Federal Government to Schools: Ignore Title VI Obligations at Your Own Peril

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With constantly changing regulations, technical definitions and intricate procedural requirements, many schools have spent the past several years worrying about preventing sex-based discrimination as required by Title IX. Recent activity from the federal government suggests that schools might be well-served to monitor compliance with Title VI as well.

Just as Title IX prohibits discrimination on the basis of sex by educational institutions that receive federal funding, Title VI prohibits those institutions from discriminating against students on the basis of race, color, or national origin. This means that institutions must not only refrain from acting in a discriminatory manner themselves but must also address harassment or discrimination among students or students and employees.

Of course, racial discrimination and harassment have been an issue in the U.S. since before its founding, and recent events have highlighted racial inequities and tensions within society. Perhaps in response to this, in November 2022, the Biden administration issued a YouTube video jointly presented by the Department of Education's Office for Civil Rights (OCR) and the Department of Justice, which highlights recent Title VI enforcement efforts against school districts and encourages students to file complaints for discrimination based on race or national origin. Issues highlighted in the video include:

- Racially discriminatory discipline – In August 2022, OCR found that the Victor Valley Union High School District in California disciplined African American students more frequently and more harshly than white students who had committed the same infractions. The types of discipline that OCR considered included suspensions, expulsions, truancy, and law enforcement citations. In its findings, OCR noted that racial disparities in discipline coincided with the use of "discretionary and subjective infractions" including "defiance," "disruption," and "inappropriate behavior." OCR required the district to implement solutions including hiring expert consultants, implementing a corrective action plan, revising disciplinary policies and procedures, and publicly reporting disciplinary outcomes by race going forward. The district was also required to offer compensatory educational opportunities to students who were unfairly disciplined.

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- Student on student harassment – Also in August 2022, OCR found that the Kyrene School District in Arizona failed to adequately address students who were bullying another student using anti-Semitic language that included racist jokes, comments about the Holocaust and Nazi Germany, and race-based slurs. The school principal did address the harassment generally by email but did not take timely action to stop the harassment, to monitor it, or to address it on a school-wide level. OCR noted that the school took nine months to address the issue, and that during that time the harassed student was left in a class with her harassers, thus exacerbating a hostile environment. OCR required the school district to financially compensate the bullied student for her lost educational opportunities, to issue an anti-harassment statement and amend its non-discrimination policies, to provide training to staff and students, and to undergo a climate assessment and compliance audit.
- Non-English communication practices – In September 2022, the Justice Department investigated the New Bedford, Massachusetts School District's practices for communicating with parents and guardians who had limited English proficiency. Specifically, the district's response to speakers of K'iche', an Indigenous Mayan language, was discriminatory in that staff repeatedly assumed that K'iche' speakers were native Spanish speakers based on their country of origin, and the educational needs of English learner students who spoke K'iche' were not adequately met by educational programming. The district was required to revise its practices and professional development to more adequately address the needs of the K'iche' speaking population, and its compliance will be monitored by the Department of Justice for three years.

The message of the video was clear: educational institutions that engage in or do not address practices that result in race- or national origin-based inequities may face consequences from either the Department of Education or the Department of Justice. This represents a change in enforcement priorities. As with Title IX, many OCR enforcement actions by the Trump administration focused on matters such as scholarship equity – i.e., not limiting the availability of a scholarship based on the applicant's race or gender. The Biden administration appears to be shifting toward enforcement focused on inequities facing students who are racial or ethnic minorities. Schools would be well served to assess their policies and practices related to discipline, harassment and bullying, and non-English communication, for civil rights compliance.

CLIENT TIP

Incorporate Title VI obligations into a global compliance scheme that prohibits harassment and discrimination on all protected categories. Assess whether it is necessary to break out policies and processes for addressing different types of discrimination or harassment (for example, sex-based harassment vs. race-based harassment) and consider adopting the same enforcement scheme to address all legally protected categories.

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