



KROKIDAS & BLUESTEIN LLP

**CLIENT ALERT**

**MONITORING, REMEDYING AND PREVENTING DISCRIMINATION IN DISCIPLINE POLICIES AND PRACTICES: RECENT DEVELOPMENTS**

On August 16, 2022, the United States Department of Education’s Office for Civil Rights (“OCR”) issued a findings letter and published the resolution agreement in a multi-year investigation of a California school district (“District”) involving allegations of racial disparity in the District’s implementation of school discipline. OCR found that the District violated Title VI of the Civil Rights Act of 1964 (“Title VI”) by disciplining African American students more frequently and more harshly than similarly situated white students. The full OCR letter and Resolution Agreement are available [here](#).

TITLE VI REQUIREMENTS

Title VI, through its implementing regulation at 34 C.F.R. 100.3(a) and (b), provides that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program receiving federal financial assistance. Further, that a recipient may not, on the ground of race, color, or national origin,

- (i) deny an individual any service or benefit provided under the program;
- (ii) provide any service or benefit to an individual which is different, or provided in a different manner, from that provided to others under the program;
- (iii) subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the program;
- (iv) restrict an individual in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program;
- (v) treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition to be provided any service or other benefit under the program; or
- (vi) deny an individual an opportunity to participate in a program through the provision of services or otherwise afford an individual an opportunity to do so which is different from that afforded others under the program.

The regulations additionally state that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing

accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin.

## OCR'S FINDING OF TITLE VI VIOLATIONS

In concluding that the District violated Title VI in discriminating against African American students in disciplinary matters, OCR considered the following relevant factors:

- Witnesses including staff and students reported observations and a general perception that African American students were subject to discrimination in several areas of discipline and that African American students were disciplined more often and more harshly than other students who engaged in similar behavior;
- Statistical evidence supported the finding of disparate treatment, particularly for incidents involving defiance, inappropriate behavior, fights and confrontations, dress code violations, truancy and obscenity. African American students were more likely to be disciplined for those types of offenses and to receive more significant discipline;
- African American students were overrepresented in matters involving the School Resource Officer;
- The District violated its own procedures and state law by mischaracterizing lower-level behaviors and disciplining those lower-level behaviors with more significant discipline penalties (including more frequent school removals) for incidents involving African American students. For example, the District mischaracterized lower-level behaviors such as tardies, truancy and defiance/disruption as more serious behavior (harassment, threats or intimidation) resulting in school removals that were not permitted under state law; and
- The District failed to collect and maintain adequate records concerning school discipline.

As a result of OCR's investigation and findings, the District and OCR entered into a Resolution Agreement that requires the District in relevant part to:

- Examine the causes of racial disparities in the district's discipline and implement a corrective action plan;
- Employ a new director with expertise in nondiscriminatory discipline practices to help the District implement the corrective action plan and the agreement;
- Establish a stakeholder equity committee to inform implementation of the plan;
- Revise its discipline policies and procedures, including those regarding law enforcement involvement in school discipline;
- Regularly analyze its student discipline data to identify and, as needed, address possible areas of discrimination;
- Provide training to staff on the revised discipline policies and practices;
- Publicly report disaggregated discipline data;
- Conduct school climate surveys to assess perceptions of fairness and safety; and
- Provide compensatory education to students subjected to discriminatory practices.

## WHAT SHOULD MASSACHUSETTS CHARTER SCHOOLS DO?

In Massachusetts, public schools, including charter public schools, are required to collect and report discipline data annually to the Department of Elementary and Secondary Education (“DESE”) pursuant to 603 CMR 53.14(1). However, the regulations also require that the principal of each school periodically review discipline data by selected student populations, including but not limited to race and ethnicity, gender, socioeconomic status, English language learner status, and student with a disability status. In reviewing the data, **“the principal shall assess the extent of in-school suspensions, short- and long-term suspensions, expulsions, and emergency removals under 603 CMR 53.07, and the impact of such disciplinary action on selected student populations.** The principal shall further determine whether it is necessary or appropriate to modify disciplinary practices due to over-reliance on expulsion, or in-school or out-of-school suspension, or emergency removals, or the impact of such suspensions, removals, and expulsions on selected student populations compared with other students.” (emphasis added). Schools are reminded of their obligations under Title VI and state law to consider the impact of discipline policies and practices on protected classes regularly and to modify those as needed. Maintaining records of efforts to monitor disciplinary impact on students and engaging in meaningful feedback endeavors with students, staff and parents regarding the school climate and culture are important tasks to ensure compliance with federal and state laws.

The OCR matter described above was conducted over a period of eight years (2014-2022). Given the potential for lengthy and complex OCR monitoring when a civil rights violation is alleged, as well as the potential for significant corrective action and compensatory education, proactive review of School policies and procedures along with regular checks for implementation consistency and School climate are essential.

For additional information or review of charter school discipline policies, procedures and best practices or training on any civil rights matters, please contact Bettina Toner ([btoner@kb-law.com](mailto:btoner@kb-law.com)) or Elka Sachs ([esachs@kb-law.com](mailto:esachs@kb-law.com)).