response to complaints;
- Updating its racial harassment and school discipline policies to more accurately track and consistently respond to complaints of race-based harassment;
- Training staff on how to identify, investigate and respond to complaints of racial harassment and discriminatory discipline practices;
- Informing students and parents of how to report harassment and discrimination;
- Implementing listening sessions, school climate surveys, training and educational events on identifying and preventing race discrimination, including discriminatory harassment; and
- Analyzing discipline data and amending policies to ensure non-discriminatory enforcement of discipline policies.”



True/False

# True/False

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- True or False?** All school districts are required to implement the new Title IX regulations in the 2024-25 school year.
- True or False?** Title IV provides that districts may not discriminate based on shared ancestry or ethnic characteristics.
- True or False?** The Supreme Court has ruled that school board members may block parents who criticize them from their social media accounts.
- True or False?** OCR has authority to investigate allegations regarding sexual or racial harassment without a complaint from a parent or third party.
- True or False?** OCR and DOJ have authority to investigate Title IX complaints.

Wrap Up/Questions

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