

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

December 21, 2018

Questions & Answers on Racial Discrimination and School Discipline

Under Title VI of the Civil Rights Act and its implementing regulations, no student shall, on the ground of race, color, or national origin (hereafter “race”), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a recipient receiving federal financial assistance (hereafter “school”).¹ This Q&A document provides information about how OCR assesses a school’s compliance with Title VI with respect to the administration of school discipline, and how a school may self-evaluate its compliance with Title VI with or without OCR’s involvement.

Question 1:

What legal obligations do schools have under Title VI with respect to school discipline?

Answer:

Schools have a legal duty, *inter alia*, not to treat students differently based on their race.² Title VI protects students throughout the disciplinary process, including behavior management in the classroom; referral to an authority outside the classroom because of misconduct; the school’s response to student misconduct, which may or may not include exclusionary discipline for the student; and any administrative reviews of disciplinary decisions.³

In any investigation regarding this topic, OCR’s role is to ascertain the school’s compliance with Title VI. Where appropriate, OCR will work with the school to reach a voluntary resolution to bring the school into compliance⁴ while recognizing and respecting the discretion of local school leaders to choose which type of nondiscriminatory discipline policies best serve the needs of their school.⁵ If voluntary

¹ 42 U.S.C. § 2000d. Note that the terms “race,” “color,” and “national origin” have distinct legal meanings. The term “race,” however, is used as shorthand in this document to aid the reader.

² The nondiscrimination requirements of Title VI extend to conduct undertaken by entities that carry out some or all of the schools’ functions through contractual or other arrangements. *See e.g.*, 34 C.F.R. § 100.3(b)(1).

³ For example, it could potentially be impermissible different treatment based on race if a high level administrator elected to review, with the possibility of repeal, disciplinary actions taken against students of one race but not another.

⁴ 34 C.F.R. § 100.7.

⁵ *See Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 646 (1999) (“On more than one occasion, this Court has recognized the importance of school officials’ ‘comprehensive authority . . . consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.’”); *see also Tinker v. Des Moines Indep. Cty. Sch. Dist.*, 393 U.S. 503, 507 (1969); *New Jersey v. T. L. O.*, 469 U.S. 325, 342, n. 9 (1985) (“The maintenance of discipline in the schools requires not only that students be restrained from assaulting one another, abusing drugs and alcohol, and committing other crimes, but also that students conform themselves to the standards of conduct prescribed by school authorities.”).

compliance with Title VI cannot be effected, OCR will institute formal enforcement proceedings against the recipient.

OCR provides technical assistance to schools regarding compliance with Title VI and welcomes requests for such assistance by contacting the appropriate OCR regional office: <https://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

Question 2:

What evidence does OCR examine when conducting a Title VI discipline investigation?

Answer:

Complaints that administration of school discipline violates Title VI often allege that a student was disciplined for particular behavior or a particular incident in a discriminatory manner (e.g., that the student was treated differently than similarly situated students of another race). Complaints also often allege that a school adopted a racially neutral discipline policy with the intent to target students of a particular race.

If, based on the totality of information available to OCR through the evaluation process, OCR determines that a complaint alleges a violation of Title VI and is otherwise appropriate for investigation, OCR will investigate the allegation. Based on the allegations, OCR determines the type and scope of evidence that is necessary to support a legally sound investigation and determination. Generally, as part of its investigation to determine whether the school treated students differently because of race in violation of Title VI, OCR examines information such as:

- Direct evidence of racial motive or animus (for example, statements by decision-makers expressing racial bias).
- Circumstantial evidence of racial bias, including, for example:
 - comparative evidence regarding the treatment of similarly situated students;
 - departures from the school's standard disciplinary procedures/norms;
 - a history of discriminatory actions.⁶

OCR will review the evidence and circumstances that may be unique to a particular school or situation to determine whether a student was treated differently compared to similarly situated students, and, if so, whether there is a non-pretexual, nondiscriminatory reason for the different treatment. OCR bears the burden of proving a violation of statute or regulation by a preponderance of the evidence.

Question 3:

⁶ Although statistics may be a source of circumstantial evidence to establish the presence of discriminatory motive, the mere existence of disparities does not establish different treatment. See *Belk v. Charlotte-Mecklenburg Bd. of Educ.*, 269 F.3d 305, 332 (4th Cir. 2001) (“disparity [in discipline rates] does not by itself constitute discrimination”).

What records concerning discipline is a school required to maintain?

Answer:

Accurate and complete recordkeeping is an important obligation of each school as a condition of receiving federal funds, and is essential in the context of an OCR Title VI discipline investigation.⁷ Records must be kept in such a manner that Department personnel could review and analyze those records in the context of an investigation. Failure to maintain such records is itself a violation of Title VI's implementing regulation.

Question 4:

How should racial discrimination in school discipline be remedied?

Answer:

OCR may enter into a voluntary agreement with the school designed to bring the school into compliance with the law. The relief provided for in such an agreement with the school must be squarely tied to the violation found by OCR (or, in the context of a voluntary agreement reached prior to conclusion of OCR's investigation, the concerns or potential violations that OCR noted during the course of its investigation), and necessary to bring the school into compliance with Title VI.

Addressing instances of discrimination by a teacher or school official should lead to redress for the individual victim, and any other measures necessary to bring the recipient into compliance. Remedies may include correcting the record of the student who was treated differently, restoring any benefits specifically withheld due to the discriminatory discipline, or providing academic services that were not received by the student due to a discriminatory discipline decision. For instance, if the victim was deprived of a school-based scholarship or tuition waiver due to discriminatory disciplinary action, that scholarship should be restored, and any tuition charged as a result of the termination of the tuition waiver should be returned to the student.

It is not appropriate for OCR or a school to impose racial quotas or proportionality requirements for suspensions or other discipline sanctions as a remedy for discrimination.⁸

Note: The Department has determined that this Q&A is a significant guidance document under the Final Bulletin for Agency Good Guidance Practices of the Office of Management and Budget, 72 Fed. Reg. 3432 (Jan. 25, 2007). This document does not add requirements to applicable

⁷ See 34 C.F.R. § 100.6(b), which provides: "Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part. "

⁸ For example, a federal appeals court struck down a provision that forbade a "school district to refer a higher percentage of minority students than of white students for discipline unless the district purges all 'subjective' criteria from its disciplinary code" because that constituted a forbidden racial quota—even though that school district had previously been determined to have committed racial discrimination. *People Who Care*, 111 F.3d at 538.

law. If you have questions or are interested in commenting on this document, please contact the Department of Education at ocr@ed.gov or 800-421-3481 (TDD: 800-877-8339).