

STATEMENT OF

TANYA CLAY HOUSE
DEPUTY ASSISTANT SECRETARY
OFFICE OF PLANNING, EVALUATION AND
POLICY DEVELOPMENT
U.S. DEPARTMENT OF EDUCATION

ARY AMERIKANER
DEPUTY ASSISTANT SECRETARY
OFFICE OF ELEMENTARY AND SECONDARY
EDUCATION
U.S. DEPARTMENT OF EDUCATION

JESSIE BROWN
SENIOR COUNSEL
OFFICE FOR CIVIL RIGHTS
U.S. DEPARTMENT OF EDUCATION

Before the
U.S. COMMISSION ON CIVIL RIGHTS
Briefing on Public Educational Funding Inequality in an Era of
Increasing Concentration of Poverty and Resegregation

May 20, 2016

Introduction

Good afternoon. Thank you to Chairman Castro and Commissioner Narasaki for the opportunity to testify today. The Department of Education is committed to ensuring that all students have access to an excellent public education. Last year, we achieved the highest graduation rate we've ever had as a country. Since 2008, we have cut in half the number of "dropout factory" high schools. Tens of thousands of children now have access to high-quality preschool and millions more students have access to higher education. Too often, however, students of color and students from low-income families attend schools that are underfunded, inadequately staffed, and poorly resourced. Moreover, these schools tend to be segregated by race and class, with student populations that are disproportionately comprised of students of color and students from low-income families. The result is that, even as we commemorate the sixty-second anniversary of *Brown v. Board of Education*, far too many poor, students and students of color are relegated to underperforming schools in which they are isolated by race and class from the rest of the world. Although we continue to make great strides in public education, we have much work to do to close the achievement gap for, black students, Hispanic students, Native American students, and other historically disadvantaged students, including low-income students...

Diverse schools can play an essential role in positioning all of America's children and our nation for success. The ability to work with people from every background — rich or poor, black, Latino, white, or Asian-American — will be a core competency for the jobs we want all students to have some day. According to a 2015 research report from

McKinsey, “companies in the top quartile in terms of gender or racial and ethnic diversity are more likely to have financial returns above their national industry medians.” Similarly, schools that are socioeconomically diverse have even more immediate and powerful benefits for every student—especially, but not exclusively, for our most vulnerable students.

Identifying the Problem

The Persistence of Racial and Socioeconomic Segregation in Public Schools

The data paints a bleak picture of continuing segregation, where most public school students attend schools in which they are not exposed to significant number of children of other races. Over half of all black students attend schools where 75 percent or more of the student body is comprised of minority students. In contrast, less than one-quarter of all public school students attend schools that are over 75 percent minority. As of the 2007-2008 school year, almost half of all black public school students attended schools where the majority of the students enrolled were black.¹ At the same time, schools that are majority black only enrolled, on average, 2-4% of students from each of the other racial and ethnic groups for which data are collected.² We also know that 57 percent of all Hispanic public school students attend majority-Hispanic schools, and over half of all Hispanic students attend schools that are at least 75 percent minority. At the same time, 9 of every 10 white public school students attend a school that is majority white. In short, America’s public schools still do not reflect its incredible diversity.

Racial segregation in public schools is doubly pernicious in that it is often intertwined with socioeconomic status and, in particular, concentrated poverty. Minority students are more likely to attend high-poverty schools where more than 75 percent of students are eligible for free or reduced-price lunch (FRPL). Approximately half of all black and Hispanic public school students, for example, attend these high-poverty schools, while only seven percent of white public-school students attend such schools.

The Relationship Between Segregation and Resource Inequity

Part of the legacy of *Brown* is that it highlighted not only the inequities of segregated schools, but also the inherent resource disparities that existed in segregated schools. Today, this is evidenced not only through differential funding schemes, but also in the availability of advanced courses and enrichment opportunities for all students. Access to advanced courses, gifted and talented programs, college preparatory programs, arts and music programming, and other extracurricular engagements helps students to build skills, encourages higher levels of effort, and is correlated with higher achievement levels. Yet, it is disappointing that our most recent Civil Rights Data Collection includes data

¹ U.S. Department of Education, National Center for Education Statistics (2010), Status and Trends in the Education of Racial and Ethnic Minorities, available at: https://nces.ed.gov/pubs2010/2010015/indicator2_7.asp.

² *Id.*

that demonstrate that schools serving more students of color are less likely to offer advanced courses and gifted and talented programs than schools serving mostly white student populations, and students of color are less likely than their white peers to be enrolled in those courses and programs within schools that have those offerings.³

- Almost one in five black high school students attend a high school that does not offer Advanced Placement (AP) courses, a higher proportion than any other racial group.
- Students with limited English proficiency (English language learners) are also underrepresented in AP courses according to data from the 2011-2012 school year. In that year, English learners represented five percent of high school students, but only two percent of the students enrolled in an Advanced Placement (AP) course.
- Of the high schools serving the most black and Latino students in the 2011-2012 school year, only 74 percent offered Algebra II and only 66 percent offered chemistry. Comparable high-level opportunities were provided more often in schools serving the fewest black and Latino students, where 83 percent offered Algebra II courses and 78 percent offered chemistry. Moreover, the percentages of black and Latino students enrolled in calculus courses did not closely match the percentages of black and Latino students enrolled in high schools. While black and Latino students represented 16 percent and 21 percent, respectively, of high school enrollment in 2011-2012, they were only eight percent and 12 percent, respectively, of the students enrolled in calculus.
- Black and Latino students were also underrepresented in gifted and talented programs. Schools offering these programs had an aggregate enrollment that was 15 percent black and 25 percent Latino, but their gifted and talented enrollment was only nine percent black and 17 percent Latino. Further, the percentage of non-English language learners participating in gifted and talented programs was three-and-a-half times greater than the percentage of English language learners participating in these programs.

Furthermore, beyond access to coursework, high-quality teachers, leaders, and support staff in a school are foundational to student learning and development. Unfortunately, we continue to see that disparities in the opportunity for students to benefit from strong teachers, leaders, and support staff — ones who, generally speaking, are qualified, experienced and accomplished — exist among and within districts, as well as among classes in the same school.

- Schools serving the most black and Latino students are 1.5 times more likely to employ teachers who are newest to the profession as compared to schools serving the fewest of those students.⁴
- And teachers in high schools serving the highest percentage of black and Latino students during the 2011-2012 school year were paid on average \$1,913 less per year than their colleagues in other schools within the same district that serve the lowest percentage of black and Latino students.⁵

³ U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection: 2011-12: Data Snapshot: College and Career Readiness*, (Mar. 21, 2014), www.ed.gov/ocr/docs/crdc-college-and-career-readiness-snapshot.pdf.

⁴ U.S. Department of Education, Office for Civil Rights, *Civil Rights Data Collection: 2011-12: Data Snapshot: Teacher Equity*, (Mar. 21, 2014), www.ed.gov/ocr/docs/crdc-teacher-equity-snapshot.pdf. This analysis compares the percentage of teachers in their first or second years of teaching in schools with the highest and lowest combined black and Latino enrollment in the 2011-12 CRDC. Schools with the highest and lowest combined black and Latino enrollment are in the top and bottom quintiles, respectively, within the district in terms of combined black and Latino enrollment. Specifically, six percent of teachers in the top quintile of schools, ranked by percentage of black and Latino enrollment are in their first or second year of teaching, compared to four percent of teachers in the lowest quintile.

⁵ *Id.* This analysis compares the average teacher salaries at schools with the highest and lowest combined black and Latino enrollment. Schools with the highest and lowest combined black and Latino enrollment are in the top and bottom quintiles, respectively, within the district in terms of combined black and Latino enrollment.

The physical spaces where students are educated are also significant resources that influence the learning and development of all students. Still, many of our Nation's schools have fallen into disrepair. Too often, school districts with higher enrollments of students of color invest thousands of dollars less per student in their facilities than those districts with predominantly white student enrollments.⁶

- Older buildings with inadequate or poorly maintained heating, ventilation, and air conditioning (HVAC) systems still are more likely to house schools attended mostly by students of color, who in many instances are also low-income students.
- In 2012-2013, almost half of all "majority-minority" schools had temporary, portable buildings, whereas the same was true for only about a tenth of the schools that had less than six percent students of color.

The sad truth about today's segregated schools is one that Thurgood Marshall knew and articulated six decades ago: separate is not equal.

Structural Inequities in School Financing Disproportionately Harm Poor and Minority Students

The situation is similarly concerning when we evaluate our school funding data. Inequitable school funding has been a problem in the United States for years, particularly because of our long history of using local property taxes to fund schools. In the most egregious version of this system, wealthy neighborhoods can fund their schools handsomely, and low-income neighborhoods are left struggling to educate their children.

According to ED's School District Finance Survey, in the 2011-2012 school year, nationwide, our highest poverty districts spent 15.6 percent less per student than our lowest poverty districts. In 23 States, students from low income families were being shortchanged when it comes to State and local education funding. In these States, districts serving the highest percentage of students from low income families spent fewer State and local dollars per pupil than the lowest poverty districts, even though we know that students from low income families have greater educational needs.

It doesn't have to be this way. There are States and districts that uphold their responsibility to provide the most support to the students who need it most. In Indiana, the highest-poverty districts spent 17 percent more per student than the lowest poverty district. In Minnesota, it's 15 percent more for the highest poverty districts. New Jersey and North Dakota each spend 9 percent more on the highest poverty districts than the lowest.

Unfortunately, these states are the exception – they ought to be the rule. The deeply inequitable spending that exists today at the State and local level calls for bold action to redesign and reform the funding of our nation's public schools.

⁶ Mary W. Filardo, *Growth and Disparity: A Decade of U.S. Public School Construction*, (Oct. 2006), www.ncef.org/pubs/GrowthandDisparity.pdf; *Condition of America's Public School Facilities: 2012–13*, NCES 2014-022, U.S. Department of Education, National Center for Education Statistics, <http://nces.ed.gov/pubs2014/2014022.pdf>.

Solutions: The Role of the Federal Government in Ensuring Equal Educational Opportunity

The federal government – and the Department of Education in particular – plays an important role in identifying and remedying funding inequities and their related ills. The Elementary and Secondary Education Act, or ESEA, originally enacted in 1965 and recently reauthorized by the Every Student Succeeds Act (ESSA), is at its heart a civil rights law designed to ensure that the even the most marginalized, disadvantaged students gain access to a high-quality public education. We are going to talk briefly about three types of levers we use at the federal level to address the problems described above: implementation of discretionary grant programs across the Department of Education; our Office of Elementary and Secondary Education’s implementation and enforcement of Title I of the Elementary and Secondary Education Act; and our Office for Civil Rights’ enforcement of civil rights laws including Title VI of the Civil Rights Act of 1964.

“Stronger Together” and Other Efforts to Incentivize Increased Socioeconomic Diversity

The Department is actively pursuing innovative strategies to incentivize work to increase diversity and combat inequality in our Nation’s schools. The President’s fiscal year 2017 budget request, for example, included a proposal for a competitive grant program, called “Stronger Together,” designed to increase socioeconomic diversity in schools and school districts. Research increasingly shows that socioeconomic school integration matters: States with more socioeconomic segregation in schools tend to have larger achievement gaps between low- and higher-income students, and socioeconomically diverse schools can lead to improved outcomes for all students, with especially powerful impacts for low-income students compared to their peers in high-poverty schools. Through Stronger Together, the Department hopes to capitalize on the growing evidence base supporting the importance of socioeconomically diverse schools and communities. Stronger Together would support voluntary community-led efforts to develop and implement comprehensive strategies to address the effects of concentrated poverty by increasing socioeconomic diversity in early childhood education programs and elementary and secondary schools and classrooms. In so doing, the Department believes that schools and districts would tear down the barriers that prevent poor and minority students from accessing the same high-quality schools and teachers that are available to many of their peers. The federal government must be nimble and inventive in applying a multipronged approach to combating the dual scourges of segregation and concentrated poverty. Through rigorous technical assistance, compliance monitoring, and innovative competitive funding, we hope to begin to achieve the promise of equal educational opportunity for all American students.

In addition to the Stronger Together proposal, the Department is leveraging existing discretionary programs to focus on the development and implementation of successful strategies to increasing diversity. The recently announced notice inviting applications for the Investing in Innovation program, for example, prioritizes projects that propose to develop and evaluate innovative approaches to increasing diversity. Likewise, the recently announced notice inviting

applications for the Magnet Schools Assistance Program seeks project proposals that focus on the development of evidence-based strategies for reducing racial and socioeconomic isolation in public schools. We also sought public comments on how we might use the School Improvement (SIG) Grants program to help districts implement locally driven strategies to boost socioeconomic diversity and improve student outcomes in the lowest-performing schools. Finally, in an effort to ensure that information and technical assistance is available to schools and districts that are grappling with issues of racial and socioeconomic segregation, the Department recently published a Notice of Proposed Rulemaking (NPRM) in the Federal Register to revise the regulations that govern the Equity Assistance Centers (EAC), authorized under Title IV of the Civil Rights Act to provide technical assistance on issues occasioned by desegregation. The NPRM updates the definitions applicable to the program; removes the existing selection criteria; and provides the Secretary of Education with flexibility to determine the number and composition of geographic regions for the program. These changes reflect the breadth of the types of desegregation issues now faced in schools. The centers may provide technical assistance around improving school climate, reducing bullying (including harassment and hate crimes), addressing the needs of diverse learners, ensuring that schools employ a diverse workforce, and reducing school violence and drop out-rates among vulnerable populations. Additionally, by providing the Secretary with flexibility to determine the number and composition of the geographic regions for the program and reducing the number of centers, the Department believes that the funding available for each center would increase and enable them to operate in the most effective and efficient manner.

Implementing Title I of the Elementary and Secondary Education Act: A Focus on Equity

As described above, the disparities in spending between our highest poverty districts and our lowest poverty districts are deeply troubling, and in too many places, these inequalities are exacerbated further by inequalities in spending between schools within the same district. We know, for instance, according to a Department analysis from 2011, that approximately one quarter of school districts receiving Title I funds spend fewer State and local dollars per student in their Title I schools than their non-Title I schools, or in their highest poverty schools than their lowest poverty schools.

Giving less money to schools serving the highest concentrations of poor students cuts against both common sense and basic fairness. It also undermines the purpose of Title I of the Elementary and Secondary Education Act, which is to “provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps.” The \$15 billion we spend in Title I funds every year is supposed to go to high poverty schools to provide the supplemental resources we know those schools need to provide truly equitable educational opportunities for their students. They can’t do that if they are simply filling in for unfair shortfalls in State and local funding in those high poverty schools.

To help address these concerns, the Department recently engaged in a process called “negotiated rulemaking,” in which we put forward a proposed rule regarding the “supplement, not supplant” provision of Title I, part A, found in

section 1118(b) of the ESEA, as amended by the ESSA. During this process, the Department provided a draft proposal that was designed to ensure that, regardless of the methodology a district chooses to allocate its State and local funds to schools, each Title I school ultimately “receives all of the State and local funds it would otherwise receive if it were not receiving” Title I funds, as the law requires. The Department’s proposal provided a straightforward test that States and districts could use to determine compliance with this provision: a district receiving Title I, part A funds would demonstrate that each Title I school in the district receives at least as much in State and local funding as the average non-Title I school in that district. This approach would give districts the flexibility to choose their preferred method for allocating State and local resources while also ensuring that, consistent with the ESEA as amended by the ESSA, Title I dollars are used to supplement State and local funding and not to supplant that funding. The Department was unable to reach consensus on this proposal, and is now continuing to seek input on how to implement the supplement, not supplant provision of the law.

There are two other provisions within Title I of the ESSA that are worth mentioning today. The first is a new reporting requirement - Section 1111(h)(1)(C)(x) of the ESSA, under which States and districts must report per-pupil expenditures of Federal, State, and local funds for each school and district on State and local report cards. This is an important step forward in shining a light on the inequities we have discussed here today, but it will only be meaningful if parents and other stakeholders at the local level are able to access and understand the information. We look forward to working with States and districts as they implement this new requirement to ensure it is done well.

Finally, Title I, part A of the ESSA requires that each State describe how low-income children and minority children in Title I schools are not taught at disproportionate rates by ineffective, out-of-field, or inexperienced teachers. Research demonstrates that a great teacher is the single most important in-school factor for a student’s performance. Access to strong teachers should not be connected to children’s race, ethnicity or national origin, zip code, wealth, or first language. Of course, this is related to today’s larger conversation about fiscal equity, because we know that often, teachers in Title I schools are paid less than their counterparts in non-Title I schools. In implementing the ESSA’s requirement, the Department will build on similar work done in the last two years. In July of 2014, the Department launched a comprehensive Excellent Educators for All Initiative at the White House to help States and districts support great educators for all students. As part of that comprehensive approach, the Department asked all States to submit a plan describing the steps it will take to ensure that poor and minority children are not taught by inexperienced, unqualified, or out-of-field teachers at higher rates than other children. All 50 states plus Puerto Rico and DC are moving forward with innovative plans informed by data and input from students, community groups, teachers and principals.

There are many innovative and interesting ways that States are engaging in this work. For example, in Delaware the State is examining ways to implement differentiated compensation opportunities and create career pathways for educators to address gaps related to teacher turnover in high-need schools. In Missouri, there is a focus on correcting the imbalance of teacher supply and demand in hard-to-staff content areas and geographic locations by developing and implementing an Educator Shortage Predictor Model. This Educator Shortage Predictor Model pinpoints where

shortages will likely occur by region and certification area across the State, so that Missouri can target its recruitment and retention efforts in a way that helps to minimize educator shortages and, ultimately, helps to ensure that all of its students will have access to excellent educators. Finally, New Hampshire is working closely with one of its large, urban districts which has large equity gaps, and which has constraints in addressing those gaps because of incomplete and inconsistent data across schools. To address those limitations, New Hampshire is working in partnership with the district to streamline data collection, including addressing challenges from multiple data systems in the district that are currently incompatible. Their investments in better data systems are designed to support better decision-making and, ultimately, eliminate its equity gaps. The work to ensure all students have access to excellent educators does not start or stop with these plans. States have committed to publicly reporting their progress so that students, schools, and communities can follow their progress and hold them accountable.

In addition to continuing to working with States and districts to make the plans real and meaningful for teachers and students, the Department is also convening a series of quarterly, state-specific Equity Labs. These labs bring together civil rights groups, unions, principals, parents, teachers and students in engaging in meaningful conversations regarding the progress their state is making in implementing its plan and moving towards equal access to excellent educators for all students. The Equity Labs are led by the Department's team of teacher and principal Ambassador Fellows, as well as teacher leaders in the states. In addition to the labs, the support network the Department created as part of this Initiative will continue to provide states and districts real-time help in turning their plans into meaningful action, and sharing best practices and lessons learned. The first Equity Lab was held in Mississippi, where high-poverty and minority students are disproportionately located in the lowest-performing schools, which have half as many highly-effective and 1.5 times as many ineffective teachers as the high-performing schools. The work happening around the Excellent Educators for All Initiative is promising, and holds the potential to decrease equity gaps and improve outcomes for kids throughout the country.

The Office for Civil Rights' Guidance and Enforcement Activities

Our Office for Civil Rights (OCR) has made clear that resource inequities on the basis of race – including lack of access to excellent educators – may be actionable civil rights violations. In October 2014, OCR issued a comprehensive guidance package on resource comparability, detailing how the Department views this issue through the lens of Title VI of the Civil Rights Act of 1964.⁷ The guidance has helped school administrators, teachers, parents, students, and advocates understand their legal obligations and how OCR may investigate issues related to resource inequity. The guidance also provides practical suggestions for how to perform a proactive self-assessment to ensure compliance with the law.

⁷ OCR, *Dear Colleague Letter: Resource Comparability* (Oct. 1, 2014), <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf>. Other resource comparability materials available at: <http://www2.ed.gov/about/offices/list/ocr/resourcecomparability.html>.

Of course, in addition to issuing important guidance documents, OCR, through its 12 enforcement offices around the country, ensures that recipients are complying with federal civil rights laws, including Title VI. Because the issue of educational opportunity is so closely linked to school desegregation, OCR has been investigating this type of discrimination since the agency began. In FY2015, OCR received 40 complaints related to student access to resources, curricula, and opportunities that foster college and career readiness under Title VI. Additionally, in FY2015, OCR launched three and resolved three proactive, systemic investigations in this area. In an investigation regarding equity of educational resources, OCR looks holistically at quantitative and qualitative differences in access to resources like technology, strong teaching, and instructional materials, also taking into account the ongoing efforts that States or districts are taking to improve resource equity.

We have seen districts taking action to promote equal educational opportunities for all students, sometimes as a result of OCR investigations. In January of this year, prior to the completion of its investigation, OCR reached a resolution agreement with the Toledo Public Schools in Ohio. OCR's compliance review indicated that the district was taking steps to increase facility equity through a building plan started in 2005, which rebuilt or renovated nearly every district school; developed programs to recruit and retain strong building leadership across all district schools; offered substantially equal access to strong teachers at least in the measures of teacher certification and highly qualified status; and made efforts to provide the same textbooks to students at all of its schools. However, the review also uncovered a number of potential Title VI of the Civil Rights Act of 1964 (Title VI) compliance concerns regarding equitable access to resources for African American students, including experienced teachers, teachers with master's degrees, library access for K-8 students and distance learning classes for high school students.

Another investigation representative of this work is in the Arlington Independent School District in Texas, which was resolved in June 2015. The investigation assessed whether the district discriminated against black and Latino students on the basis of race or national origin in providing access to foundation courses that are essential to prepare students to take rigorous courses in high school and to provide them with college- and career-ready skills, as well as in providing equal access and equitable opportunity to participate in college and career preparatory programs and courses, including Advanced Placement (AP) and International Baccalaureate (IB) programs. OCR learned that black and Latino students were enrolled in these high-level, high-quality courses at lower rates than their respective districtwide enrollment rate, and OCR identified possible barriers to enrollment in these courses. This included the publication of enrollment criteria, lack of awareness about the district's IB program, and the need for prerequisites for AP courses. OCR entered a resolution agreement with the district, in which Arlington agreed to develop a comprehensive districtwide plan for ensuring equal opportunity to participate in college and career preparatory courses as well as other advanced academic activities, and to conduct an assessment of barriers to entry for these courses. The district also committed to communicate with parents and guardians about the programs, and to conduct trainings at every level to encourage black and Latino participation and retention in higher learning activities.

In July of 2014, OCR resolved a compliance review that evaluated the Elk Grove Unified School District's compliance with Title VI. The compliance review, opened in 2011, assessed whether African-American students were provided equal educational opportunities to participate in the District's Gifted and Talented Education (GATE) programs, honors and AP courses in compliance with Title VI. During the 2010-11 school year, black students in grades 3-6 were nearly five times less likely than their white peers to be identified for the GATE program, elementary schools in the district with higher than average black student populations had smaller GATE programs than those schools with higher than average white student populations, and schools with a higher enrollment of black students did less parental outreach about the GATE programs than other schools. OCR's investigation found that the district's policies and procedures resulted in an unlawful adverse impact on black students. OCR resolved the case after the district, in a resolution agreement, committed to establish and implement modified eligibility and selection criteria for the district's GATE program and to provide OCR with an analysis of the changes with data to be disaggregated by school, grade level, and race.

Since the agreement, the district has taken comprehensive steps to eliminate barriers to equal access. They have revised the eligibility criteria for these programs, increased communications and outreach to families about the benefits of the programs, developed targeted plans at every elementary and middle school to boost equitable referral and identification of students, and created a district GATE/equity committee with parents. This new commitment to equitable access have led to changes to program administration that affect more than 62,000 students district-wide, including the district's change of prerequisites for 42 courses in the program's first year of implementation.

Conclusion

The legacy of *Brown v. Board* is fundamentally about whether we are going to create equitable educational opportunities for all students and ESSA is a part of this legacy. It is both the Department's responsibility and moral obligation to build on the civil rights legacy of ESSA.

The Department of Education was created to assist and oversee states and localities in the provision of equitable and quality public education for all students. Yet, without meaningful oversight and enforcement by the Department, students in high-poverty, high-need schools, in particular, may not receive the educational opportunities of which they are entitled. We take these responsibilities very seriously and appreciate the opportunity to testify before the Commission on the federal government's ongoing efforts. The Department of Education looks forward to working together with the Commission to achieve equitable educational opportunities for all students.