

REPORT  
OFFICE  
OF  
CIVIL RIGHTS

# HELPING TO ENSURE EQUAL ACCESS TO EDUCATION

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## Report to the President and Secretary of Education

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

**FY 2009–12**

U.S. Department of Education  
Office for Civil Rights

2012



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2012

**U.S. Department of Education**  
**Office for Civil Rights**  
Russlynn H. Ali  
*Assistant Secretary*

November 2012

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 that the assistant secretary for civil rights shall make a report to the secretary of education and the president “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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## MESSAGE FROM THE ASSISTANT SECRETARY

At the beginning of this administration, President Barack Obama and Secretary of Education Arne Duncan set our nation on a path to once again lead the world in the proportion of college graduates by 2020. If we are to accomplish this goal, we must fulfill our country's longstanding commitments to equal access to a high-quality education for all students, equitable opportunities to achieve, and the right of our young people to learn free from discrimination. And vigorously enforcing the nation's civil rights laws is imperative to making those commitments real.

While we have made great progress since the enactment of the civil rights laws in education—indeed, as Secretary Duncan has said, “The steady movement to a more fair and just society plays out each day in the classrooms, colleges, and universities all across America”—there remains much to be done. The Office for Civil Rights's (OCR) contributions to that steady movement are described in the pages of this report. It shows examples of existing barriers to equal educational opportunity and OCR's work to help dismantle them—removing these barriers is no longer just a moral imperative, but an economic necessity as well. As all of us in the Department of Education know, the educational status quo is simply not good enough.

From 2009 to now, OCR has investigated and resolved a record number of complaints and entered into robust remedies that attack discrimination at its roots. We have engaged in unprecedented proactive enforcement, revamped our technical assistance, and expanded our outreach to new levels. We have dramatically enhanced our case management and investigatory processes, knowledge sharing, performance management and accountability. The dedicated employees of OCR have transformed this agency in order to accomplish more than ever before.

Our challenge has been clear: in a time of increasing need, we must fulfill our statutory duties and live up to our historical legacy and founding purpose of enforcing the civil rights laws with excellence and efficiency. Over the last four years, OCR's accomplishments and the work of its nearly 600-member team to meet this challenge have exceeded even my highest expectations. I am proud and honored to serve by their side. And through continued implementation of our strategy, and with strategic, smart and continuous improvement, and ongoing efficiency, I am confident we will sustain our pace and remain true to the vision provided by the president and secretary.



Sincerely yours,

Russlynn H. Ali



## EXECUTIVE SUMMARY

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Nearly half a century after the first federal civil rights laws in education were enacted, the national aspiration for equity in education remains unfulfilled. This is not just a moral issue, but an economic one as well, offering a clear mandate to move forward aggressively to enforce civil rights laws and pursue the ideals of equity at the heart of the American dream. This report documents the breadth of the work performed by the roughly 600 attorneys, investigators and support staff of the U.S. Department of Education's Office for Civil Rights (OCR) during fiscal years 2009 through 2012.<sup>1</sup> These have been four years of transformation and dramatic impact for OCR, focusing on three major themes: (1) Greater Productivity to Meet a Rising Caseload; (2) Supporting Equity Throughout the Department; and (3) Maximum Impact, Maximum Engagement.

*First*, OCR strategically revised its enforcement approach to increase its efficiency and impact. Faced with an ever-growing workload, OCR developed and implemented new internal systems of management, performance accountability, professional development and support, and use of data. It dramatically enhanced its investigatory processes, the impact and significance of its resolutions, guidances and policy documents, technical assistance and data. It increased the heft of its monitoring capacity and the scope of the issues it addresses. It designed new ways to ensure continuous improvement, innovation and efficiencies. And it established a collaboration with each educational institution involved in a resolution, leading to improved, multifaceted strategies to foster organizational change and address the root causes of discrimination.

*Second*, Secretary Duncan and leaders from OCR and throughout the Department of Education (the Department) have integrated OCR's civil rights agenda and the Department's broader educational reform agenda in an unprecedented manner. The impact of this work can be seen through, for example, OCR's leadership role in the Secretary's Equity and Excellence Commission; its membership on Secretary Duncan's senior-most advisory and decision-making committees; its collaborations throughout the Department to ensure a focus on equity issues in waivers granted to states from requirements under the *Elementary and Secondary Education Act* (ESEA), proposals for reauthorizations of key legislation such as the *Carl D. Perkins Career and Technical Education Act*, and the distribution of competitive and formula funds.

*Third*, in the past four years, OCR has comprehensively and substantively addressed some of the most challenging and urgent civil rights issues facing educational institutions today—and it has done so in conjunction with a public engagement strategy to maximize impact. OCR has published robust and reader-friendly policy guidance documents that provide schools and colleges with detailed interpretations of the laws they must follow, including concrete examples based on actual scenarios that educators encounter.

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<sup>1</sup> In the federal government, a fiscal year runs from October 1 through September 30 and is identified by the calendar year in which it ends. Thus, "fiscal year 2012" (or "FY 2012") ran from October 1, 2011 to September 30, 2012. Unless otherwise noted, years referred to in this document are fiscal years.

It has also developed an integrated, holistic approach to educating students, parents, community groups, and educational institutions about their rights and obligations. For example, OCR increased the number of outreach activities directed toward covered entities, parents and community groups, to an average of over 330 activities per year in the last four years, compared with 185 in 2008. Additionally, OCR has empowered parents, educators and advocates across the country with a treasure trove of civil rights information through the new CRDC. Not only does the CRDC now cover issues of critical interest in every school and district, such as enforcement of discipline sanctions, spending on teachers, and access to college- and career-preparatory courses, but it is now accessible to the public through a new, easy-to-use website, enabling everyone, from researchers to parents to teachers, to discover educational inequities that may be affecting students in schools and communities across the nation. Such information is a powerful tool for change.

OCR made all these changes while receiving and resolving more cases than ever before, and doing it faster. Between 2009 and 2012, OCR received 24 percent more cases than in the four years prior; resolved cases faster than in years past; and launched over 100 proactive compliance reviews, many of which address first-of-their-kind issues, and all of which are innovative in their comprehensiveness, scope, and approach.

While we have made great progress, there remains much more to do. OCR must continue to improve, and we are committed to doing so. We are poised to meet new challenges head-on and work to ensure fairness and opportunity for all young people in our nation's schools.

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## ABOUT OCR: AN OVERVIEW

OCR was created in 1966 in response to Congress’s passage of Title VI of the *Civil Rights Act of 1964*. That landmark legislation was Congress’s most comprehensive effort since Reconstruction to use the authority of the federal government to eliminate discrimination on the basis of race, color and national origin.

Over the past five decades, Congress has continued to promote equal opportunity by requiring federally funded public and private institutions (including elementary and secondary schools, institutions of higher education, and other postsecondary programs) to eliminate invidious discrimination based on additional grounds, including sex, disability and age. OCR is now responsible for enforcing six separate federal statutes. In addition to Title VI, OCR enforces Title IX of the *Education Amendments Act of 1972*, which addresses sex discrimination; Section 504 of the *Rehabilitation Act of 1973* and Title II of the *Americans with Disabilities Act*, which address disability discrimination; the *Age Discrimination Act of 1975*, which addresses age discrimination; and the *Boy Scouts of America Equal Access Act of 2002*, which addresses the rights of the Boy Scouts and certain other organizations relating to access to space for meetings. (See Exhibit 1.)

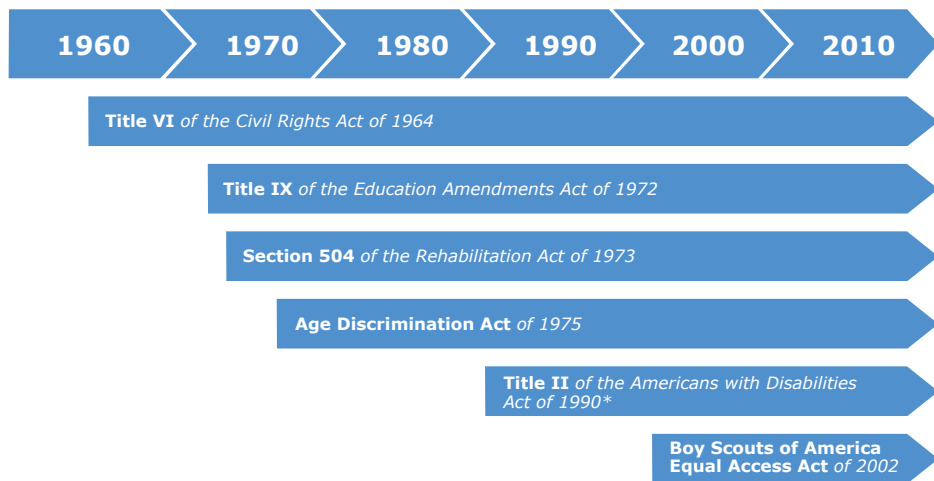
Combined, these laws embody our country’s continuing commitment to equality and decisions based on individual merit. Their vigorous enforcement is critical to our nation’s long-term prosperity: fulfilling the promise of public schools in America helps us ensure a competitive workforce and maintain America’s standing in the global economy.

### Exhibit 1:

#### OCR’s Mission

*“The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through vigorous enforcement of civil rights.”*

#### Mandated Statutes





## VIGOROUSLY ENFORCING CIVIL RIGHTS THROUGH SYSTEMIC CHANGE, IMPROVED OPERATIONS AND EXPANDED IMPACT

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During the four-year period spanning FY 2009 through FY 2012, OCR engaged in a strategic planning process and embarked upon a series of systemic changes. The result has been streamlined operations and a more holistic approach to civil rights law enforcement, including:

- ▶ new systems for proactive and complaint-based investigations, resolution agreements, and aligned monitoring and compliance efforts;
- ▶ new, coordinated data systems that aid in monitoring internal progress and in continuously improving execution of priorities in OCR's policy and enforcement work;
- ▶ frequent, strategically aligned, broad-based technical assistance activities and outreach efforts;
- ▶ expanded support to offices across the Department and throughout the federal government on matters pertaining to civil rights and educational equity, including intra- and inter-agency sharing of best practices; and
- ▶ enhanced policy guidance.

OCR's strategic planning process, undertaken in early 2009, aligned OCR's policy, communications and enforcement levers, and has guided refinements made continuously since then. As a result, OCR's five goals have been consistently clear, and OCR's staff of almost 600 dedicated lawyers, investigators, and administrative personnel has worked tirelessly to meet OCR's goals with high standards for excellence and efficiency. Taken together, OCR's goals provide an integrated approach to addressing concerns about educational equity:

- Goal 1:** Increase students' and their families' awareness of their rights, and strengthen their capacity to identify and resolve civil rights and equity issues in their communities, by strategically issuing clear "Dear Colleague" letters and other guidance documents, and by expanding technical assistance services.
- Goal 2:** Increase schools', colleges', and universities' understanding of their obligations under civil rights laws and strengthen their capacity to make the vision at the heart of these laws a reality by strategically issuing clear "Dear Colleague" letters and other guidance documents, and by expanding technical assistance services.
- Goal 3:** Protect individual complainants' civil rights and ensure due process by continuously improving the complaint investigation and resolution process.
- Goal 4:** Identify and eliminate any systemic violations of civil rights laws through the proactive and strategic use of compliance reviews and complementary tools.
- Goal 5:** Maximize impact over time by ensuring that all components of the Department are advancing civil rights and equity goals, and that OCR is supporting and reinforcing the Department's strategic priorities.

## Strategically Focusing Proactive Investigations

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### *Developing a System of Aligned, Strategic, Proactive Investigations*

In the past four years, OCR launched more than 100 compliance reviews—proactive, broad-scale, systemwide investigations of issues of strategic significance.<sup>2</sup> Recognizing a need for greater coherence and strategic focus in its compliance review docket, OCR implemented, during this time, a collaborative, data-driven process to guide its attorneys and investigators through multiple steps of analysis—including a comprehensive examination of each proposed proactive investigation with regard to its need and priority, causes of concern, geography, severity, impact and other relevant information. With coordination and support from national headquarters, each regional office throughout the country now annually launches compliance reviews that are designed to effect significant change at the target institutions and provide widely applicable solutions to civil rights problems faced by institutions elsewhere. (See Exhibit 2.)

OCR's compliance reviews have dealt with never-before addressed issues, keeping pace with emerging concerns and questions arising under the civil rights laws that OCR enforces, including sexual violence at the K–12 and postsecondary levels; comparability of resources; bullying and harassment; booster clubs and the distribution of athletic dollars and resources; charter schools and authorizers; state transportation support for students with disabilities; shortened school days; food allergies; access to college- and career-preparatory courses and services; disproportionate discipline rates; minority over-representation in special education programs and under-representation in talented and gifted programs; and access to electronic and web-based educational resources.

### *Using All of the Tools Under Its Jurisdiction*

In the fall of 2010, OCR implemented an investigative approach called the “directed inquiry” to allow for immediate, expedited investigations of urgent and critical civil rights problems.<sup>3</sup> The directed inquiry process allows OCR to rapidly address fast-moving or exigent circumstances and has led to significant resolution agreements on issues such as sexual violence involving allegations of gang rape, sexual assault and suicide that needed to be addressed through school and college collaboration with local law enforcement; and bullying, harassment and sex stereotyping of lesbian, gay, bisexual and transgender (LGBT) students that allegedly contributed to tragic student suicides.

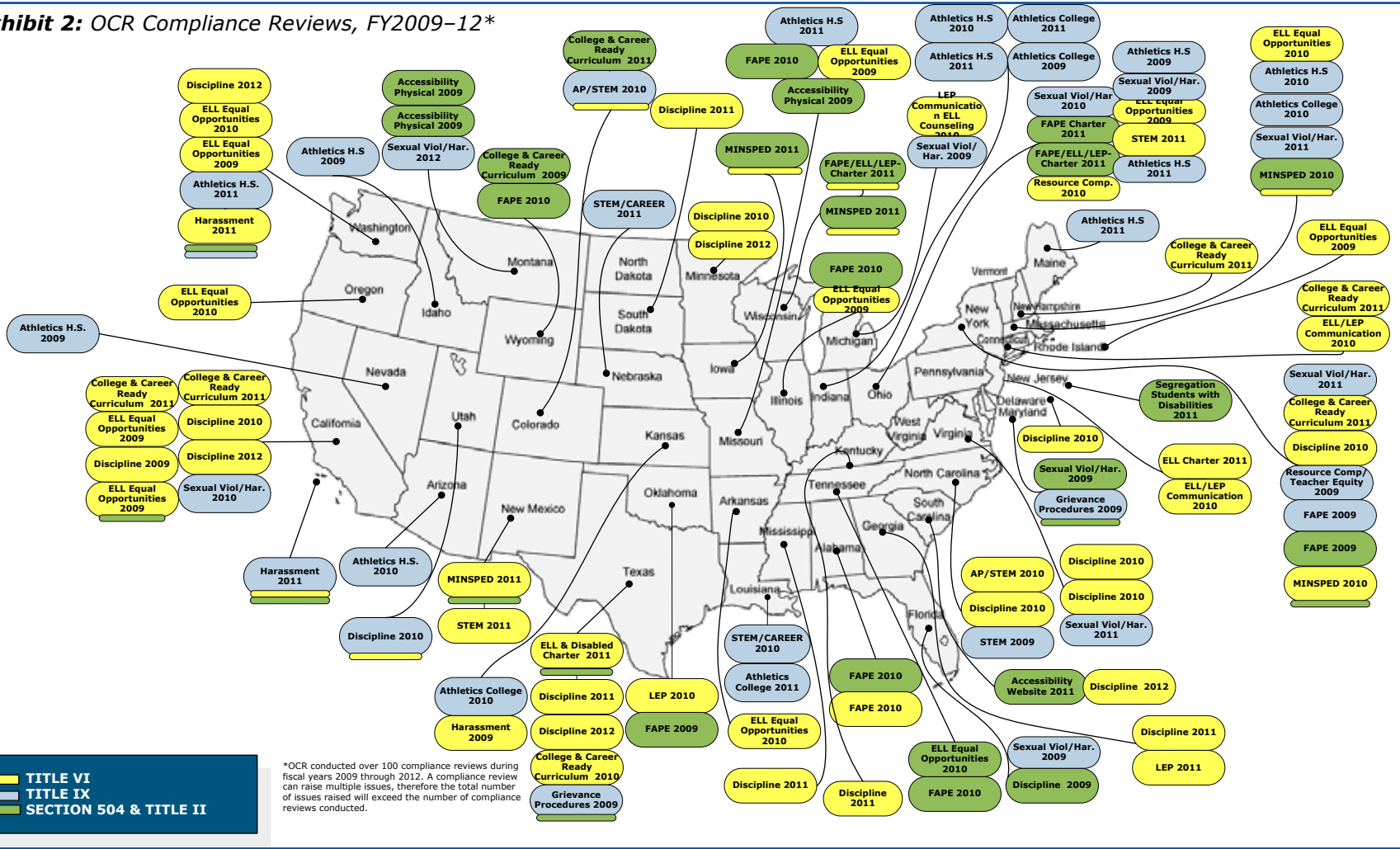
### *Guiding States in Overseeing Career and Technical Education Compliance*

Through its Methods of Administration authority, OCR oversees the civil rights compliance programs of 71 state agencies that are responsible for career and technical education across the country. Over the last four years, these agencies conducted over 1,200 comprehensive on-site inquiries of subrecipients and state-operated programs that were targeted based on their potential for civil rights

<sup>2</sup> 34 C.F.R. § 100.7(a), Periodic Compliance Reviews.

<sup>3</sup> 34 C.F.R. § 110.7(c), Investigations.

**Exhibit 2: OCR Compliance Reviews, FY2009–12\***



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noncompliance. About 90 percent of these inquiries resulted in corrective action and positive change for students on issues such as accessibility; recruitment, admissions, and counseling; comparable facilities; services for students with disabilities; financial assistance; work-study, cooperative and job placement programs; and employment.

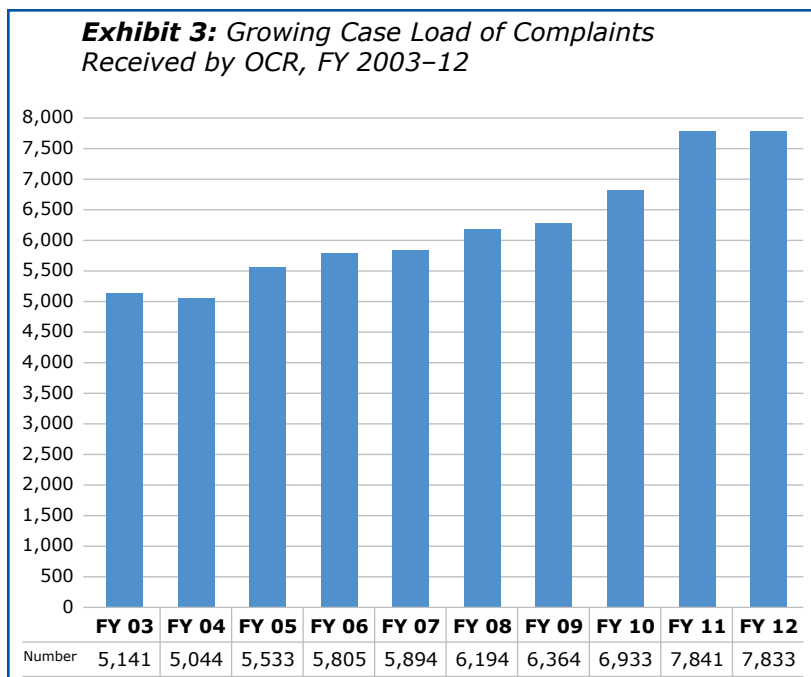
For example, under OCR's guidance, state agencies have ensured their districts provide high school curriculum guides and other important information to communities serving limited English proficient parents and students in Spanish and other languages; ensured districts conduct required assessments of counseling activities in places where female and African-American students remain underrepresented in science, technology, engineering, and mathematics (STEM) programs; and ensured technical colleges provide accessible student stations in their career and technical education classes and laboratories. OCR also issued guidance documents on how such state agencies should document their compliance oversight work. Through OCR's ongoing analyses of their work, it is clear that state agencies are making great impact and continuously improving the legal adequacy and findings of their compliance audits and the effectiveness of the resulting remedies.

### Revitalizing the Complaint and Investigatory Processes

Over the last four years (FY 2009–12), OCR has received 28,971 complaints—more than in any previous four-year period in its history, and representing a 24 percent increase over the previous four-year period. Over half of them addressed disability issues, about a quarter pertained to Title VI concerns, and the remaining addressed sex and age discrimination, 14 percent and 6 percent respectively. (See Exhibits 3 and 4.) During the same time period, OCR closed<sup>4</sup> 28,577 complaints—also a record. Complaint resolution has always been OCR's primary function, and this growing volume made it all the more necessary that OCR get more effective and efficient in delivering this crucial service.

#### Coordinating Support and Information Sharing

During the past four years, OCR enhanced its capacity to ascertain



<sup>4</sup> OCR closes complaints through a number of means, including dismissal based on lack of jurisdiction, closure after the parties reach a mediated agreement through OCR's Early Complaint Resolution process, or closure through a resolution agreement between the recipient and OCR, either before or after a finding of violation by OCR.

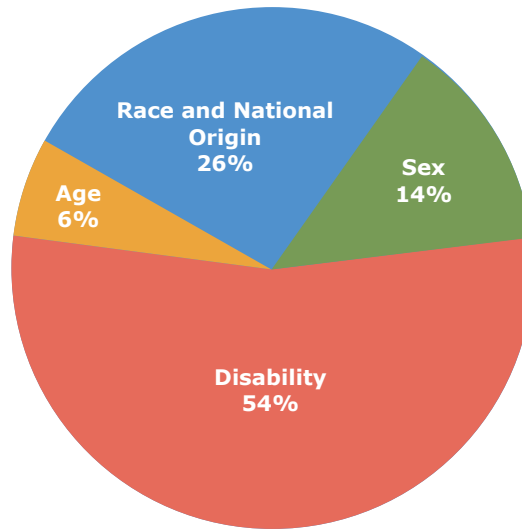
trends and emerging issues found in complaints, and to systematically share and incorporate lessons learned by OCR’s enforcement teams across the country. To do this, OCR enhanced its case management database system to better support its staff in investigating, closing and monitoring cases, and its management of the review and dissemination of information and the allocation of resources across OCR.

**Creating Powerful Resolutions and Sustaining Results**

The potential for benefit of any investigation, be it complaint-driven or proactive, lies in the resolution. To generate the maximum sustained impact in each case, OCR collaborates with the institution in question to identify policies and procedures that need to be revised and training and orientation programs that need to be provided, and to take whatever additional steps are necessary to identify and address the source of discrimination and empower and support the entire school or university community to eradicate it.

OCR has achieved stronger outcomes by institutionalizing measures to improve the structure, development and content of each resolution agreement and to ensure that the remedies obtained are faithfully implemented. As an example, OCR staff and leadership across its regional offices developed a holistic approach to resolutions, always answering critical questions such as: Are the root causes of the discrimination being addressed? Are all the possible levers—including, for example, policy and program changes, training, community outreach, advisory groups, support and remediation for complainants, the use of climate checks, surveys, interviews and other means to garner stakeholder input, and frequent monitoring—being utilized? Has the agreement been developed collaboratively with the educational institution to design effective remedies that build upon the institution’s expertise and capacity, existing programs and intended

**Exhibit 4: Percentage of Complaints Received in FY 2009–12 By Type of Alleged Discrimination**



*In addition to the categories listed on the figure, two-tenths of a percent (.2 percent) of allegations received over the past four years involved alleged violations of the Boy Scouts of America Equal Access Act.*

*“Every resolution of a Title IX investigation...[has] an impact beyond that particular school. We believe that campuses and school administrators and attorneys at campuses really pay attention and look at what other schools are being held accountable for.”*

— Ariela Migdal  
ACLU

“Tougher Line on Sexual Harassment”  
*Inside HigherEd*, December 10, 2010

reform efforts, and to obtain the institution's buy-in? And are provisions built into the resolution agreement to ensure that the remedies are faithfully implemented, and that OCR can act quickly to help if compliance is stalled?

By grappling with these and other questions as a matter of course, OCR has issued stronger resolution agreements in hundreds of cases over the past four years, and moved them from oft-described compliance-driven checklists to collaborative, rigorous instruments of change used by school officials across the country to align and monitor reform efforts. And to help ensure these resolutions yield real and sustained change, they now include standard provisions clarifying OCR's authority to continue monitoring until the institution is in full compliance with the law and to pursue legal enforcement if OCR finds noncompliance. Monitoring now continues until the recipient is capable of taking prompt and effective steps to eliminate discrimination, prevent it from recurring, and, as appropriate, address its effects on the individual victims and the broader community, and is in compliance with the law. Depending on the complexity of the case and resulting agreement, monitoring can be brief or last for multiple years.

### ***Fulfilling Longstanding and Unfinished Responsibilities***

While improving its approach to new complaints, OCR also set about identifying and resolving the large number of unfinished investigations spanning multiple years that existed in every regional office. In 2009 and 2010 alone, OCR closed well over 50 such cases.

For example, one case involving physical accessibility of a university in Ohio had been open since 2004. OCR worked closely with the institution and entered into an agreement that addressed the deficit in facilities and programs campuswide. In another case, opened in 2008, a district in New York that lacked the required Section 504/ADA coordinator and was using significantly defective procedures for addressing the needs of students with disabilities finally revised its grievance processes and procedures and realigned its staff to support students with disabilities. In Arizona, a complaint open since 2005 was finally resolved to ensure English learners were no longer prematurely exited from language programs unprepared to access the core curriculum. And OCR resolved a 15-year-long investigation into a case on sex discrimination involving intercollegiate athletics programs at a major California university. OCR restarted the stalled investigation and negotiations and closed the case in 2012 after concluding that the university had come into compliance with regard to scholarships and athletic participation opportunities. In another example, OCR closed the monitoring of an agreement that had been entered into in 2001 with a school district in Washington on increasing opportunities for girls to play sports. Working with OCR, the district came into compliance by increasing the participation of girls in sports, while simultaneously sustaining its teams and participation opportunities for boys. It achieved this result in part by developing outreach activities at the middle-school level and a pipeline of opportunities for its girls to play sports.

## **Amplifying the Impact: Technical Assistance and Outreach**

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Even the most thoughtful and vigorous enforcement efforts alone, are insufficient to prevent civil rights offenses across the country. Therefore, to promote voluntary and proactive compliance with the civil rights laws, OCR has improved the information and other support services—i.e., technical assistance—it provides to institutions and individuals across the country. OCR has also undertaken a systematic, strategic and organized approach to building a comprehensive, proactive technical assistance and outreach docket.

### ***Helping Recipients Understand Obligations***

A major element in improving technical assistance has been increased transparency, with communications along multiple channels with recipients and the public. For example, OCR now translates its key documents into multiple languages and posts its resolution agreements to provide concrete models that institutions can use to meet their obligations and stave off potential problems.

Complementing its written communications efforts, OCR's regional offices routinely provide technical assistance outreach to educational institutions. From FY 2009 through FY 2012, OCR made over 1,325 technical assistance presentations to various constituencies—an average of over 330 presentations per year—compared with 185 presentations given in FY 2008.

Technical assistance includes on-site consultations with recipients, conferences, community meetings, webinars, widespread dissemination of policies and other information, and responses to thousands of written inquiries and questions via OCR's telephone hotline. During the last four years, OCR has developed and carried out a strategic, proactive outreach program to ensure that critical civil rights information is reaching the broadest possible segment of the education community—including state and local agencies, communities that may be isolated, disenfranchised, or otherwise lacking in effective communication resources, and the public at large.

Frequent technical assistance enables OCR's constituents to learn of their rights and responsibilities under the civil rights laws, thereby improving civil rights compliance without the need for enforcement activity. With the Office of Management and Budget's assistance and approval, OCR developed a new survey instrument to collect feedback from recipients of technical assistance in order to monitor the frequency and effectiveness of the assistance provided. OCR has also begun to provide technical assistance more efficiently and expansively through better use of technology.

For example, while expanding overall the number of complicated TA initiatives and activities offered, OCR has designed a special initiative for "wounded warriors" that addresses the rights of service members who have disabilities as a result of being injured while on duty and who are entering or reentering postsecondary education. In one initiative, OCR partnered with several California community colleges, the California State University system, the California Department of Veterans Affairs, and veteran advocacy groups to provide multiple outreach seminars and workshops for several hundred participating students and service personnel.

Additionally, since 2009, OCR has held large-scale, multistate conferences on the responsibilities of schools to meet the needs of students with food allergies, juvenile diabetes, and other health needs. Over 400 parents and advocates attended regional events in New York and New Jersey alone. In Texas, parents traveled as far as 350 miles to attend an OCR-led workshop discussing how diabetes affects students during school hours and school-related functions and the corresponding responsibilities of schools to ensure students are safe and in school.

In Chicago, OCR provides technical assistance to officials from across the Midwest at what is now its annual Chicago seminar. Since 2009, the Chicago seminar, held at the local OCR office for little to no cost, has brought nearly 100 state and local leaders and educators together in a unique, interactive and collaborative atmosphere to address issues they face. Building on the Chicago seminar, in 2011, three regional offices partnered with three of the Department-funded Equity Assistance Centers to sponsor a collaborative multiday conference for over 250 state and local educators, administrators, policymakers, researchers and advocates from states such as Alabama, Florida, Arkansas, Louisiana, Texas, North and South Carolina and Washington, D.C. And in Virginia, OCR has worked with the state's Higher Education Leadership Partnership to conduct "transition forums," which focus on the path students with disabilities take to successfully transition from high school to college. OCR also worked with a number of Virginia stakeholders to help plan the National and International Transition Forums, extending OCR's help across district and regional borders, to raise awareness and share best practices for improving the likelihood of a successful transition to college for students with disabilities.

In addition to its proactive technical assistance initiatives, in FY 2012, OCR's customer service and technology team (CSTT) handled 10,162 telephone hotline requests—a 40% increase from the 6,045 requests received in FY 2009—and 2,574 pieces of correspondence from the public, up nearly 300 letters and emails from 2009. CSTT also coordinates the distribution of OCR guidance documents and publications and handles *Freedom of Information Act* (FOIA) requests—approximately 100 in FY 2012, while OCR's regional offices managed around 1,000 additional FOIA requests during the same time period. OCR's customer service processes and new procedures have been recognized within the Department for their rapid turnaround of controlled correspondence. For example, despite the substantial increase in correspondence, our response time decreased from 3.1 days on average in 2009 to 2.5 days in 2012. Indeed, OCR has consistently achieved efficient controls and timely responses, and serves as a model for the Department in responding to FOIA requests promptly and efficiently.

### ***Reaching the Public***

In today's instant, continuous, and crowded informational marketplace, OCR understands that to reach a diverse array of stakeholders it must constantly communicate with recipients and students and their families. Accordingly, OCR has utilized multiple channels of public engagement—including traditional and social media, town hall meetings, other live events, and print materials—in order to complement, amplify, and inform its work. OCR leadership now routinely engages proactively with the press and community groups in an effort to reach as many

leaders, students and parents as possible. OCR also frequently meets with members of Congress and their staffs to provide information and address their concerns.

OCR also often engages with local communities as part of its investigations. For example, OCR now conducts town hall meetings, where appropriate, during its investigations. In one investigation, to solicit input from parents and students, OCR conducted a town hall meeting in Los Angeles with over 400 community members, which gave OCR staff and attorneys the opportunity to speak with hundreds of parents eager to share their experiences.

Similarly, in Pennsylvania, as part of a compliance review to determine whether English learners had received the services and supports they were entitled to by law, including information from the district in a language they and their parents could understand, OCR conducted a town hall meeting with parents and community members to learn their perspectives about the provision of English learner services. During the meeting, complaints were filed by parents alleging unequal treatment of Hispanic students and their parents when they tried to register and enroll in school.

OCR provided Title IX athletics technical assistance to a large school district, with attendees including the district's equity compliance office and attorneys.

Due to the training's success, the district asked OCR to provide similar training to all district athletic directors as soon as possible.

The presentations addressed a full auditorium of over 200 athletic directors on interscholastic athletic topics, with emphasis on athletic interests and abilities and issues such as facilities, equipment and supplies, and scheduling.

## OCR Policy Guidance as a Tool for Enforcement and Education

Over the past four years, OCR has issued relevant and accessible policy guidance documents that complement OCR's technical assistance and enforcement activities, and inform recipients and the public about critical and emerging issues arising under the laws and regulations OCR enforces. The structure and format of the guidance documents have been revamped to include application sections with multiple hypothetical fact scenarios showing how legal principles apply to the educational decisions constantly made by educators and administrators everywhere. The new guidance documents also avoid overly academic or legal language in favor of plain prose.

OCR attorneys use its recent guidance documents as lodestars during investigations; school system administrators, school principals and college administrators use them prophylactically to prevent civil rights violations; and members of the public use them to better understand how these laws apply to their own lives or to the lives of their children, relatives, friends, and neighbors.

*"The AAPD...commends the U.S. Dept. of Ed. for issuing broad guidance to [K-12] schools and institutions of higher education."*

—Helena Berger  
CEO, American Association of People with Disabilities, responding to OCR's guidance regarding the need for accessibility of emerging technologies on college and other campuses.  
*Press release, May 26, 2011*

The topics addressed in the policy guidance documents, also known as “Dear Colleague Letters” (DCLs), have offered clear direction to schools and colleges in areas of pressing concern under the laws OCR enforces.

**EXHIBIT 5: OCR POLICY GUIDANCE 2009–12**

<b>March 3, 2009</b> (Section 504/Title II)	Frequently Asked Questions (FAQ) regarding disability issues to incorporate the <i>Americans with Disabilities Amendments Act of 2008</i> , effective January 1, 2009.
<b>April 20, 2010</b> (Title IX)	DCL regarding the standards for assessing compliance with Part Three of the “Three-Part Test” used to determine whether institutions are meeting the Title IX regulatory requirement to accommodate students’ athletic interests and abilities.
<b>June 29, 2010</b> (Section 504/Title II)	DCL concerning the obligation of colleges and universities to ensure that students with disabilities have equal access to emerging technologies in education.
<b>October 26, 2010</b> (Title IX, Title VI, Section 504/Title II)	DCL concerning recipients’ obligations to protect students from student-on-student harassment on the basis of sex; race, color and national origin; and disability.
<b>April 4, 2011</b> (Title IX)	DCL on Title IX requirements and how they relate to sexual harassment and sexual violence.
<b>May 6, 2011</b> (Title VI)	DCL regarding schools’ enrollment procedures explaining that Title VI and the Equal Protection Clause forbid public schools from denying an education to children based on their citizenship or national origin.
<b>May 26, 2011</b> (Section 504/Title II)	DCL and FAQ documents to K–12 and higher educational institution regarding the use of electronic book readers and other emerging technologies in compliance with civil rights laws that prohibit discrimination on the basis of disability.
<b>December 2, 2011</b> (Title VI)	DCLs on the permissible voluntary uses of race to achieve diversity or avoid racial isolation in K-12 and postsecondary institutions.
<b>January 11, 2012</b> (Methods of Administration)	DCL on how state Methods of Administration programs can document the thoroughness of their compliance reviews.
<b>January 19, 2012</b> (Section 504/Title II)	DCL and FAQ regarding how the <i>Americans with Disabilities Amendments Act of 2008</i> affects students with disabilities attending public elementary and secondary schools and how OCR evaluates compliance with Title II of the <i>ADA</i> and Section 504 in light of the <i>Amendments Act</i> .

OCR's policy guidance documents can have a widespread, positive impact on students' civil rights by guiding recipients to proactively address critical civil rights issues without any enforcement action by OCR. For example, OCR's 2011 release of comprehensive guidance on the obligations of schools and colleges under Title IX to prevent and respond to sexual harassment and violence has led to unilateral ongoing change in the higher education community. Within months of the release, dozens of universities revised their sexual assault policies. Furthermore, colleges across the country are sustaining intensive efforts to address these problems more comprehensively and effectively. For example, the 2012 National Conference on Law and Higher Education, attended by representatives of approximately 110 colleges from across the country, devoted a day-long session to investigating and preventing sexual misconduct, noting in its agenda, "Preventing college sexual misconduct is now a national higher education top priority. The U.S. Department of Education has issued new guidance and ramped up its enforcement and investigation efforts.

Compliance is the order of the day." The seminar featured an address by a senior staff member of OCR and presentations by administrators of colleges that had been investigated by OCR on this topic and by attorneys who specialize in training schools in best approaches to this issue.

*"Perfect ...  
It's a very fair interpretation of what  
the court decided."*

—Lee Bollinger  
President, Columbia University  
(commenting on the use of race  
policy guidance)  
"U.S. Urges Creativity by Colleges  
to Gain Diversity" *New York Times*,  
December 2, 2011

In another example, OCR helped spur the national focus on bullying with its groundbreaking guidance in 2010 regarding bullying and its work with the Department to produce an analysis of state anti-bullying laws. Following the publication of these resources, a number of states enacted laws prohibiting bullying or harassment of students based on their sexual orientation, and states that had not previously addressed bullying enacted anti-bullying statutes. Moreover, these documents have provided a legal framework for much of the discussion and advocacy on bullying that has occurred in the last two years.


## The Civil Rights Data Collection: A Transformed Tool to Engage Communities

OCR recently released its transformed Civil Rights Data Collection (CRDC), which now offers the public an array of new civil rights indicators with which to gauge the "equity health" of schools. Thanks to the 100 percent response rate from the schools and districts surveyed across the country—representing 85 percent of America's school children—the new CRDC has been heralded as a first-of-its-kind opportunity gap data tool that is allowing citizens and schools nationwide to identify educational equity-related problems and their solutions.<sup>5</sup>

<sup>5</sup> The quality of the CRDC data ultimately depends on accurate collection and reporting by the participating districts. OCR strives to ensure CRDC data provide an accurate and comprehensive depiction of student access to educational opportunities in sampled school districts. The submission system includes a series of embedded edit checks to ensure data errors are corrected before the district submits its data. Additionally, each district, through its superintendent or the superintendent's designee, is required to certify the accuracy of its submission.

**Exhibit 6:** *The New Civil Rights Data Collection Web Tool.*


## CIVIL RIGHTS Data Collection



Wide-ranging education access and equity data from a sample of our nation's public schools.


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**Quick Access**




**2009 District or School Reports**

- Find school- or district-level summaries
- Access all data for a single school or district




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**Detailed Data Tables**

- View and compare data across multiple schools and districts
- 2000, 2004, 2006, and 2009 CRDC data




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**View Longitudinal Data (Coming Soon)**

- Explore data trends over time




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**State and National Estimations**

- Download 2000, 2004, 2006, and (2009 Coming Soon)



### ***Expanding and Streamlining the Data Collection***

Beginning in the summer of 2009, OCR set about extensively redesigning the CRDC. It sought input from a wide range of experts within the Department and throughout the federal government, and from stakeholders from state and local education agencies and the broader education community, through meetings and two public notice-and-comment periods. Sources of advice included the Education Information Management Advisory Committee (a committee of the Council of Chief State School Officers), the National Center for Education Statistics Forum, state data coordinators for the Department's ED*Facts* data submission system, and a sampling of school districts to ensure coordination among data collections and to minimize burden on schools and districts. OCR attorneys and staff from throughout the country were deeply involved to ensure the collection's maximum utility in the investigatory process; this involvement was important given that, in the past, CRDC data were too often considered irrelevant by OCR's attorneys and investigators. Now, the new CRDC data are used frequently by officials at OCR, the Department, schools and colleges, and members of the public alike.

OCR's processes ensured that, while several new indicators were added to the collection, indicators also were removed where appropriate. The effort was made

easier because OCR, for the first time, made its data definitions and metrics consistent with other mandatory collections across the Department wherever possible. For example, rather than collecting data on teachers by raw number, it now reports on the number of “full-time equivalents,” as do *EDFacts* and other data sets. Further, new finance data definitions were made identical to those legislatively mandated under the *American Recovery and Reinvestment Act*. The new collection also no longer requires schools to report to OCR data on students by disability type because those data are more easily imported from *EDFacts*.

*“The power of the Civil Rights Data Collection is not only in the numbers themselves, but in the impact it can have when married with the courage and the will to change. The undeniable truth is that the everyday educational experience for many students violates the principle of equity at the heart of the American promise. It is our collective duty to change that.”*

—Secretary Arne Duncan  
“The Transformed CRDC,” March 6, 2012

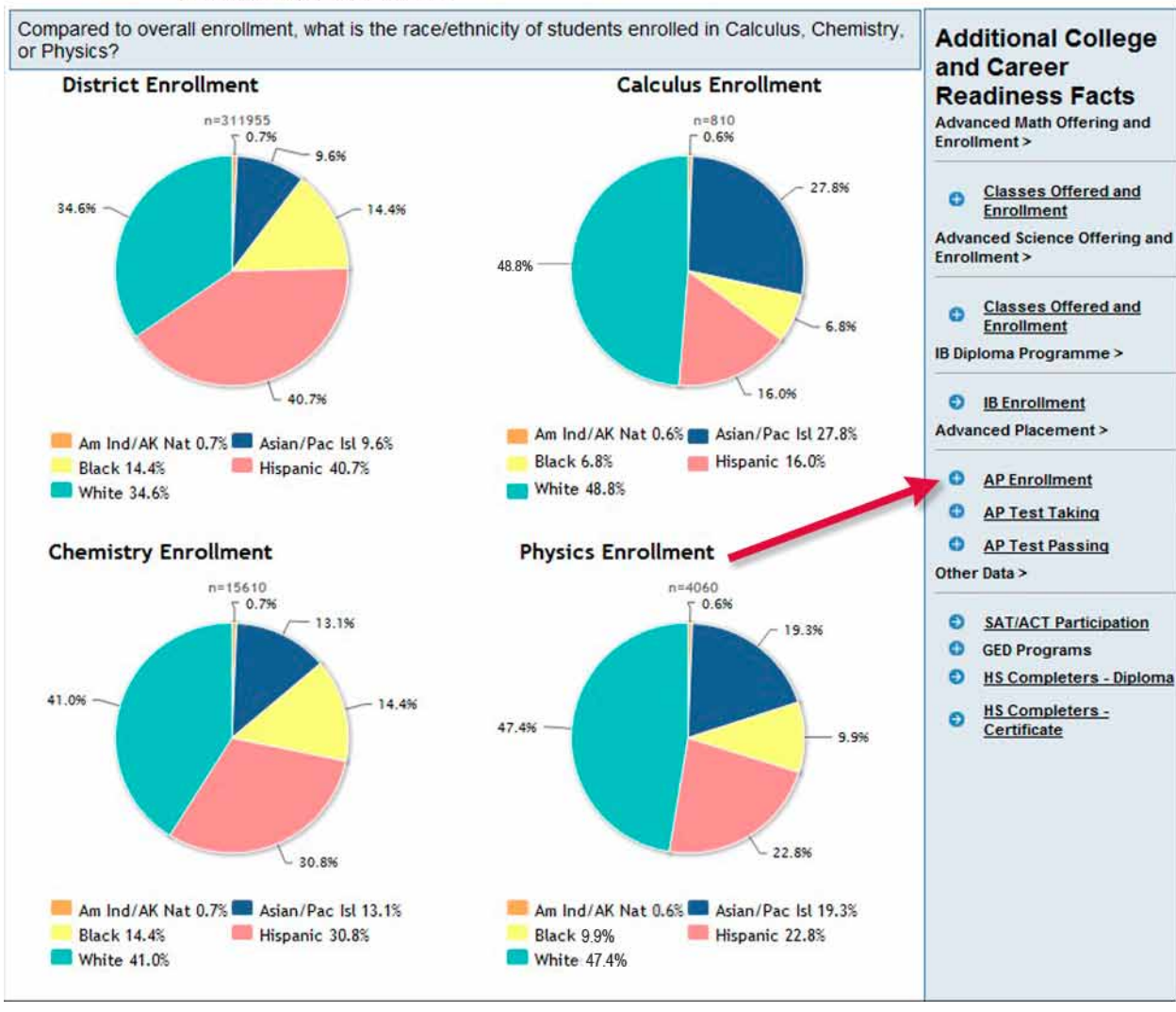
In order to deepen the understanding of students’ educational opportunities, the CRDC now includes data on whether students have access to the critical, rigorous courses needed for success in postsecondary education or training; previously collected data on promotion and graduation testing did not provide adequate information on the level of preparation students had for future success. It also collects new data on teacher experience and attendance; school finance; student retention; participation in SAT and ACT tests; discipline (including data on students with and without disabilities, data on in-school and out-of-school suspensions, referrals to law enforcement agencies, and school-related arrests); harassment and bullying; and restraint and seclusion.

Moreover, the sample for the 2009–10 CRDC was expanded to include all schools in every district serving more than 3,000 students, a representative sample of schools by type (e.g., charter or magnet) and geography, and state juvenile justice agencies. To ensure an accurate cohort analysis, the collection is now done in two parts—the earlier one with enrollment indicators and the later one to track outcomes, such as completion of certain courses—and includes further disaggregation by disability status (by the *Individuals with Disabilities in Education Act* (IDEA) and Section 504 separately), race (including further disaggregation of Asian/Pacific Islander and multiracial student population), and English learner status.

### ***Making Data Transparent and Accessible***

In an effort to make the new CRDC easily usable by the public and OCR’s investigators and attorneys, OCR designed a new Web-based data collection tool that allows users to tailor the school-level indicators and produce visually intuitive graphic displays of school- and district-level tables, and made it available to the public in a privacy-protected format on OCR’s website, <http://ocrdata.ed.gov>. The new website is also research-friendly. For example, users have enhanced ability to search and query the database for types of schools as well as schools or districts meeting certain criteria.

**Exhibit 7: Snapshot of CRDC College and Career Readiness: District in Nevada.**



Early analysis shows signs of increased visibility and usability. For example, the new CRDC website has clearly increased the public’s awareness of the data itself. Since the launch in March of 2012 through October, 2012, the CRDC site has seen more than 69,000 visits—an average of about 9,900 visits per month, compared to 2,600 visits per month prior to the launch of the website and the release of these data.

**Helping to Understand and Use Data for Change**

To support the nearly 17,000 school districts reporting CRDC data, OCR frequently provides trainings and technical assistance on the new CRDC and its tools, including webinars and interactive data presentations. Additionally, OCR now offers technical assistance through a Partner Support Center where districts can call or email with questions. A full 78 percent of sampled districts (more than 5,000) contacted these support centers for the new collection. The Partner Support Center also provides targeted outreach to school districts to offer specific guidance and trainings to rural schools, charter schools, large districts, and districts that will be participating in the

CRDC for the first time in 2011–12, which will be a universal collection across every school and district in the country.

OCR continues to refine technical assistance to help districts meet their obligations to provide data that are accurate and sufficient for meaningful longitudinal analysis. For example, OCR has developed advanced Web-based survey features, increased the data edit checks and enhanced the post-certification review process so that each district can check its own data before they are released publicly. As they launch investigations, OCR’s staff across the country use the CRDC to prepopulate their data requests so that recipients do not have to make duplicate reports and submissions. This expedites investigations and reduces the reporting burdens.

The CRDC’s utility reaches far beyond OCR to the entire Department, to other agencies and to researchers and policymakers across the nation. For example, the Department uses the CRDC in monitoring compliance with requirements for federal professional development funding; in monitoring, where appropriate, states under ESEA flexibility waivers; for defining a critical program requirement in the first-of-its-kind Race to the Top district competition; and for evaluating the Office of English Language Acquisition’s (OELA) programs and activities.

In addition, the collection has been identified by other agencies as a resource for informing policy and monitoring grant activities; and has been cited by more than 20 research reports in the last six months alone. Organizations such as advocacy groups, college professors, research institutes and news organizations already have done in-depth explorations of the local and regional CRDC data to determine where underlying problems exist and find models of successful school

*“Transparency is the first step towards reform, and for districts that want to do the right thing, the CRDC is an incredible source of information that shows them where they can improve and how to get better.”*

—Assistant Secretary Russlynn Ali  
June 30, 2011

transformation. Further, at least two state boards of education, in Maryland and Michigan, and state legislatures in California and elsewhere have introduced policy supported by analyses of local CRDC data; and counties and districts in those states and others such as Colorado, Texas, Virginia, North Carolina and Delaware have recently taken up reform of zero-tolerance discipline policies, many citing CRDC data as parts of their movements.

### ***What the Data Reveal—Student Opportunities Along Their Educational Pathways***

Data from the transformed CRDC have revealed profound inequities in public schools nationwide. These data, often being revealed for the first time ever, provide a new way to examine the journeys of students through the entire educational process—from pre-kindergarten through the end of high school. These data portray a disturbing picture for too many students across the nation. Though the data alone do not constitute a civil rights violation, they shine a spotlight on urgent educational concerns and have become an important tool for self-analysis in schools and districts across the country.

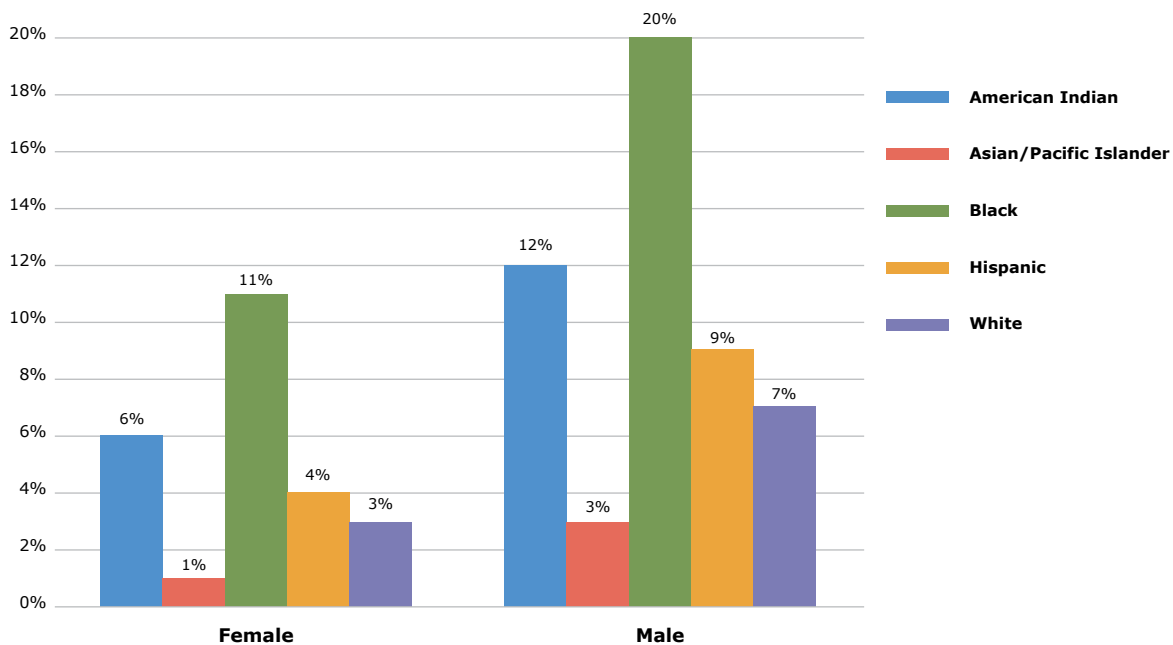
Equally important, the CRDC data also reveal where schools and districts are making great progress and leading the nation in closing the opportunity gap.

Across the spectrum, the new CRDC data tell an important story about a plethora of issues facing America's schools and colleges. For example, on access to rigorous courses and learning environments, and indicators about teachers, the data describe common phenomena:

- ▶ New data on early learning opportunities show that most districts offer their communities pre-kindergarten programs, about a fifth target those programs to low-income children, and half offer full-day pre-kindergarten.
- ▶ New information about where opportunity gaps begin in elementary school reveals some concerning trends:
  - White and Asian/Pacific Islander students are twice as likely to participate in gifted and talented education programs as their African-American and Hispanic peers. Conversely, African-American students, particularly African-American boys, are more likely to be labeled with disabilities than are their white and Asian counterparts.
  - Elementary schools serving the most Hispanic and African-American students pay, on average, \$2,251 less per teacher every year than do schools in the same districts serving the fewest numbers of Hispanic and African-American students.
- ▶ New data about middle school show the importance of a rigorous learning environment that prepares students for the challenges of high school:
  - Students of different races succeed at about the same rates when they get access to rigorous math early (86 percent of white students taking Algebra I in middle school passed the course, as did 79 percent of Hispanic and African-American students); and students of all races or ethnicities who take algebra in these earlier grades pass the course at higher rates than those who take it later. But African-American and Hispanic students are less likely to get algebra early to begin with.
  - Middle schools serving mostly African-American students are nearly twice as likely to have teachers with one or two years of experience as are middle schools within the same district that serve mostly white students.
- ▶ And a host of never-before-available indicators inform us about high schools and college- and career-readiness:
  - Students with limited English proficiency make up 6 percent of the high school population (in grades 9–12), but are 15 percent of the students for whom algebra is the highest-level math course taken by the final year of their high school career.
  - While over 80 percent of the high schools in the CRDC offer their students Algebra I, geometry and biology, only 62 percent offer physics and one-half offer calculus. And in diverse districts, of the high schools serving the most Hispanic and African-American students, less than a third offer calculus, and only 40 percent offer physics.

- Hispanic students make up 20 percent of the student body at high schools offering calculus, but only 10 percent of the students taking calculus.
- ▶ Girls are equitably represented in most rigorous high school math courses, including Geometry, Algebra II, and Calculus. In AP mathematics (Calculus and Statistics), however, girls are only 48 percent of the enrollment, and boys have consistently outnumbered girls in these courses. And, overall, boys take AP tests and pass AP tests at a higher rate than girls. In fact, 60 percent of boys passed an AP exam compared to 55 percent of girls.
  - Only 2 percent of the students with disabilities are taking at least one AP class.
- ▶ The transformed CRDC makes public long-hidden data about other important indicators of school culture, including: numbers of students, broken down by demographic characteristics, who are suspended once and multiple times, expelled, and arrested in school; and new information about the use of restraint and seclusion in our classrooms:
  - African-American students are over 3½ times more likely to be suspended or expelled compared to their white peers.
  - One in five African-American boys receives at least one out-of-school suspension, more than any other group of students. And, while girls generally receive fewer punishments than boys, African-American girls are suspended at a rate higher than Asian/Pacific Islander, Hispanic or white boys. (See Exhibit 8.)

**Exhibit 8: Out-of-School Suspension Rates by Race and Sex, 2009–10**



Sample size: 7,000 school districts, including over 72,000 schools.  
 Source: CRDC data.

- Students with disabilities who are covered under the IDEA are more than twice as likely to be suspended out-of-school than are students who do not receive services under the IDEA.
  - Nearly 30,000 students were expelled under zero-tolerance policies in the CRDC sample. And in districts that reported expulsions under zero-tolerance policies, Hispanic and African-American students represent 45 percent of the student body but 56 percent of the students expelled under such policies.
  - Never-before-seen data on restraint and seclusion show that while Hispanic students represent 24 percent of students without disabilities, they are a full 42 percent of students without disabilities who are subject to seclusion.
- ▶ First-of-its-kind data about bullying and harassment:
- Across the grades, data show that districts are confronting issues of bullying and harassment throughout the country—nearly every district in the sample reports having a policy on bullying and harassment. Over one-half report at least one incident of bullying and harassment on the basis of a student’s sex, nearly half report incidents of racial or ethnic harassment; and almost one-third report at least one incident of bullying or harassment on the basis of a student’s disability.
  - All told, over 91,600 students were disciplined for bullying or harassment on the basis of sex. Nearly 80 percent were male.

### ***What the Data Reveal—Success Stories***

The CRDC data on opportunities for America’s school children show that access and opportunity gaps can be closed. Analyses using new tools on the CRDC allow educators, researchers, policymakers, parents and students to find districts and schools where, for example, disciplinary policies are fair, and all students have equal opportunity to participate in gifted and talented programs, to take algebra early, and to get access to the full range of college- and career-ready courses in high school that they will need to succeed in life after graduation. With these tools the public can find and learn from schools and districts defying myths about achievement and opportunity.

For example, the CRDC can shine a spotlight on:

- ▶ An elementary school in Dade County, Florida, has 600 students, 96 percent of them African-American and Hispanic and 90 percent growing up in poverty. Yet, over twice as many Hispanic students participate in talented and gifted programs than in the district as a whole.
- ▶ A school district in Elizabeth, New Jersey, where 89 percent of students are African-American and Hispanic, and all the district’s students are taking Algebra I by the end of 8th grade with a 95 percent pass rate.
- ▶ At a high school in Montgomery County Public Schools in Maryland, where 68 percent of students are African-American and Hispanic, 72 percent of those students are enrolled in physics; in contrast, across the CRDC only 40 percent of African-American students are enrolled in physics, as are 45 percent in Montgomery County as a whole.

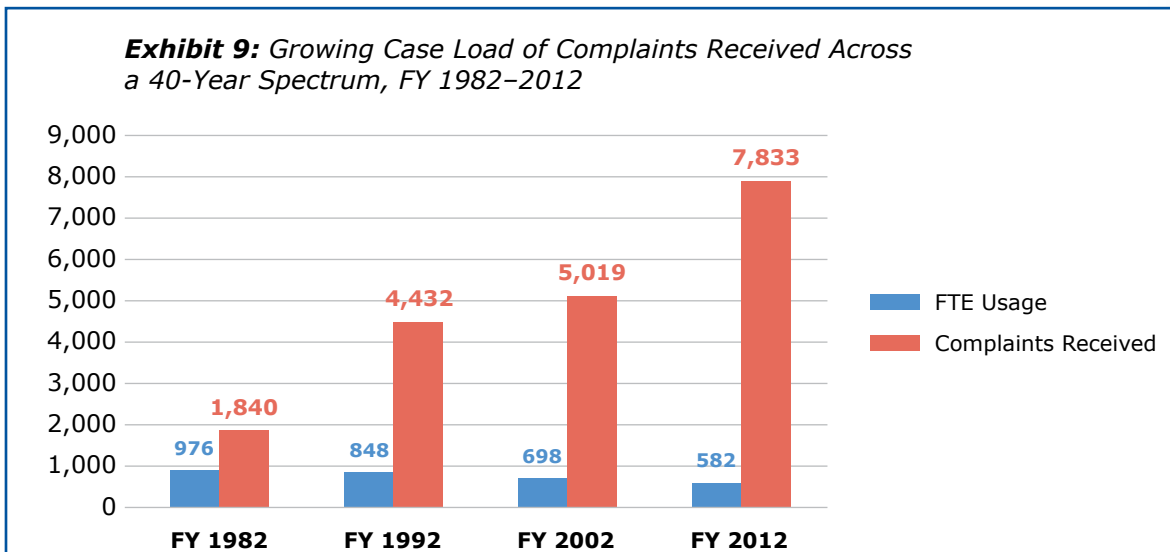
## Improved Operations to Meet OCR's Goals

### Increased Productivity

Against a backdrop of OCR's substantially increased investigation docket, technical assistance activities, and policy and data work, combined with limited resources—for example, since 1982 OCR's staff has nearly halved while its case load has increased almost fourfold (see Exhibit 9)—over the last four years OCR developed and implemented a new vision for empowering staff and using technology innovation to enhance efficiency, effectiveness and consistency in operations. OCR teams across the country rose to meet new challenges, performing tasks with aplomb and efficiency—receiving and resolving thousands more cases in 2012 than they did in 2008, and doing so faster. (See Exhibit 10.)<sup>6</sup>

### Building Capacity, Support and Accountability

In both practice and procedure, OCR's laser-like focus on excellent and efficient civil rights enforcement has meant ensuring its expert staff in its 12 regional offices



**Exhibit 10: OCR Case Load and Timely Resolutions, FY 2008-2012**

Fiscal Year	Number of Complaints With Resolution Due Dates Within the Fiscal Year	Number of Complaints Resolved Within 180 Days of Receipt	Percentage of Complaints Resolved Within 180 Days of Receipt
2012	8,051	7,491	93%
2011	7,159	6,580	92%
2010	6,671	6,025	90%
2009	6,167	5,684	92%
2008	5,964	5,412	91%

<sup>6</sup> Because of an increased appropriation, in FY 2010, OCR hired a total of 95 staff; 71 new mission critical staff in the field and 11 new mission critical staff in headquarters, as well as backfilled 13 mission critical management positions nationwide. However, due to attrition in FY 2010, the net gain to staff size was only 47.

are supported, respected and accountable, and that the work in each region is coordinated to ensure shared learning, consistent practices and collaborative and aligned enforcement. For example, as opposed to the restrictive and siloed nature of past practice, since 2009, career managers and leaders have been empowered to make staffing decisions and to design and implement technical assistance and outreach initiatives with leadership, support and coordination from headquarters. OCR has met its twin goals of strong and increasing staff accountability and empowerment. It developed new institutional procedures and practices to ensure staff engage with each other, share best practices and receive ongoing and tailored professional development from their expert colleagues across the agency.

### ***Using Technology to Gain Efficiency***

Beginning in 2009, with innovation and design expertise from our in-house staff, OCR revamped its nationwide case management system, allowing for ongoing real-time analyses of OCR's docket, including emerging trends in schools and districts across the country, and better management and resource allocation decisions.

OCR also developed new and efficient ways of helping students and institutions faster. Changes in practice and procedure include the re-engineering of the online complaint assessment platform to allow members of the public to better direct complaints and concerns to the appropriate forum, and to improve the quality of information OCR obtains at the outset of the investigatory process. Because many complaints are filed electronically as opposed to in person—in FY 2012, for example, about 70 percent of complaints (about 5,530) were submitted electronically—more accurate and useful online forms at the start will expedite investigations and the steps toward resolution. Staff leads from across OCR's regions are working with experts on Web-based interactive sites and privacy protections, and the new complaint forms are set to go live early next year.

### ***Ensuring Prompt Action and Consistent Results Countrywide***

Recently, OCR also piloted a new staff-led procedure to rapidly respond to certain types of cases. For example, OCR's analyses of complaint intake data show that disability complaints consistently represent about half of OCR's complaint workload—and thousands of these cases are relatively routine single-issue and individual complaints. To expedite resolution of this large group of complaints and ensure students are provided the supports they need in a prompt manner, OCR has recently launched a Rapid Resolution Processing Protocol in four of its twelve regions. Preliminary findings from this pilot resolution option are impressive: on average, using the protocol has reduced resolution time to 33 days against a historic average of 159 days for the typical case of this nature, while still maintaining high-quality service for the parties. It allows OCR staff to provide more immediate feedback on civil rights concerns to educational institutions and more timely results and better customer service for complainants so they can more quickly move forward with their education. The pilot has been applauded by OCR teammates, allowing them to be more productive while freeing up time for more complex cases.

## Maximizing Impact: Supporting Equity and Reform

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As the Department of Education's central office responsible for advancing equity through civil rights law enforcement, over the last four years OCR has worked tirelessly to support staff and leadership across the Department and administration and has collaborated on a variety of issues. For example, over the last year, OCR worked to help develop enforcement reporting requirements under IDEA; policy proposals for programs authorized by the *Carl D. Perkins Vocational and Applied Technology Education Act*; equity safeguards in ESEA flexibility; accountability provisions in Department-supported teacher preparation programs; equity-related outcomes in the administration of formula and competitive grants; and guidance on equity provisions in ESEA-required district and state report cards. In another example, OCR collaborated to help foster a positive learning culture by helping to issue memoranda on state anti-bullying laws, the *Equal Access Act*, and restraint and seclusion. Some signs of success in these efforts are clear. For example, the Department's previous strategic plan, released in 2007, failed to mention OCR or its work. Now, the Department's strategic plan through 2014 includes clear equity-related goals for students, and OCR is referenced several times as a critical office working to advance these goals.

OCR also works with a number of interagency initiatives, including the secretary of education's and attorney general's Supportive School Discipline Initiative; the *Violence Against Women Act* Interagency Policy Workgroup that seeks to combat and prevent sexual violence; the White House Council on Women and Girls; the Advisory Commission on Accessible Instructional Materials in Postsecondary Education for Students with Disabilities; interagency collaborations to help coordinate Title IX enforcement efforts pertaining to access to science, technology, engineering and math (STEM) programs; and the White House Initiatives on Hispanic, African-American, American Indian and Alaska Native, and Asian-American and Pacific Islander young people, and on Historically Black Colleges and Universities. In addition, it has been a lead office in helping design and lead the implementation of the Department's plan for improving access to services by persons with limited English proficiency pursuant to Executive Order 13166, and in helping to ensure the accessibility of the Department's communications and website pursuant to Section 508 of the *Rehabilitation Act of 1973*. OCR is a part of the secretary's and Department's senior-most advisory and decision-making committees. And OCR houses the Secretary's Equity and Excellence Commission, established by Congress in the *2010 Consolidated Appropriations Act*, comprising a group of 26 national education experts assembled to make recommendations to the secretary on ways to improve educational equity and excellence and close achievement and opportunity gaps still hobbling far too many of America's school children. In this role, OCR provides financial, administrative, staff and operating support for the Commission and its members, and OCR's assistant secretary sits as an *ex officio* member of the Commission. Lastly, OCR has worked in partnership with the State Department to implement the U.S.-Brazil Joint Action Plan to Eliminate Racial and Ethnic Discrimination and Promote Equality (JAPER) and with UNESCO to address sex discrimination suffered by LGBT students in member states.



## GETTING RESULTS: EXAMPLES OF STRATEGIC CIVIL RIGHTS ENFORCEMENT ACTIVITIES

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The majority of OCR's efforts are targeted at discrimination on the basis of race, color and national origin, prohibited by Title VI; discrimination based on a complainant's sex, prohibited by Title IX; and discrimination based on a complainant's disability, prohibited by Title II and Section 504. The three sections below provide examples of the types of complaints and compliance reviews OCR resolved, the policy guidance issued, and our technical assistance delivered during FYs 2009–12 in each of these three areas. The final section describes our work on harassment and bullying, one of the important issues that involves all three areas.

Together, these examples illustrate how the strategic alignment of our enforcement activities with our overall goals can result in positive change for students, parents, and teachers and ultimately contributes to the success of our nation's education system.

### Title VI: Discrimination on the Basis of Race, Color, and National Origin

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Title VI of the *Civil Rights Act of 1964* prohibits discrimination on the basis of race, color or national origin in programs and activities operated by recipients of federal funds. It states, "No person in the United States shall, on the basis of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." In the education arena, Title VI's protection applies to all elementary and secondary schools, colleges and universities—public or private—that receive federal financial assistance, and to certain other institutions. Its protection extends to all aspects of these institutions' programs and activities.

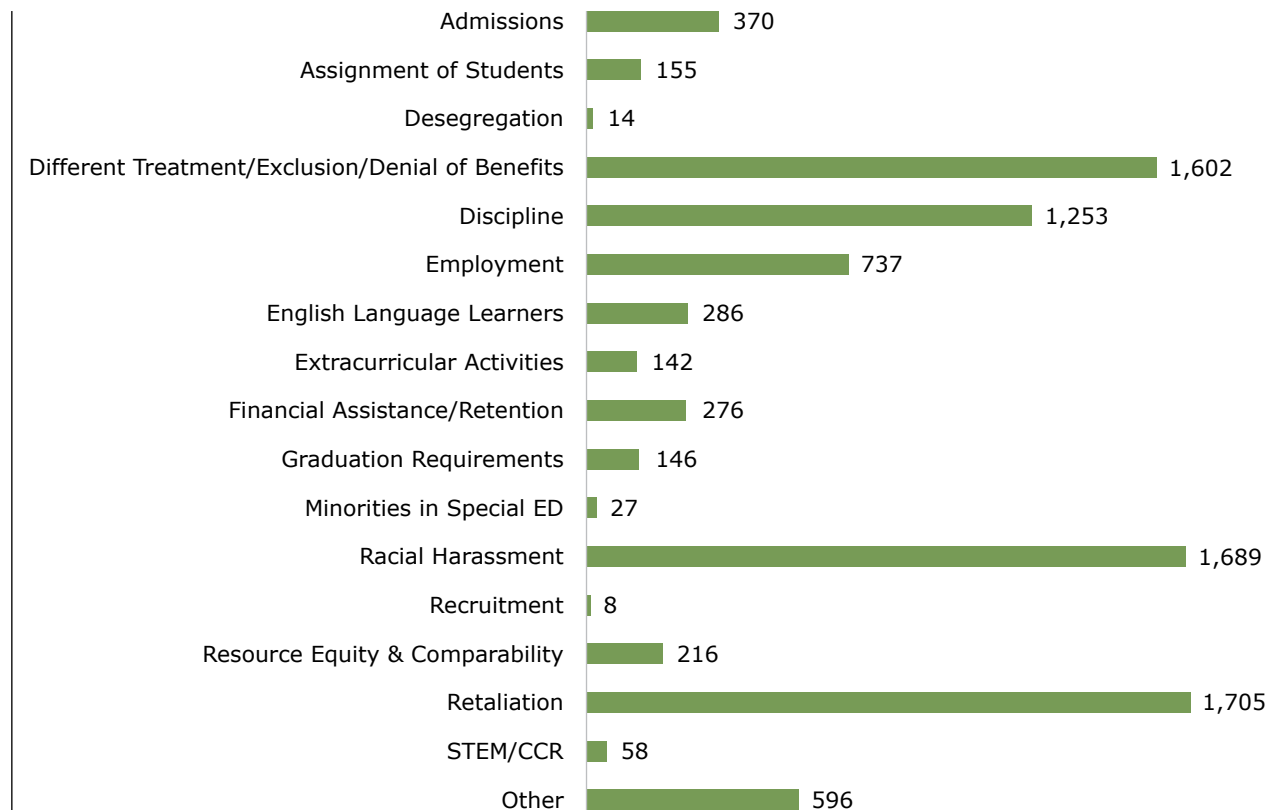
#### Policy

OCR has also issued three policy guidance documents that address topics related to Title VI: (1) how schools and colleges may voluntarily consider the race of students to pursue diversity, including racial diversity, in their student bodies and, in the case of K–12 schools, to avoid racial isolation; (2) the equal right of every child in the United States to a public elementary and secondary education regardless of his or her citizenship or immigration status or the status of his or her parents or guardians; and (3) schools' obligations to respond to bullying and harassment based on race, color, or national origin.

*"The administration is making strong policy statements on low-income children and students of color, outlining remedies."*

—Bob Wise  
Former Governor of West Virginia  
"U.S. Urges Creativity by Colleges to Gain Diversity"  
*New York Times*, December 2, 2011

**Exhibit 11:** Number of Title VI Issues Raised in OCR Complaints, Broken Down by Issue, FY 2009–12



Total Number of Complaints Raising Title VI Issues, FY 2009–12 = 7,722.

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

STEM refers to Science, Technology, Engineering and Math.

CCR refers to College and Career Readiness.

### **Enforcement**

In the last four fiscal years, OCR received over 7,700 Title VI–related complaints (see Exhibit 11)—more than ever before in a four-year period—and launched 61 systemic, proactive investigations that, collectively, address a broad range of Title VI–related issues in institutions across the nation. As described more fully below, OCR has worked on Title VI allegations such as the denial of access to college- and career-preparatory courses and programs and other educational opportunities, discriminatory discipline, and barriers to education for English learners.

### **Technical Assistance**

Educators, as well as parents and students, must have the knowledge and skills to identify discrimination, to prevent it, and to address it or get help when it does occur. Every year, OCR provides technical assistance to schools and communities around the country on both longstanding and emerging civil rights issues. In FY 2012 alone, OCR engaged in 106 technical assistance events on Title VI–related issues.

## ***Issue: Equal Access to Comparable Educational Opportunities (Including College- and Career-Preparatory Programs)***

While all students may not choose to go to college, OCR works to ensure that schools and school districts give students of every race, color and national origin an equal opportunity to pursue that choice.

### ***Enforcement—College- and Career-Readiness and Success***

OCR's efforts to ensure equal access to meaningful educational opportunities led to 15 Title VI-related, proactive systemwide investigations around the country over the last four years. These investigations involved student access to resources, curricula and opportunities that foster college- and career-readiness. In addition, OCR received nearly 60 complaints in this area during the same period.

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

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

In such cases, OCR seeks to ensure that school districts take steps to eliminate inequities by, for example:

- ▶ Expanding access to technology and library materials.

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

President Barack Obama,  
July 14, 2009

- ▶ Ensuring fair access to gifted and talented programs.
- ▶ Addressing gaps in language proficiency.
- ▶ Improving staff attendance.
- ▶ Providing staff professional development in academic subjects and cultural competency.
- ▶ Providing “wraparound” social services.

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

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

### ***Issue: Combating Discriminatory Discipline***

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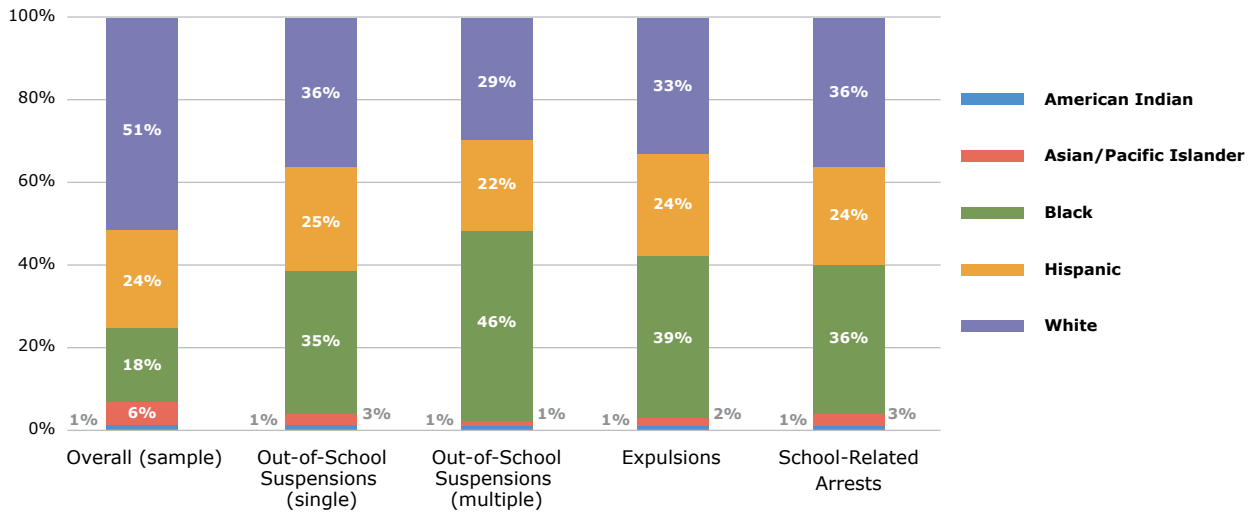
In many educational institutions, minority students are disciplined more harshly and more frequently than other students, resulting in serious, negative educational consequences, particularly when such students are excluded from school.

As examples of these discipline disparities, African-American students represent 18 percent of students in the 2009–10 CRDC sample but 35 percent of students suspended once, 46 percent of those suspended more than once, 39 percent of students expelled, and 36 percent of the students arrested on public-school grounds. Hispanic students are one-and-a-half times more likely to be expelled than their white counterparts. Additionally, in districts that showed at least one expulsion under zero-tolerance policies, African-Americans represent 19 percent of enrollment but 33 percent of the students expelled.<sup>7</sup> (See Exhibit 12.)

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

<sup>7</sup> 2009–10 CRDC data.

**Exhibit 12: Disparities in Discipline by Race and Ethnicity, 2009–10**



Sample size: 7,000 school districts, including over 72,000 schools.  
 Source: CRDC data.

### Enforcement—Discipline

OCR has intensified its enforcement activities to ensure that students are not disciplined more severely or frequently because of their race, color or national origin. In fiscal years 2009 through 2012, OCR launched 20 proactive investigations in schools with significant racial disparities in discipline based on data from the most recent CRDC. Additionally, during the last four years, OCR received more than 1,250 complaints brought by parents, students or other concerned individuals about possible civil rights violations involving school discipline systems. OCR also held two major conferences with the DOJ on issues relating to student discipline.

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

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

disciplinary histories, the white student received three days in-school suspension, while the Native American student was arrested by the police and received a 10-day out-of-school suspension.

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

In resolving disparate discipline investigations, OCR works with school districts to design robust remedies appropriate to the facts and circumstances of each case. School districts and their stakeholders are critical partners in this effort, for they have the expertise to develop strategies that can lead to real institutional change. The goal is to ensure that all students are provided schools that are safe and conducive to learning. In order to eradicate root causes of inequities, OCR and school districts have crafted resolutions requiring the district to undertake steps such as the following:

- ▶ Working with an expert reviewing and modifying disciplinary policies to ensure that rules are clearly defined and easily understood by students, staff and parents and that school authorities consider alternatives to expulsion and suspension to keep students in the classroom.
- ▶ Developing and implementing strategies for teaching positive student behavior.
- ▶ Ensuring that school staff have appropriate resources and training in order to effectively manage classrooms and school campuses.
- ▶ Providing supports for struggling students, including access to mentors, counselors, behavior interventionists or student advocates.
- ▶ Implementing school climate surveys for students, parents, and school staff to measure their perceptions of school safety and fairness in discipline, as well as their understanding of disciplinary rules and behavioral expectations.
- ▶ Creating the position of a discipline coordinator who is responsible for ensuring that the implementation of the district's policies is fair and equitable and for addressing complaints from parents, guardians, students and others regarding the implementation of the district's disciplinary policies.

*"[Superintendent Smith] said he believes the measures the district will take, which build on steps taken over the last few years, will shift the culture in the district—and have the potential to improve a troubled city with a history of poverty and violence. 'We think as a public school system we can contribute to a healthier city by addressing this problem,' Smith said."*

—Anthony Smith,  
Superintendent Oakland School District,  
referring to Oakland Unified's resolution with OCR to  
address Title VI and discipline.  
*Education Week*, September 28, 2012

- ▶ Collecting and evaluating data regarding all referrals for student discipline, including those that did not result in the imposition of disciplinary sanctions and referrals to law enforcement, at all district schools.
  - Such a recordkeeping system could include demographic information on all students involved (race, sex, disability and English-learner status), as well as numerous other indicators such as a description of the misconduct, previous attempts to address the behavior, witnesses to the incident, and discipline imposed.
- ▶ Providing regular informational programs to families and students to explain behavior expectations, present discipline data, advise them of the availability of a discipline coordinator, and invite discussion of how the process is working.

***Issue: Ensuring Equal Opportunities for English Learners***

Children whose first language is not English (English learners or EL students) require language supports in order to meaningfully participate in school. Title VI requires that elementary and secondary schools take affirmative steps to ensure that English learners can overcome language barriers and effectively participate in their schools’ educational programs. A school district must implement a sound educational approach in its programs for EL students and show that it is teaching EL students English and providing them with access to the district’s curriculum. Title VI also requires schools to adequately communicate with limited English proficient parents about important school-related information in languages they can understand.

***Enforcement—English Learners***

OCR has sought to dramatically improve language assistance services and programs for EL students in communities across the country, so that limited English proficiency is not an obstacle for these students to fully access the school’s educational opportunities. Over the past four years, OCR has launched 21 proactive, systemic investigations relating to EL programs and services and has received nearly 300 complaints alleging discrimination against EL students.

OCR cases show that EL students and families are sometimes denied the language services they need to fully

“¡Por favor, necesito su ayuda!” (“Please, I need your help!”) A Spanish-speaking mother of a non-verbal autistic child from a small district in South Carolina approached the OCR staff person who had just presented to a sizable group of parents and community members, pleading for help in understanding her son’s IEP.

Because many parents in areas with large concentrations of minority, low-income, and limited English proficient families are unaware of their rights, several OCR offices expanded their outreach to these communities.

OCR reached out to numerous organizations in several states across the Mid-Atlantic and Southern regions that work closely with African-American, Hispanic and LEP, and other underserved communities to educate their members and the public about OCR’s complaint process and the civil rights laws we OCR enforces. Many of the sessions were conducted in both English and Spanish and were delivered to parent and student audiences.

access school opportunities. Examples of the problems OCR has addressed include the following:

- ▶ School districts, and in one case an entire state, improperly excluded students from English language acquisition services because surveys or testing instruments did not consider critical factors such as the language students speak at home or a student’s distinct needs in writing, reading, speaking, and listening.
- ▶ A school district failed, for more than five years, to identify EL students and led parents to believe that they had to “opt out” of EL services for their children if they wanted them to enroll in particular schools or programs.
- ▶ A school district failed to implement an effective process for identifying and meeting the language assistance needs of its limited English proficient parents to ensure they received important information about their children’s education—despite the fact that nearly 60 percent of the district’s 11,000 students identified their home language as Arabic.
- ▶ Charter schools and charter management organizations showed low enrollment of EL students (as well as students with disabilities).
  - Proactive reviews of such schools are addressing a number of issues, including whether they have nondiscriminatory recruitment and admission policies and practices with regard to EL students (and students with disabilities), whether they provide equal educational opportunities to such students, and whether they adequately communicate with limited English proficient parents.

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

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

English was heavily accented. As a result, the state now focuses its monitoring on whether a teacher has been certified by the local district as fluent in English.

- ▶ For charter schools or special programs that have discriminatorily denied EL students access, revising admission and recruitment policies and practices to ensure that EL students are not denied admission based on their national origin, tailoring recruitment and outreach to EL students and their parents, and ensuring that EL students can access core curriculum and appropriate language assistance and instruction.

### **Technical Assistance**

OCR has also provided hundreds of technical assistance presentations over the last three years to parents, educators, administrators and community members that have included information on the obligations schools have under Title VI to provide EL students with support and opportunities and to communicate effectively with parents whose primary language is not English. This outreach has included numerous technical assistance activities with state-level officials. (See text box on page 29.)

## **Issue: Equal Rights of All Children to Attend Public School Regardless of Immigration or Citizenship Status**

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### **Policy—Equal Right to Attend School**

OCR, along with the Department’s Office of the General Counsel, issued policy guidance with the DOJ affirming the equal right of every child in the United States to a public elementary and secondary education regardless of his or her citizenship or immigration status or the status of his or her parents or guardians. As the guidance explains, this right was established in a landmark 1982 case called *Plyler v. Doe*, in which the Supreme Court stated that denying “innocent children” access to a public education “imposes a lifetime of hardship on a discrete class of children not accountable for their disabling status.”<sup>8</sup>

The guidance makes clear that schools’ enrollment policies and practices must be consistent with Title VI’s prohibition against discrimination based on race, color or national origin. It also provides examples of permissible and impermissible enrollment practices to help districts and states meet this responsibility as well as examples of the types of information that may not be used as a basis for denying a child enrollment in a public elementary or secondary school. For example, school districts that require children to establish age during the enrollment process should accept as proof a variety of different documents, including foreign birth certificates. The guidance notes that school districts that have proof-of-residency requirements might include utility bills or rental receipts among the accepted documents, but should not include requests for immigration papers, because such documents are not necessary to establish residency in the district. Moreover, any proof of age or residency requirements must be uniformly applied to all students.

<sup>8</sup> *Plyler v. Doe*, 457 U.S. 202, 223 (1982).

### **Enforcement—Equal Right to Attend School**

OCR has addressed allegations of districts discriminating on the basis of race, color and national origin in the way they improperly focused on the immigration status of parents and students.

- ▶ In one case, OCR hosted a town hall meeting for the parents of English learners residing in a district. During the meeting, which was also attended by a school district representative, OCR informed parents of their rights under Title VI and of the district’s responsibilities to provide services to students who are English learners. A Dominican mother with limited English proficiency explained to OCR that she was required to provide immigration papers while registering her child for school, even though they were irrelevant to the district’s informational needs. The forms she was given were also in English, which she could not read, raising a question as to whether the district was meeting its obligation to provide meaningful access to limited English proficient parents. The parent filed a complaint immediately after the meeting with OCR. As a result of the town hall meeting, the district official committed to making sure that registration forms were available in Spanish. OCR is investigating the other issues the parent raised.
- ▶ In another case, a school district allegedly asked Hispanic parents for proof of residency, Social Security cards, and driver’s licenses when they came to enroll their children, despite the fact that the district had a policy allowing 30 days to prove residency. The district agreed with OCR to change its procedures to clarify that all students had 30 days to prove residency. It also agreed to translate residency documents into Spanish, and to accept an expanded list of documents, including an affidavit, to serve as proof of residency.
- ▶ In a third case, the complainant alleged that a school district discriminated against Hispanic students in the enrollment process, including by asking a Hispanic student who presented proof of residency to also provide a passport and immigrant visa prior to enrolling in a high school. School staff allegedly

“This is not supposed to happen in the United States of America,” said a very upset mother of two young children during a 2010 community meeting held by OCR in a Northeastern district.

At the meeting, the mother, who is limited in English proficiency, told OCR about the informal barriers she experienced as she tried to register her two young children for public school. After being refused available Spanish language services, she tried to explain why she did not yet have proof of residency. The staff person became increasingly rude and said she had to have the forms filled out within 30 days, or be charged tuition for the entire year as a nonresident. Two other parents at the meeting raised similar concerns about registration and enrollment, which at the time required four forms for showing proof of residency.

OCR shared information with the parents about and the protections afforded by Title VI under the U.S. Constitution, and by the Supreme Court holding in *Plyler v Doe*, against this type of harassment and discrimination. After the meeting, the parents decided to file complaints with OCR and OCR staff assisted with the filing process.

made comments to the student, such as, “How can you be here without a passport or visa?” and “You must be an illegal.” The case was resolved with a district commitment to review and, if necessary, revise its registration documents to make clear that immigration documents and passports are not required for enrollment and to provide annual training for staff on proper enrollment procedures using OCR’s guidance documents on this issue.

### ***Issue: Supporting Schools, Districts and Colleges That Voluntarily Pursue Racial Diversity***

Many educators believe—and the Supreme Court has affirmed—that schools and colleges have compelling interests in pursuing diverse student bodies. The benefits of diverse learning environments are many—for example, they help students sharpen their critical thinking and analytical skills; they prepare students to succeed in an increasingly diverse and interconnected world; they break down stereotypes and reduce bias; and they enable schools to fulfill their role in opening doors for students of all backgrounds. Yet many of America’s schools remain racially isolated; indeed, research has shown that America’s schools have been growing more segregated since the 1980s.<sup>9</sup>

#### ***Policy—Voluntary Pursuit of Racial Diversity***

To increase clarity on this important issue, OCR withdrew previously issued guidance that did not fully explain the legal options available to schools and colleges that choose to pursue diversity, and in December 2011 issued new guidance jointly with DOJ’s Civil Rights Division. The two-part guidance—one for K–12 schools and one for postsecondary institutions—explains the Supreme Court decisions

*“Obama stands up for racial diversity in education policy.”*

—Mary Sanchez,  
*Chicago Tribune*,  
December 8, 2011

that provide the legal framework for the consideration of race and national origin by educational institutions in pursuit of diversity and avoiding racial isolation.

As a starting point, the guidance recognizes that schools and colleges have a compelling interest in increasing diversity. Institutions do not have to wear blinders—they can look at whether their decisions will deprive students of

the opportunity to learn and interact with students of other races and national origins, and they can affirmatively make decisions to increase diversity. The guidance goes on to offer concrete examples of how the Supreme Court’s legal framework applies to specific techniques for achieving diversity.

The K–12 guidance indicates how school districts can pursue diversity and reduce racial isolation through their decisions on locating schools, including magnet schools, and specialized academic, athletic or extracurricular programs; closing schools or

<sup>9</sup> NCES Table: Public elementary and secondary school students, by racial/ethnic enrollment concentration of school: Fall 1995, fall 2000, and fall 2009, available at [http://nces.ed.gov/programs/digest/d11/tables/dt11\\_102.asp](http://nces.ed.gov/programs/digest/d11/tables/dt11_102.asp). Gary Orfield, Reviving the Goal of an Integrated Society: A 21st Century Challenge, 12-13 (The Civil Rights Project).

## Praise for the 2011 Guidance Regarding the Voluntary Pursuit of Racial Diversity

*"I think it gives us a frame to start being more aggressive."*

—Terri Harris Reed  
Vice Provost for Diversity and Inclusion  
George Washington University  
"Federal rules change allows for  
race-aware admission"  
*The GW Hatchet*, December 8, 2011

*"A road map to combat the harms of racial isolation and promote the benefits of diversity."*

—Khin Mai Aung  
Director, Educational Equity Program  
Asian-American Legal Defense and  
Education Fund  
"Universities can consider  
race in student admission"  
*The Daily Iowan*, December 8, 2011

*"Very welcome" and "very useful."*

—Ada Meloy  
General Counsel  
American Council on Education  
"Guidance on Diversity"  
*Inside HigherEd*, December 5, 2011

*"An excellent step in the right direction."*

—Georgina Dodge  
Chief Diversity Officer  
University of Iowa  
"Universities can consider  
race in student admission"  
*The Daily Iowan*, December 8, 2011

*"It's expanding and clarifying the authority of school districts to act, if they wish to act."*

—Gary Orfield  
Co-Director  
Civil Rights Project  
"School districts can use race  
in decision-making, feds say"  
*Seattle Times*, December 2, 2011

*"An important re-affirmation of the federal government's commitment to the vital work of redeeming the promise of Brown."*

—John Payton  
President and Director-Counsel  
NAACP Legal Defense and  
Educational Fund  
*Press Release*, December 2, 2011

*"The Obama administration makes a convincing case that it's in the nation's best long-term interest to make diversity a part of this country's competitive edge."*

—Sam Fulwood III  
"Race and Beyond: We Need  
Diversity in Education"  
*Center for American Progress*,  
December 6, 2011

*"A clear and accurate statement of what the Supreme Court has said."*

—Dennis Parker  
Director, ACLU Racial Justice Program  
"New federal policy supports considering  
race in college admissions practices"  
*AnnArbor.com*, December 2, 2011

programs; aligning grade and feeder patterns; drawing attendance zone lines; and designing inter- and intra-district transfer systems.

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

The choice as to whether to pursue diversity and reduce racial isolation lies with educational and civic leaders. OCR is ready to help educational leaders who make this choice.

### ***Enforcement—Voluntary Pursuit of Racial Diversity***

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

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

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

Cases at the higher education level have addressed whether colleges are legally pursuing diversity by considering race or national origin in admissions, financial aid programs and student recruitment, or mentoring and support programs. Specific complaints involve the following questions:

- ▶ Whether an urban university’s mentoring and support program that focused on African-American males was open to all without admitting or excluding students on the basis of their race, one of the ways a race-themed mentoring and support program is permissible under Title VI.
- ▶ Whether a university admissions system that considered an applicant’s race to achieve the compelling educational benefits of diversity did so in a narrowly tailored manner, consistent with Supreme Court decisions.
- ▶ Whether the use of institutional or third-party scholarships for students of color in order to further campus diversity complies with Title VI.

In these cases, OCR recognized the colleges’ compelling interests in the educational benefits that flow from a diverse student body in helping them to fulfill their missions. So long as these institutions were acting within the bounds of the law provided by the Supreme Court, as explained by the OCR and DOJ guidance, their efforts at diversity were not found to violate Title VI.

### ***Technical Assistance***

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

## **Issue: Enforcing Longstanding Desegregation Orders**

Building on the Supreme Court's *Brown v. Board of Education*<sup>10</sup> decision, Congress enacted Title VI to outlaw racial segregation and other forms of discrimination. From the law's passage in 1964 through the 1970s, OCR placed a primary emphasis on eliminating unconstitutional segregation in the Southern and Border states in elementary, secondary and postsecondary schools. OCR investigations also found that school districts in other regions violated Title VI through the operation of intentionally segregated, dual school systems. The hallmark of unlawful racial segregation was state-imposed racially separate schools and programs that were often accompanied by denials of equal educational resources and opportunities for African-American students.

As at the K–12 level, states operated racially segregated systems of higher education that barred African-Americans from enrolling in certain institutions—while providing inferior opportunities through public Historically Black Colleges and Universities (HBCUs) that were constrained by limited missions, inadequate state resources, and other substantial forms of discrimination. Beginning in the late 1960s, OCR required formerly *de jure* segregated state systems of higher education to submit plans to desegregate traditionally white institutions and to end the states' denial of equal opportunities for students attending HBCUs.

Under Title VI standards informed by Supreme Court decisions and interpreted in OCR policy, OCR requires public schools and state systems of higher education to eliminate the vestiges of past intentional segregation of students based on race.<sup>11</sup> OCR leads investigations and collaborations to ensure that previously segregated schools and districts further racial desegregation. In keeping with its historical mission, OCR also investigates complaints that institutions are segregating students or offering them separate and unequal educational resources or opportunities on the basis of race, color, or national origin.

### **Sub-issue: K–12 Resources and Opportunities**

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

- ▶ A school district was planning to open a new charter school, but it appeared that the school would be nearly all white, in violation of the district's longstanding desegregation plan. At the district's request, OCR helped it devise a plan to ensure that the new school increased its African-American student enrollment, staff, leadership and governance as well as its outreach and recruitment in the district's growing Hispanic community. Failure to meet the minority enrollment, staff, leadership and governance targets could jeopardize the continued existence of the school.
  - Today, the charter school has increased its population of minority students and is on track to meet the goals of its desegregation agreement.

<sup>10</sup> 347 U.S. 483 (1954).

<sup>11</sup> 59 Fed. Reg. 4271 (Jan. 31, 1994).

- Minority parents have been among the strongest advocates for the continued operation of the school, stating that the school was the best opportunity for their children.
- ▶ OCR also helped a district under a longstanding desegregation plan to revise its approach to opening a new high school that would have been over 80 percent African-American (in contrast with districtwide enrollment of 34 percent African-American).
  - The revised plan combated racial segregation and resource disparities by providing all students at the new school a range of programs and activities comparable to those provided at the district's other high schools, implementing research-based programs to improve completion and dropout rates, and offering a sought-after early college program at the school that would attract students throughout the district.
  - This program, offered in conjunction with a local college, will allow students at the high school to earn associate degrees in a variety of high-demand fields (including electronics and telecommunications, design technology, criminal justice, and health sciences) at the same time as their high school diplomas.
  - The new high school recently received a \$100,000 grant from an international company that develops educational tools, technologies and services for use by school districts. The company will create a high-tech center to develop equipment, hardware and software, as well as furniture tailored to the technology, at the new high school. Moreover, the high school will house a sophisticated education technology classroom.
  - As a result of the programs implemented at the new high school, student diversity has steadily increased.

### ***Sub-issue: Higher Education Desegregation Orders***

At the postsecondary level, in recent years, OCR has renewed its commitment to enforce higher education desegregation plans that were still in place and had been adopted long ago by six of the states (Pennsylvania, Maryland, Florida, Ohio, Oklahoma and Texas) that previously ran *de jure* segregated higher education systems. OCR is committed to actively monitoring the progress of these states in implementing their agreements and eliminating the vestiges of state-imposed segregation. OCR's reinvigorated monitoring has shown positive results.

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

funding to their HBCUs, notwithstanding potential higher education budget cuts in their states. After the governors received the letters, the final budgets of at least two states cut less funds from HBCUs than was originally proposed—in one of these states, \$2 million was restored for an HBCU.

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

### ***Sub-issue: Magnet Schools Assistance Program***

OCR plays a critical role in implementing the Magnet Schools Assistance Program (MSAP), a program that provides financial assistance to school districts seeking to improve educational programs and to reduce, prevent, or eliminate minority-group isolation. The MSAP statute requires OCR to determine that the applicant school district is not discriminating in a number of areas, including hiring, promotion or assignment of employees, and assignment of students to schools and to courses of instruction within the schools. In addition, OCR analyzes whether the plans comply with Title VI. Over the last four years, after careful analyses, OCR has approved nearly 200 applications.

In FY 2010, OCR reviewed numerous voluntary desegregation plans submitted by applicants for grants under interim final MSAP regulations. The interim regulations amended the MSAP regulations to provide greater flexibility to school districts in designing their desegregation plans and collaborated to ensure MSAP interim regulations provide appropriate flexibility.

Over the last four years, OCR also provided extensive, individualized technical assistance to all MSAP applicants that were within funding range. For example, OCR worked intensively with one district to address civil rights concerns about programs available in the magnet schools, as well as to determine the legal status of the magnet schools in relation to the district's federal court order. OCR worked with another district to revise its student selection process for the magnet schools to ensure that students with disabilities were able to participate in magnet programs to the fullest extent.

### ***Issue: The Right to Equal Treatment***

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

### ***Enforcement—Equal Treatment***

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

- ▶ Minority students not being able to participate in certain academic programs, receiving inaccurate grades and being denied the opportunity to participate on athletic teams.
- ▶ Minority students receiving unequal access to charter and magnet schools or to special education services in such schools.
- ▶ Minority students being inappropriately and disproportionately categorized as having an intellectual disability, emotionally disturbed and learning disabled.

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

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

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

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

### ***Cross-Cutting Issues***

OCR investigates and resolves matters holistically, attempting to root out multiple manifestations of discrimination.

For example, OCR launched a compliance review of a large school district initially to determine whether EL students, who composed approximately one-third of the district’s population, were provided with meaningful access to the core curricular content, but the investigation was expanded to address unequal treatment of African-American students as well.

OCR found that only 3 percent of the EL high school students were proficient, or performing at grade level, in math and English. The district failed to provide an

effective program for English language development and meaningful access to the core curricular content for EL students.

- ▶ EL students were expected to acquire full proficiency in English in six years. However, 75 percent of those students did not meet this goal, and after they exited the EL program the vast majority of these students did not have support classes or a curriculum designed to address their language deficits. Rather, they were left to languish in programs taught in English, unable to access core content and therefore failing and repeating courses.
- ▶ Parents of EL students did not understand how the EL program worked, and translation and interpretation services were sometimes inaccurate.

In addition, given the disparity in academic achievement between African-American and white elementary school students in the district, coupled with concerns raised by the community and policymakers, OCR also investigated whether disparate resource allocation existed between racially concentrated African-American and white elementary schools in the district.

A voluntary resolution with the district resulted in the most significant step forward for improving educational opportunities for EL students and ensuring the comparability of resources for African-American students in this district to date.

Under the resolution, the district will revise its entire program for EL students, creating a new English Learner Master Plan with systems to evaluate the program's success in teaching students English. The plan also includes enhanced professional development to support teachers in strengthening their instruction of EL students.

The agreement also requires the district to accelerate its efforts to close the achievement and opportunity gap for African-American students. The district will expand access to the full range of educational resources they need to learn—from technology and library materials to fair access to gifted and talented programs. The district also developed a plan to take steps to eliminate inequitable and disproportionate discipline. Moreover, the district will institute a first-of-its-kind pilot project for a community school in a predominantly African-American neighborhood that will provide wrap-around health and social services. This school could become a sustainable and replicable model for promoting African-American student success.

In addition, the agreement required the district to increase its focus on college- and career-ready curricula and programs for both EL and African-American students, ensure access to needed supports, including effective teachers to accelerate student progress, and provide parents and students with information and support so students can prepare for success in postsecondary education and careers.

### **Title IX: Discrimination on the Basis of Sex**

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Title IX of the *Education Amendments of 1972* prohibits discrimination on the basis of sex in all education programs and activities operated by recipients of federal funds. It states: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.”

**Policy**

OCR has also issued three policy guidance documents that pertain to Title IX on (1) schools’ obligations to prevent and address sexual violence; (2) the proper way to gauge student interest for purposes of providing equitable athletic opportunities to members of both sexes; and (3) schools’ obligations to respond to bullying and harassment based on sex.

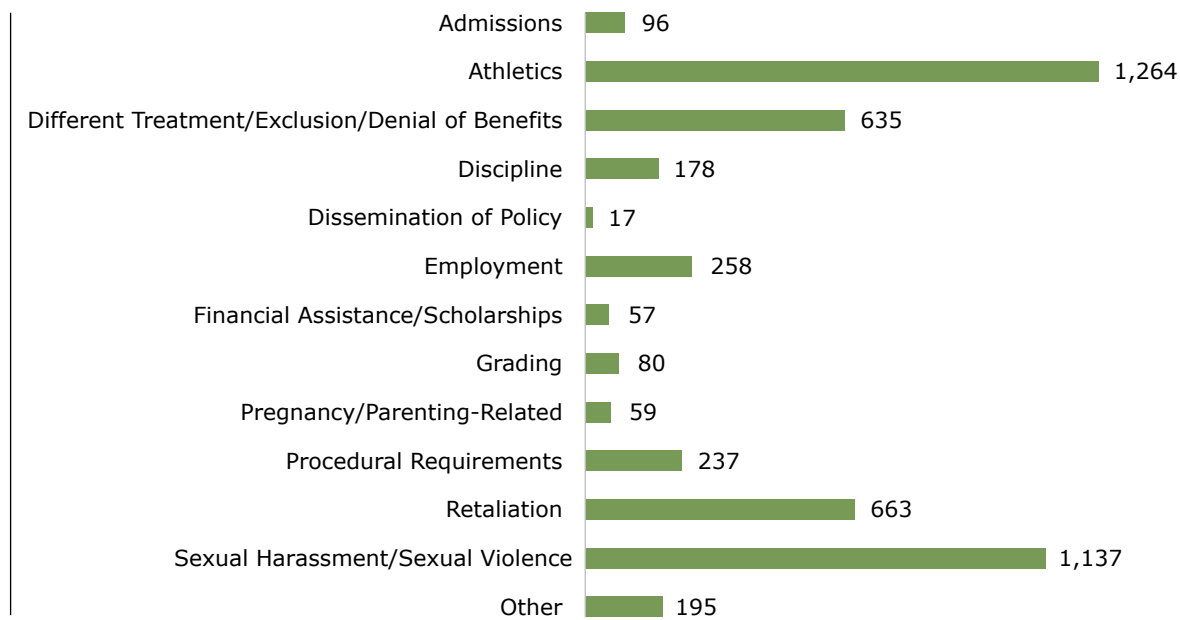
**Enforcement**

OCR enforces Title IX’s prohibition of all forms of sex discrimination, including gender-based harassment, sexual harassment, and sexual violence. Over the last four years, OCR has received 4,138 Title IX complaints and launched 37 proactive large-scale compliance reviews and directed inquiries.

**Technical Assistance**

Training for educators, families and community members can equip them to uphold and protect students’ civil rights. OCR staff deliver hundreds of technical assistance events each year, including 158 events addressing Title IX issues in FY 2012 alone.

**Exhibit 13:** Number of Title IX Issues Raised in OCR Complaints, Broken Down by Issue, FY 2009–12



Total Number of Complaints Raising Title IX Issues, FY 2009–12 = 4,138.  
 Note: A single complaint can raise multiple issues; therefore the total number of issues raised will exceed the number of complaints received.

## ***Issue: Prohibiting Sexual Assault and Violence on Campus***

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Too often, women and girls are victims of sexual harassment or sexual violence. About one in five women will be a victim of sexual assault or attempted sexual assault while in college, as will about 6 percent of undergraduate men.<sup>12</sup> Public high school students reported nearly 3,600 incidents of sexual battery and over 600 rapes and attempted rapes in a recent year.<sup>13</sup> Through policy guidance, proactive investigations, complaint resolution, and other responses to events around the country, OCR aims to ensure that no student fears for his or her safety or loses out on educational benefits and opportunities because of sexual violence.

### ***Policy—Sexual Violence***

OCR issued a first-of-its-kind policy guidance in April 2011 to ensure that schools and colleges fully understand their Title IX obligations relating to sexual violence. The guidance advises institutions on how they can prevent sexual violence from occurring and ensure it gets identified and reported when it does occur. The guidance explains institutions' responsibility to resolve complaints of sexual violence promptly and equitably, and to respond to any incident of sexual violence swiftly and effectively. It includes examples of the types of remedies institutions can implement for the victim and the entire school community. It also describes proactive measures schools and colleges can take to prevent sexual violence. Additionally, the guidance emphasizes the need to keep students notified of nondiscrimination and anti-harassment policies and to involve law enforcement agencies when necessary. Since the guidance's release, dozens of colleges and universities have made changes to their policies and procedures consistent with the guidance, and institutions continue to work together to develop better practices for dealing with sexual violence.

### ***Enforcement—Sexual Violence***

OCR received more than 120 complaints relating to sexual violence and launched 11 proactive investigations on sexual violence in the last four years. These have led to groundbreaking remedies such as implementing procedures by which schools address sexual violence as a Title IX civil rights issue, rather than leaving this matter to be handled only by the criminal justice system; providing interim protection and services for victims of sexual violence; systematizing cooperation between school officials and local law enforcement authorities to ensure Title IX investigations are completed promptly; conducting climate surveys; establishing advisory committees comprising students, faculty, and community members to monitor the school climate and advise the school's administration; conducting peer-to-peer sexual harassment training; and publicizing school policies so that students know where and with whom to file reports and what to expect from the process.

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<sup>12</sup> Christopher P. Krebs et al., *The Campus Sexual Assault Study Final Report* xiii, 5-5 (National Criminal Justice Reference Service, Oct. 2007).

<sup>13</sup> National Center for Education Statistics, *Indicators of School Crime and Safety: 2011*. Available at [http://nces.ed.gov/programs/crimeindicators/crimeindicators2011/tables/table\\_06\\_1.asp](http://nces.ed.gov/programs/crimeindicators/crimeindicators2011/tables/table_06_1.asp).

The facts surrounding the sexual violence cases investigated and resolved by OCR are often tragic.

- ▶ In one college, several incidents of student-on-student sexual assault had occurred. The college referred the complaints to the police for treatment solely as a criminal matter while other sexual assaults took place, notwithstanding the college's Title IX obligation to address the incidents through in-school measures. In another, a local prosecutor threatened to charge college officials with obstruction of justice when they tried to conduct the school's Title IX investigation while the criminal investigation was pending. In a third, a student was found murdered in her dorm room after a fellow student had allegedly sneaked into her room, raped her, and then smothered her with a pillow; for ten weeks school officials maintained that no foul play was involved.
- ▶ In another case, three victims did not receive an equitable hearing—they were made to sit very close to the accused; the accused was allowed to review evidence in advance of the hearing while the accusers were not; the accused was allowed to question the complainant and the two other accusers directly, including questions about their sexual histories; the accused, but not the accusers, was allowed to present character witnesses; and a victim was not allowed to present a witness to testify regarding the underlying events.
- ▶ OCR has also launched two proactive systemwide investigations into K–12 school districts where gang rape allegedly occurred; in one case, the rape was allegedly committed by nonstudents as well as students. Investigations

#### Technical Assistance: Sexual Violence

OCR has heard from many experts around the country about how critical it is for OCR to be proactive in its outreach to colleges and communities on the issue of sexual violence on campus. In response, OCR has launched a number of large-scale technical assistance and outreach initiatives on this issue. These forums are designed to bring together experts in the field of campus sexual assault to discuss the latest research, policies, legal challenges, interdisciplinary collaborations and reporting issues.

For example, OCR's "Title IX and Sexual Assault: Exploring New Paradigms for Prevention and Response" conference focused on the problem of sexual violence on college campuses, and how to respond to and prevent it. Over 350 people from the New England area attended, including college staff, college attorneys, researchers and law enforcement personnel. Topics addressed during the conference included colleges' responsibilities under Title IX; working with sexual assault victims; responding to reports or complaints of sexual assault; and prevention strategies.

Similar events held around the country have created a critical dialogue and have resulted in requests for technical assistance by numerous colleges and universities on Title IX compliance and the development of effective policies and procedures. In addition, these OCR forums have created networks of practitioners in this area.

uncovered widespread peer-to-peer sexual violence and harassment suffered by middle and high school students as well as evidence of teacher-student violence or harassment.

- ▶ Where appropriate, OCR also works with the local prosecutor’s office and police department to ensure that the college will be able to meet its Title IX obligation to conduct prompt investigations when it receives complaints of sexual harassment, even if there is a concurrent criminal investigation; and OCR requires the school to publish revised Title IX grievance procedures and nondiscrimination notices, to develop a Title IX training program for students and staff, and to conduct periodic assessments of campus climate to assess the effectiveness of its efforts to respond to and prevent sexual misconduct.
- ▶ In addition, OCR has required schools and colleges to ensure that victims of harassment are provided services as needed, even before the outcome of the Title IX or criminal investigations, which can include counseling and academic support services, compensatory services and interim remedies. OCR has made it clear that hearings must be equitable—and what is provided to the accused during the hearing, such as the ability to present witnesses and the right to an appeal, must also be provided to the victim. OCR has also made clear that schools and colleges must keep accurate records and monitor progress in creating a safer campus in part by conducting community meetings and periodic assessments of the campus climate.

### ***Issue: Equal Access to Athletic Opportunities and Benefits***

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From scholarships to placement on teams to other athletic program resources such as facilities, coaching, and equipment, women and girls still do not have equal access to opportunities and benefits in athletics. Although there has been undisputable progress since Title IX was enacted, women and girls continue to represent a disproportionately low percentage of college and high school athletes when compared to their enrollment rates. Women make up 57 percent of college students but receive only 43 percent of positions on varsity sports teams.<sup>14</sup> And girls make up roughly half of all high school students but receive only 41 percent of positions on varsity sports teams.<sup>15</sup>

### ***Policy—Athletics***

As part of an ongoing effort to ensure the equal opportunities guaranteed by Title IX, OCR issued policy guidance in April 2010 clarifying how it assesses whether an institution is providing nondiscriminatory athletic participation opportunities based on its students’ interests and abilities, under the “Three-Part Test” previously articulated by OCR. The guidance reinstated the Department’s longstanding policy that it will analyze multiple indicators to determine whether the school’s athletics program is meeting the interests and abilities of the school’s underrepresented sex, usually women.

<sup>14</sup> NCAA Sports Sponsorship and Participation Rates Report Student Athlete Participation 1981/1982-2010-2011. Available at: <http://www.ncaapublications.com/productdownloads/PR2012.pdf>.

<sup>15</sup> National Federation of State High School Associations 2010-11 High School Athletes Participation Survey. Available at: <http://www.nfhs.org/content.aspx?id=3282>.

The letter withdrew policy guidance issued in 2005 that had inappropriately changed the Department’s longstanding policy and allowed institutions to rely on a single email survey to assess the interests of the underrepresented sex. The 2005 policy further permitted institutions to count nonresponses to the survey as indicating a lack of interest in athletics. Thus, a low response rate leads institutions to significantly underestimate the interests and abilities of their students while appearing to comply with Title IX.

OCR’s April 2010 policy guidance ensures that institutions will be held accountable for meeting the full range of athletic interests and abilities of the underrepresented sex. The letter also provides institutions with recommendations for developing effective procedures for collecting, maintaining, and evaluating information on students’ interests and abilities, as this information is critical to determining whether institutions are providing nondiscriminatory athletic opportunities.

**Enforcement—Athletics**

OCR’s investigations have ensured that thousands of female students at an array of schools, including some with highly visible athletic programs, have an equal opportunity to participate in varsity sports. Over the last four years, OCR initiated 17 proactive investigations of possible Title IX violations in athletics programs. During the same time period, OCR received more than 1,250 complaints from students, parents, coaches, and others alleging Title IX violations in athletics programs. Where appropriate, OCR has obtained resolution agreements from school districts and universities to ensure that female students have an equal opportunity to participate in sports programs. Institutions have agreed with OCR to take steps such as providing female athletes with additional financial aid, adding new teams, and ensuring that female athletes have comparable quality coaching, facilities, equipment and other athletics-related benefits. Some examples of OCR’s cases in this area are the following:

- ▶ OCR is investigating fundraising by athletic booster clubs predominantly for male teams to determine if this is creating inequities in benefits between male and female athletes in violation of Title IX.

*“Much progress has been made over the past 38 years in women’s athletics participation. Going back to the 1996 standard of measuring interest in women’s sports will help ensure that continued progress is made and future generations of young women will have [the same] equal opportunities as young men.”*

—Jim Isch  
Interim President, NCAA  
“Biden Announces Change in Title IX Women’s Sports Policy”  
CNN, April 10, 2010

*“The bottom line is that it will make us a better athletic program...Now the Office for Civil Rights is saying you can do better. That’s our challenge, this is our opportunity.”*

—Tom Childress  
Sr. Vice President Catawba College  
“Catawba Out of Compliance With Title IX”  
Salisbury Post, November 6, 2010

- ▶ In another investigation of an entire sports league, OCR is ensuring equal opportunities for secondary school athletes by requiring the league and its member school districts to equitably treat female and male students in “primetime” scheduling of athletic events, in scheduling of practice times and in providing publicity for their events.
- ▶ OCR obtained redress for women athletes at a university that was providing significantly fewer and inferior resources to its women’s sports teams in comparison to the men’s programs. Among other things, the university failed to maintain adequate equipment and locker room facilities for its female athletes, who were forced to change in cars and sheds. Female student athletes often received inferior medical and training services from less experienced staff. In addition, unlike the men’s teams, when the women’s teams went on “away” games, they were crowded into hotel rooms or had to make long journeys back home on the same day as their games. A robust resolution agreement between the university and OCR resulted in the construction of upgraded practice and competitive facilities, new and improved locker rooms, appropriately sized equipment and other equitable treatment for the women’s athletic program.
- ▶ OCR helped expand opportunities for girls in a school district that had roughly equal enrollment of boys and girls but a 57 to 43 percent split between boys’ and girls’ participation in interscholastic athletics. OCR negotiated an agreement with the district that resulted in athletic participation opportunities for girls and boys that are substantially proportionate to their respective enrollments, without cutting any sports or spots on individual teams. The district has hired a new athletic director with significant Title IX experience; added girls’ sports teams, such as bowling, water polo, and wrestling; developed outreach activities at middle schools to encourage participation in interscholastic athletics; and created an athletics improvement committee.

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

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While women and girls have made great progress in an array of fields of study, female students remain underrepresented in some of the most rigorous math and science courses. This mixed picture is shown in OCR’s CRDC—the data reveal that girls, who compose 49 percent of the CRDC sample set, are equitably represented in Geometry and Algebra II, but girls represent 47 percent of students taking Physics and 48 percent of students taking AP Math (Calculus and Statistics) and are less likely to take and pass AP tests than their male peers.

In higher education, in 2008–09, women earned fewer than 18 percent of all bachelor’s degrees in computer and information sciences, and women from underrepresented minorities earned less than 7 percent of bachelor’s degrees in computer and information sciences. Similarly, fewer than 17 percent of all bachelor’s degrees in engineering were awarded to women, and less than 4 percent were awarded to women from underrepresented minorities.<sup>16</sup>

<sup>16</sup> *Digest of Education Statistics* 2010, Table 316. Available at [http://nces.ed.gov/programs/digest/2010-menu\\_tables.asp](http://nces.ed.gov/programs/digest/2010-menu_tables.asp). See also <http://www.nsf.gov/statistics/wmpd/minwomen.cfm>.

## Enforcement—College- and Career-Readiness and Success

OCR works to ensure gender equity in access to courses and to career training.

- ▶ For example, in one proactive investigation of a school district, OCR is examining the underrepresentation of girls in advanced math and science courses. OCR’s goals for a resolution in this type of case include the development of policies and procedures to ensure fair and equitable access to AP STEM courses for female high school students as well as better preparation of K–8 female students for their future success in such courses.
- ▶ In a similar proactive investigation of a community college, OCR is examining the disparity between male and female participation and graduation rates and degree attainment in programs traditionally dominated by men, like engineering and computer science.
- ▶ A third example responded to the insults and harassment experienced by the sole female student in a college’s aviation maintenance technology program. The harassment was so severe that the student was forced to drop out of the program. In that case, the college and OCR reached a resolution that helped both the individual student as well as the overall college community. The resolution agreement required the college to reimburse the student for the educational costs she incurred while attending the college, and to eradicate the culture of hostility by, for example, issuing an anti-discrimination statement to students and staff, revising its nondiscrimination and anti-harassment policies and procedures, and providing training for staff.

## Section 504 and Title II: Discrimination on the Basis of Disability

OCR protects the rights of persons with disabilities under two federal laws. One of these is Section 504 of the *Rehabilitation Act of 1973*, which prohibits discrimination based on disability in programs and activities 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....”<sup>17</sup>

The other law is Title II of the *Americans with Disabilities Act of 1990* (ADA), which prohibits discrimination based on disability by public entities, regardless of whether they receive federal financial assistance.<sup>18</sup> 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.”<sup>19</sup>

<sup>17</sup> Section 504 also prohibits disability discrimination in programs and activities conducted by the federal government. The Department’s Office of Management rather than OCR has authority to enforce this aspect of Section 504.

<sup>18</sup> Pursuant to a delegation by the U.S. attorney general, OCR shares in the enforcement of Title II with DOJ and other federal agencies. OCR, along with DOJ, enforces Title II at all public institutions, including public elementary and secondary schools, colleges and universities, as well as at public libraries.

<sup>19</sup> Title III of the ADA prohibits disability discrimination by private entities, including private schools, colleges and universities. DOJ enforces Title III. Information about Title III can be found on the DOJ website at [www.ada.gov](http://www.ada.gov).

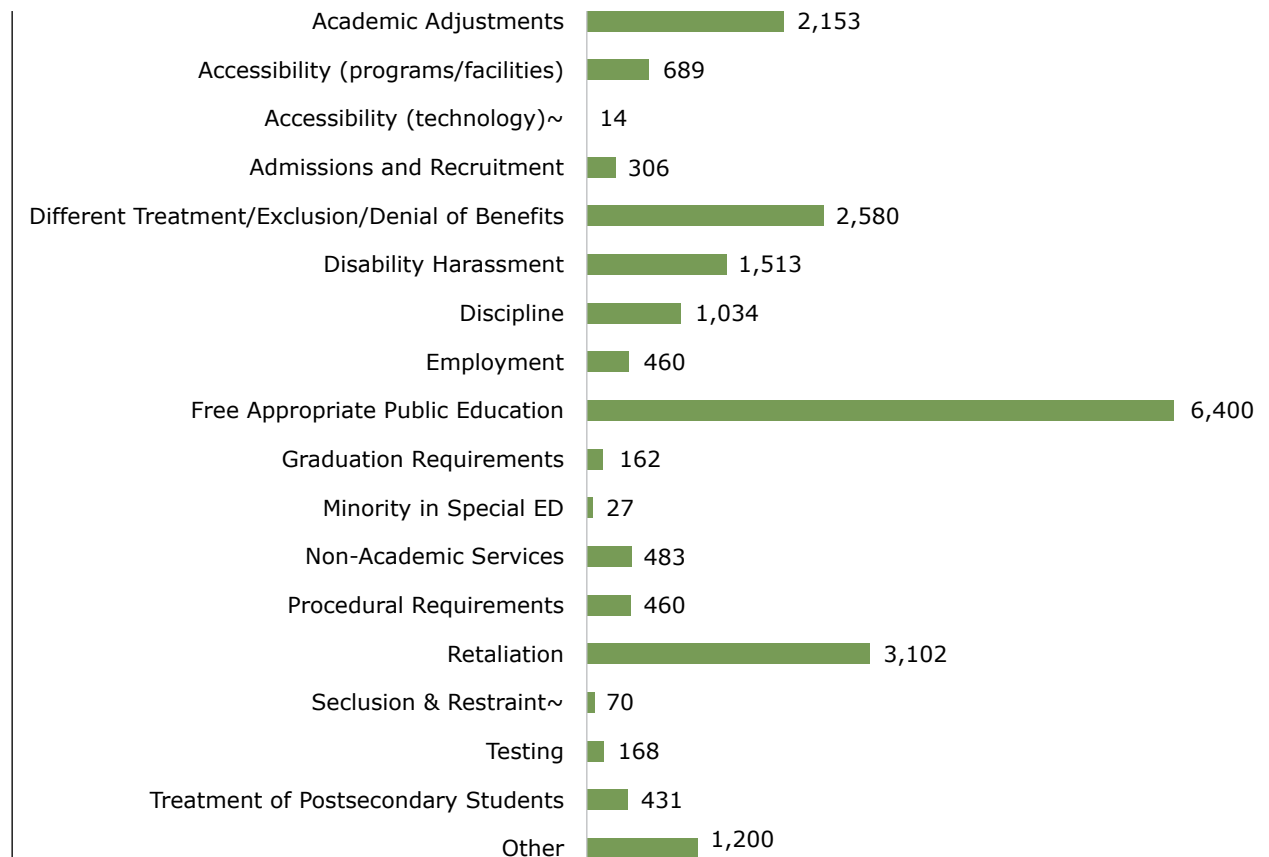
**Policy**

Since January 2009, OCR has issued four guidance documents that address or include topics related to disability rights: (1) equal access to electronic book readers and other technology for postsecondary students with disabilities; (2) equal access to emerging technologies for all students, including elementary and secondary school students; (3) schools’ obligations to respond to bullying and harassment based on disability; and (4) changes in the meaning of “disability” made by the *ADA Amendments Act of 2008*.

**Enforcement**

In the fiscal years 2009 through 2012, OCR received over 16,107 disability-related complaints—more than ever before in a four-year period. This figure also represents more than 55 percent of the complaints OCR received during this four-year period. In addition, in the last four fiscal years, OCR launched 34 systemic, proactive investigations that, collectively, addressed a broad range of

**Exhibit 14:** Number of Disability Issues Raised in OCR Complaints, Broken Down by Issue, FY 2009–12



Total Number of Complaints, FY 2009–12 = 16,107.

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

~ Data collections start in FY 2011.

disability-related issues in institutions across the country. OCR has employed innovative techniques to resolve many of these complaints and investigations, often involving multiple stakeholders to design and sustain meaningful change at the institutions involved.

### **Technical Assistance**

Education and outreach form a critical element of OCR’s strategy for securing the rights of students with disabilities. In the last four years, OCR has conducted hundreds of disability-related technical assistance events, including 221 events in FY 2012 alone.

### **Issue: Free Appropriate Public Education (FAPE)**

Children with disabilities have the same right to K–12 public education as children without disabilities. In order to receive and benefit from that education, students with disabilities may need special education and related 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.<sup>20</sup>

### **Policy—FAPE**

The Department issued policy guidance in 2012 addressing the requirements of Title II and Section 504 in the elementary and secondary school context in light of changes to these laws made by Congress in 2008 that broadened their scope of protection. The guidance explained how, under the amended laws, more students may have a disability and require evaluation to determine whether they need special education or related aids and services. The guidance also addressed the need for schools to revisit health plans developed for some students. Under the amended laws’ broadened definition of disability, more students with conditions such as food allergies, asthma and diabetes may now be covered by Section 504 and Title II. Therefore, schools may need to examine how they are ensuring equal educational opportunities for such students, including a review of health plans to ensure that schools have met the Section 504 requirements for evaluation, placement, and procedural safeguards. The Department also worked with the National Diabetes Education Program of the Department of Health and Human Services in updating the program’s guidance on how to ensure optimal diabetes management in schools in 2010.<sup>21</sup>

<sup>20</sup> 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’s Office of Special Education Programs, in the Office of Special Education and Rehabilitative Services.

<sup>21</sup> *Helping the Student with Diabetes Succeed: A Guide for School Personnel* (September 2010), available on the National Diabetes Education Program’s website at <http://ndep.nih.gov/publications/PublicationDetail.aspx?PubId=97&redirect=true#main>.

### **Enforcement—FAPE**

In fiscal years 2009 through 2012, OCR received 6,400 complaints alleging FAPE violations. This is by far the disability issue on which OCR receives the most complaints, making up almost two-fifths of the more than 16,000 disability complaints received in this time period. During this same period, OCR launched over 15 proactive systemwide investigations around the country concerning the provision of FAPE.

### **Enforcement—FAPE—Evaluation and Placement of Students With Disabilities**

- ▶ A school district required parents to obtain, at their own expense, medical documentation supporting the existence of disabilities for their children. The district also required parents to demonstrate that their children were being discriminated against before it would conduct an evaluation. While school districts can consider information submitted by parents, districts may not require parents to provide diagnostic information or obtain outside assessments of students before conducting an evaluation. Furthermore, the failure to evaluate a student suspected of having a disability is itself discrimination based on disability; school districts may not require parents to demonstrate discrimination before their child is evaluated. Pursuant to its agreement with OCR, the district is revising and training staff on its referral procedures and forms, and reimbursing parents who had paid for evaluations.
- ▶ A charter school failed to properly evaluate, in a timely manner, a sixth-grade transfer student with a severe, potentially life-threatening peanut allergy to determine if she had a disability and needed services to receive FAPE. The student had a Section 504 plan at her previous school. Pursuant to its agreement with OCR, the school committed to evaluating the student to determine if she had a disability and, if so, to developing a Section 504 plan to ensure that she received FAPE and could safely attend school. The school also notified other parents of students with food allergies of their rights under Section 504 and developed and provided training on written policies and procedures consistent with Section 504.
- ▶ OCR facilitated an Early Complaint Resolution in a case in which parents alleged that the school district had not fully implemented the individualized education program (IEP) developed under IDEA for their child, who had a mood disorder disability. Implementation of an IEP is one means of providing FAPE under

Under Section 504, an “appropriate education” is regular or special education and related aids and services that meet the educational needs of students with disabilities as adequately as the needs of nondisabled students and that satisfy certain procedural requirements. Public schools must evaluate students who, because of a disability, may need special education or related services; determine what those services should be; and provide those services along with procedural safeguards. FAPE requires that students with disabilities be educated with students without disabilities to the maximum extent appropriate to meet the needs of the students with disabilities.

Section 504. Following OCR's intervention, the district agreed to conduct an IEP meeting to discuss the parents' concerns regarding the implementation of the IEP and to provide specific notice to the student's teachers of the obligation to implement it. The district also agreed to convene a meeting between the parents and the student's teachers in the new school year to ensure the terms of the IEP were being appropriately implemented.

### *Enforcement—FAPE—Transportation Services*

- ▶ OCR initiated a statewide investigation of whether children who rode school buses specifically for students with disabilities were inappropriately receiving a shorter school day and less instructional time compared to students without disabilities who did not ride special transport. To settle this case with OCR, the state agreed to implement new, statewide standards for ensuring that students with disabilities on these bus routes were not receiving a shortened school day because of a district's transportation schedule; conduct audits of school districts' transportation schedules and appoint a coordinator responsible for ensuring that districts take corrective steps; require districts to create tracking systems for buses; and monitor districts' implementation of the tracking systems.
- ▶ OCR initiated a proactive investigation to determine whether a large school district failed to provide students with disabilities with transportation to and from the locations where they were receiving educational services. In its resolution with OCR, the district agreed to ensure that students with disabilities received the needed transportation services by taking the following steps: publicizing and operating a phone system to promptly trouble-shoot transportation issues; maintaining a system for reporting monthly on transportation problems and their resolution; notifying parents of their right to reimbursement for the costs of getting their children to school; determining if students who miss school time due to transportation failures are entitled to compensatory education; and providing relevant training for school principals.

### ***Issue: Academic Adjustments for Postsecondary Students***

OCR's work also extends to postsecondary institutions. Students with disabilities who meet the academic and technical standards for admission to, or participation in, a postsecondary education program are entitled to academic modifications and auxiliary aids and services to ensure their equal opportunity to participate in the program. A postsecondary student with a disability who wishes to receive academic modifications or auxiliary aids and services must inform the college of the disability and need for accommodation. Colleges do not have to make changes to academic requirements that they can demonstrate are essential to the instruction being pursued, nor do they have to provide academic adjustments that they can demonstrate would fundamentally alter the institution's program or would result in undue financial and administrative burdens. Short of meeting this high bar, however, the costs of providing auxiliary aids and services are not valid reasons for failing to provide the aids or services.

OCR has collaborated with colleges and universities to ensure equal opportunities in several ways. For example:

- ▶ A college failed to provide sign language interpreters to students with hearing impairments. Because of a shortage of interpreters, the college videotaped some classes and had students with hearing impairments make appointments with interpreters to review the videos, while still requiring the students to attend classes even though there was no interpreter. The results: scheduling a separate appointment with the interpreter took too much time; the video was going too fast for the student to ask the interpreter questions; and students could not ask the teacher questions while watching the videotape because the teacher was not present. In its resolution with OCR, the college agreed to hire one new part-time interpreter; review its entire interpreting system to determine how to meet its current needs; and offer affected students the options of retroactively dropping classes, obtaining refunds and repeating courses.
- ▶ A student alleged that his college discriminated against him by dismissing him from its medical office technology program based on his HIV-positive status. One course required students to draw blood from each other, and the college had expressed safety concerns. To resolve the complaint, the college agreed to offer reenrollment to the student, consider his request for the academic adjustment of not having other students draw his blood, and develop and provide training on procedures to address academic adjustment requests.
- ▶ A deaf student in a college's teacher education program needed a sign language interpreter for student teaching. College officials told her that if she used an interpreter she might not meet state technical standards for teaching and might not pass her student teaching requirement. The college provided inconsistent interpreter services and did not make improvements after the student complained. After the state department of education clarified that there was no state position on whether the use of interpreters during student teaching affected a student's eligibility for teacher certification, the college agreed with OCR to consistently provide the student with qualified interpreters, to not consider her use of an interpreter in evaluating her student teaching, and to generally provide students with appropriate accommodations.

### ***Issue: Discipline***

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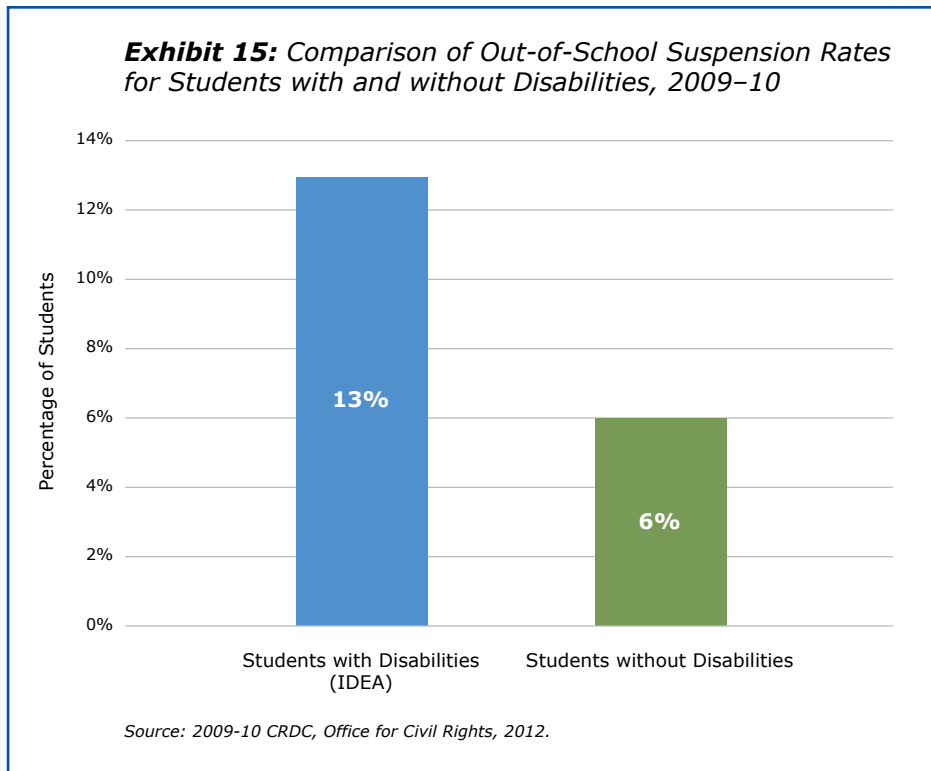
Students with disabilities are often disproportionately disciplined in comparison to their peers without disabilities. For example, the CRDC shows that students served by IDEA are twice as likely to be suspended out of school as their peers without disabilities. (See Exhibit 15.) Statistics alone do not prove a civil rights violation, but such disparities can be a cause for concern. In addition, in fiscal years 2009 through 2012, OCR received over 1,000 complaints alleging disability discrimination concerning discipline.

OCR works to protect students with disabilities from violation of their rights in the discipline process. Under Section 504 and Title II, students with disabilities may not be punished or disciplined for behavior that is caused by or is a manifestation of their disabilities. Additionally, students with disabilities must not be subjected to

discriminatorily different treatment in discipline, and must not be disciplined more harshly or frequently than similarly situated students without disabilities for the same infractions.

One example of OCR's work in disability discipline issues involved a parent who alleged that a school district had indefinitely suspended her son with

Asperger's Syndrome without determining whether the student's behavior was caused by or was a manifestation of the student's disability. The child had brought a container of harmless materials to school that the school mistakenly perceived as a safety risk. The parent further alleged that the school had neither promptly evaluated and placed her son nor provided him special education or related services in this matter. OCR facilitated an agreement between the parent and the school district in which the district agreed to expedite proper procedures to ensure FAPE; allow the student to choose to return to a different high school in the district, with transportation, and retake some courses; provide information to the district attorney to assist in dropping criminal charges; and conduct an internal review of how it was handling this type of situation.



**Issue: Accessibility of 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 to otherwise provide equal access to the educational benefits and opportunities afforded by the technology.

**Policy—Accessibility of Technology**

In 2010, in collaboration with DOJ, OCR released guidance on how Section 504 and the ADA apply to emerging technologies, especially electronic book readers, in

education. The guidance, set forth in a letter addressed to college and university presidents, makes clear that if an emerging technology is inaccessible to students who are blind, then requiring the use of that technology in a classroom is prohibited by Section 504 and the ADA. This prohibition is lifted when schools and colleges provide blind students with accommodations or modifications that permit them to receive all the educational benefits of the program in an equally effective and equally integrated manner. Such accommodations must allow blind students to acquire the same information, engage in the same interactions and enjoy the same services as sighted students. In 2011, OCR issued a follow-up document explaining that the principles underlying the 2010 guidance also apply to elementary and secondary schools; to students with other disabilities, such as learning disabilities, that affect the ability to access printed materials; and to other forms of online or emerging technology beyond electronic book readers.

### ***Enforcement—Accessibility of Technology***

As the use of technology in education increases, OCR's enforcement efforts are ensuring that students with disabilities have the same opportunities as students without disabilities in this fast-changing area. OCR has initiated two proactive reviews to ensure that schools, colleges, and universities are not using technology in a way that discriminates against students with disabilities. OCR has also addressed complaints in this area, such as the following:

- ▶ Working with a private company, a university established a pilot program to provide students with electronic book readers with Web browsers as a source of class-related, text-based information. Advocacy organizations alleged that the electronic book reader was not accessible to blind and visually impaired students and that alternate formats did not provide these students with equal access.
  - After OCR and DOJ began investigating, the university agreed to require, purchase or incorporate electronic book readers into its programs only if the readers were fully accessible to students with visual impairments. Alternatively, the university also agreed to provide a reasonable modification or accommodation that would allow students with visual impairments to access and acquire the same information, engage in the same interactions and enjoy the same services as sighted students in their classes.
- ▶ Online colleges, like their brick-and-mortar counterparts, must not discriminate against students with disabilities. OCR has seen an increase in complaints filed against online colleges in recent years. In one case, for example, a student alleged that an online college did not properly accommodate her disabilities to allow her to access its paralegal training program. In particular, the student wanted extra time to complete assignments and tests. OCR found that the college did not have an adequate process for students with disabilities to request academic adjustments or accommodations. The college agreed to fully refund the student's tuition; develop a new policy on academic adjustments and auxiliary aids and services, as well as a revised grievance procedure to provide for the

prompt and equitable resolution of Section 504 issues; and publicize the new policies and procedures and train all staff on them.

- ▶ A college student with a disability withdrew from an online math class because he could not use his testing accommodation, which was extra time for the online tests. The software did not allow for untimed testing, and the professor would have had to spend about 50 minutes converting each test into a format that would work for untimed situations. The college required the student with a disability to come in to the testing center during specified hours and take a test on paper, while the other students in the class could take the test online, from anywhere, at any time during a 48-hour window. OCR found that the online program did not provide equal access given that the student with a disability did not have the same ease of use and ready access to the test as other students. The additional work it would have taken to prepare an untimed online version of each test was not an undue burden. Following OCR's intervention, the college reimbursed the student for the cost of the course, cancelled its collection action for unpaid tuition, notified credit agencies and trained its staff on providing accommodations.

### ***Issue: Physical 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 and colleges. Parts of old buildings may need to be renovated, and new buildings need to be properly constructed so that individuals with disabilities, including those who use wheelchairs, can, among other things, enter and navigate, use bathrooms, and park near the buildings.

### ***Enforcement—Accessibility of Programs, Services and Facilities***

In fiscal years 2009 through 2012, OCR received nearly 700 complaints alleging violations in the accessibility of programs, services and facilities, and initiated three proactive reviews on this topic. Following are some of the issues OCR has addressed in this area:

- ▶ OCR conducted a proactive review of accessibility at a university campus and found compliance problems with, among other things, the slope and size of parking spaces; the doors and shelves in bathrooms; the slope of a ramp in a building; the pressure required to open some classroom doors; and routes blocked by obstacles such as trash cans and picnic tables. The college agreed to correct these problems.
- ▶ In another proactive accessibility review of a college, the university agreed to remedy several concerns, including: providing accessible restrooms in identified buildings and facilities; providing accessible seating in the campus basketball facility and football stadium; installing audible alarms in the campus auditorium building; providing accessible parking on campus; identifying an accessible pedestrian route on campus and providing notice of the route to the public; and installing appropriate accessibility signage on all building and facility entrances.

- ▶ A complaint alleged that elementary school playgrounds within a school district were not accessible for individuals with mobility disabilities. OCR negotiated an agreement in which the district committed to spending \$2.2 million over eight years to make all the elementary school playgrounds accessible for individuals with mobility disabilities.

## **Cross-Cutting Issue: Combating School Harassment and Bullying**

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Bullying and harassment are harmful to students and the learning environment, and are far too pervasive in our nation's schools and colleges. As Secretary Duncan explained: "Before we can educate our children, we have to make sure that we are keeping them safe. We owe it to our students to provide a safe and healthy environment in which to learn."

Student misconduct that is sufficiently severe or pervasive to interfere with a student's ability to learn may trigger responsibilities under federal civil rights laws.

### ***First-of-its-kind Policy***

In 2010, OCR issued a "Dear Colleague" letter to discuss racial and national origin harassment, sexual harassment, gender-based harassment, and disability harassment because the civil rights legal implications of these issues previously had not been made adequately clear to recipients. The guidance explains that the civil rights laws enforced by OCR 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. OCR's policy guidance provides examples of harassment and illustrates how a school should respond in each case.

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

The 2010 guidance document also makes clear that schools may violate Title IX by failing to effectively respond to bullying or harassment of LGBT students. Title IX does not cover discrimination based solely on sexual orientation, but harassment of LGBT students constitutes sex-based discrimination if it is based on the student's failure to conform to sex stereotypes. For example, a student may be bullied because he or she does not act or dress according to his or her classmates' gender-based expectations for boys or girls. In addition, the guidance states that Title IX

prohibits sexual harassment of all students, regardless of their actual or perceived sexual orientation or gender identity. The guidance reminds schools and universities that when harassment targets LGBT students, includes anti-gay comments, or is partly based on a target's actual or perceived sexual orientation, Title IX obligates the institution to investigate and remedy any overlapping sexual or gender-based harassment of those students.

### **Enforcement**

In fiscal years 2009 through 2012, OCR received over 1,600 complaints involving racial or national origin harassment, more than 1,100 complaints involving sexual or gender-based harassment, and nearly 1,500 complaints of disability harassment. During the same period, OCR launched 12 proactive investigations to address harassment.

### **Enforcement—Racial and National Origin Harassment**

Over the last four years, OCR has worked with districts and colleges on helping to change the culture of their schools that gives rise to a hostile environment because of racial harassment and bullying. Some fact patterns encountered include the following:

- ▶ Epithets scrawled on school walls (for example, swastikas scrawled on walls at a university housing complex) and expressed verbally to

“The bullying and harassment I suffered eliminated my high school experience.” Over 150 students, parents and advocates sat silently as Dylan recounted his story during a seminar sponsored by one of OCR’s Midwestern offices and a state human rights commission. The message regarding the effects of bullying and harassment were clear as Dylan stated that even 10 years later, he was still trying to cope with those effects.

OCR has conducted dozens of technical assistance and outreach activities to address and help prevent the bullying and harassment of students based on sex, race, and disability. Every OCR office has conducted bullying and harassment outreach and technical assistance. Unfortunately, Dylan’s story is all too common.

During another forum, this one a town hall on bullying and harassment held jointly by OCR and the U.S. Attorney’s Office for the Northern District of Ohio, four student panelists (one African-American male, two Arabic Muslim females, and one gay male) shared their stories about how they have been subjected to bullying and harassment in their various Ohio schools and how they have responded.

They, along with an adult panelist representing advocacy and support groups, answered text and email questions from over 1,000 students participating remotely from over 40 schools, as well as to questions from over 100 students in the studio audience. Based on the panelists’ stories and the students’ questions of the participating students and the stories of the panelists, it was clear that bullying and harassment in schools, particularly through the use of social media, remains a significant problem.

The gay male panelist, now a senior deciding where he will go to college, shared how as a result of the bullying he endured his freshman year in high school, he attempted suicide. The lesson was powerful and clear. Such dialogue on this important topic—as well as putting positive action behind the words—will go a long way toward eradicating bullying and harassment in our nation’s schools.

students (calling African-American students “n\*\*\*,” Arab students “sand n\*\*\*” and Jewish students “dirty Jew”) and other derogatory and offensive comments (African-American students being told by other students to “pick cotton” and that “my people owned your people,” Somali students being called “freeloaders” who do not work and receive “unfair privileges” such as time off to pray and being allowed to wear religious head garb in school).

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

*“We have been working with the department [of Education] for the past 17 months. . . . They have done a very thorough review of . . . our policies and procedures and practices and enrollments. We have an agreement which I think will help to make us better.”*

—Tom Tapper  
Superintendent of Owatonna  
School District  
*Star Tribune*, April 12, 2011

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

For example, in an agreement negotiated with a major state university, the university agreed to provide \$330,000 in additional annual funding for outreach and retention programs, with the goal of recruiting students from historically underrepresented

groups and providing support and assistance to help retain those students after they enroll. In addition, the university agreed to establish a task force to identify best practices for the recruitment, support, and retention of faculty from underrepresented groups.

### *Enforcement—Sex Harassment*

OCR's work with schools and colleges over the last four years has dealt with issues that give rise to serious concern about school culture. Some examples:

- ▶ Two separate investigations involved students who were bullied and subjected to chronic sexual and gender-based harassment at school for not acting and dressing in ways that conformed to traditional gender stereotypes. Students were routinely called hostile and demeaning names. Female students reported being called “manly,” “guy,” or “he-she”; male students reported being called “girl,” and “gay boy.” In one case, a middle school student was subject to insult and harassment for years, including being called “sissy” and “girl” and was the target of insults meant to question his masculinity, including references to his clothing as “girly” and suggestions that he “get surgery” to become a female. Students in these investigations were physically threatened and assaulted because of their nonconformity to gender stereotypes. Some of these students suffered physical and mental health problems or stopped attending school for periods of time, left the school district, entered into independent study programs, or dropped out of school entirely. One student committed suicide after experiencing prolonged harassment.
- ▶ In another case, a teacher allegedly bribed a student with candy and money and inquired about which students were homosexual, and locked another student in a classroom and sexually assaulted him.

*“We approach the monitoring role of the DOJ and OCR in a spirit of collaboration, as it will provide an opportunity for continued communication on this important concern. Our efforts to further address harassment related to sexual orientation will result in positive change in our schools that will extend far beyond the five years of the consent decree.”*

—Dennis Carlson  
Superintendent Anoka-Hennepin  
School District  
*ABC Newspaper (online), March 5, 2012*

These investigations led to resolution agreements in which the school districts agreed to take steps to prevent, eliminate and respond appropriately to sex-based harassment and to take certain further actions such as the revision of harassment policies, mandatory trainings on harassment, including training on empowering bystanders and the community to help stop bullying, hiring of new staff assigned to ensure equity and safety, mental health counseling for students who had been harassed, implementation of school climate surveys to assess school climate and student behavior, the formation of an advisory committee composed of diverse members of the school community, and the establishment of a student peer-based leadership program.

### *Enforcement—Disability Harassment*

OCR's work with schools and colleges on disability harassment has involved issues such as the following:

- ▶ A complainant alleged that a high school student with Fragile X Syndrome, Asperger's Syndrome, Tourette's Syndrome and ADHD was verbally ridiculed by her fellow students about her disability-related body odor, sprayed with an air freshener by staff in front of her classmates, detained by staff in school who made her take showers before allowing her to attend classes, and pulled out of class to be sent home before the end of the school day because of her body odor. She wanted to drop out because of the harassment.
- ▶ Parents alleged that their child with cerebral palsy, scoliosis and ADD, who weighed only 65 pounds, was bullied and harassed by classmates at middle school and on the school bus. They said he was kicked in the legs in the cafeteria, intentionally hit in the head while playing dodge ball, and hit with bottles at a pep rally. As a result, the parents removed the child from school to homeschool him.
- ▶ A parent complained that a student with a severe nut allergy was the subject of a protest instigated by district employees because of aids and services provided to the student to address her food allergy. The complainant alleged that several teachers, including a teacher who had been reprimanded for failing to implement the aids and services, leaked confidential information about the student's medical condition and spread misinformation about the accommodations to other parents, and that an online response to a news story concerning the protest included a suggestion that parents send their children to school with backpacks smeared in peanut oil, which could have proved fatal for her child.

These complaints led to resolution agreements in which the school districts agreed to take steps to prevent, eliminate and respond appropriately to disability-based harassment. For example, the school districts agreed to provide training to the staff regarding students with disabilities, and Section 504 and Title II; educate students, faculty, staff and the community about the severity of nut allergies and the need for appropriate aids and services in schools; to provide education or other services to the students who were harassed; revise and fully implement policies and procedures on bullying and harassment; discipline students who engaged in bullying and harassing conduct and report those incidents to parents in a timely manner; and set up a hotline for the parent of the bullied student to use to report future concerns.

### *Technical Assistance*

OCR has also provided extensive technical assistance to school districts, colleges and universities across the country on harassment-related issues. In one city, Asian-American students suffered pervasive acts of harassment, including an

*"We have embraced these steps, and we're not just wanting to check off items from a checklist. We're wanting to grow. We're doing this all for the right reasons."*

—Lisa Gilbert  
Interim Superintendent Tehachepi  
Unified School District  
*The Bakersfield Californian*,  
February 4, 2012

incident in which approximately 30 Asian-American high school students were attacked, leading many to be sent to the emergency room. OCR is now working with other federal and local organizations, including DOJ's Community Relations Service, to conduct student workshops at secondary schools in that city and others that are experiencing racial or inter-group tensions. In another case, where a girl committed suicide following alleged sex and national-origin harassment, OCR gave presentations to school district officials on their obligations to address illegal harassment.



## CONCLUSION

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The mission of the Office for Civil Rights is to ensure equal access to education and to promote educational excellence throughout the nation through enforcement of civil rights. During the last four years, OCR has maintained its proud tradition through vigorous execution of its mission while transforming itself to have even greater impact.

As this report shows, for the dedicated OCR team, nearly 600 attorneys, investigators and staff in 12 regions across the nation, it has been a time of rising to meet challenges, overcoming obstacles and embracing change and innovation. Above all, these last four years have been about strategically maximizing OCR's impact, with laser focus on helping to ensure equal access and opportunity in our nation's schools and colleges and improving the lives of America's students.

While we have made great progress, there is much more to do. Just as we will work hard to vigorously enforce the nation's civil rights laws, we will continuously improve our team. We have work processes that we must make more efficient and effective, and areas where we need to target our efforts toward greater impact. OCR is prepared to meet the challenges ahead. The change of the last four years has been systemic and institutional, so it provides the foundation on which the office will build. And the processes for strategic planning and development that have allowed OCR to work in new ways, meet expanding responsibilities and achieve critical goals will set the pattern for work going forward.



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