



# ARCHIVED INFORMATION

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

February 8, 2016

Mr. Peter Kirsanow, Commissioner  
United States Commission on Civil Rights  
1331 Pennsylvania Avenue, NW  
Suite 1150  
Washington, DC 20425

Dear Mr. Kirsanow:

Thank you for your October 27, 2015 letter raising for a third time your continued concerns about the U.S. Department of Education's *#RethinkDiscipline Public Awareness Campaign* (Campaign) and a school discipline Dear Colleague letter, jointly issued by the U.S. Department of Education and U.S. Department of Justice on January 8, 2014 (the Guidance).

This third letter requests an explanation for how the Guidance is consistent with the Supreme Court's decision in *Alexander v. Sandoval*, 532 U.S. 275 (2001). The Guidance addresses the application of existing Office for Civil Rights (OCR) regulations proscribing unjustified discriminatory effects to the administration of student discipline. 34 C.F.R. § 100.3(b) (2) ("A recipient...may not...utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin..."). The United States Supreme Court upheld the regulations' prohibition of disparate impact discrimination in the 1983 case of *Guardians Association v. Civil Service Commission of the City of New York*, 463 U.S. 582 (1983).

The Department of Justice has consistently instructed federal agencies that while the Supreme Court's decision in *Sandoval* held that there is no private right of action to enforce Title VI's disparate impact regulations, the Supreme Court did not invalidate the Title VI disparate impact regulations themselves or the Federal Government's authority and obligation to enforce them. 2001 Memorandum from the Assistant Attorney General on Executive Order 13166. See also 2009 Memorandum from the Acting Assistant Attorney General on Strengthening of Enforcement of Title VI of the Civil Rights Act of 1964 (urging federal agencies "to remember that [we] serve an especially critical role in enforcing Title VI disparate impact regulations ... [Because] [v]ictims can only turn to the administrative complaint process, ... agencies must be particularly vigilant in ensuring strong enforcement in this area.").

In your letter, you also requested further explanation of the goals of the Campaign related to unnecessary out of school suspensions and expulsions. The Campaign seeks to reduce, and ultimately eliminate, unnecessary suspensions and expulsions. The Campaign also seeks to address unnecessary discipline of all students, as well as racial disparities in discipline. For

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100  
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example, on December 10, 2014, the Department of Education and the Department of Health and Human Services issued a policy statement and recommendations to assist States and their public and private local early childhood programs in severely limiting expulsions and suspensions in early learning settings. The policy statement and recommendations are available at <http://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ece-expulsions-suspensions.pdf>. Because OCR enforces Title VI of the Civil Rights Act, OCR necessarily focuses its policy guidance on race-based discrimination in discipline that violate Title VI's prohibition of discrimination based on race, color, or national origin.

Thank you again for your response.

Sincerely,



Catherine E. Lhamon  
Assistant Secretary for Civil Rights  
U.S. Department of Education