

U.S. Department of Education
Office for Civil Rights

PROTECTING CIVIL RIGHTS, ADVANCING EQUITY

*Report to the President and
Secretary of Education*

*Under Section 203(b)(1) of the
Department of Education Organization Act*

FY 13-14

**U.S. Department of Education
Office for Civil Rights**

Catherine E. Lhamon
Assistant Secretary

April 2015

This report is submitted under Section 203(b)(1) of the *Department of Education Organization Act of 1979*, Pub. L. No. 96-88, which provides: "The Assistant Secretary for Civil Rights shall make an annual report to the Secretary, the President, and the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems as to which such Office has made a recommendation for corrective action and as to which, in the judgment of the Assistant Secretary, adequate progress is not being made." 20 U.S.C. §3413(b)(1).

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This report is also available on the Office for Civil Rights website at <http://www.ed.gov/ocr>. Any updates to this report will be available at this website.

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MESSAGE FROM THE ASSISTANT SECRETARY



Catherine E. Lhamon

For nearly five decades, the U.S. Department of Education's Office for Civil Rights (OCR) has stood as a guardian of civil rights in educational institutions nationwide. We have taken seriously our charge to remove barriers to students' full participation in every facet of educational life. Our progress is palpable: Today, for example, more students of color are graduating from high school and attending college than ever before, educational and athletic opportunities and attainment for girls and women are far greater than they were when Title IX of the Education Amendments of 1972 (Title IX) was enacted, and all students with disabilities are now assured a free appropriate public education, compared to the era when the quality of their education varied greatly in the absence of legal protections.

Though we have come far, the unfortunate reality is that discrimination remains prevalent even more than four decades after the passage of Section 504 of the Rehabilitation Act of 1973 and Title IX, and more than half a century from the enactment of the Civil Rights Act of 1964. For every success story, civil rights challenges in schools persist nonetheless. Too often, students are harassed or sexually assaulted on campus because of their gender or gender identities, are not allowed to participate equitably in sports because of their disability, are unfairly suspended from school because of their race, or suffer other forms of discrimination.

As the contents of this report illustrate, we in OCR use every tool at our disposal to continue our significant forward progress to realize our nation's federal civil rights promises for every student in every school. OCR received nearly 10,000 civil rights complaints in each of the past two fiscal years—the highest numbers in OCR history. Breaking all previous records, we also resolved nearly 20,000 cases during this period. During fiscal years (FY) 13–14, we launched 68 proactive investigations independent of any complaint and resolved 44 such investigations. We issued 11 policy guidance documents covering critical civil rights issues in education. We released data from our first universal Civil Rights Data Collection since 2000, covering approximately 97,000 public schools and about 49 million students nationwide. We responded to thousands of public inquiries and requests for technical assistance, and we collaborated with other offices within the Department and with other agencies to amplify the impact of our work and accomplish common goals. Additionally, we increased transparency in our work, posting more than 500 new resolution agreements on our website and publicly releasing lists of institutions under investigation for civil rights violations.

This report chronicles stories of our nation's students, of injustices faced and justice delivered. The distressing facts behind these cases illustrate precisely why we continue our critical work.

This report also tells the story of OCR. As these pages detail, our talented staff achieve terrific results on behalf of students notwithstanding daunting obstacles: The number of OCR staff has steadily declined with time, falling to a critical all-time low, even as OCR's overall caseload has dramatically increased. Through efficiency, innovation, and dedication, this office has continued to fulfill its mission. What we have achieved has been possible only through the skill and unwavering commitment of our expert staff, for whom I am so grateful. And the students who rely on them deserve to see OCR's staff numbers increase significantly so students may realize full assurance of their civil rights in schools.

I look forward to the privilege of continuing to work with our extraordinary staff to protect civil rights and advance educational equity for all students.

Sincerely,

Catherine E. Lhamon

Assistant Secretary for Civil Rights

EXECUTIVE SUMMARY/HIGHLIGHTS

During FY 13–14, OCR increased the quantity, quality, transparency, and reach of its policy and enforcement efforts; implemented and improved the Civil Rights Data Collection; and strived to ensure equal access to educational resources for all students.

OCR wrote and released 11 comprehensive **policy guidance** documents in FY 13–14 to notify schools and other recipients of their legal obligations and to help them comply with the law. These documents addressed urgent and complex questions related to schools' obligations to respond promptly and effectively to sexual violence and unequal school discipline policies or practices and to promote equitable access to resources on the basis of race or national origin, the rights of immigrant and undocumented students and of pregnant and parenting students to enroll in and attend school, the use of race in voluntary efforts to increase diversity and reduce racial isolation, the obligation of charter schools to adhere to federal civil rights laws, equitable athletic opportunities for students with disabilities, and the prohibition against retaliation under civil rights laws.

OCR emphasized the importance of data by releasing a new, expanded **Civil Rights Data Collection** that made equity indicators in nearly every public school and district in America transparent. OCR worked to make the data known to the public through presentations, technical assistance, and the media, and staff intensified efforts to improve the

data collection system and to work with districts to ensure data quality now and in the future.

OCR increased the breadth, depth, and transparency of its **enforcement** activities while maintaining the quality and pace of its resolutions. In FY 2013, OCR received 9,950 complaints, initiated 30 compliance reviews and directed inquiries, and resolved 10,128 cases overall.¹ In FY 2014, OCR received a record-high 9,989 complaints, initiated 38 compliance reviews and directed inquiries, and resolved 9,407 cases total. See the Appendix for the total number of resolution agreements in FY 13–14 by jurisdiction, statute, and type of investigation.

During the same time frame, OCR instituted a number of key **operational improvements**, including developing a pre-complaint online screening process, expanding the use of online voluntary surveys in investigations, and expediting review of single-issue disability complaints. To boost transparency, OCR instituted a new policy of publicizing lists of schools under investigation by OCR, including a list of colleges subject to pending sexual violence cases, and of uploading nearly every resolution agreement and letter reached during FY 2014 and beyond onto its website. As a result, schools and the public can now access more than 500 resolutions on OCR's website that provide examples of what schools are doing to come into compliance with civil rights laws.

THE OFFICE FOR CIVIL RIGHTS: EVOLVING TO MEET CHANGING NEEDS

For nearly 50 years, OCR has played a significant role in the history of the United States. It continues to enforce civil rights in our nation's schools, which serve almost 80 million students annually.

Mission and Scope

To advance the U.S. Department of Education's mission of promoting student achievement and to prepare students for global competitiveness, OCR's purpose is to foster educational excellence and ensure equal access by enforcing federal civil rights laws and implementing regulations that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in all programs or activities that receive federal financial assistance.

"I believe in my heart that education is the civil rights issue of our generation."

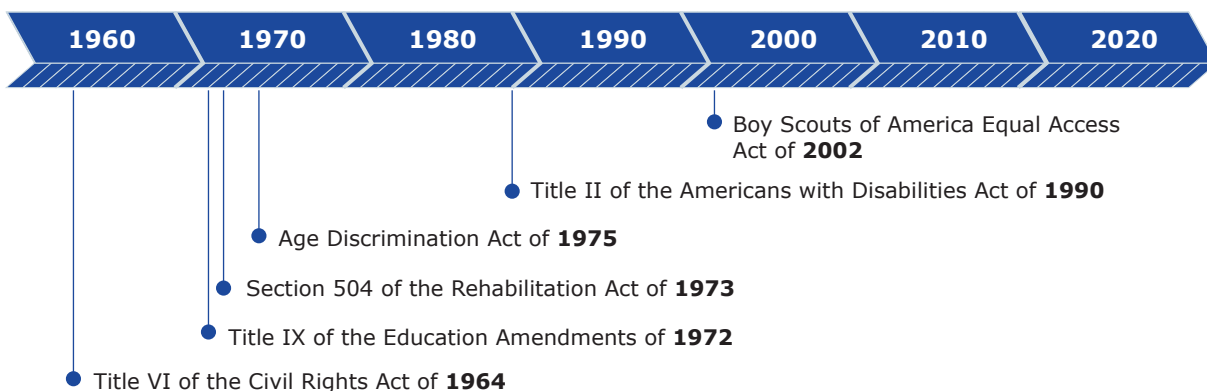
—Secretary Arne Duncan,
May 2014

Federal Civil Rights Laws Under OCR's Jurisdiction

OCR's charge is to enforce and implement *the following laws* (see Figure 1):

- ▶ Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination in all programs or activities receiving federal financial assistance);
- ▶ Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in all education programs or activities receiving federal financial assistance);
- ▶ Section 504 of the Rehabilitation Act of 1973 (prohibiting discrimination on the basis of disability in programs, services, and activities receiving federal financial assistance);
- ▶ Age Discrimination Act of 1975 (prohibiting age discrimination in all programs or activities receiving federal financial assistance);
- ▶ Title II of the Americans with Disabilities Act of 1990² (prohibiting disability discrimination in state and local government services—whether or not programs receive federal financial assistance); and

FIGURE 1: The Office for Civil Rights Enforcement Jurisdiction Timeline



- ▶ Boy Scouts of America Equal Access Act (2001) (prohibiting public elementary and secondary schools, local educational agencies, and state educational agencies from denying any group officially affiliated with the Boy Scouts of America or certain other youth groups equal access to school facilities for meetings).

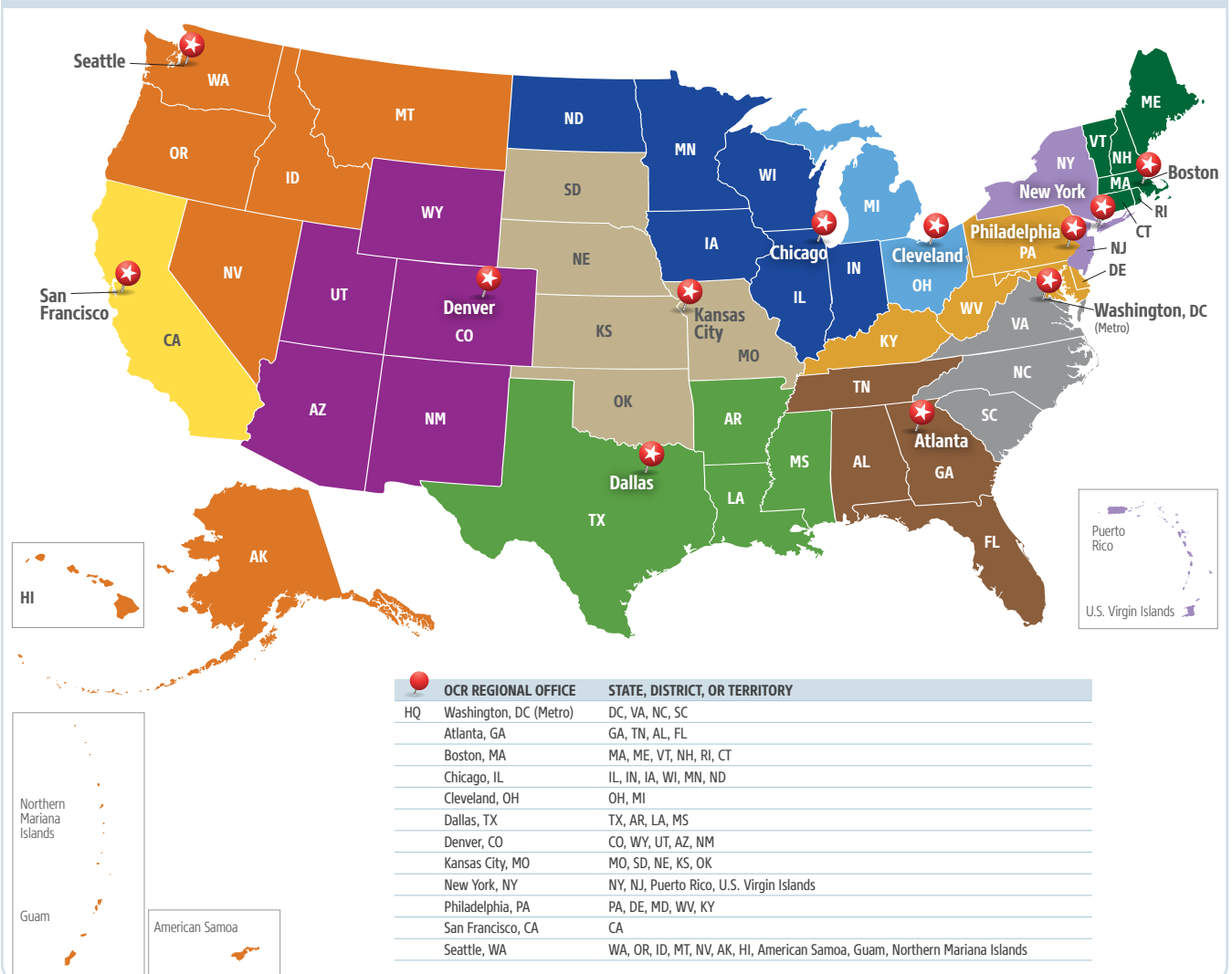
These and other civil rights laws extend to a wide range of federal recipients, including all state educational agencies; approximately 16,900 local educational agencies; approximately 7,200 postsecondary institutions, including proprietary schools and community colleges; 80 state vocational rehabilitation agencies and their sub-recipients; as well as other institutions that receive U.S. Department of Education financial assistance, such as libraries, museums, and correctional institutions. More than 79 million individuals are beneficiaries of the financial assistance these institutions and agencies receive on behalf of the Department.

Structure and Functions

OCR is headed by an Assistant Secretary, appointed by the President of the United States with the advice and consent of the U.S. Senate. The senior staff supporting the Assistant Secretary include a Principal Deputy Assistant Secretary, a Deputy Assistant Secretary for Enforcement, a Senior Counsel on Policy, a Deputy Assistant Secretary for Strategic Operations and Outreach, a Chief of Staff, an Executive Officer, and two additional senior counsel.

OCR is composed of a headquarters office and 12 enforcement offices throughout the country (see Figure 2). The Headquarters and DC Metro enforcement offices are located in Washington, DC, and the remaining 11 enforcement offices are in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, and Seattle.

FIGURE 2: OCR Regional Offices



OCR's core activities include responding to civil rights complaints filed by the public and conducting proactive investigations to enforce federal civil rights laws, *monitoring institutions' adherence to resolution agreements reached with OCR*, issuing policy guidance to increase recipients' understanding of their civil rights obligations and students' awareness of their civil rights, responding to requests for information from and providing technical assistance to the public, and administering and disseminating the Civil Rights Data Collection. Notable accomplishments in these activities during FY 13–14 are detailed throughout this report.



Securing Civil Rights Compliance through Effective Case Monitoring

Resolution agreements are effective to the extent that they are implemented. To ensure that parties follow through with their commitments, OCR actively monitors cases that have resolution agreements until the institution meets all provisions. In FY 13–14, OCR engaged in 4,321 monitoring activities. Additionally, OCR closed 1,178 cases in FY 13–14 that were previously under monitoring.

When a case is in monitoring, OCR's role is to scrutinize the recipient's implementation of the resolution agreement to ensure that the institution effectively implements its commitments and that the recipient is in compliance with the statute(s) and regulation(s) at issue. OCR may conduct onsite visits as part of its monitoring, as well as conduct individual interviews and focus groups as part of the onsite monitoring activities. This monitoring function is a significant and important tool in OCR's overall enforcement scheme and is essential to OCR's mission of ensuring compliance with civil rights laws and ensuring equal access to educational excellence for all students.

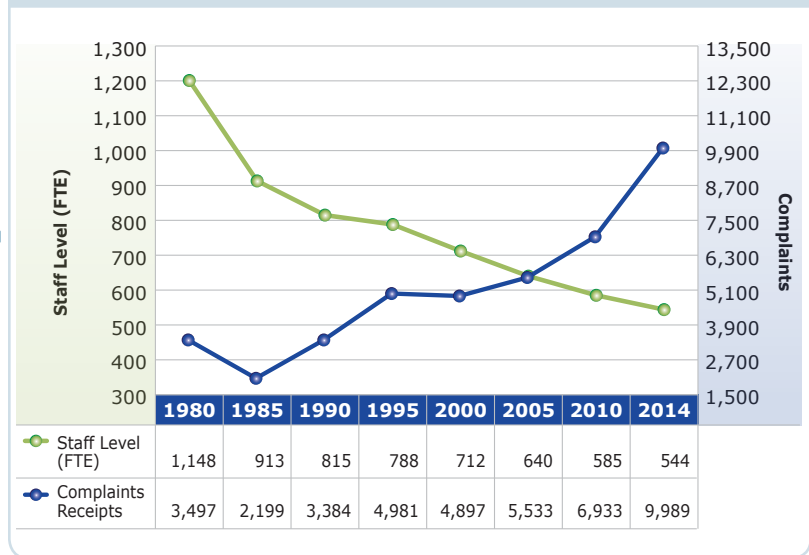
Handling More Complaints with Fewer Staff

OCR's staffing level has consistently declined over the life of the agency even though complaint volume has significantly increased. **Figure 3** depicts OCR's full time employee (FTE) levels from 1980 to 2014. OCR's staffing level at the end of FY 2014 was 544 (FTE), marking an all-time low in staff levels since 1980, when the Department of Education (ED) separated from what had until then been the Department of Health, Education, and Welfare, establishing an OCR within ED. *The number of staff in OCR today is almost 15% below its staffing level 10 years ago (640); about 30% below its staffing level 20 years ago (788); and more than 50% below its staffing level 34 years ago (1,148).*



The chart also shows how the number of complaints has risen over time. The ever-increasing level of complaint receipts generates a large share of workload for OCR staff.

FIGURE 3: OCR Staff Level (FTE) and Complaints Received, FY 1980–2014

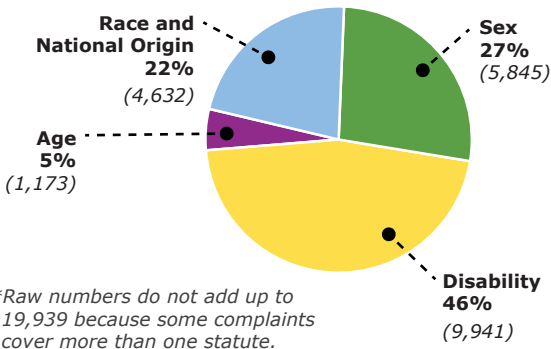


In FY 2013, OCR received 9,950 complaints and resolved 10,128 total cases. In FY 2014, OCR received 9,989 complaints, and resolved 9,407 total cases (see Figure 4).

Estimates are that this record level will continue and modestly increase through at least FY 15–16. By comparison, in FY 1985, OCR received just 2,199 complaints—nearly 80% fewer than what OCR now receives in a typical year—and had 913 FTEs, compared to 544 FTEs at the end of FY 2014. Even examining the last several years, from FY 2009 to FY 2014, annual complaint receipts increased by more than 55%.



FIGURE 4: Percentage of Complaints Received in FY 13–14 by Type of Alleged Discrimination (both raw numbers and percentage)*



OCR’s staff-to-complaint ratio has become dangerously imbalanced, jeopardizing OCR’s capacity to fulfill its mission effectively. OCR continues to aspire to the highest levels of performance, and the students whose rights OCR serves deserve fuller staffing for OCR to satisfy its mission.

Becoming More Efficient

Recognizing the need to become more efficient in order to address increasing workload and fewer staff, OCR has, in recent years, taken aggressive measures to improve efficiency in operations.

- **Pre-Complaint Online Screening Process:** In FY 2013, OCR developed a pre-complaint online screening process to help potential complainants understand the scope of OCR’s authority and to reduce the number of complaints filed that do not fall under OCR’s jurisdiction. For complaints outside OCR’s jurisdiction, the system refers complainants to other agencies, as appropriate. Although anyone may file a complaint even after going through the online screening process, this additional mechanism saves time and resources by reducing the number of complaints filed with OCR over which OCR lacks jurisdiction.

- **Resolving Single-Issue Disability Complaints through Expedited Case Review:** In the past few years, OCR has resolved some single-issue disability complaints—which compose over 40% of the complaints filed with OCR in FY 13–14—more quickly using expedited case review procedures, to the extent feasible. This streamlined process has reduced staff travel time and costs while providing quick relief to complainants.

- **Streamlining Investigations through Online Surveys:** OCR expanded the use of online communication and voluntary surveys to obtain information in investigations, saving time and resources needed for travel and conducting individual interviews while significantly increasing the number of individuals from whom OCR can receive information.

- **Significant Improvements to the Civil Rights Data Collection:** OCR enhanced the Civil Rights Data Collection (CRDC) online data collection tool and, as a result, reduced data reporting errors as well as the staff time needed to address the errors. OCR achieved these improvements by streamlining the user interface so schools and districts could enter data more easily, clarifying instructions and developing new technical assistance materials, and making other updates.

- **Responding to Requests for Information:** OCR has also experienced a surge in requests for information, stakeholder and public engagement, and technical assistance. Each year, *OCR receives over 1,000 Freedom of Information Act (FOIA) requests, over 5,500 hotline calls, over 1,000 media inquiries, and hundreds of requests for technical assistance.* In response, OCR has worked to implement technological efficiencies that have allowed staff to address each inquiry more quickly and effectively. OCR is also using technology to disseminate information more broadly.



OCR Response to the Public: OCR processed 1,081 FOIA requests in FY 2013 and 1,150 FOIA requests in FY 2014. Additionally, OCR handled 5,852 hotline calls in FY 2013 and 6,650 in FY 2014.

- **Responding to the Call for Greater Speed and Transparency:** Schools’ and communities’ interest in more policy guidance and increased, faster, and more transparent civil rights enforcement from OCR has increased significantly over the past two fiscal years. In FY 2014, OCR began a practice of posting nearly all resolution agreements on its website so that schools, parents, and students can see what steps recipients are taking to achieve compliance. In addition, OCR now institutes time limits for negotiating the terms of voluntary resolution agreements with recipients—a change that can lead to speedier resolutions.

POLICY GUIDANCE: AN OVERVIEW

During FY 13–14, OCR issued 11 policy guidance documents. Addressing issues ranging from retaliation to sexual violence to the administration of school discipline, these policy guidance materials serve an important function: to notify schools and other recipients of federal funds of their legal obligations and the ways OCR enforces federal civil rights laws, helping them to comply with the law. In some instances, the guidance OCR issues directly responds to emerging trends in discriminatory behavior, as reflected in the Civil Rights Data Collection, requests OCR receives for technical assistance, and complaint investigations. Also, when precedent-setting cases in the courts clarify specific elements of application of the law,

OCR utilizes *Dear Colleague* letters and accompanying supplementary materials to help ensure that the general public understands how the decisions apply to schools, districts, and educational institutions of higher learning. When appropriate, OCR issues guidance jointly with other civil rights offices, such as the Civil Rights Division at the U.S. Department of Justice (DOJ). Educational institutions may use OCR’s policy guidance to help adjust their own policies and practices to enhance civil rights protections for students and avoid committing civil rights violations, which may eliminate the need for OCR enforcement. And students, families, and communities may utilize this guidance to better understand students’ civil rights.

Below is a list of the guidance that OCR released during FY 13–14:

STATUTE	ISSUE / RELEASE DATE	DESCRIPTION
Title VI, Title IX, and Section 504/Title II	Prohibition against retaliation April 24, 2013	Clarifies the basic principles of retaliation law and describes OCR’s methods of enforcement for claims of retaliation.
	Applicability of civil rights laws to charter schools May 14, 2014	Provides a reminder that charter schools are subject to the same federal civil rights obligations to which all other public schools are subject and highlights some of the legal requirements related to admissions, school discipline, students with disabilities, and English learners.
Title VI	Voluntary use of race to achieve diversity September 27, 2013 (released jointly with the Department of Justice)	Provides information about the U.S. Supreme Court ruling in <i>Fisher v. University of Texas at Austin</i> and reiterates OCR’s and the U.S. Department of Justice’s (DOJ’s) support for the voluntary use of race to achieve diversity in education.
	Nondiscriminatory discipline January 8, 2014 (released jointly with the Department of Justice)	Addresses the requirement for nondiscriminatory administration of school discipline and provides information describing how schools can meet their obligations under federal law to administer school discipline without discriminating on the basis of race, color, or national origin.
	Voluntary use of race to achieve diversity May 6, 2014 (released jointly with the Department of Justice)	Provides information about the U.S. Supreme Court ruling in <i>Schuetz v. Coalition to Defend Affirmative Action</i> and reiterates OCR’s and DOJ’s support for the voluntary use of race and ethnicity to achieve diversity in education.
	Equal access to education regardless of immigration or citizenship status May 8, 2014 (released jointly with the Department of Justice)	Discusses schools’ enrollment procedures and the obligation to enroll all students of school age regardless of their race, color, national origin, immigration, or citizenship status.
	Resource equity October 1, 2014	Discusses the requirement that students have equal access to educational resources without regard to race, color, or national origin.
Title IX	Rights of pregnant and parenting students June 25, 2013	Addresses the specific requirements of Title IX applicable to pregnant and parenting students, including information on strategies and practices that educators may use and programs schools can develop to address the educational needs of students who become pregnant or have children.
	Addressing and preventing sexual violence April 29, 2014	Clarifies in FAQ guidance the legal requirements under Title IX articulated in the April 4, 2011 <i>Dear Colleague</i> letter on Sexual Violence and the January 19, 2001 <i>Revised Sexual Harassment Guidance</i> .
Section 504/Title II	Equal access to extracurricular athletics for students with disabilities January 25, 2013	Details the specific Section 504 regulations that require students with disabilities to have an equal opportunity for participation in nonacademic and extracurricular services and activities and discusses the provision of separate or different athletic opportunities.
	Rights of students with hepatitis B June 12, 2013 (released jointly with the Department of Justice and the Department of Health and Human Services)	Discusses the latest recommendations from the Centers for Disease Control and Prevention regarding the participation of students with hepatitis B in health-related schools, and how these recommendations relate to the federal laws prohibiting discrimination on the basis of disability, race, color, and national origin.

AMPLIFYING THE IMPACT OF OCR POLICY AND ENFORCEMENT

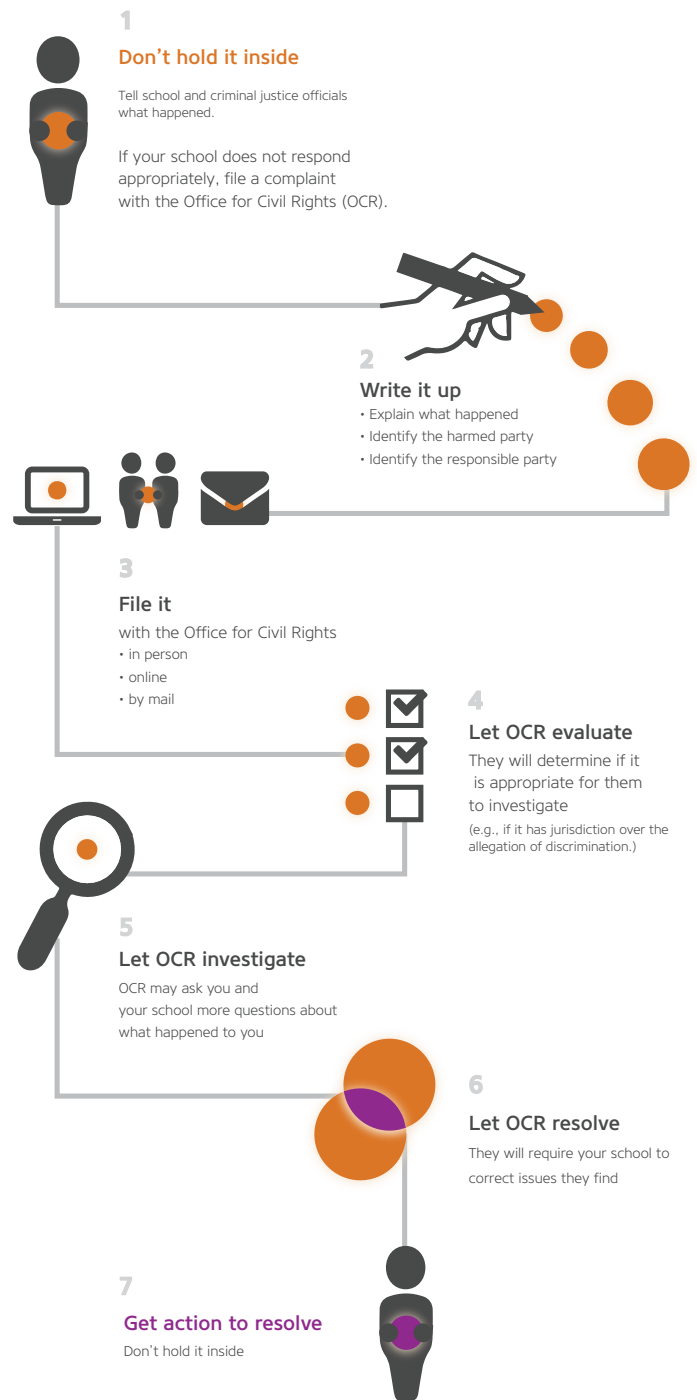
OCR amplifies its work through a number of inter- and intra-agency equity initiatives and public events, thereby extending the reach of its enforcement and policy activities.

OCR played a key role in driving forward public engagement, policies, and enforcement measures to curb sexual assault on college campuses in its contributions to the **White House Task Force to Protect Students from Sexual Assault**, which President Obama convened in January 2014. The first Task Force report to the President, issued in April 2014, included the creation of NotAlone.gov, a resource hub for students, parents, and stakeholders that includes prevention strategies, resources, OCR’s legal guidance on sexual harassment and violence, OCR resolution agreements related to sexual violence, and *easy-to-follow information on OCR and its complaint process* (see Figure 5). In FY 13–14, OCR resolved 90 cases related to sexual violence, including 25 resulting in a resolution agreement, and changed past practice to begin making transparent the schools OCR investigates related to sexual violence.

Since 2011, OCR has been an active partner in the **Supportive School Discipline Initiative (SSDI)**. SSDI brings a number of federal agencies together to promote positive school discipline approaches and alternatives to exclusionary discipline. In January 2014, OCR and the United States Department of Justice (DOJ) jointly released first-ever public policy guidance on school discipline together with a larger school discipline guidance package that includes a best practices guide and a list of federal school discipline resources (see page 20 of this report).

In FY 2013, OCR proposed for public comment new Civil Rights Data Collection (CRDC) elements related to school violence that not only support the President’s **Now Is The Time** initiative in response to the tragedy at Sandy Hook Elementary School in Newtown, Connecticut, but also will help communities to better monitor public safety trends in their local schools. Starting with the 2013–14 CRDC collection, data related to school violence (including incidents involving use of weapons) will be included and publicly available at the school level for those districts that report these data (the data are optional for 2013–14, and required for 2015–16).

FIGURE 5: Life Cycle of an OCR Complaint (created for NotAlone.gov)*



*Adapted from design by Christina S. Kang, licensed under a Creative Commons Attribution-Non-Commercial 4.0 International License.

OCR's enforcement, policy development, and data collection work contributed to **My Brother's Keeper (MBK)**, a cross-agency initiative that the President announced in February 2014 to support more positive outcomes for all students, including men and boys of color. OCR's landmark resolutions in the area of school discipline (see page 21 of this report) cement a core MBK—and civil rights—principle that students of color should not be subject to discriminatory school discipline. The discipline guidance package referenced above provided communities across the nation with valuable information as they work to achieve discipline reform in their schools. OCR's resource equity guidance (see page 19 of this report) also furthered recommendations from the MBK initiative, calling for equitable access to educational resources for all students. OCR's **Civil Rights Data Collection (CRDC)** data (see page 14 of this report) on preschool suspensions and expulsions informed the initiative's early education recommendation calling for a ban on exclusionary discipline in preschool.

OCR also contributed data to the **Excellent Educators for All Initiative**, a 50-state strategy announced in July 2014 to enforce the statutory provision in Title I of the Elementary

and Secondary Education Act (ESEA) requiring states to take steps to ensure that students of color and low-income students are not taught by inexperienced, unqualified, or out-of-field teachers at higher rates than are other students. The Initiative created state profiles using various data points related to teacher equity, including several collected through the CRDC, to aid states in drafting state plans required under Title I of the ESEA.

On July 2, 2014, OCR commemorated the **50th Anniversary of the Civil Rights Act of 1964** by organizing a public event attended by political and civil rights leaders, youth, and the media. OCR Assistant Secretary Catherine E. Lhamon and Acting Assistant Secretary for Communications and Outreach Massie Ritsch joined with several of the original Freedom Riders, as well as young civil rights leaders, to ride school buses from Washington, DC, to Richmond, VA, where Virginia Governor Terry McAuliffe welcomed them at the State Capitol. Assistant Secretary Lhamon keynoted the event with remarks on our nation's progress in satisfying the civil rights promises of the Act, joined by U.S. Congressman Bobby Scott, State Senator Henry Marsh, and Freedom Rider Reginald Green.

THE CIVIL RIGHTS DATA COLLECTION: MEASURING THE EQUITY HEALTH OF PUBLIC SCHOOLS NATIONWIDE

The Civil Rights Data Collection (CRDC) is a biennial survey of the nation's public schools that OCR requires with the purpose of collecting data on leading civil rights indicators related to access and barriers to educational opportunity at the pre-K through 12th grade school levels. The CRDC is a longstanding and important aspect of OCR's overall strategy for administering and enforcing the civil rights statutes for which it is responsible. While OCR does not rely on CRDC data alone in determining whether schools have violated the law, since 1968, OCR has conducted the CRDC for use in its monitoring and enforcement efforts regarding equal educational opportunity. Information compiled through the CRDC includes student enrollment and educational programs and services data that are disaggregated by race/ethnicity, sex, limited English proficiency, and disability. The CRDC is also a tool for other Department offices and federal agencies, policymakers, researchers, educators, school officials, parents, students, and the public, so that they may analyze student equity and opportunity.

"The CRDC survey is an incredibly rich resource, a survey of every public school in the United States. I encourage you to dig into it aggressively to report local stories on educational equity, or the lack thereof."

—Secretary Arne Duncan,
May 2014

Enhancing Usability

Civil rights data provide the raw information that helps OCR, educators, administrators, policymakers, researchers, parents, students, and communities to ascertain the equity health of schools. In the past two fiscal years, OCR has worked to make the CRDC more accessible, usable, and understandable for the general public as well as for researchers and analysts. In March 2014, OCR posted the data from the 2011–12 CRDC—the first universal collection of data from all schools and districts in the country since the 2000 CRDC. The 2011–12 CRDC provides school-level,

in-depth, disaggregated data about important indicators of educational opportunity for about 49 million public school students in approximately 97,000 schools across 16,500 districts, which is more than double the number of districts in the 2009–10 collection.

In FY 2014, OCR worked to disseminate information about the CRDC to schools and the public in order to improve the quality of the data OCR receives and to promote its usage to ensure civil rights satisfaction in schools. This broader public dissemination had significant impact: OCR saw an increase of 61% in visitors per month in FY 2014 on its CRDC website, and an increase of 153% in page views from the previous year, with a total of 2.25 million page views of the CRDC in FY 2014. OCR also released a series of issue briefs to highlight major themes in the 2011–12 CRDC data in a manner accessible to the public.

Improving Quality

In FY 2013, OCR completed the first phase of a multi-year effort to improve the data tool used to collect information at the school level by working with the Department's National Center for Education Statistics (NCES) and the University of Chicago to determine how to increase the data quality and reduce burden on local educational agencies (LEAs) in complying with data collection requirements in future collections.

In FY 2013, OCR and NCES improved the clarity of the instructions for the CRDC and developed new technical assistance materials, targeting more than 2,000 districts (approximately 12% of districts) to support them as they prepared to collect and submit their 2013–14 data.

Building on the work to make the CRDC data widely accessible, OCR also began development of pre-submission analytic reports to assist districts in resolving possible reporting errors and to provide them with a visually intuitive depiction of their 2013–14 data before they submit it. In FY 13–14, OCR added new tip sheets, FAQs, and guidance documents to the CRDC website to assist LEAs in preparations for upcoming data submissions, with over 12,000 downloads of documents related to the 2013–14 collection—a fourfold increase from the previous data

collection. In addition, outreach to LEAs and improved technical assistance materials resulted in LEAs taking early steps to prepare for the 2015–16 CRDC, with over 19,000 downloads of technical assistance documents relevant to the 2015–16 CRDC.

Progress on School Discipline

CRDC data reveal that exclusionary discipline practices have had a disproportionately negative impact on students of color and students with disabilities and are causing a reduction in instructional time for disciplined students. The CRDC data provide useful information for educators to rethink their approaches to the issue, resulting in systemic changes that are increasingly taking root in various parts of the country.

During the period in which new CRDC data has been released (2012–2014), several states and districts—such as California, Maryland, Massachusetts, the District of Columbia, Fairfax County (VA), Beaverton (OR), Denver (CO), Philadelphia (PA), Chicago (IL), and Broward County (FL)—have begun to change policies and practices to focus more on alternative measures to suspension and expulsion.

CRDC Data at a Glance

The CRDC provides the building blocks for understanding school-by-school distinctions in the provision of equitable educational opportunities, including the degree to which students have equitable access to resources and opportunities or are subject to discipline, bullying, or harassment. In the 2011–2012 CRDC, two key factors allowed for strongly reliable depictions of statewide trends and interstate disparities: the inclusion of every public school and district in the nation, and a 99% compliance rate from the approximately 97,000 public schools reporting their data in the CRDC. This was the first time since 2000 that the entire universe of public schools and districts was surveyed. To highlight some of the issues that affect the everyday lives and the futures of students around the country, OCR developed reports that take the CRDC data and translate them into comprehensible graphs and charts. In March 2014, OCR issued four comprehensive Data Snapshot briefs addressing school discipline, early childhood education, college and career readiness, and teacher equity. Each snapshot document (also translated into Spanish) provides educators, administrators, policymakers, and researchers with data revealing nationwide trends in educational equity that provide *a useful starting point for states, districts, and schools to analyze their own data and trends.*

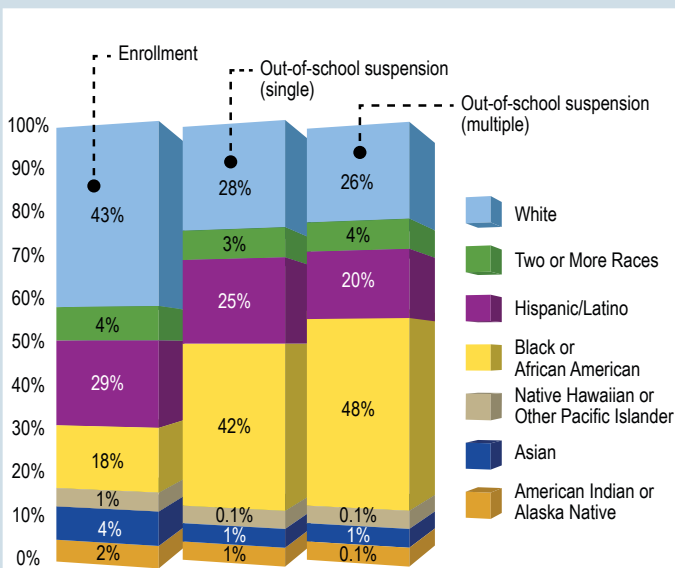


School Discipline

The 2011–12 CRDC reveals that students of certain racial or ethnic groups and students with disabilities are disciplined at far higher rates than are their peers, *beginning in preschool* (see Figure 6). The CRDC data also show that an increasing number of students are losing important instructional time due to exclusionary discipline, such as suspensions and expulsions.



FIGURE 6: Preschool Students Receiving Suspensions, by Race and Ethnicity

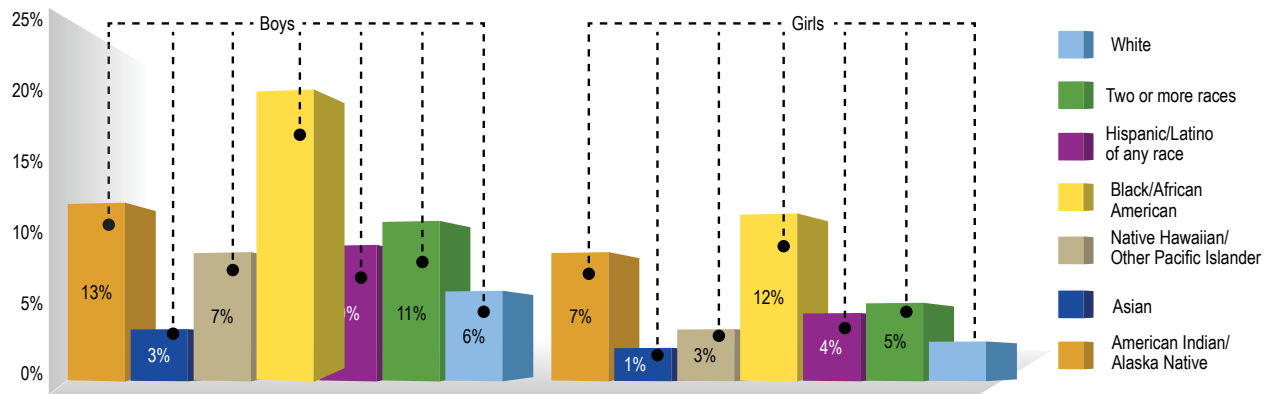


Note: Detail may not sum to 100% due to rounding. Figure reflects 99% of schools offering preschool, including over 1 million preschool students, nearly 5,000 students suspended once, and over 2,500 students suspended more than once. Preschool suspensions and expulsions were collected for the first time in 2011–12.

Source: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011–12.

- ▶ **In preschool, black children are being suspended at a disproportionately high rate.** Black children represent 18% of preschool enrollment, but 42% of preschool children suspended once.
- ▶ **Black students are suspended and expelled at a rate three times greater than that of white students.** On average, 5% of white students are suspended, compared to 16% of black students.
- ▶ **American Indian and Native Alaskan students are also disproportionately suspended and expelled,** representing less than 1% of the student population but 2% of out-of-school suspensions and 3% of expulsions.
- ▶ **Girls of color are generally suspended at higher rates than white girls.** *Black girls* are suspended at higher rates (12%) than girls of any other race or ethnicity and most boys; *American Indian and Native Alaskan girls* (7%) are suspended at higher rates than that of white boys (6%) or girls (2%) (see Figure 7).

FIGURE 7: Students Receiving Out-of-School Suspensions, by Race/Ethnicity and Gender



Note: Data reflects 99% of CRDC schools and a total of 290,000 American Indian/Alaska Native females, 300,000 American Indian/Alaska Native males, 1.1 million Asian males, 1.2 million Asian females, 120,000 Native Hawaiian/Other Pacific Islander males and females, 3.7 million black females, 3.8 million black males, 5.6 million Hispanic females, 5.9 million Hispanic males, 630,000 males of two or more races, 640,000 females of two or more races, 12 million white males, and 12 million white females.

Note: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12.

► **Students with disabilities (served by IDEA) are more than twice as likely to receive an out-of-school suspension (13%) as are students without disabilities (6%).**

- Twenty-nine percent (29%) of American Indian and Native Alaskan boys with disabilities (served by IDEA) receive an out-of-school suspension, compared to 12% of white boys with disabilities (served by IDEA).
- Twenty percent (20%) of American Indian and Native Alaskan girls with disabilities (served by IDEA) receive an out-of-school suspension, compared to 6% of white girls with disabilities (served by IDEA).

► **Although black students represent 16% of student enrollment, they represent 27% of students referred to law enforcement and 31% of students subject to a school-related arrest.** In comparison, white students represent 51% of student enrollment but 41% of students referred to law enforcement and 39% of students subject to a school-related arrest.

► **Students with disabilities (served by IDEA) represent a quarter of students arrested and referred to law enforcement,** even though they are only 12% of the overall student population.

Additionally, the CRDC reveals that students with disabilities are subject to physical and mechanical restraint and seclusion at rates that far exceed those of other students, and black students with disabilities are subject to mechanical restraint at even higher rates (compared to their enrollment) than other students with disabilities.³ Students with disabilities (served by IDEA) represent 12% of the student population, but 58% of students placed in seclusion or involuntary confinement and 75% of students physically restrained at school to immobilize them or reduce their

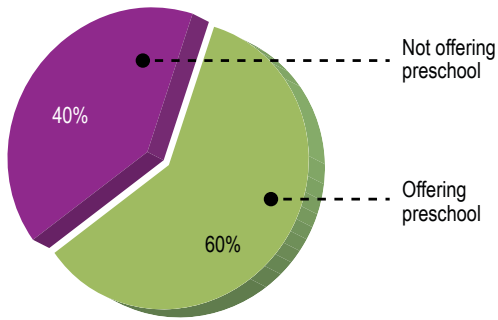
ability to move freely. Black students represent 19% of students with disabilities served by IDEA, but 36% of the students who are restrained at school through the use of a mechanical device or equipment designed to restrict their freedom of movement.

Early Childhood Education

A child’s early education, including preschool⁴ and elementary school, can set the foundation for his or her future success. The 2011–12 CRDC collected early childhood education-related data such as preschool access and discipline, as well as student retention, in elementary school. The data tell us:

- **Public preschool access is not yet a reality for much of the nation.** About 40% of districts do not offer preschool programs (see Figure 8).
- **Part-day preschool is offered more often than full-day.** 57% of districts that operate public preschool programs offer only part-day preschool.
- **Access to preschool is limited.** Just over half of the districts that operate public preschool programs explicitly make such programs available to all students within the district.
- **Kindergarten retention disparities:** Native Hawaiian, other Pacific Islander, American Indian, and Native Alaskan kindergarten students are held back a year at nearly twice the rate of white kindergarten students. Boys represent 61% of retained kindergarteners.
- **Preschool children being suspended:** Black children make up 18% of preschool enrollment, but 42% of preschool children receiving an out-of-school suspension. Boys receive more than three out of four out-of-school preschool suspensions.

FIGURE 8: Percent of School Districts Operating Public Preschool Programs



Note: Figure reflects public preschool programs operated by, or on behalf of, public school districts. The CRDC does not collect information related to the quality of public preschool programs. Figure represents 16,503 school districts.

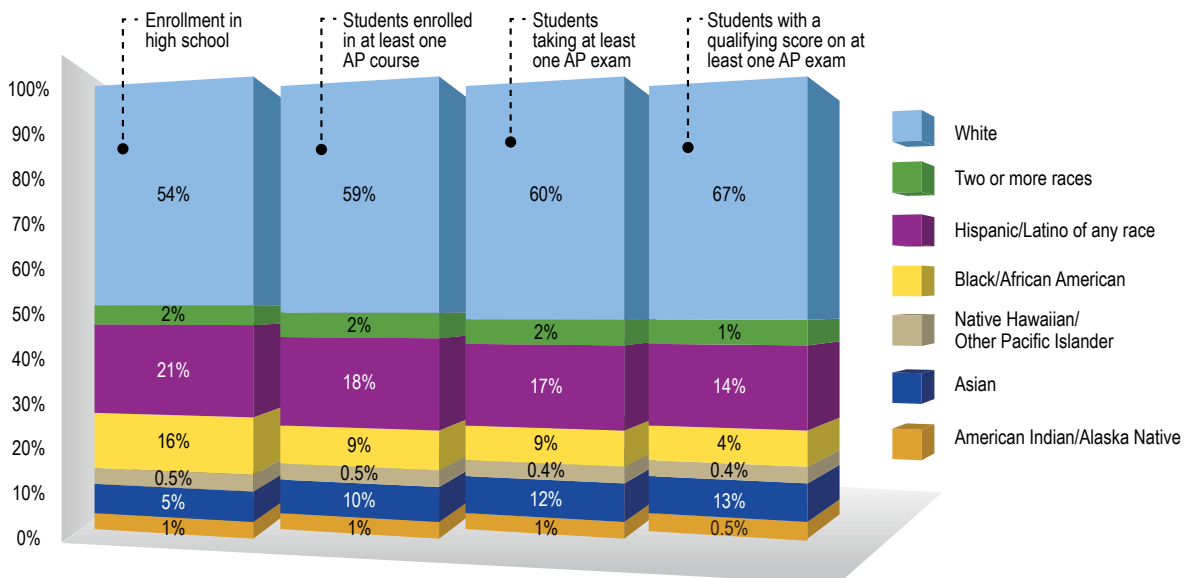
Source: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011–12.

College and Career Readiness

Access to high-level math and science courses is crucial to a student’s ability to prepare for college and the workforce. The CRDC tracks information on courses provided, access to gifted and talented programs, and student retention rates. *It also reveals strengths and deficits nationwide in student access to college and career preparatory coursework and opportunities, as well as disparities in which students are successful in advanced mathematics and science courses and Advanced Placement (AP) courses and tests (see Figure 9).*



FIGURE 9: Advanced Placement Enrollment, Exam Taking, and Receipt of a Qualifying Score, by Race and Ethnicity



Note: Detail may not sum to 100% due to rounding. Data in this chart represents 98.9% of high schools in the CRDC universe. Overall high school enrollment is 16 million students, enrolled in at least one AP course is 2.5 million students, taking at least one AP exam is 1.75 million students, and with a qualifying score on at least one AP exam is 980,000 students.

Note: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011–12.

The data depict limited access to college and career preparatory courses for students of color.

- ▶ **High-level math and science courses are widely unavailable.** Nationwide, only 50% of high schools offer calculus courses, and only 63% offer physics courses.
- ▶ **Access to other core courses is also limited.** Nationwide, between 10% and 25% of high schools do not offer more than one of the core courses in the typical sequence of high school math and science education—such as Algebra I and II, geometry, biology, and chemistry.
- ▶ **Black, Latino, American Indian, and Alaska Native students have even less access to high-level courses.** A quarter of high schools with the highest percentage of black and Latino students do not offer Algebra II; a third of these schools do not offer chemistry. Fewer than half of American Indian and Native Alaskan high school students have access to the full range of math and science courses in their high schools.
- ▶ **Overall, students of color are disproportionately under-enrolled in gifted and talented programs.** Black and Latino students represent 26% of the students enrolled in gifted and talented education programs, compared to black and Latino students’ 40% enrollment in schools offering gifted and talented programs. White and Asian-American students make up 70% of the students enrolled in gifted and talented education programs, compared to 55% enrollment in schools offering gifted and talented programs.

- ▶ **Disparities in Advanced Placement (AP) course enrollment and testing exist across all demographics.**
 - Black and Latino students make up 37% of students in high schools, 27% of students enrolled in at least one AP course, and *18% of students receiving a qualifying score of 3 or above on an AP exam (see Figure 9).*
 - English learners represent 5% of high school students, 2% of the students enrolled in at least one AP course, and 1% of the students receiving a qualifying score of 3 or above on an AP exam.
 - Students with disabilities served by IDEA represent 12% of high school students, 2% of students enrolled in an AP course, and 1% of the students receiving a qualifying score of 3 or above on an AP exam.
- ▶ **American Indian and Native Alaskan English learners have less access to English language instruction programs.** Eighty-one percent (81%) of American Indian and Native Alaskan English learners are enrolled in English language instruction programs, compared to 92% of their Latino and black peers.

Teacher Equity

Research indicates that students' race and family income often predict their access to excellent educators. *Low-income students and students of color are more likely than their wealthier and white peers to attend schools whose teachers are least experienced and have fewer credentials.* Nationally, according to the CRDC, black students are four times as likely as white students to be enrolled in a school with more than 20% first-year teachers, and Latino students are more than twice as likely.

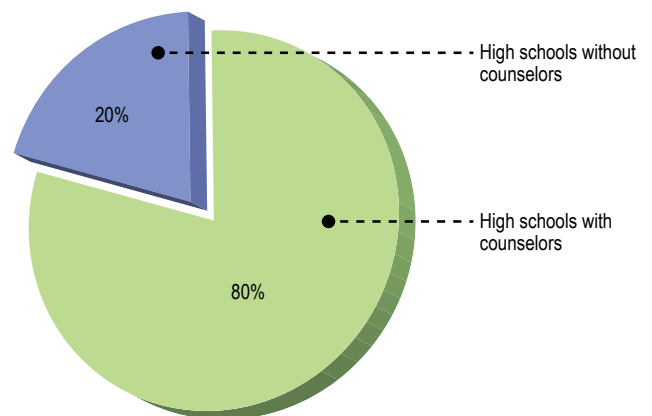
The CRDC: Informing Teacher Equity Nationwide

In July 2014, the U.S. Department of Education released the details of its Excellent Educators for All Initiative to ensure that economically disadvantaged students and students of color have the same access to high-quality teachers that their more economically advantaged peers and white peers have. One component of the Department's strategy is the use of CRDC data to inform states' analysis of teacher distribution across schools.

Highlights of the data on teacher equity include:

- ▶ **Access to experienced teachers:** Black, Latino, and American Indian and Native Alaskan students attend schools with higher concentrations of first-year teachers at a higher rate (3% to 4%) than white students (1%). English learners also attend these schools at slightly higher rates (3%) than non-English learners (2%).
- ▶ **Teacher salary disparities:** Nearly one in four districts with two or more high schools report a teacher salary gap of more than \$5,000 or more between high schools with the highest and high schools with the lowest black and Latino student enrollments.
- ▶ **Access to certified teachers:** Although most teachers are certified, nearly half a million students nationwide attend schools where 60% or fewer teachers meet all state certification and licensure requirements. Nearly 7% of the nation's black students—totaling over half a million students—attend schools where 80% or fewer teachers meet state certification and licensure requirements.
- ▶ **Access to school counselors:** Nationwide, one in five high schools lacks a school counselor (see Figure 10).

FIGURE 10: Percent of High Schools with Access to Counselors



Note: Represents data from 99.97% of responding CRDC high schools offering grades 10 or 11 (25,055 high schools).

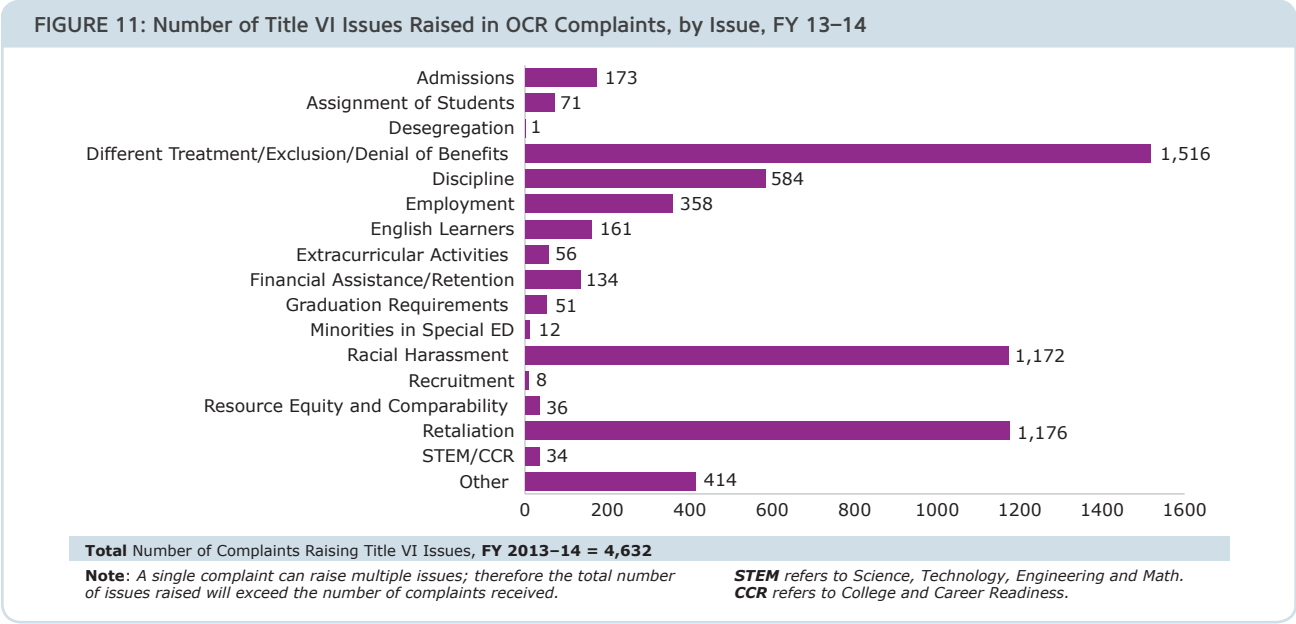
Source: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011–12

TITLE VI: DISCRIMINATION BASED ON RACE, COLOR, OR NATIONAL ORIGIN

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in programs and activities operated by recipients of federal funds. It states: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” In the education arena, Title VI’s protections apply to all public elementary and secondary schools and colleges and universities—public or private—that receive federal financial assistance. Its protections extend to all aspects of these institutions’ programs and activities. When enforcing Title VI, OCR works to ensure equal access to education services and benefits and to prevent acts of retaliation against those who report Title VI violations.

Policy Guidance: During FY 13–14, OCR issued five guidance documents or packages that address Title VI: (1) how states, schools, and districts can develop practices and strategies to administer student discipline without discriminating on the basis of race, color, or national origin; (2) the ability of colleges and universities to use race and ethnicity to achieve diversity in education after the *Fisher v. University of Texas at Austin*⁵ decision; (3) the effect of the decision in *Schuette v. Coalition to Defend Affirmative Action*,⁶ leaving the ability articulated in *Fisher* intact; (4) acceptable admissions practices for elementary and secondary educational institutions to prevent discrimination on the basis of race, color, or national origin in accordance with *Plyler v. Doe*;⁷ and (5) the requirement that students have equal access to educational resources without regard to race, color, or national origin.

Enforcement: In the last two fiscal years, OCR received over 4,600 Title VI-related complaints and launched 32 systemic, proactive investigations that, collectively, [address a broad range of Title VI-related issues in institutions across the nation](#)⁸ (see Figure 11). As described more fully below, OCR has worked on Title VI allegations such as the denial of access to college- and career-preparatory educational opportunities; discriminatory discipline; barriers to education for English learners, immigrants, and noncitizens; racially biased admissions practices; and bullying and harassment.



Technical Assistance: Educators as well as parents and students must have the knowledge and skills to identify, prevent, and address discrimination, or get help when it does occur. Every year, OCR provides technical assistance to schools and communities around the country on both longstanding and emerging civil rights issues. In FY 13–14, OCR engaged in 216 technical assistance events on Title VI-related issues. These events included presentations on the implications of *Fisher* on admissions practices of various schools and districts, overviews of OCR’s discipline guidance package, and technical assistance on issues faced by English learners.

Ensuring Access to Equal Educational Opportunity

OCR works to ensure that schools and districts satisfy their Title VI obligation to give students of every race, color, and national origin an equal opportunity to pursue college and careers *by providing access to high-rigor academic courses and programs* (see Figure 12).

Policy

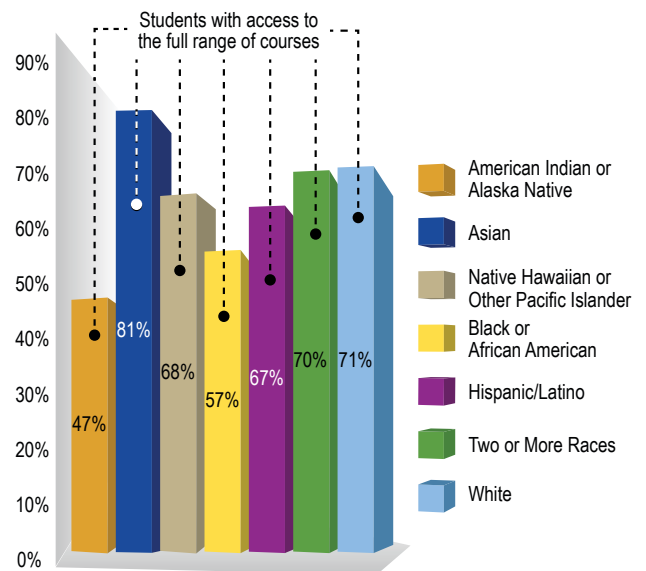
On October 1, 2014, OCR released a *Dear Colleague* letter and fact sheet on the responsibility of schools to provide students with equal access to educational resources without regard to race, color, or national origin. The guidance provides superintendents and other district officials with information regarding the requirements on educational resources, how OCR investigates resource disparities, and what states, districts, and schools can do to meet their obligations to all students. Under Title VI, states, districts, and schools must not intentionally treat students differently based on race, color, or national origin in providing educational resources. In addition, they must not implement policies or practices for providing educational resources that disproportionately affect students of a particular race, color, or national origin without legally sufficient justification.

Enforcement

OCR's efforts under Title VI to ensure equal access to educational opportunities led to resolutions of 67 complaints in FY 13–14 involving student access to resources, curricula, and opportunities that foster college and career readiness. More than 20% of OCR's compliance reviews launched in FY 13–14 were in this area. Illustrative cases include:

- ▶ **Cleveland Metropolitan School District (OH):** In January 2014, OCR concluded an investigation that found seats going unfilled in science, technology, engineering, and math-focused (STEM) schools in this district that offer extraordinary opportunities such as allowing high school students to learn from experts with NASA and the Massachusetts Institute of Technology, job shadow at General Electric, and take courses in industrial design. Yet, the district was not advertising the course availability in Spanish, the home language of 80% of the district's English learner students. OCR reached an agreement with the district committing the district to ensure that English learner students and their families have equal access to the high-rigor course offerings the district makes available.
- ▶ **Elk Grove Unified School District (CA):** OCR's investigation found that the district's policies and procedures for identifying gifted and talented (GATE)

FIGURE 12: Students with Access to the Full Range of Math and Science Courses, by Race and Ethnicity



Note: Figure reflects data for 99% of CRDC high schools, including approximately 200,000 American Indian/Alaska Native students, 743,000 Asian students, 75,000 Native Hawaiian/Other Pacific Islander students, 2.5 million black students, 3.3 million Latino students, 340,000 students of two or more races, and 8.5 million white students.

SOURCE: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011–12.

students and enrolling students in honors and Advanced Placement (AP) courses resulted in an unlawful adverse impact on black students. As a result, in July 2014, OCR resolved this case after the district agreed to establish and implement modified eligibility and selection criteria for the district's GATE program and to provide OCR with an analysis of the changes with data to be disaggregated by school, grade level, and race. Changes to program administration affect more than 62,000 students district-wide, including the district's change of prerequisites for 42 courses in the program's first year of implementation.

- ▶ **Lee County Public Schools (AL):** OCR's investigation of this rural district revealed that, although the district's student population was 22.5% black, one of its four high schools served more than 90% black students—and that high school had never, until 2008, offered a single AP course. When the high school did begin offering one AP course, it did so with minimal instructional support, offering the course online only. In contrast, the district's other three high schools, which were heavily populated with white students, offered a wide range of AP and other high-rigor courses. In September 2013, OCR negotiated a resolution agreement requiring the district to offer comparable high-rigor courses to all high school students regardless of their race or national origin, to ensure an equitable pathway for all students beginning in elementary school to prepare them to take such courses in high

“Today, the Office [for] Civil Rights sent a strong message that equity matters ... The Dear Colleague letter is a reminder that federal law requires more than good intentions to ensure the equitable provision of educational resources for students of color.”

—Education Trust, about OCR’s resource equity guidance, October 2014

school, to permit students to transfer to schools with more course options or utilize distance learning opportunities, and to conduct a self-evaluation to determine the effectiveness of these measures.

- **Manchester School District (NH):** OCR investigated the district to determine whether the district discriminated against black and Latino students by denying them access to advanced courses. In a resolution agreement signed in April 2014, the district, which serves over 15,000 students, agreed to identify barriers to increased enrollment of black, Latino, and English learner students in the district’s higher level learning opportunities and identify strategies to increase their participation, as well as monitor the effectiveness of any implemented strategies.

Combating Discriminatory Discipline

In many educational institutions, students of color are disciplined more harshly and more frequently than other students, resulting in serious, negative educational consequences, particularly when such students are excluded from school. Although discipline decisions are inherently context-specific decisions about classroom management and school culture, a district’s discipline policies, procedures, and practices must comply with the requirements of Title VI.

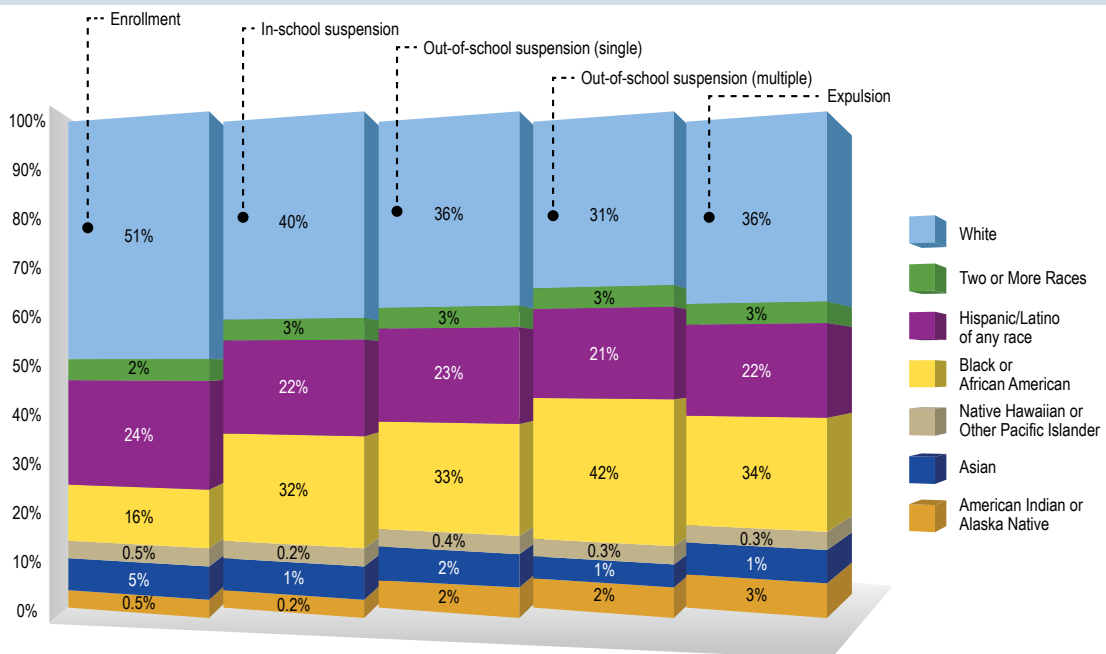
Findings from the most recent Civil Rights Data Collection (CRDC), which describe the 2011–12 school year, *reveal stark discipline disparities* (see Figure 13). OCR has continued its vigorous enforcement activities to ensure that students are not disciplined more frequently or more severely because of their race, color, or national origin.

Policy

On January 8, 2014, Secretary of Education Arne Duncan and Attorney General Eric Holder announced the release of a first-of-its-kind school discipline guidance package to assist states, districts, and schools in developing practices and strategies to enhance school climate and ensure that school policies and practices respect students’ civil rights. The package included



FIGURE 13: Students Receiving Suspensions and Expulsions, by Race/Ethnicity



Note: Detail may not sum to 100% due to rounding. Totals: Enrollment is 49 million students, in-school suspension is 3.5 million students, single out-of-school suspension is 1.9 million students, multiple out-of-school suspension is 1.55 million students, and expulsion is 130,000 students. Data reported in this figure represents 99% of responding schools.

Source: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12.

a *Dear Colleague* letter from the Departments explaining how schools can meet their obligations under federal law to administer school discipline without discriminating on the basis of race, color, or national origin.

“This Administration is moving aggressively to disrupt the school-to-prison pipeline in order to ensure that all of our young people have equal educational opportunities.”

—Attorney General Eric Holder,
March 2014

Enforcement

In FY 13–14, OCR launched nine proactive investigations related to racial disparities in discipline. Additionally, in FY 13–14, OCR received more than 580 complaints brought by parents, students, or other individuals concerned about possible civil rights violations involving School Discipline systems. Illustrative resolutions in this area include:

- ▶ **Christian County Public Schools (KY):** OCR’s investigation found that black students were disproportionately overrepresented in referrals for disciplinary action, including in-school suspensions, out-of-school suspensions, and referrals to school resource officers. OCR’s investigation also revealed that the majority of the violations listed in the district’s disciplinary code were undefined, which gave administrators broad discretion in assigning sanctions and failed to give students and parents adequate notice of the consequences for particular violations. In January 2014, the district reached a resolution agreement with OCR that included broad-based remedies and commitments to improve the district’s disciplinary system so that all students throughout the district receive equitable treatment. Among other remedies, the district agreed to ensure to the maximum extent possible that misbehavior is addressed in a manner that does not require removal from school, to collaborate with experts on research-based strategies designed to prevent discrimination in the implementation of school discipline, to review and revise disciplinary policies and practices accordingly, to review school resource officer interventions and practices annually, and to establish a discipline review team to randomly review a percentage of disciplinary actions at each school on an ongoing basis to ensure these to be non-discriminatory.
- ▶ **Christina School District (DE):** OCR’s investigation of Christina School District uncovered black students being

disciplined more harshly than white students for similar behaviors. For example, where a black kindergartener received a five-day out-of-school suspension for pulling a fire alarm, a ninth grade white student received a one-day out-of-school suspension for a similar offense. When a black student with no prior disciplinary history and a white student who had been disciplined for smoking twice before (both 11th graders) were caught with tobacco, the black student received a one-day out-of-school suspension; the white student received detention only. The district entered into a resolution agreement with OCR in December 2012, committing the district to reform its disciplinary practices to prevent such discrimination for its more than 17,000 students and to correct the records of students who were treated differently and unlawfully on the basis of race, color, or national origin. Under the agreement’s terms, the district will develop and implement strategies for teaching, encouraging, and reinforcing positive student behavior and analyze its discipline data and revise its disciplinary policies to ensure equity in discipline administration.

- ▶ **Tupelo Public School District (MS):** OCR’s investigation, which focused on three schools in the district with the largest number of discipline sanctions, revealed that, in school years 2010–11 and 2011–12, black students at the three schools in the district constituted 81% and 78% of discipline referrals respectively while making up 48% and then 49% of enrollment. Additionally, the district’s discipline codes permitted the exercise of discretion, as terms such as “improper behavior at school” and “other misbehavior as determined by the administration” were not defined in the codes. Without clear definitions or explanations of these offenses, students and their parents and guardians did not have adequate notice of the specific behavior(s) that may result in the imposition of discipline. Per a resolution agreement reached in September 2014, the district committed to ensure fair disciplinary practices for students in the district by requiring all school staff to employ a range of corrective measures before referring students to disciplinary authorities and/or law enforcement, except in documented circumstances showing threats to safety or disruption to educational environment; by reviewing and revising its student discipline policies, practices, and procedures to remove ambiguities that could lead to the discriminatory administration of discipline; by establishing a discipline review team to randomly evaluate a certain percentage of discipline actions to ensure that they were conducted in a non-discriminatory manner; and by annually assessing the impact of these changes and making necessary modifications to ensure that instituted reforms work as intended.

"[F]ederal civil rights investigations ... routinely turn up evidence of school districts invoking harsher punishments against minority students than their non-minority classmates, even when the behaviors being punished are identical."

—*The New York Times*, about OCR's school discipline investigations, March 2014

Ensuring Equal Opportunities for English Learners

Students whose first language is not English (English learners or EL students) may require language supports in order to meaningfully participate in school. Title VI requires that state education agencies (SEAs) and districts take affirmative steps to address language barriers so that EL students may participate meaningfully in their schools' educational programs. A district must effectively implement a sound educational approach in its programs for EL students. Title VI also requires schools to adequately communicate with limited English proficient (LEP) parents about important school-related information in languages they can understand. OCR has sought to ensure that limited English proficiency is not an obstacle for students or their LEP parents to access educational opportunities.

Enforcement

In FY 13–14, OCR received 161 complaints alleging discrimination against English learner (EL) students and launched seven proactive and systemic investigations relating to EL programs and services. Illustrative cases include:

- ▶ **BASIS DC Public Charter School (DC):** In November 2013, OCR resolved a case in which it found that there were multiple students at BASIS who did not speak English at home, yet who were never assessed to determine whether they were EL students. OCR also found that the school failed to allocate adequate staff and resources to its EL program. Some teachers were unaware of their obligations to serve EL students, and some teachers believed that the Reading Lab teacher was providing EL services, even though she was not. Pursuant to its resolution agreement with OCR, BASIS committed to

conduct English proficiency examinations for all students who speak languages other than English at home, provide EL training to all school staff responsible for working with EL students, and conduct individualized assessments of all EL students currently attending the school.



Multi-Jurisdictional Policy Guidance: Protecting Charter School Students

To inform thousands of new public charter schools that opened their doors over the past 14 years, as well as existing charter school, of their legal obligations, OCR released new guidance in May 2014 confirming that the same federal civil rights laws that apply to other public schools apply equally to public charter schools. The guidance highlights critical subjects that have arisen in charter schools, including their obligations to avoid discrimination in admissions practices and the administration of discipline, to provide a free appropriate public education for students with disabilities, and to take affirmative steps to assist English learners. This guidance applies to public charter schools across all of OCR's enforcement areas.

- ▶ **Hazleton Area School District (PA):** In April 2014, after OCR initiated an investigation to assess whether EL students in the Hazleton Area School District had access to equal educational opportunities and whether the district adequately notified LEP national origin minority parents and guardians about school activities that are called to the attention of other parents, OCR resolved a case with the district. OCR found that the district did not consistently identify students whose home language is other than English, did not sufficiently provide required instructional time for elementary school EL students, and did not have an effective system to identify LEP parents and to ensure that interpreters were available when needed. Per the agreement, the district is ensuring that students whose primary home language is not English are promptly assessed for English language proficiency; additionally, the district is developing and implementing policies and procedures to ensure that LEP parents are notified, in a language they understand, of school activities that are called to the attention of other parents.

- ▶ **Orleans Parish School Board (LA):** In July 2014, OCR successfully resolved an investigation of the school board regarding allegations of discrimination against Vietnamese- and Spanish-speaking LEP families in three district charter schools. The voluntary resolution agreement obligates the district to implement a comprehensive language assistance plan and to provide annual staff training regarding Title VI obligations to notify LEP parents of school programs and activities that are called to the attention of other parents.
- ▶ **Tigard-Tualatin School District 23J (OR):** In February 2014, in response to OCR's compliance review regarding whether EL students are denied equal educational opportunities in the district's programs and services, the district expressed interest in voluntarily resolving this case. The district committed to, among other remedies, implement a policy to ensure that all EL students participate in the EL program until they meet the district EL plan's criteria to exit the program. In addition, to ensure that LEP parents can make informed decisions regarding their children's education, the district agreed to implement a process by which district staff may obtain, in a timely manner, language assistance services for communication with parents.

Protecting the Equal Rights of All Students to Attend Public School Regardless of Immigration or Citizenship Status

The U.S. Supreme Court has affirmed that citizenship or immigration status of students, parents, or guardians cannot be used to bar students from public schools (*Plyler v. Doe*, 1982). OCR works to ensure that schools' enrollment policies and practices are consistent with Title VI's prohibition against discrimination based on race, color, or national origin.

Policy

On May 8, 2014, OCR released an updated version of its *Dear Colleague* letter concerning the responsibility of districts to provide all children with equal access to public education at the elementary and secondary level, pursuant to Title VI. The guidance explained that in *Plyler*, the U.S. Supreme Court held that denying "innocent children" access to a public education "imposes a lifetime of hardship

on a discrete class of children not accountable for their disabling status."⁹ The guidance clarifies that districts may not require information from students or their parents—such as birth certificates and Social Security numbers—that have the purpose or result of denying the students access to public schools on the basis of their or their parents' immigration or citizenship status.

Enforcement

Remedies OCR has secured in resolution agreements reached with educational institutions regarding immigration-related discrimination include revising policies to clarify that state-issued identity documents are not required for parents to enroll their children in school, disseminating these policies to parents and the community, and providing annual training to staff on new policies. Illustrative cases include:

- ▶ **Jefferson Parish Public School System (LA):** In July 2014, OCR and the U.S. Department of Justice (DOJ) reached a comprehensive agreement with Jefferson Parish Public School System (JPPSS) to ensure that all students can enroll in school regardless of their own national origin or immigration status or that of their parents or guardians. Among other remedies, the school system, which serves over 45,000 students, agreed to conduct an internal review of all enrollment and registration materials and policies before the beginning of the 2014–15 school year to ensure they do not chill or discourage the participation, or lead to the exclusion, of students based on their or their parents' actual or perceived citizenship and/or immigration status.
- ▶ **Kentwood Public Schools (MI):** In July 2013, OCR resolved an investigation of Kentwood Public Schools when the district revised its policy to clarify that forms of photo identification other than a driver's license or state ID, such as a passport or an employment ID, can be used to establish identification and residency for purposes of enrollment in the district's schools. The new policy also provided for an appeal to the Assistant Superintendent of Student Services for anyone being denied enrollment because of his or her inability to render proof of residency. OCR's investigation had confirmed that the district formerly had a policy requiring parents or guardians to provide a state-issued, unexpired driver's license or state ID to enroll their children in school. To ensure compliance with the law, the district also arranged to train relevant staff about these policy changes and to issue notices to the community to inform parents and guardians about these reforms.

Preventing Discriminatory Assignment to Special Education Services

Under Title VI, OCR works to ensure equal access to education services and benefits and to prevent racially discriminatory assignment to special education.

Enforcement

In FY 13–14, OCR resolved 13 complaints involving discriminatory placement of students in special education. Illustrative cases in this area include:

- ▶ **Schenectady City School District (NY):** In October 2013, OCR resolved an investigation of Schenectady City School District that had been initiated to examine whether the district discriminated against black and Latino students on the basis of race, national origin, or disability in the pre-referral and referral of these students for special education evaluation. Over the course of the investigation, OCR identified more than two dozen teachers in the district with racially diverse classrooms who referred only non-white students for evaluation by the special education evaluation teams, notwithstanding progress reports and/or discipline records that reflected similar or even greater concerns regarding their white students. The district entered into a resolution agreement in which it committed to review specific special education records for current students to assess whether eligibility and placement decisions were appropriate, annually train all teaching staff about issues relating to overrepresentation of black and Latino students in special education and appropriate student interventions to facilitate effective placement, and ensure that building-level teams and special education personnel evaluate EL students in their dominant language.
- ▶ **Sun Prairie Area School District (WI):** In November 2013, OCR entered into a resolution agreement with Sun Prairie Area School District after conducting an investigation concerning the overrepresentation of black students in special education. OCR found that although black students were 10% of all students in the district, in the 2012–13 school year they were 24.2% of all students in special education. Additionally, OCR’s review of the special education files revealed documentation that did not support the eligibility determinations for some students, including white students determined not eligible for special education despite documentation suggesting that the students met the criteria for special education, and black students found eligible for special education, despite an absence of documentation establishing that the students met the applicable criteria. The resolution agreement

requires the district to provide training to all teaching staff to increase awareness about the overrepresentation of black students in special education. The district also agreed to maintain and use data gathered during the implementation of the agreement to annually evaluate the effectiveness of its screening, intervention, and evaluation processes.

Combating Bullying and Harassment on the Basis of Race, Color, and National Origin

Bullying and harassment are harmful to students and the learning environment and are too pervasive in our nation’s schools. OCR works to protect the right of all students to learn in environments free from discriminatory bullying and harassment.

Enforcement

In FY 13–14, OCR received 1,172 complaints on this issue. Illustrative cases include:

- ▶ **Adams County 14 School District (CO):** While investigating a complaint, OCR found a climate of hostility against Latino students and staff and found that the district failed to communicate with LEP parents in a language they could understand. In one incident uncovered during OCR’s investigation, district staff reported to OCR that a limited English proficient (LEP) elementary school student went to an English-speaking teacher on the playground to tell the teacher that he fell and hurt his head. The teacher on the playground did not speak Spanish and dismissed the student’s complaint when he did not explain his injury in English. Over an hour later, when the student returned to a Spanish-speaking teacher’s classroom, he told the teacher that his head was hurt, in Spanish, and the teacher sought medical attention. OCR also substantiated allegations that Latino staff were scrutinized far more harshly than non-Latino staff, leading to multiple resignations among Latino personnel. To foster systemic change to confront the issues underlying these and other incidents, OCR entered into a comprehensive resolution agreement with the district in April 2014. In the agreement, the district agreed to publish a letter in both English and Spanish to the staff and community, explaining the allegations and findings in the complaint and identifying the steps the district would take to come into compliance with federal civil rights laws, and to conduct climate surveys related to race, color, and national origin harassment.

- ▶ **Indiana State University (IN):** In November 2012, OCR resolved a complaint against Indiana State University after a student alleged that the university was aware of and failed to respond to discrimination on the basis of national origin and sex when a professor subjected her to inappropriate sexual comments. According to the complainant, the professor’s behavior included unwelcome invitations for her to sleep at his house and unwanted touching on two separate occasions. Under the terms of the resolution agreement, the university agreed to issue a public statement emphasizing that the university does not tolerate harassment on the basis of race, national origin, and sex and to revise its policies and procedures around race- and sex-based harassment.
- ▶ **Napa Valley College (CA):** In December 2012, OCR resolved substantiated claims that a clinical supervisor discriminated against a non-native-English-speaking nursing student, contributing to the creation of a hostile environment for the complainant based on national origin by making disparaging remarks about the student’s accent in front of the class and intimidating the student. OCR also found that the college failed to respond in a timely way when the student brought these issues to its attention. To comply with Title VI, the college entered into a resolution agreement with OCR, committing to conduct a climate survey; to provide annual notice to students and employees of its procedures for responding to alleged harassment; and to send out a statement to all students, faculty, and staff in the Associate Degree in Nursing program declaring that the college does not tolerate harassment based on race, color, or national origin, including status as a non-native English speaker.
- ▶ **Chase County Unified School District (KS):** In May 2014, OCR resolved a complaint alleging discrimination on the basis of race and disability. To address issues raised in this complaint, the district entered into a resolution agreement with OCR in which it committed to evaluate whether the student was owed any compensatory services for the class time he missed when he was suspended, identify an individual to serve as the complainant’s son’s primary contact in the event he needs to report harassing conduct, and train staff on race and disability discrimination and harassment.

Supporting Schools, Districts, and Colleges that Voluntarily Pursue Racial Diversity

In June 2013, the U.S. Supreme Court followed its prior holdings that obtaining the educational benefits of student diversity is a compelling state interest that can justify the use of race in university admissions. Diverse learning environments help students sharpen their critical thinking and analytical skills, prepare students to succeed in an increasingly diverse and interconnected world, break down stereotypes and reduce bias, and enable schools to fulfill their role in opening doors for students of all backgrounds.

In determining whether institutions of higher education that use race as a factor in their admissions practices are in compliance with Title VI, OCR examines institutions’ actions under criteria established by the U.S. Supreme Court, including four narrow-tailoring criteria necessary for the lawful use of race in higher education admissions programs: Colleges and universities must use an individualized review process for their applicants, colleges and universities must have considered race-neutral alternatives to their admissions policies, a college or university’s admissions program must not place an undue burden on any racial group, and a college or university must subject its procedures to periodic review to determine whether the use of race is still necessary to achieve a diverse student body.

Policy

The policy guidance OCR jointly released with the U.S. Department of Justice (DOJ) in 2011 regarding ways for K-12 and postsecondary institutions to pursue diversity, and for K-12 schools to also reduce racial isolation, remains in effect. Additionally, OCR released two *Dear Colleague* letters in FY 13–14 explaining the continued viability of the 2011 guidance following recent U.S. Supreme Court decisions that explored the question of race in the context of education or the political process.

On September 27, 2013, OCR and DOJ released a *Dear Colleague* letter clarifying a college or university’s ability to voluntarily pursue racial diversity in light of the June 2013 U.S. Supreme Court decision in *Fisher v. University of Texas at Austin*. The letter explains that the decision preserved the legal principle that colleges have a compelling interest in achieving the educational benefits that flow from a racially and ethnically diverse student body and can lawfully pursue that interest in their admissions programs, and that OCR guidance released in 2011 on the voluntary use of race to achieve diversity in postsecondary education remains

in effect. OCR and DOJ also released an accompanying *Questions and Answers* document explaining that *Fisher* did not invalidate the use of race as a factor in higher education admissions, change the standard of scrutiny that courts must apply when evaluating admissions programs, or alter what colleges and universities must do to tailor their admissions programs narrowly to remain in accordance with the U.S. Constitution.

On May 6, 2014, OCR and DOJ released an additional *Dear Colleague* letter explaining that the U.S. Supreme Court's holding in *Schuetz v. Coalition to Defend Affirmative Action, et al.* leaves intact the Court's prior holdings recognizing that institutions of higher education and elementary and secondary schools may use all legally permissible methods to achieve their diversity goals. The letter also stated that the 2011 and 2013 guidance documents, regarding the voluntary use of race to achieve diversity in postsecondary education and the legal effect of *Fisher*, respectively, remain in effect.

Enforcement

OCR investigates and resolves a broad range of cases involving challenges to the use of race or national origin to help achieve diversity at the K-12 and postsecondary levels and in combating racial isolation at the K-12 level. Illustrative cases include:

- ▶ **University of Virginia (VA):** In March 2013, OCR's investigation found the University of Virginia (UVA) to employ an individualized, holistic admissions review process in which multiple readers consider a prospective student's academic qualifications, personal characteristics, and race and national origin, among other factors. OCR investigated a complaint that alleged the university discriminated against white and male applicants by considering race and gender as factors in admissions to achieve diversity. OCR found that UVA reviewed applicants as individuals and did not use formulas or numerical targets. OCR's investigation of specific application decisions corroborated UVA's descriptions of the process. OCR's investigation also concluded that the university's admissions process did not unduly burden applicants of any racial group; applicants of different races are not judged by different criteria in the application review process. Applicants of different races are not judged by different criteria in the application review process. OCR reviewed the race-neutral alternatives the university

considered and confirmed that the university will continue to consider race-neutral alternatives through periodic reviews of its admissions process.

- ▶ **University of North Carolina at Chapel Hill (NC):** In November 2012, OCR closed its investigation of a complaint alleging that the university's consideration of race and national origin as factors to achieve diversity in its undergraduate classes violates Title VI. OCR found that the university employed a holistic and individualized approach in weighing 40 selection criteria falling into eight categories including "academic performance," "academic program," "standardized testing," "extracurricular activity," "special talent," "essay," "background," and "personal." Extensive interviews of administration and staff, along with review of numerous admissions applications and accompanying notes, confirmed the absence of numerical quotas or formulas in making admissions decisions and showed that the various factors were weighed differently, based on the totality of qualifications of each applicant. OCR's investigation also concluded that the university's admissions process did not unduly burden applicants of any racial group. In addition, the university was able to prove that race-neutral models were not as effective in promoting diversity and that such diversity indeed benefited students of every race. Finally, the university provided evidence of its periodic review of its need to consider race in admissions.

Eliminating Retaliation for Exercising Civil Rights

Retaliation is prohibited under each of the civil rights laws that OCR enforces, including Title VI. Retaliatory acts against any individual who exercises his or her rights under Title VI are considered to be discrimination and are unlawful. Recipients of federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by the statutes that OCR enforces.

Policy

In April 2013, OCR issued a *Dear Colleague* letter that clarified the basic principles of retaliation law and described OCR's methods of enforcement for claims of retaliation. Once an individual complains formally or informally to a school about a potential Title VI or other civil rights violation or participates in an OCR investigation or proceeding, the school is prohibited from retaliating because of the individual's complaint or participation.



Multi-Jurisdictional Policy Guidance: Protecting Students from Retaliation

In April 2013, OCR released its first-ever policy guidance on retaliation to clarify the basic principles of retaliation law and to describe OCR's methods of enforcement. The *Dear Colleague* letter explains that each of the federal civil rights laws that OCR enforces makes it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. The ability of individuals to oppose discriminatory practices and to participate in OCR investigations and other proceedings is critical to ensuring equal educational opportunity in accordance with federal civil rights laws. Discriminatory practices are often only raised and remedied when students, parents, teachers, coaches, and others can report such practices to school administrators without the fear of retaliation. Individuals should be commended when they raise concerns about compliance with the federal civil rights laws, not punished for doing so.

The guidance explains the steps that OCR takes if investigators find that a district, college, or university retaliated against a complainant or anyone who made a complaint, testified, or participated in any manner in an OCR investigation or proceeding. OCR seeks a resolution agreement with the institution to ensure that the individual who was retaliated against receives redress and to ensure that the institution complies with the prohibition against retaliation in the future. OCR will determine which remedies are appropriate based on the facts presented in each specific case.

Enforcement

OCR received 1,176 complaints of Title VI-related retaliation in FY 13–14. Although resolutions are based on the individual circumstances and facts of each case, common remedies include implementing policies and procedures regarding how the district must respond to complaints of race discrimination, including the district's internal grievance procedures; providing faculty, staff, and administrators training on prohibitions of retaliation; and amending the educational records of the affected student as appropriate. Below is a case that illustrates some of OCR's work in this area:

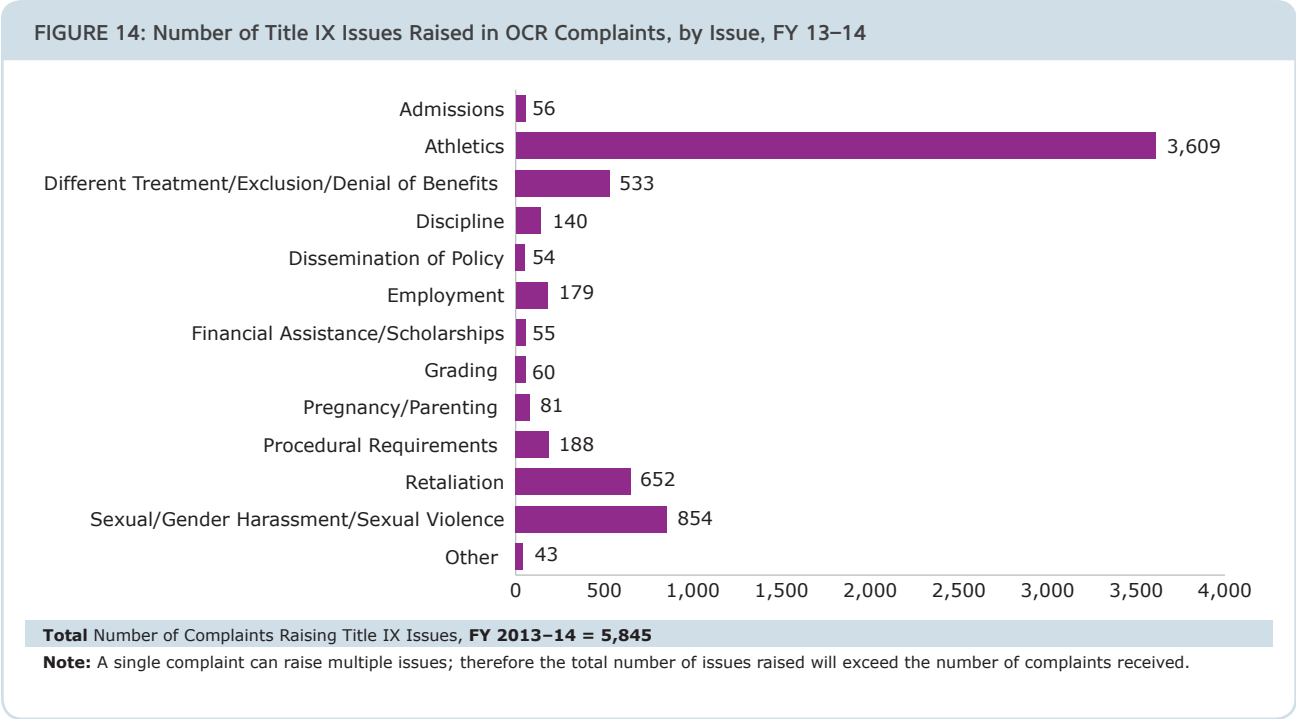
- ▶ **Rutherford County School District (TN):** In October 2012, OCR resolved a complaint alleging that a teacher called a student a "monkey" and then retaliated against him for filing a complaint with the school by writing a disciplinary referral for tardiness and giving him a zero on a class assignment. In addition, the complainant, who is the student's mother, alleged that school officials subjected the student to racial discrimination and retaliated against him when they grabbed the student's cell phone and forced him to unlock it so they could read his text messages aloud. During the course of the investigation, OCR found that a school official retaliated against the student by reading his text messages, but did not find violations with respect to the other allegations. To remedy the retaliation OCR found, the district agreed to train staff annually on Title VI's prohibition against retaliation and to destroy any written records it created of the student's text messages.

TITLE IX: DISCRIMINATION BASED ON SEX

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in all education programs and activities operated by recipients of federal funds, including colleges, universities, and public school districts. OCR enforces Title IX to ensure that students have equal access to educational opportunity and can go to school without fear of sex discrimination.

Policy Guidance: In FY 13–14, OCR released a guidance package on the rights of pregnant and parenting students under Title IX, including a *Dear Colleague* letter and a pamphlet titled *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972*. OCR also released a *Questions and Answers* document that further clarifies the legal requirements under Title IX articulated in its April 4, 2011 *Dear Colleague* letter on sexual violence and the 2001 *Revised Sexual Harassment Guidance*.

Enforcement: In FY 13–14, OCR received over 5,800 Title IX–related complaints and launched 20 systemic, proactive investigations that, collectively, *address a broad range of Title IX–related issues in institutions across the nation*¹⁰ (see Figure 14), including sexual violence at the elementary, secondary, and postsecondary levels; equal access to athletic opportunities; support for pregnant and parenting students; and bullying and harassment.



Technical Assistance: Educators, as well as parents and students, must have the knowledge and skills to identify, prevent, and address discrimination or get help when it does occur. Every year, OCR provides technical assistance to schools and communities around the country on both longstanding and emerging civil rights issues. In FY 13–14, OCR engaged in 278 technical assistance events on Title IX–related issues. These events included presentations on the rights of pregnant and parenting students under Title IX and the responsibilities of schools to respond to sexual violence under Title IX.

Sexual Harassment: Eradicating Sexual Violence

In January 2014, President Barack Obama established the White House Task Force to Protect Students from Sexual Assault (the Task Force), an interagency effort to prevent and address sexual assault on college and university campuses. In April 2014, the Task Force presented President Obama with its first report of recommendations on how to:

- ▶ Help schools identify the scope of the problem on their campuses
- ▶ Help schools prevent sexual assault
- ▶ Help schools better respond when a student is assaulted
- ▶ Improve the federal government's role as a partner in and enforcer of this effort

Assistant Secretary Lhamon and other OCR senior staff members participated in the 27 listening sessions held by the Task Force to gather more information from stakeholders, including college and university administrators, students, and survivors. OCR has participated actively in many of the Task Force's deliverables, including the Task Force's 20-page report to the President about the prevalence of sexual assault and recommendations for preventing it on college campuses, and the creation of NotAlone.gov, a resource hub for students, parents, and stakeholders on prevention strategies, survivor resources, legal guidance, and information on how to file complaints with the U.S. Department of Justice (DOJ) and the U.S. Department of Education (ED). OCR's efforts in conjunction with the Task Force culminated in the release of a *Questions & Answers* document clarifying the duty of educational institutions to prevent and address sexual violence on their campuses; separate Memoranda of Understanding (MOUs) with the Federal Student Aid office (FSA) and DOJ designed to increase intra- and inter-agency collaboration and coordination on sexual assault and improve our service delivery to school communities; and a major OCR policy change to increase transparency by releasing a list of postsecondary institutions currently under investigation for their handling of Title IX sexual violence complaints.

"No student should have to choose between getting an education and being treated with human dignity."

—Assistant Secretary Catherine E. Lhamon,
July 2014

Policy

In April 2014, in conjunction with the release of the first report of the Task Force, OCR released a *Questions & Answers* document about Title IX and sexual violence and a *Know Your Rights* fact sheet that further clarify the legal requirements under Title IX articulated in the April 4, 2011 *Dear Colleague* letter on sexual violence and the January 19, 2001 *Revised Sexual Harassment Guidance*. These documents further elucidate issues surrounding:

- ▶ Confidentiality and a school's obligation to respond to sexual violence
- ▶ Title IX training, education, and prevention
- ▶ How Title IX intersects with a school's obligations under the Clery Act and the Violence Against Women Reauthorization Act of 2013
- ▶ A school's obligation to designate a Title IX coordinator and disseminate a notice of nondiscrimination
- ▶ Use of the preponderance of the evidence standard in proceedings regarding sexual assault
- ▶ The application of Title IX's protections to transgender students, noncitizens, and students with disabilities
- ▶ A school's obligation to provide interim relief to complainants

Enforcement

During FY 13–14, OCR resolved 90 Title IX investigations related to sexual violence at the K-12 and postsecondary levels, including 25 resulting in a resolution agreement. During these two years, OCR's compliance reviews related to sexual violence made up 19% of the total number of compliance reviews; 9% of OCR's complaints were Title IX sexual violence complaints. Illustrative cases include:

- ▶ **Los Angeles County Office of Education (CA):** An OCR investigation revealed that an adult student with a cognitive disability reported to a school official that she had been sexually assaulted in the school bathroom by another student with an intellectual disability. OCR found that the school failed to promptly conclude its investigation within 30 days in accordance with district policy, based on the erroneous notion that the school had to wait for the conclusion of a police investigation, and failed to provide notice that could be easily understood to students, parents, and employees of the procedures for the resolution of complaints. Under the terms of the agreement in September 2014, the district agreed to designate a Title IX coordinator; establish interim procedures to provide appropriate responses in compliance with Title IX; provide notice to students, parents/guardians, and staff about these changes; hire an expert consultant to train the district's Division of

“Perhaps most important, we need to keep saying to anyone out there who has ever been assaulted: you are not alone. We have your back. I’ve got your back.”

—President Barack Obama,
January 2014

Special Education annually about effective procedures for responding to reports of sexual harassment or assault of persons with cognitive disabilities; and provide information to adult students with cognitive disabilities about appropriate social and relationship boundaries and how to recognize and avoid situations that could constitute sexual harassment.

- ▶ **Ohio State University (OH):** In September 2014, OCR resolved a compliance review of Ohio State University regarding sexual harassment and assault. During the investigation, OCR found that Ohio State’s notice of nondiscrimination was compliant with Title IX but that its sexual harassment/violence policies and procedures were not. To remedy this, Ohio State entered into an agreement that covers over 63,000 students at Ohio State’s six campuses and incorporates the university’s recommendations and corrective actions relating to its internal investigation regarding an allegation of a sexually hostile environment within the marching band. OCR commended the university for having taken some steps to prevent and address sexual harassment and sexual violence, including the creation of a “one-stop-shop” Title IX website, the creation of a new Sexual Violence Consultation Team to coordinate handling of sexual violence cases filed with different university offices, and the creation of a new compliance/integrity office that houses the Title IX coordinator and deputy coordinators.
- ▶ **State University of New York (NY):** In October 2013, OCR resolved a compliance review of the State University of New York’s (SUNY’s) handling of sexual violence complaints. During the course of the investigation, OCR reviewed 159 individual cases of alleged sexual harassment from four of SUNY’s individual campuses visited during the review and determined that the vast majority of these complaints involved reports of sexual violence incidents sufficiently serious to create a sexually hostile environment for the affected students. SUNY agreed, among other remedies, to seek input from the campus community, including from past complainants, regarding ways to improve SUNY’s prevention and responses to acts of sexual violence, and then to submit for OCR’s review both these recommendations and

SUNY’s plans to implement any of the recommendations. Because SUNY is the largest comprehensive statewide system of public higher education in the United States, enrolling nearly 219,000 students, implementing the resolution agreement entails widespread distribution of Title IX coordinator contact information to staff and students; significant revisions to the SUNY-wide Discrimination Complaint Procedure; designation and comprehensive training of Title IX coordinators; and development, distribution, and analysis of annual climate surveys to gauge the SUNY community’s progress in creating a safe educational environment free from sexual hostility.

- ▶ **Tufts University (MA):** In April 2014, OCR resolved a complaint against Tufts University after finding that the school violated Title IX by failing to provide a prompt and equitable response to complaints of sexual harassment/violence, by allowing for the continuation of a hostile environment that denied a student access to the educational opportunities in her program, and by failing to designate a Title IX coordinator. After the investigation, OCR reached an agreement with the university that affected more than 10,000 students on the university’s three campuses. The university agreed to provide timely and effective interim relief for complainants, including academic adjustments and housing changes as necessary; to conduct periodic assessments of the campus climate in order to evaluate and improve the university’s implementation of its sexual assault policies; and to provide training on issues related to sexual assault to all members of the university community.
- ▶ **University of Montana-Missoula (MT):** In May 2013, OCR and DOJ reached an agreement with the University of Montana-Missoula regarding the university’s handling of allegations and reports of sexual assault and harassment at its Missoula campus. The joint investigation found that the University of Montana’s various sexual misconduct policies were inconsistent and confusing for students. To rectify this, the university’s Missoula campus, which enrolls approximately 10,000 students, agreed to revise the university’s policies, procedures, and investigative practices to provide a grievance procedure that ensures prompt and equitable resolution of sexual harassment and sexual assault allegations; adequately investigate and respond to allegations of retaliation by students who have alleged sexual assault; and take effective action to fully eliminate a hostile environment based on sex, prevent its recurrence, and address its effects.
- ▶ **West Contra Costa Unified School District (CA):** In November 2013, OCR resolved a compliance review of West Contra Costa Unified School District, which was launched after a high-profile gang rape at a district high

school. OCR's investigation revealed that sexually harassing student-on-student behavior permeated the district's elementary and secondary schools. OCR's resolution agreement requires the district to protect all 30,000 students in the district from sexual violence and harassment by designating a Title IX coordinator; revising and implementing easily-accessible and user-friendly grievance procedures for promptly and equitably addressing possible incidents of sexual and gender-based harassment; developing a comprehensive plan for educating students, parents, and employees to ensure that they are aware of Title IX's prohibition against sex discrimination, including the right to be protected from sexual harassment, how to recognize it when it occurs, and how to report incidents; providing age-appropriate training to all students on what constitutes sexual and gender-based harassment; and implementing procedures for ensuring that an appropriate level of supervision of students by school staff exists at each school during times the students are on campus but not in class.

OCR's resolution "restored my faith in humanity."

—OCR sexual violence complainant, to NBC News,
on OCR's resolution agreement with district,
December 2013

Sexual Harassment: Combating Bullying and Harassment on the Basis of Sex

Bullying and harassment are harmful to students and the learning environment and are far too pervasive in our nation's schools. OCR strives to protect students' rights to learn in environments free from bullying and harassment. Title IX's sex discrimination prohibition extends to claims of discriminatory bullying or harassment based on a student's sex, including allegations of both opposite-sex and same-sex bullying or harassment, bullying or harassment based on students' gender identity, and bullying or harassment based on a student's failure to conform to traditional sex stereotypes.

Enforcement

In FY 13–14, OCR received 854 complaints related to this issue. Illustrative cases include:

- **Arcadia Unified School District (CA):** In July 2013, DOJ and OCR resolved complaints alleging that the district was discriminating against a student based on sex by denying

him equal access to the district's education program and activities because he is transgender. DOJ and OCR shared with the district concerns about the district's response to the family's request that the student be permitted access to sex-specific facilities, including that the district had not considered reasonable alternatives that would have been less burdensome on the student during his sixth- and seventh-grade years and the district's unwillingness to recognize the student's consistent and uniform gender presentation in the absence of an identification document. The district's resolution agreement committed it to permit the student to use male-designated facilities at school and on school-sponsored trips and to otherwise treat the student as a boy in all respects. The district also agreed to take other actions to ensure that it continues to treat all students, including transgender students, in a nondiscriminatory manner, including by amending its policies and procedures, training staff, and ensuring appropriate support for the student and for other transgender students who request it.

- **John Doe College¹¹ (NY):** In September 2014, OCR facilitated a resolution between the parties in a complaint alleging that the college discriminated against a transgender student by requiring her to use a faculty restroom rather than a women's restroom, by continuing to note the student's birth name on attendance rosters and in her college email address, and by failing to take corrective measures when staff harassed the student by using male pronouns to refer to her and by making inappropriate comments. The college committed to grant the student immediate equal access to all sex-specific facilities at the college consistent with her female gender identity and to change the student's name on all school documents and in her email address. In addition, the agreement confirmed the college's directive that staff address the student by her current name and use female pronouns to refer to her. The college also agreed to conduct training on LGBTQ (lesbian, gay, bisexual, transgender, queer/questioning)-related issues for faculty, staff, and students.
- **Ladue School District (MO):** In March 2013, Ladue School District entered into a resolution agreement with OCR to resolve a complaint alleging that the district allowed female students at its high school to be subject to a sexually hostile environment after their names appeared on a list of girls' names written by peers that included sexually derogatory statements. The agreement, which was entered into during the course of the investigation, required the district to take steps to correct the hostile environment. The resolution agreement required the district to issue and broadly distribute a statement that the district does not tolerate acts of harassment; to establish a student committee to provide

Monitoring Civil Rights Compliance

Xavier University in Cincinnati, Ohio, entered into a resolution agreement with OCR in July 2012. As a result of information regarding how issues of harassment were addressed during academic year 2013-14, learned during OCR's monitoring of the university's compliance with that agreement, the university subsequently committed to improving its campus-wide prevention education program by increasing collaboration between the Title IX coordinator and the director of the university's multicultural, gender, and women's center. The university is also establishing a Prevention Education Task Force to facilitate educational programs to encourage and support men on gender identity and related issues and to encourage and support collaboration between the university's student body president and the President of Students Against Sexual Assault.

a forum for students to discuss matters concerning discrimination or harassment on the basis of sex; to develop and implement an annual Title IX high school climate survey; and to train students, administrators, and staff on sexual harassment issues.

- ▶ **Washington Mathematics Science and Technology Public Charter School (DC):** In July 2013, OCR resolved a complaint in which a parent alleged that the school failed to respond promptly and appropriately to complaints of peer sexual harassment regarding her son, a high school student. Under the terms of the agreement, the school agreed to provide interim measures to protect the student, including ensuring that the student and alleged harasser remained separate and providing daily check-ins with the student to help make sure that he felt comfortable while the school thoroughly investigated the incident. More broadly, the school agreed to undertake systemic changes, including issuance and dissemination of a statement that the school does not tolerate sexual harassment, training for staff on sexual harassment and gender-based harassment, and age-appropriate student education on sexual harassment and non-conformity with gender stereotypes.

Preventing Discrimination Based on Pregnancy or Parental Status

The U.S. Department of Education's regulation implementing Title IX specifically prohibits discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from any of these conditions.¹² The Title IX regulations also prohibit a school from applying any rule related to students' parental, family, or marital status that treats them differently based on their sex.¹³

Policy

In June 2013, OCR released a *Dear Colleague* letter that clarified the specific requirements of Title IX applicable to pregnant and parenting students. The accompanying pamphlet also provided information on strategies that educators may use and programs schools can develop to address the educational needs of students who become pregnant or have children. The letter and pamphlet provide the following key information regarding pregnant and parenting students:

- ▶ Schools cannot exclude pregnant students (or students who have been pregnant) from participating in any part of an educational program, including extracurricular activities.
- ▶ Schools must provide the same special services to pregnant students that they provide to students with other temporary medical conditions.
- ▶ Schools must excuse a student's absences because of pregnancy or childbirth for as long as the student's doctor deems the absences medically necessary.

Although the pamphlet focused on secondary schools, the legal principles apply to all recipients of federal financial assistance, including postsecondary institutions, in order to ensure that pregnant and parenting students receive equal access to educational benefits across all levels.

Enforcement

In FY 13-14, OCR received 81 pregnancy discrimination complaints. Illustrative cases include:

- ▶ **Burlington School District RE-6J (CO):** In February 2014, OCR resolved a complaint against Burlington School District RE-6J after the district assigned pregnant students to an alternate Learning Lab, separate from their peers. The resolution agreement required the district to ensure equal educational opportunity for pregnant and parenting students and to take remedial steps that include convening a team for each pregnant student in

the Learning Lab to individually assess the amount of compensatory services necessary for the student.

- ▶ **John Doe Schools¹⁴ (VT):** In July 2014, OCR resolved a complaint alleging that John Doe Schools discriminated against a student by pressuring her to attend an alternative high school designed to serve pregnant and parenting students that did not afford educational opportunity comparable to opportunity in the district's traditional high school. OCR facilitated an Early Complaint Resolution in which the district agreed to provide extra support for the student to recover academic credits and meet requirements for graduation, expand opportunities for pregnant and parenting students who attend alternative schools to participate in extracurricular programs, and hold regular meetings between the alternative school and district staff to ensure consistency in curricula and a smooth transition for students who may return to the district's traditional high school.
- ▶ **Mid-Michigan Community College (MI):** In July 2013, OCR resolved a complaint alleging that Mid-Michigan Community College's nursing program policies discriminated against pregnant students. During the investigation, OCR found that the college's Student Nurse Handbook stated that should pregnancy "interfere with progress," students would "need to re-evaluate their choices." Before the conclusion of the investigation, the college signed an agreement in which it committed to revise its nursing program policies relating to sex discrimination and harassment and pregnancy discrimination, and to provide training to staff to ensure nondiscrimination against pregnant students.
- ▶ **Virginia Military Institute (VA):** OCR found Virginia Military Institute (VMI) in violation of Title IX because VMI's marriage and parenthood policy rendered pregnant cadets ineligible to participate in VMI's program. Under VMI's policy, pregnant and parenting cadets were required to resign or face separation from the school. Working with OCR, VMI revised its marriage and parenthood policy to allow pregnant cadets to remain enrolled in VMI as long as they are able to perform their duties and to provide them with the same opportunity to take medical leave that cadets with other temporary medical conditions have. The new policy, which became effective in April 2014, also permits parenting cadets to remain at VMI as long as the cadets have made arrangements for their children's custody, care, and support.

Ensuring Equal Access to Athletic Opportunities and Benefits

Since its passage, Title IX has dramatically increased academic and athletic opportunities for women and girls. For example, between 1972 and 2011, girls' participation in high school athletics increased from approximately 250,000 to 3.25 million students.¹⁵ Although there has been indisputable progress since Title IX was enacted, sex discrimination unfortunately continues to exist, including in interscholastic and intercollegiate athletic programs.

Enforcement

In FY 13–14, OCR resolved 3,665 complaints involving equal access to athletic opportunities and benefits for girls and women. Illustrative cases include:

- ▶ **Indianapolis Public School District (IN):** In February 2014, OCR reached an agreement in this compliance review with the Indianapolis Public School District that assessed whether the district provides boys and girls an equal opportunity to participate in its high school interscholastic athletics program. Data gathered during the investigation for the 2010–11 school year showed that total student enrollment at seven of the district's high schools was 5,538 students, with 2,744 boys (49.5%) and 2,794 girls (50.5%). Of the approximately 1,466 total participants in the district's athletic program at these seven high schools, 945 were boys (64.5%) and 521 were girls (35.5%). Over the course of the investigation, OCR found that the district's interscholastic athletics program failed to provide girls an equal opportunity to participate in high school interscholastic athletics, both through the failure to effectively accommodate students' interests and abilities and through failure to provide equal access to practice and competitive facilities, locker rooms, equipment and supplies, and the scheduling of games and practice times at some high schools. Under the terms of the agreement, the district committed to develop, implement, and publicize a procedure for students to use in requesting the addition of new sports at the high schools, and to take prompt steps to remedy the inequities that OCR's investigation revealed in benefits and services, including uniforms, competitive and practice facilities, and the scheduling of games and practice times, provided to female athletes.
- ▶ **Portland Public Schools (ME):** In September 2013, OCR resolved a compliance review of Portland Public Schools that examined whether the district was providing female students an equal opportunity to participate in its interscholastic athletics program. Over the course of the

investigation, OCR determined that the district was not doing so. Additionally, the boys' varsity baseball teams at the district high schools competed at Hadlock Stadium, a professional facility, whereas the girls' softball team competed at local, poorer-quality fields. OCR negotiated a resolution agreement with the district under which the district agreed to create a girls' volleyball team at both its high schools and to substantially upgrade the girls' softball facilities, among other remedies.

- ▶ **Southeastern Louisiana University (LA):** In March 2014, OCR reached an agreement with Southeastern Louisiana University after conducting a compliance review investigating whether the university awarded athletics scholarships or grants-in-aid in a nondiscriminatory manner and provided male and female students an equal opportunity to participate in the university's intercollegiate athletic programs. The university did not provide participation opportunities for male and female students in numbers substantially proportionate to their respective enrollments during the 2009–10 and 2010–11 academic years. The agreement requires the university to conduct an assessment of the athletic interests and abilities of all its students and to address several deficiencies, including ensuring that the fields for the women's soccer team are comparable to the fields used by the men's soccer team.

Eliminating Retaliation for Exercising Civil Rights

Retaliatory acts, which may include giving students failing grades, preventing students from participating in school activities, and threatening expulsion against any individual who exercises his or her rights under Title IX, are considered to be discrimination and are unlawful. Recipients of federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX.

Policy

As page 27 of this report describes more fully, in April 2013, OCR issued a *Dear Colleague* letter that clarified the basic principles of retaliation law and described OCR's methods of enforcement for claims of retaliation. Once a student, parent, teacher, coach, or other individual complains formally or informally to a school about a potential Title IX or other civil rights violation or participates in an OCR investigation or proceeding, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating) against the individual because of the individual's complaint or participation.

Enforcement

In FY 13–14, OCR received 652 complaints of retaliation under Title IX. Below is a case that illustrates some of OCR's work in this area:

- ▶ **Cartwright Elementary School District (AZ):** In November 2013, OCR resolved a complaint that a school did not respond in a timely and appropriate way to a student's concerns about harassment by peers based on sex, race, and disability and that it disciplined her more harshly and ultimately withdrew her from enrollment in retaliation for bringing her concerns to the school's attention. Under the terms of the resolution agreement, the district agreed to submit to OCR for review its policies and procedures relating to handling complaints of harassment and related penalties, addressing non-discrimination, and tackling retaliation; to train district staff on related issues, including prohibition against retaliation; and to reassess the student's needs and reinstate her with proper educational and behavioral supports.

SECTION 504 AND ADA TITLE II: DISCRIMINATION BASED ON DISABILITY

OCR protects the rights of persons with disabilities, including students and parents, under two federal laws in the education context. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on disability in any program or activity operated by recipients of federal funds. It states: “No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...”

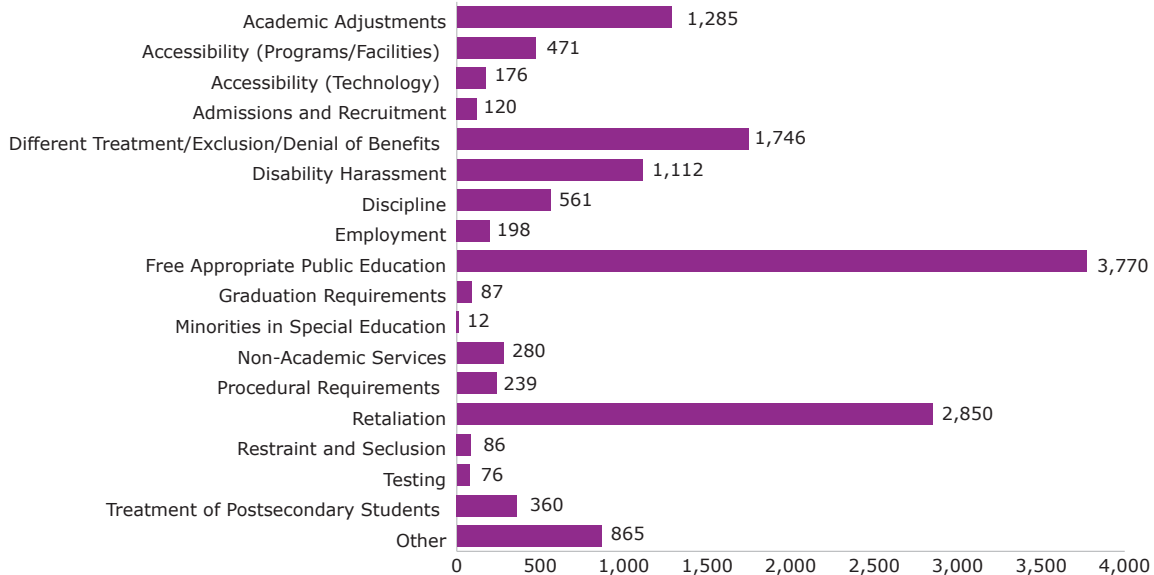
Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on disability by public entities, regardless of whether they receive federal financial assistance. Title II states: “[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.”

Policy Guidance: During FY 13–14, OCR published two policy guidance documents relating specifically to students with disabilities, including guidance and fact sheets addressing equal access to extracurricular athletics for students with disabilities and *guidance addressing the rights of students with hepatitis B in postsecondary medical, dental, nursing, and other health-related programs* (see page 36).

Enforcement: Of all complaints OCR receives, nearly half involve allegations of disability-based discrimination. In FY 13–14, OCR received *more than 9,500 complaints alleging violations of disability laws and covering a broad range of issues*¹⁶ (see Figure 15). Over this same period, OCR initiated 17 compliance reviews related to disability issues.



FIGURE 15: Number of Disability Issues Raised in OCR Complaints, by Issue, FY 13–14



Total Number of Complaints Raising Disability Issues, FY 2013–14 = 9,941

Note: A single complaint can raise multiple issues; therefore the total number of issues raised will exceed the number of complaints received.

Technical Assistance: In FY 13–14, OCR staff delivered over 400 technical assistance presentations across the country on disability rights issues. Topics included what constitutes a qualified student with a disability; the obligations of schools, districts, and institutions of higher learning to provide equal access to the full range of programs, services, and activities available to other students; how entities may formulate policies, practices, and procedures so as not to discriminate against students with disabilities; and how to remedy potential Section 504 or Title II violations, once identified.

Policy Guidance Protecting Students with Hepatitis B

In June 2013, the Departments of Justice, Education, and Health and Human Services sent a joint letter to the nation's medical schools, dental schools, nursing schools, and other health-related schools regarding hepatitis B discrimination, expressing concern that some health-related schools may be making enrollment decisions based on an incorrect understanding of the hepatitis B virus. The letter updates schools on the latest recommendations from the Centers for Disease Control and Prevention (CDC) regarding the participation of students with hepatitis B in health-related schools and emphasizes schools' obligation to comply with federal laws prohibiting discrimination on the basis of disability, race, color, and national origin. Pointing out that the hepatitis B virus has not been passed from medical or dental school students to patients in the U.S. or other developed countries since 1991, the guidance explains that chronic hepatitis B in itself should not preclude the study or practice of medicine, surgery, dentistry, or other allied health professions.

Combating Disparities in School Discipline and Curbing Restraint and Seclusion in Public Elementary and Secondary Schools

Data from the most recent Civil Rights Data Collection (CRDC) illustrate that students with disabilities (served by IDEA) are treated far more harshly than their peers without disabilities; for example, *they are twice as likely to receive an out-of-school suspension (13%) as are students without disabilities (6%)* (see Figure 16). Moreover, students with disabilities represent 12% of students in public schools but 58% of students placed in seclusion or involuntary confinement. They are also 75% of students physically restrained at school and make up 25% of students arrested and referred to law enforcement.

Resolution agreements in Section 504 discipline cases have included remedies requiring the institution to develop a protocol to ensure that manifestation determination reviews (MDR protocol) occur as required by Section 504,¹⁷ provide training to school and district staff, and monitor the

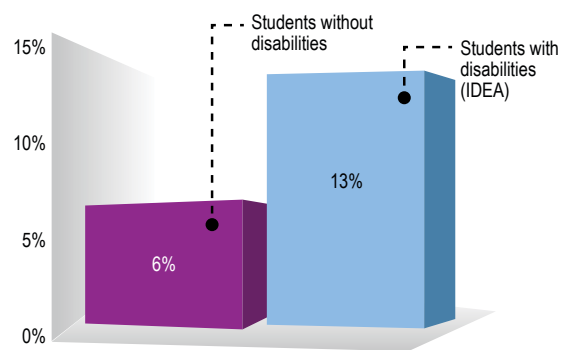
implementation of the MDR protocol. Remedies in cases of inappropriate restraint or seclusion include implementation of new policies, dissemination of policies to staff and parents, and training for staff on these policies. Additionally, compensatory educational services may also be required, especially in cases where the student missed class time as a result of the action. OCR closely reviews proposed remedies in such cases to make the determination whether or not compensatory services are necessary.

Enforcement

In FY 13–14, OCR addressed school discipline involving students with disabilities via complaints and compliance reviews involving 426 districts in 48 states. Illustrative cases include:

- ▶ **Riverview Gardens School District (MO):** A parent alleged that the district discriminated against her son on the basis of disability (Attention Deficit Hyperactivity Disorder and Specific Learning Disability) by suspending him multiple times and causing him to miss more than 10 days during the school year without conducting a manifestation determination review. In November 2012, the district committed to develop new evaluation protocols and training for staff.
- ▶ **Durham Public Schools (NC):** A complainant alleged that the district inappropriately disciplined students by physically restraining their movement while they were seated in chairs, even though the students' Individualized Education Programs (IEPs) did not call for restraints and the district's policy prohibited the use of restraints except when a student posed a threat to self or others. Through the resolution agreement

FIGURE 16: Students Receiving Out-of-School Suspensions, by Disability (IDEA) Status



Note: Data reflects 99% of CRDC schools, including 43.5 million students without disabilities and 6 million students with disabilities.

Source: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011–12.

reached in June 2014, the district, with over 32,000 students, agreed to deliver student-specific remedies to the students who were physically restrained, including determining whether the students needed to be re-evaluated, whether a modification or change to their current placement or services was warranted, whether the students' discipline records should be expunged if they were disciplined because of their disability, and whether any compensatory services were required.

Ensuring a Free Appropriate Public Education (FAPE)

Students with disabilities have the same right to K-12 public education that students without disabilities have. In order to receive and benefit from that education, students with disabilities may need special education and/or related aids and services. OCR works to ensure that public elementary and secondary schools, including charter schools, provide a free appropriate public education (FAPE) to all qualified students with disabilities (generally, students with disabilities who are of school age), regardless of the nature or severity of their disabilities. Section 504 and Title II require public schools to provide appropriate education and aids and related services free of charge to students with disabilities and their parents or guardians. The "appropriate" component means that this education must be designed to meet the individual educational needs of the student as determined through appropriate evaluation and placement procedures. However, students with disabilities must be educated with students without disabilities to the maximum extent appropriate.

Additionally, the Individuals with Disabilities Education Act (IDEA), a federal law that provides federal funds for special education, also has FAPE requirements. IDEA is administered by the Department of Education's Office of Special Education and Rehabilitative Services (OSERS). To the extent that disability harassment adversely affects an elementary or secondary student's education, it may also constitute a denial of FAPE under the IDEA, as well as a violation of Section 504 and Title II.¹⁸

Enforcement

In FY 13–14, OCR resolved 3,725 cases involving allegations that FAPE was denied. Illustrative cases include:

- ▶ **Bay Village City School District (OH):** In September 2014, OCR resolved a complaint against Bay Village City School District alleging that the district discriminated against middle and high school students with disabilities who receive transportation related to their disabilities by subjecting those students to a shortened school day. The complaint indicated that students at the middle school were being dismissed from class approximately eight to ten minutes earlier than their peers. To ensure the students received a full day's schooling, the district agreed to begin keeping daily logs showing the actual release times for students with disabilities who receive transportation related to their disabilities, and to designate an administrator at each school building to conduct random observation checks to ensure that students do not receive shortened school days.
- ▶ **Fairfield City School District (OH):** OCR negotiated a resolution agreement in August 2013 after a parent filed a complaint alleging that the district had failed to provide effective sign language interpreter services to a student with multiple disabilities, including autism. The complaint also alleged that the district failed to fully implement the student's IEP. The agreement commits the district to convene the student's IEP team to develop an IEP that is designed to ensure that the student receives FAPE; to provide services so that communication with the student is as effective as communication with peers without disabilities; and to create policies and procedures that address the identification, evaluation, and placement of students who the district knows have a physical or mental disability.
- ▶ **Tacoma School District No. 10 (WA):** In November 2013, OCR resolved this case after a visually impaired parent filed a complaint alleging that the district discriminated against him on the basis of his disability by failing to provide him with his son's classroom progress reports, list of class assignments, and homework assignments in a format accessible to persons with visual disabilities. Under the agreement, the district pledged to take steps to ensure that its communications with parents who are blind or visually impaired are as effective as communications with parents without disabilities, including providing appropriate auxiliary aids and services when necessary, such as materials that may be accessed by screen readers.

Ensuring Equal Access to Comparable Educational Opportunities

OCR works to ensure that schools and districts give students with and without disabilities an equal opportunity to pursue college or careers by providing access to high-rigor academic courses. Under federal law, schools must provide students with disabilities equal opportunity to access these courses.

Enforcement

In FY 13–14, OCR received 1,746 complaints in this area. Illustrative cases include:

- ▶ **Rockdale County School District (GA):** OCR investigated an allegation that Rockdale County School District discriminated against a student by subjecting him to different treatment when he was removed from a college readiness/preparatory program called Advancement via Individual Determination (AVID) and by informing the complainant that students with disabilities were not allowed in the program. In a resolution agreement signed in April 2014, the district agreed to conduct annual training for staff, apologize to the student, and invite that student, along with other students with disabilities, to participate in the AVID program without any preconditions for enrollment; to institute related policy corrections with OCR approval; to establish new outreach protocols advertising that the program does not discriminate; and to document student selection and retention to ensure nondiscrimination.
- ▶ **Shenendehowa Central School District (NY):** A complaint alleged that the district discriminated against a student on the basis of his disability by applying a modified grading formula that reduced his grades. OCR determined that the district, in downgrading the grades of students with disabilities by 0.69, treated students differently on the basis of disability in violation of the law. Through the resolution agreement reached in January 2014, the district agreed to cease its practice of adjusting the grades of students with disabilities downward and to restore unadjusted grade values to all students with disabilities whose grades had been adjusted downward.

Providing Necessary Academic Adjustments for Postsecondary Students

Students with disabilities who meet the academic and technical standards for admission to, or participation in, a postsecondary education program may receive academic modifications and auxiliary aids and services to ensure their equal opportunity to participate in the program.

Enforcement

In FY 13–14, OCR received 1,153 complaints regarding academic adjustments for postsecondary students. Below is a case that illustrates some of OCR's work in this area:

- ▶ **University of Kansas (KS):** The complainant, a student, alleged that the university discriminated against him on the basis of his learning disability by refusing to grant his request to substitute another course for a math class. The university entered into a resolution agreement with OCR in January 2013 that required the university to adopt and publish a new petition process that did not require a student to take (and possibly fail) the math course before the university considered whether to allow a student to make a course substitution based upon a disability, and to reconsider the complainant's request for course substitution based on the revised process.

Safeguarding Accessibility to Appropriate Technology

Technology plays an increasingly important role in education at all levels. For example, schools and colleges commonly use computers in traditional classrooms, electronic book readers that supplement or replace paper textbooks, online classes, and online registration and class scheduling. Section 504 and Title II require schools and colleges to ensure that the technology they use is fully accessible to individuals with disabilities or otherwise to provide equal access to the educational benefits and opportunities afforded by the technology.

OCR's enforcement in this area follows legal principles articulated in OCR's *Dear Colleague* letter issued on June 29, 2010, and a supplementary *Questions and Answers* piece released on May 26, 2011. As the use of technology in education increases, OCR's enforcement efforts are ensuring that students with disabilities have the same opportunities that students without disabilities have in this fast-changing aspect of education delivery.

Enforcement

In FY 13–14, OCR received 176 complaints related to technology access. Illustrative resolutions include:

- ▶ **University of Montana-Missoula (MT):** In March 2014, OCR entered into a resolution agreement with the University of Montana-Missoula, which serves approximately 10,000 students, to ensure that the university's electronic and information technologies were accessible to people with disabilities. These technologies include websites, online course registration, library database materials, videos, classroom clickers, discussion boards, and electronic textbooks. Among other provisions, the agreement requires that the university make its education and information technologies accessible to students with disabilities, create a new accessibility policy, and appoint a staff member to coordinate the new policy.
- ▶ **Virtual Community School of Ohio (OH):** In November 2013, OCR announced a first-of-its-kind resolution with a virtual charter school. Over half of the school's 1,200 students identify as having a disability. Although the school advertised itself as an "ideal setting" for students with disabilities, OCR's investigation identified compliance problems with the evaluation and placement procedures used by the school to identify students with disabilities under Section 504 and to determine their individual education needs and the services necessary to provide

them an appropriate education. Additionally, the school's website and online learning environment were not accessible, especially for students with visual disabilities. In the resolution agreement, the school committed to take actions to ensure that it provides FAPE to each qualified student with a disability and to ensure an accessible online learning environment.

- ▶ **South Carolina Technical College System (SC):** OCR conducted a compliance review to assess whether South Carolina Technical College System's communications with persons who are blind, have low vision, or have other print disabilities are as effective as communications with persons without disabilities, as required by law. This included an examination of compatibility of the system's websites with assistive technology used by current and prospective students with disabilities to access admissions applications (many of which could only be submitted online) and information about the system's programs and services. Under a resolution agreement in March 2013, the system committed to develop a resource guide that provides information about web accessibility requirements, direct that the website and the websites of all the member colleges be accessible to students with disabilities, and annually review the websites and monitor steps taken to correct any identified accessibility problems.

Ensuring Accessibility of Programs, Services, and Facilities

OCR works with recipients to ensure that persons with disabilities have physical access to the programs, services, and facilities of schools, colleges, and universities. Sections of old buildings may need to be renovated and new buildings properly constructed so that individuals with disabilities, including persons who use wheelchairs, can, among other things, enter and navigate, use facilities in, and park near the buildings.

Policy

In January 2013, to clarify that students with disabilities have the right under Section 504 to receive an equal opportunity to participate in extracurricular athletic programs, OCR issued guidance identifying school districts' existing legal obligations and encouraging school districts to work with community organizations to increase athletic opportunities for students with disabilities, such as opportunities outside the existing extracurricular athletic program, in order to enable them to have the same access to health and social benefits related to athletics that others

have. The guidance provides concrete examples of how districts may modify policies, practices, and procedures in support of students with intellectual, developmental, physical, and other disabilities. The guidance also notes that the law does not require that a student with a disability be allowed to participate in any selective or competitive athletics program offered by a school district, so long as the selection or competition criteria are not discriminatory.

Enforcement

During FY 13–14, OCR received 638 complaints alleging violations in the accessibility of programs, services, and facilities. A key remedy in accessibility cases is to ensure that the program, service, and/or facility is accessible for students with disabilities. Illustrative cases include:

- ▶ **Parma City School District (OH):** In November 2012, OCR resolved a complaint against Parma City School District following OCR’s investigative findings that the district’s website was not accessible to and usable by persons with disabilities using assistive technology; that students with disabilities at one elementary school were provided with emergency-related services that were different from, and not as effective as, those provided to students without disabilities; and that some of the district’s schools and facilities were inaccessible to persons with disabilities. To remedy these issues, the district committed to provide a website that is accessible to and usable by persons with disabilities, including persons who use assistive technology (such as screen readers). The district also committed to develop an emergency procedures plan that includes students with disabilities in fire and other emergency evacuation drills and to provide proper signage and two-way communication devices in the area of refuge at one of the identified schools.
- ▶ **Cumberland County Schools (NC):** A parent filed an OCR complaint alleging that the district discriminated against her daughter and other students with mobility impairments on the basis of disability because the school’s playground equipment and stage in the cafeteria were inaccessible for students with mobility impairments. In January 2013, OCR negotiated an agreement with the district to develop a process for notifying parents and students of the inaccessible facilities and relocating programs and activities to accessible areas and to modify its play areas to make them physically accessible.

Combating Bullying and Harassment on the Basis of Disability

Bullying and harassment that are based on a student’s disability and that interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school are prohibited under Title II and Section 504. Further, if the harassing behavior interferes with the student’s ability to access educational services, the situation, if uncorrected, may constitute a FAPE violation. OCR works with other offices in the Department, as well as with the U.S. Department of Justice (DOJ), to address bullying and harassment of students with disabilities.

“While there is broad consensus that bullying cannot be tolerated, the sad reality is that bullying persists in our schools today, especially for students with disabilities. Basic decency and respect demand that our schools ensure that all their students learn in a safe environment.”

—Assistant Secretary Catherine E. Lhamon,
October 2014

Policy

OCR’s 2010 *Dear Colleague* letter on bullying and harassment continues to inform local and state educational agencies about these issues. The guidance explains that the civil rights laws OCR enforces require that if an institution knows or has reason to know about student-on-student harassment based on race, color, national origin, sex, or disability, it must take immediate and effective action to eliminate the harassment, prevent its recurrence, and, where appropriate, address its effects on the harassed student and the school community. The policy guidance also provides examples of harassment and illustrates how a school should respond in each case.

Enforcement

In FY 13–14, OCR received 1,112 complaints of disability-based harassment. In resolving a number of these complaints, OCR facilitated agreements that entailed bringing together students, teachers, parents,

school administrators, district leaders, and community organizations to address the underlying causes for the absence of school safety. Illustrative cases include:

- ▶ **Jefferson County Public Schools (KY):** In August 2014, OCR resolved a complaint against Jefferson County Public Schools alleging that the district discriminated against a student on the basis of disability by failing to address a hostile environment created by disability harassment from a teacher. In a resolution agreement, the district agreed to issue a memo to staff explaining that different treatment of students on the basis of disability is a violation of the law, to revise its grievance procedures to provide for the prompt and equitable resolution of complaints, and to offer counseling services for the student.
- ▶ **John Doe¹⁹ School District (MD):** In June 2014, OCR resolved a complaint alleging that the district failed to adequately address incidents of harassment based on a student's disability (severe food allergy). In an Early Complaint Resolution, the district agreed to train teachers, cafeteria aides, and other district staff to recognize the symptoms of anaphylaxis and the dangers of cross-contamination and shared surfaces. This district also agreed to provide an additional training session on how to administer an EpiPen and what to do in the event of an emergency during district-sponsored after-school activities attended by students with life-threatening allergies.
- ▶ **Palo Alto Unified School District (CA):** In December 2012, OCR entered into a resolution agreement to resolve an allegation that the district failed to promptly, appropriately, and effectively respond to reports of ongoing and widespread harassment of a middle school student with an intellectual disability. To address these issues, the district agreed to disseminate a memorandum and give training to district administrators and a notice to staff, parents, and students regarding the district's obligation to ensure a nondiscriminatory environment for students with disabilities; to revise its middle school handbooks to include disability as a basis that may give rise to a discrimination complaint; and to provide age-appropriate training for students regarding disability-based harassment.

Eliminating Retaliation for Exercising Civil Rights

Retaliatory acts against any individual who exercises his or her rights under Section 504 or Title II are considered to be discrimination and are unlawful. Recipients of federal funds are prohibited from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Section 504 or Title II.

Policy

As this report describes more fully on page 27, in April 2013, OCR issued a *Dear Colleague* letter clarifying basic principles of retaliation law. For example, if an individual brings concerns about possible civil rights problems to a school's attention, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she made a complaint, testified, or participated in any manner in an OCR investigation or proceeding.

Enforcement

In FY 13–14, OCR received 2,850 complaints alleging retaliation under Section 504 and Title II. Below is a case that illustrates some of OCR's work in this area:

- ▶ **Birmingham City School District (AL):** The complainant alleged that after she filed a complaint against the district regarding her oldest son's Section 504 Plan, the district subjected her younger son to retaliation by refusing to allow him to make up class assignments, by issuing failing grades for all of his spring 2013 classes, by expelling him, by failing to provide him with the opportunity to appeal his expulsion, by barring the complainant from removing items from her son's locker and then charging her for books that were located in the locker, and by encouraging another student's family to file criminal charges against her son. Among other remedies achieved through the December 2013 resolution agreement, the district committed to replace the student's failing grades with grades received during summer school and train district staff on the Section 504 prohibitions against retaliation.

OTHER STATUTES OCR ENFORCES: THE AGE DISCRIMINATION ACT AND THE BOY SCOUTS OF AMERICA EQUAL ACCESS ACT

OCR also has jurisdiction over two additional civil rights laws: the Age Discrimination Act of 1975 and the Boy Scouts of America Equal Access Act (2001).

The Age Discrimination Act of 1975

The Age Discrimination Act of 1975 prohibits discrimination based on age in programs or activities that receive federal financial assistance. This prohibition extends to all state education agencies, elementary and secondary school systems, colleges and universities, vocational schools, proprietary schools, state vocational rehabilitation agencies, libraries, and museums that receive federal financial assistance from the U.S. Department of Education. Programs or activities that receive such funds must provide aids, benefits, or services in a nondiscriminatory manner. These include (but are not limited to) admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, and housing. Though the Act does not limit protections against discrimination to a certain age group, it does allow for exceptions such as when colleges offer special programs that are geared toward providing special benefits to children and the elderly in a specific age range.

- ▶ In FY 13–14, OCR received 1,173 complaints under the Age Discrimination Act and resolved 1,213 cases.²⁰ Common remedies in OCR resolutions include provisions that require training for staff, updating and dissemination of nondiscrimination policies, and investigation by the institution into the specific incidents that resulted in the allegation of age discrimination.

The Boy Scouts of America Equal Access Act

OCR also enforces **The Boy Scouts of America Equal Access Act**, which is part of the No Child Left Behind Act of 2001. Under this Act, no public elementary school, public secondary school, or state or local education agency that provides an opportunity for one or more outside youth or community groups to meet at the school, before or after school hours, shall deny equal access or a fair opportunity to meet or otherwise discriminate against any group officially affiliated with the Boy Scouts of America or any other youth group listed in Title 36 of the United States Code as a patriotic society.

- ▶ In FY 13–14, OCR received 125 complaints under the Boy Scouts Act and resolved 135 cases.²¹ Many of the complaints filed under this statute sought enforcement of the requirement that institutions' nondiscrimination policies include a statement about the Boy Scouts Act and its provisions.

LOOKING AHEAD

The achievements detailed throughout this report represent important progress in the advancement of civil rights for this nation's students. But we know from the sizable opportunity gaps revealed in the Civil Rights Data Collection and our burgeoning case docket that our work is far from complete.

OCR has reached a pivotal moment in its history: As civil rights complaints and the demand for effective enforcement skyrocket, our ability to fulfill our mission to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights laws is being tested as never before. OCR's staffing level has consistently declined while our complaint volume has dramatically increased. Public interest in more policy guidance and civil rights enforcement by OCR has visibly increased during this Administration. OCR has also experienced a surge in requests for information, stakeholder and public engagement, and technical assistance. OCR recognizes these developments as a positive sign that people are more aware of their civil rights—and have greater confidence in OCR as a protector of those rights. But they also create considerable challenges for the future.

OCR will need to continue to utilize efficiency measures we've developed—and develop new ones as well—in order to accomplish our critical mission.

Whereas we have reason to celebrate the progress we have made to date, we know that we must do more to deliver the federal civil rights promises that are every student's right. We know that our society depends on a well-educated community, and that our students do not have time to squander before receiving the civil rights to which they are entitled. We must—and we do—operate in what Dr. Martin Luther King, Jr., called the fierce urgency of now. This is our challenge as an agency—and one that we vow to take on with every lever available to us.

APPENDIX: INDEX OF CASES RESOLVED WITH AGREEMENTS

Total number of resolution agreements in FY 13–14 by jurisdiction, statute, and type of investigation

STATE, DISTRICT OR TERRITORY	TITLE VI			TITLE IX			DISABILITY			TOTAL ACROSS STATUTES
	TOTAL	COMPLAINTS	COMPLIANCE REVIEWS	TOTAL	COMPLAINTS	COMPLIANCE REVIEWS	TOTAL	COMPLAINTS	COMPLIANCE REVIEWS	
AK										0
AL	6	5	1	7	7		20	20		33
AR	1		1	2	2		12	12		15
AS							1	1		1
AZ	7	7		6	5	1	42	42		55
CA	30	27	3	23	22	1	97	97		152*
CO	7	7		8	8		17	17		33*
CT	4	4					15	15		19
DC	2	2		2	2		12	12		16
DE	3	2	1				4	4		7
FL	5	5		6	6		39	39		50
GA	10	9	1	7	7		22	22		41*
HI							2	2		2
IA	1		1	1	1		4	4		6
ID							7	7		7
IL	7	7		2	2		15	15		24
IN	4	3	1	12	10	2	10	10		26
KS	4	4		2	2		21	21		27
KY	5	4	1	5	5		11	11		22*
LA	6	6		4	2	2	17	17		27
MA	8	7	1	10	9	1	30	30		48
MD	2	2		7	7		24	24		33
ME	1	1		2	1	1	3	3		6
MH										0
MI	2	1	1	8	8		37	37		47
MN	3	3					9	9		12
MO	6	6		5	4	1	33	32	1	46*
MS	1		1	5	5		6	6		12
MT				5	4	1	3	3		8
NC	8	8		4	4		42	42		54
ND	1	1								1
NE				1	1		4	4		5
NH	1		1	3	3		10	10		14
NJ	1	1					20	20		21
NM				1	1		4	4		5
NV	1	1		1	1		5	5		7
NY	28	26	2	27	26	1	52	51	1	139*
OH	8	7	1	6	5	1	48	47	1	63*
OK	8	7	1	1	1		12	12		21
OR	2	1	1				26	26		29*
PA	4	3	1	12	12		16	16		33*
PR							4	4		4
RI							5	5		5
SC	3	3		4	4		27	25	2	34
SD	1	1		2	2		2	2		5
TN	4	4		2	2		21	21		27
TX	4	4		9	9		67	67		81*
UT	1	1		1	1		9	9		11
VA	3	2	1	9	9		37	37		49
VI										0
VT							1	1		1
WA	2	2		3	3		17	17		23*
WI	2	1	1	3	3		1	1		6
WV	1	1		2	2		8	8		11
WY				1	1		5	4	1	6
Totals	208	186	22	221	209	12	956	950	6	1430**

** 1,310 cases resulted in resolution agreements during FY 2013 (734) & FY 2014 (576). However the total listed here reflects the fact that many cases included issues across multiple statutes. Additionally, there were 28 claims of age discrimination and 17 claims under the Boy Scouts statute that are included in this total.

* Totals marked with an asterisk (*) include claims of discrimination by age or under the Boy Scouts statute.

Endnotes

- 1 Resolved cases include cases that resulted in dismissal, administrative closure, a finding of no violation, an early complaint resolution, or a resolution agreement.
- 2 42 USC § 12131(ADA). Pursuant to a delegation by the Attorney General of the United States, OCR shares in the enforcement of Title II of the Americans with Disabilities Act of 1990, which is a Federal law prohibiting disability discrimination in the services, programs, and activities of state and local governments (including public school districts), regardless of whether they receive Federal financial assistance. 28 C.F.R. 35.190(b)(2). To the extent that Title II provides greater protection than Section 504, covered entities must comply with Title II's substantive requirements.
- 3 Mechanical restraint is the use of any device or equipment to restrict a student's freedom of movement. Physical restraint is a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. Seclusion is the involuntary confinement of a student alone in a room or area that the student is physically prevented from leaving.
- 4 For the CRDC, "preschool" means a program operated by a public school for children younger than kindergarten age, including early childhood programs or services. The CRDC does not include data on private preschool programs.
- 5 *Fisher v. Univ. of Tex.*, 133 S. Ct. 2411 (2013).
- 6 *Schuette v. Coalition to Defend Affirmative Action*, 134 S. Ct. 1623 (2014).
- 7 *Plyler v. Doe*, 102 S. Ct. 2382 (1982).
- 8 In order to track accurately the extent to which OCR addresses each protected class such as race, disability, gender, and national origin, the figures shown here may entail one case being counted in multiple categories, especially where cases are cross-cutting. As such, the total aggregate numbers, when tabulating figures covering all protected classes, will exceed the actual number of cases resolved over FY 13–14.
- 9 *Plyler v. Doe*, 102 S. Ct. 2382 (1982).
- 10 In order to track accurately the extent to which OCR addresses each protected class such as race, disability, gender, and national origin, the figures shown here may entail one case being counted in multiple categories, especially where cases are cross-cutting. As such, the total aggregate numbers, when tabulating figures covering all protected classes, will exceed the actual number of cases resolved over FY 13–14.
- 11 OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- 12 34 C.F.R. § 106.40(b)(1). References to pregnancy include all the related conditions covered by the regulation.
- 13 *Ibid.*, § 106.40(a).
- 14 OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- 15 "Equal Access to Education: Forty Years of Title IX." United States Department of Justice. June 23, 2012. Accessed December 18, 2014. <http://www.justice.gov/crt/about/edu/documents/titleixreport.pdf>.
- 16 In order to track accurately the extent to which OCR addresses each protected class such as race, disability, gender, and national origin, the figures shown here may entail one case being counted in multiple categories, especially where cases are cross-cutting. As such, the total aggregate numbers, when tabulating figures covering all protected classes, will exceed the actual number of cases resolved over FY 13–14.
- 17 Manifestation determination reviews are the process by which it is determined if a student's behavior problem was or was not a manifestation of the student's disability, or if the student's conduct was the direct result of the Local Education Agency's failure to implement the student's IEP.
- 18 OCR has not disclosed the actual name of the institution in this case because of privacy considerations.
- 19 See <http://www2.ed.gov/about/offices/list/ocr/docs/disabharassltr.html>. More information on FAPE under the IDEA is available at <http://idea.ed.gov>.
- 20 The number of resolved cases includes complaints received before FY 2013.
- 21 The number of resolved cases includes complaints received before FY 2013.



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