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TITLE VI CIVIL RIGHTS NEWS @FCS

VOLUME 3 | Issue 2

SUMMER 2016

Dear Colleagues,

This summer marks the 52nd anniversary of Title VI of the Civil Rights Act of 1964 – the law enacted to ensure that federal taxpayer funds do not support race, color, and national origin discrimination. Dr. Martin Luther King, Jr. famously remarked that “the arc of the moral universe is long, but it bends towards justice.” Reflecting back, we can see progress gained from the early days of Title VI, but know that there is much left to do to fulfill the promise of this law and build upon strategies for halting discrimination in federally funded programs.

Today, agencies take action to advance Title VI proactively by conducting compliance reviews, issuing policy guidance, and engaging in community outreach, as well as achieving systemic change as a result of complaint investigations and litigation. The arc of Title VI enforcement mirrors the nation’s ongoing and new challenges to equal justice. Federal agencies continue the work of dismantling segregation, discriminatory discipline, and racial harassment, even as we address discriminatory conduct in areas not fully contemplated 50 years ago.

In this Newsletter, we present some of the latest federal agency efforts to advance Title VI enforcement and compliance. From a significant desegregation victory in Mississippi to the Department of Health and Human Services’ 21st century nondiscrimination regulations to agreements that secure equal access to the court system, agencies are tirelessly working to reflect the kind of society we want for our children and generations beyond. Please read on to find out more about recent Title VI developments.

Sincerely,

Christine Stoneman
Acting Chief
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U.S. Department of Justice



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The questions and answers in this newsletter are intended only to provide guidance to federal agencies and other interested entities and are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States.



AGENCY SPOTLIGHT

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A MESSAGE FROM DIRECTOR SAMUELS HHS OFFICE FOR CIVIL RIGHTS

Greetings! I would like to share important updates from the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS).

This newsletter edition marks the halfway point of the 2016 calendar year and we continue to see remarkable improvements in our nation's health care system. The enactment of the Affordable Care Act (ACA) in 2010 set in motion a number of significant changes in the way our health care industry reaches and serves Americans. The ACA has helped bring America's uninsured rate to its lowest level on record; 20 million people have gained health insurance coverage because of the ACA, and, importantly, no one can be denied coverage because of pre-existing conditions.

The HHS OCR, in partnership with other agencies across HHS, has been taking steps to support the ACA's goals of improving access to health care and coverage and reducing health disparities. Along those lines, OCR has been working to ensure the changes taking place protect vulnerable and underserved populations, and in some cases, extend protections for the first time in history! Read on to learn about transformative developments from HHS OCR.

Jocelyn Samuels, Director of HHS Office for Civil Rights



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HHS OCR Publishes a Final Rule Implementing Section 1557 of the ACA

Section 1557 is the nondiscrimination provision of the ACA stating that ***individuals cannot be subject to discrimination based on their race, color, national origin, sex, age or disability***. The rule combines and harmonizes existing, well-established federal civil rights laws: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975. It makes historic gains by extending certain protections in the health care setting to vulnerable populations.

In May 2016, HHS OCR [finalized the rule under Section 1557](https://www.gpo.gov/xqz9d) ([go.usa.gov/xqz9d](https://www.gpo.gov/xqz9d)) to help ensure that every American has access to the health care they deserve. Section 1557 is aimed to advance equity and reduce health disparities by strengthening protections for some of the populations that have been most vulnerable to discrimination in the health care context.

Ensuring Meaningful Access for Individuals with Limited English Proficiency: Consistent with longstanding principles under civil rights laws, the final rule makes clear that the prohibition on national origin discrimination requires covered entities to take reasonable steps to provide meaningful access to each individual with limited English proficiency who is eligible to be served or likely to be encountered within the entities' health programs and activities.

Specifically, Section 1557 requires covered entities to:

- Post a notice of individuals' rights providing information about communication assistance for individuals with limited English proficiency, among other information; and,
- Post taglines in the top 15 languages spoken by individuals with limited English proficiency in that state to indicate the availability of language assistance.

While it is not a requirement under Section 1557, covered entities are also encouraged to develop and implement a language access plan to ensure they are prepared to take reasonable steps to provide meaningful access to each individual that may require assistance. To reduce the burden on covered entities, HHS OCR has translated a sample notice, a statement of nondiscrimination and taglines for use by covered entities in up to 64 languages. For translated materials, visit: [go.usa.gov/xqvBz](https://www.gpo.gov/xqvBz).

Protecting Individuals against Sex Discrimination: Section 1557 is the first federal civil rights law to explicitly prohibit sex discrimination in health care, including discrimination based on pregnancy, gender identity, and sex stereotyping. Notably, individuals must be treated consistent with their gender identity, including access to facilities; women must be treated equally with men in the health care they receive and the insurance they obtain; and categorical coverage exclusions or limitations for health care services related to gender transition are prohibited.

Ensuring Effective Communication with and Accessibility for Individuals with Disabilities: Section 1557 maintains existing standards by requiring covered entities to take appropriate steps



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to ensure that communications with individuals with disabilities are as effective as communication with others. The final rule also requires covered entities to make all programs and activities provided through electronic and information technology accessible and to ensure the physical accessibility of newly constructed or altered facilities.

Coverage of Health Insurance Plans on and off the Marketplaces: Section 1557 prohibits covered entities from discriminating on the basis of race, color, national origin, sex, age or disability when providing or administering health-related insurance or other health-related coverage. Covered entities cannot deny, cancel, limit, or refuse to issue or renew a health-related insurance policy or other health-related coverage or claim; impose additional cost sharing or other limitations or restrictions; or employ marketing practices or benefit designs that discriminate on any of these bases.

The final rule implementing Section 1557 applies to three types of entities: any health program or activity that receives funding administered by HHS; any health program that HHS itself administers; and the Health Insurance Marketplaces and issuers that participate in the Marketplaces.

Although the final rule on Section 1557 specifically applies only to HHS recipients of federal financial assistance, the statute makes clear that it applies to all health programs and activities, any part of which receives federal financial assistance from any federal agency. As a result, all federal agencies possess enforcement responsibility for programs they fund that are covered under Section 1557.

To learn more about Section 1557 and to download reading materials on the final rule, visit HHS OCR's website at: [go.usa.gov/xqvKC](https://www.hhs.gov/ocr).

HHS OCR Issues Guidance for Long Term Care Facilities

HHS OCR has issued [new guidance](https://www.hhs.gov/ocr) ([go.usa.gov/xqvKW](https://www.hhs.gov/ocr)) to assist long term care facilities in complying with their civil rights responsibilities and obligations under regulations by the HHS Centers for Medicare and Medicaid Services. In order to assess placement needs among residents, long term care facilities are mandated to routinely administer the [Minimum Data Set](https://www.hhs.gov/ocr) (MDS) ([go.usa.gov/xqvKR](https://www.hhs.gov/ocr)), a standardized assessment tool for all residents in a Medicare and/or Medicaid-certified long term care facility. This guidance provides a series of recommendations for steps that long term care facilities can take to ensure the MDS is properly used to facilitate compliance with Section 504 and to avoid discriminatory practices towards residents.

To learn more about non-discrimination and health information privacy laws, civil rights, and privacy rights in health care and human service settings, and to find information on filing a complaint, visit us at www.hhs.gov/ocr. Follow OCR on Twitter [@HHSOCR](https://twitter.com/HHSOCR).



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Agency Title VI Administrative Investigation Resolutions



Department of Education Reaches Agreement with Oklahoma City Public Schools to Address Disproportionate Discipline of African-American Students:

On April 20, the U.S. Department of Education's (ED) Office for Civil Rights (OCR) reached a settlement agreement with the Oklahoma City Public Schools of Oklahoma to address disproportionate discipline of African-American students. An investigation revealed African-American students were significantly overrepresented in disciplinary actions. Before OCR had completed its review, the district voluntarily entered into a settlement agreement to resolve the case.

OCR's investigation found that African-American students were considerably overrepresented in all of the district's disciplinary actions. For example, for the 2014-15 school year, OCR's

investigation revealed that African-American students accounted for 42% of in-school suspensions although they represent only 26% of the population. Likewise, for the 2011-12 school year, African-American students received in-school and out-of-school suspensions, were referred to law enforcement, and were arrested for school-related incidents at statistically significant proportions compared to their enrollment in the district.

During the course of OCR's investigation, the district initiated an internal audit. Both OCR's investigation and the audit found scores of concerns including: incomplete and inconsistent recordkeeping; inconsistent provision of due process rights; inconsistent discipline practices across the district; inconsistencies within individual schools themselves; inconsistencies in information provided to parents when their children were suspended; and unclear parameters of certain disciplinary sanctions, such as "defiance of authority" and "disrespect" among others.

In response, the district has undertaken a number of corrective steps, including initiating a review of its discipline policies and practices, and its discipline code. The district also created the Office of School Climate and Student Discipline and hired a director for the Office and three student behavioral specialists.

The agreement, in part:

- Designates an employee to serve as the district's discipline supervisor.
- Prohibits exclusionary discipline to the maximum extent possible.
- Requires the district to retain experts to advise the district on research-based strategies to prevent discrimination.
- Implements revised discipline policies and practices.
- Requires training for staff and administrators and programs for students and parents to explain the policies and behavioral expectations.
- Requires the district to provide teachers and administrators with the tools and training to support positive student behavior to prevent and address misconduct.
- Requires school staff to employ a range of corrective measures before referring a student to disciplinary authorities.
- Ensures a system of supports at each school to assess students who display behavior problems.
- Addresses school climate issues.
- Implements measures to engage students, staff and parents in the implementation of the revised policies,



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practices and procedures.

- Requires a comprehensive review of the School Resource Officer program to assess the program's effectiveness and alignment with ensuring misbehavior is addressed in a manner that minimizes exclusionary discipline to the maximum extent possible.
- Facilitates communication with the parent complainant should she choose to re-enroll her children.

For further information, please see the [OCR letter \(go.usa.gov/xqPDj\)](https://www.go.usa.gov/xqPDj) to the Oklahoma City Public Schools and the [agreement \(go.usa.gov/xqPDj\)](https://www.go.usa.gov/xqPDj).

Department of Education Reaches Agreement with Toledo Public Schools to Address African-American Students' Equitable Access to Resources:

On January 21, ED OCR and Toledo Public Schools of Ohio announced that the district has entered into a resolution agreement to ensure compliance with Title VI of the Civil Rights Act of 1964 in providing equitable resources to African-American students.

The agreement, reached before OCR had completed its investigation, identifies and addresses OCR's concerns about access to experienced teachers, teachers with master's degrees, libraries for K-8 students, and

distance learning classes for high school students. The agreement acknowledges the district's ongoing efforts to ensure equitable resources for students and students' equitable access to resources, and other support for student success, but addresses OCR's concerns identified during its investigation. The agreement provides that the district will:

- Disseminate and post a non-discrimination notice, which informs all members of the school community of their rights and the district's responsibilities under Title VI, and the procedure by which students, parents and employees may report concerns.
- Obtain OCR approval of revised policies and practices if its program assessments reveal the district's initiatives fail to ensure that equally effective and qualified teachers are equitably distributed to all district schools.
- Obtain OCR approval of revised policies and practices if its program assessments reveal the district's initiatives fail to continue to ensure that equally effective and qualified building leaders are equitably distributed to all district schools.
- Ensure that all students at the district's K-8 schools can

access their schools' libraries with the same frequency and check out the same number of books.

- Deliver "live" instruction of distance learning courses, including Advanced Placement and other higher-level courses, across its high schools in a racially equitable manner; ensuring Advance Placement and other higher-level college preparatory courses are taught from the district's racially identifiable African-American high schools providing students the opportunity to engage in-person with course instructors.
- Conduct outreach activities for students and parents to better assess, provide, and monitor its distribution and allocation of resources.

For further information, please see the [resolution letter \(go.usa.gov/xqNjB\)](https://www.go.usa.gov/xqNjB) and [agreement \(go.usa.gov/xqNjw\)](https://www.go.usa.gov/xqNjw).



Department of Justice Resolves Case after the Kentucky Administrative Office of the Courts Implements Language Access Reforms:

On June 22, the U.S. Department of Justice's (DOJ) Federal



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Coordination and Compliance Section (FCS) of the Civil Rights Division reached [resolution \(go.usa.gov/xqzBT\)](http://go.usa.gov/xqzBT) in a Title VI investigation of the Kentucky Administrative Office of the Courts (KAOC). The complaint, received in September 2014, alleged a state court judge's failure to provide interpreter services to limited English proficient (LEP) parties. During the course of FCS's review, the KAOC strengthened its language access programming. FCS's technical assistance included working with the KAOC to create and implement a language services complaint system, which will be translated into a dozen non-English languages. Additionally, FCS trained court staff on the importance of providing appropriate language services and developing systems to improve the efficiency and quality of interpreter services and translations. As a condition of closure, the KAOC agreed to a 12-month monitoring period, during which it will provide quarterly updates to FCS regarding developments related to providing language services, as well as any new complaints alleging failure to provide appropriate language assistance services.

A press release and additional information is available at: go.usa.gov/xqzBm.

Department of Justice Closes Case after Colorado Courts Implement Language Access Reforms:

On June 21, DOJ FCS closed a Title VI case concerning the provision of language assistance to LEP individuals by the Colorado state courts following the successful implementation of reforms by the Colorado Judicial Department (CJD). This matter began after FCS received an administrative complaint alleging that the state courts were not providing LEP parties with interpreters in civil proceedings. In 2011, the CJD signed a [memorandum of agreement \(go.usa.gov/xqzBJ\)](http://go.usa.gov/xqzBJ) with DOJ and amended Chief Justice Directive 06-03 to mandate that, effective immediately, qualified interpreters and other approved language assistance would be provided at no charge for LEP individuals in all court proceedings, services and programs. The CJD's Office of Language Access issued a DOJ approved, comprehensive [strategic plan \(go.usa.gov/xqzKQ\)](http://go.usa.gov/xqzKQ) in 2012 that defined 35 needed improvements to court policies, standards, infrastructure and training in order to support the court system's ability to deliver timely and appropriate language assistance statewide. This year, the courts completed the improvements specified in the plan and complied with the monitoring provisions of the

memorandum of agreement. The [Chief Justice Directive \(go.usa.gov/xqzKQ\)](http://go.usa.gov/xqzKQ) was updated on May 31. This case is one of several undertaken by FCS as part of its ongoing [Courts Language Access Initiative \(go.usa.gov/x3q4j\)](http://go.usa.gov/x3q4j).

A press release and additional information is available at: go.usa.gov/xqzZR.



Departments of Education and Justice Reach Two Settlement Agreements with Arizona Department of Education to Meet the Needs of English Language Learner Students:

On May 2 and April 22, ED and DOJ entered into two settlement agreements with the Arizona Department of Education (ADE) to resolve its violations of Title VI and the Equal Educational Opportunities Act (EEOA) regarding its practices for identifying and exiting English language learner (ELL) students. ADE denies the violations but voluntarily entered into the agreements because the services therein are in the best interest of Arizona's children. The agreements require ADE to increase its English proficiency criteria to properly identify ELL students in kindergarten and in



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grades 3 through 12 and to properly determine when those students no longer need language services. The agreements also require ADE to ensure that Arizona public schools offer language support services to thousands of students who were prematurely moved out of language services or initially identified incorrectly as fluent English proficient from the 2012-2013 school year to the present. Additionally, for ELL students who opt out of language services, ADE must ensure that those students' English language proficiency is assessed every year until they are proficient in English.

These agreements arise from monitoring by ED and DOJ of a 2012 settlement agreement with ADE that aimed to resolve their findings that ADE had under-identified and prematurely removed the ELL status and language services of tens of thousands of ELL students between 2006 and 2012. ED and DOJ will continue to monitor the implementation of both agreements through 2018.

For further information, please see the [press release \(go.usa.gov/xqPB3\)](http://go.usa.gov/xqPB3). Additionally, please refer to the two settlement agreement documents [at go.usa.gov/xqPBM](http://go.usa.gov/xqPBM) and go.usa.gov/xqPBJ.

Agency Title VI Directives, Initiatives, and Reports



Department of Education Releases 2013-14 Civil Rights Data Collection:

On June 7, the U.S. Department of Education's (ED) Office for Civil Rights (OCR) unveiled the new [Civil Rights Data Collection \(CRDC\)](http://go.usa.gov/xqExA) (go.usa.gov/xqExA) from the 2013-2014 school year. The CRDC shows wide gaps that still remain in key areas affecting educational equity and opportunity for students, including incidents of discipline, restraint and seclusion, access to courses and programs that lead to college and career readiness, teacher equity, rates of retention, and access to early learning.

ED OCR releases the CRDC every two years to ensure transparency around the educational opportunities and experiences of millions of public school students. The 2013-14 CRDC covers more than 50 million students enrolled in nearly every school and school district in the United States.

The 2013-2014 CRDC collected data on several new topics for the

first time, including chronic student absenteeism; access to educational programs in justice facilities; availability of distance education, including online courses; the presence of sworn law enforcement officers in schools (including school resource officers); availability of partially or fully cost-subsidized preschool; and appointment of civil rights coordinators.

Department of Education Releases Annual Report Citing Their Enforcement Activities:

On May 4, ED OCR released its [fiscal year 2015 annual report \(go.usa.gov/xqPHw\)](http://go.usa.gov/xqPHw) highlighting efforts during the last year to protect students' civil rights and increase educational equity nationwide. The report cites examples of OCR's enforcement activities in 2015, including processing a record 10,392 civil rights complaints, opening more than 3,000 investigations, and reaching more than 1,000 substantive resolutions with institutions that included remedies or changes designed to protect students' civil rights.

Notable cases are profiled in the report, including some related to equitable access to courses and educational opportunities, racial harassment, equal opportunity for English learners, bullying and harassment, accessible technology for students with disabilities, and sexual harassment and violence.



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Department of Homeland Security will Review Applicants for Controlled Equipment for Civil Rights Violations:

The U.S. Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL), in coordination with the Federal Emergency Management Agency, is developing a process to collect and review civil rights information from law enforcement and other organizations requesting to use DHS financial assistance to acquire controlled equipment, such as military-style manned aircrafts, armored and tactical vehicles, specialized firearms, and riot helmets and shields. For decades, the federal government has provided equipment to state, local, and tribal law enforcement agencies through excess equipment transfers, federal grants, and other programs to assist these agencies as they carry out their critical missions to keep the American people safe. The equipment that law enforcement agencies acquired through these programs includes controlled equipment, as well as administrative equipment, such as office furniture and computers.

On January 16, 2015, President Barack Obama issued Executive Order 13688, "Federal Support for

Local Law Enforcement Equipment Acquisition" to identify actions that can improve federal support for the appropriate use, acquisition, and transfer of controlled equipment by law enforcement agencies. The federal government recognized the need to carefully oversee the provision of controlled equipment and funds for controlled equipment, and to ensure that law enforcement recipients have proper training regarding the appropriate use of the equipment. This includes training on the protection of civil rights and civil liberties, and awareness of law enforcement agencies' obligations under federal nondiscrimination laws. To implement the Executive Order and related interagency recommendations, the new DHS CRCL process will require applicants to report civil rights violations, findings of discrimination made by a court or administrative agency, and remedial agreements entered into as a result of a civil rights investigation during the past three years. DHS will review this information to determine if the applicant is in compliance with nondiscrimination requirements and, if approved to acquire controlled equipment, will carry out its programs and activities in a nondiscriminatory manner.

For further information about DHS, CRCL, visit their [website \(go.usa.gov/xqP9C\)](http://go.usa.gov/xqP9C).

Agency Title VI Outreach and Training



Department of Justice Provides Title VI Training at National Disability Rights Conference:

On June 15, the U.S. Department of Justice's (DOJ) Federal Coordination and Compliance Section (FCS) provided training to attorneys and advocates attending the [National Disability Rights Network P&A/CAP Annual Conference](#) in Baltimore, MD. The training focused on Title VI obligations of recipients of federal financial assistance, including the requirement to provide meaningful access to limited English proficient (LEP) individuals, recently proposed and final federal non-discrimination regulations, and the Title VI complaint and enforcement process with recent case and enforcement examples.

Department of Justice Engages Local Leaders in Immigrant Welcoming Campaign:

On June 2, FCS provided an overview of basic legal requirements for language access at the local level for the Language Access Technical Assistance Cluster of the White House



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Building Welcoming Communities Campaign (BWCC). Sponsored by the Migration Policy Institute (MPI), BWCC briefing conference calls focused on the topics identified by participating BWCC counties and cities as key concerns and issues in the area of immigrant integration. The calls allowed participants to hear from federal agency representatives and learn about promising practices from other cities and counties. In addition to reviewing the legal requirements, BWCC counties and cities also discussed how to develop effective language access plans that meet the needs of single or multiple agencies. As a starting point, MPI distributed FCS guidance, [Common Language Access Questions, Technical Assistance, and Guidance for Federally Conducted and Federally Assisted Programs](#) (go.usa.gov/xqEDe), to ensure that all participants have sufficient background in the topic area.

Department of Justice Co-hosts Bankruptcy Session on “Working with Limited English Proficient Clients”:

On May 22, FCS co-presented a workshop on “Working with Limited English Proficient Clients” at the annual convention of the National Association of Consumer Bankruptcy Attorneys in San Francisco, CA. FCS also

provided a two-hour Title VI language access training to legal services lawyers and domestic violence non-profit staff on May 20, at a session hosted by the Asian Pacific Institute on Gender-Based Violence in Oakland, CA.

Department of Justice Speaks at National Conference on Accessing State Court Interpreters:

On May 14, FCS provided keynote remarks at the [National Association of Judiciary Interpreters and Translators Annual Conference](#) in San Antonio, TX, addressing access to state court interpreters for LEP individuals. Attendees of the conference included state and federal court interpreters and translators from across the country.

Department of Justice Participates in Roundtable Discussion on Immigrant Integration:

On May 13, FCS led a roundtable discussion on language access at a [White House Regional Convening on New Americans](#) in Dearborn, MI. At this regional convening, approximately 50 federal, state, and local agencies, service providers, the private sector, and local community leaders met to highlight current multi-sector partnerships on immigrant

integration and discuss promising practices to strengthen the regional infrastructure in supporting existing and emerging immigrant communities. FCS discussed essential elements of successful language access program planning, including use of [demographic](#) and [mapping](#) data, and helped agencies strategize how to provide LEP individuals with meaningful access to federally-funded programs and activities. Other federal partners participating in this convening included the U.S. Departments of Labor, Health and Human Services, Homeland Security’s Citizenship and Immigration Services, and the Small Business Administration. This convening is part of a series of regional convenings hosted by the [White House Task Force on New Americans](#) (go.usa.gov/xTgY5).

Department of Justice Promotes Equal Access in State Courts:

On May 11, FCS spoke at the launch of the [Justice Index 2016](#) (justiceindex.org) in Chicago, IL. The [National Center for Access to Justice](#) (ncforaj.org) created the Justice Index to improve access to justice and relies on data to improve state justice systems.



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Department of Transportation and Alabama State University Host Symposium Remembering Montgomery Bus Boycott:

On June 14, the U.S. Department of Transportation (DOT) and Alabama State University (ASU) hosted a symposium reflecting on the legacy of the Montgomery Bus Boycott. Secretary Anthony R. Foxx delivered remarks on how transportation can connect people to opportunity. During his remarks, Secretary Foxx explained how transportation and infrastructure decisions from the 1950s and 1960s displaced poor and minority communities from economic mobility.

“Transportation makes or breaks lives,” stated Secretary Foxx. It is imperative that, when planning new transportation projects, the communities affected by these changes are taken into consideration and not marginalized. Secretary Foxx encouraged attendees to take an active interest in the early stages of development of transportation projects in their communities. The Department of Transportation affirms that “transportation infrastructure should be built by, for, and with the communities served by them.”

The symposium also included a conversation with Fred Gray, the attorney who defended Rosa Parks, ASU President Gwendolyn Boyd, as well as a panel discussion with Stephanie Jones, DOT Chief Opportunities Officer, Leslie Proll, DOT’s Civil Rights Director, Guillermo Mayer, President of Public Advocates who works on transportation equity issues, and Yvette Rivera, Associate Director of DOT’s Civil Rights Office.

For more information and to view pictures from the Symposium, visit the [ASU-photos webpage](#).



Departments of Education, Housing and Urban Development, and Transportation Host Diversity and Opportunity Listening Session for Leaders:

On June 8, ED, the U.S. Department of Housing and Urban Development and DOT hosted an interagency listening session for education, housing, and transportation leaders at ED’s headquarters in Washington, D.C. to help state and local leaders increase diversity in their schools and communities, and to narrow opportunity gaps. The afternoon session brought together educators, researchers and

community leaders with policy experts and leaders from the three agencies to discuss voluntary, community-led strategies to promote increased diversity in schools and neighborhoods. The event included panels on the benefits of diversity, opportunities at the federal level, a case study on diversity work in action, and community planning. Attendees also heard from individuals on the front lines who are doing this work, as well as from senior officials at the three agencies who discussed opportunities to further locally-driven efforts to support diversity.



Departments of Education and Justice and the White House Initiative on Asian Americans and Pacific Islanders Participate in a White House Roundtable on Bullying and Harassment and Publish Fact Sheet on Combating Discrimination:

On June 6, ED’s Office for Civil Rights (OCR) and DOJ’s Educational Opportunities Section of the Civil Rights Division (CRT) participated in the roundtable on bullying and harassment of Muslim, Arab, Sikh, and South Asian (MASSA) students convened by the White House. This roundtable was a



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continuation of a series of roundtables the President and White House have hosted with MASSA communities since December 2015. Events such as this highlight the intersection of discrimination based on race and national origin, with discrimination based on religion. ED OCR and CRT enforce Title VI (which prohibits discrimination based on race,

color, and national origin) and CRT enforces Title IV of the Civil Rights Act of 1964 (which prohibits discrimination based on, among other things, race, color, national origin, and religion). The offices work together to address discrimination targeting MASSA and Asian American, Native Hawaiian, and Pacific Islander (AANHPI) students. At the event, ED OCR and CRT announced the

release of a fact sheet of examples of harassment and other forms of discrimination impacting the MASSA and AANHPI communities. The fact sheet is available on the OCR and CRT websites in English (go.usa.gov/xqPFk) and other languages (go.usa.gov/xqEqj).

Note on *Fisher v. University of Texas at Austin* June 23, 2016

In a 4-3 ruling, the Supreme Court affirmed in *Fisher v. University of Texas at Austin*, 579 U.S. ____ (2016), also known as “*Fisher II*,” that the university’s consideration of race as part of its precisely articulated, holistic review process for its undergraduate admissions system is lawful, under the Equal Protection Clause of the Fourteenth Amendment to the Constitution, to reach its goal of providing the educational benefits of diversity to its students. Remarking on the Court’s June 23 ruling in *Fisher*, Attorney General Loretta Lynch stated that “[o]ur country is stronger, more credible, and more effective when our educational institutions include highly-qualified individuals with roots, cultures, and traditions that reflect our nation’s rich diversity.”

The Fourteenth Amendment’s Equal Protection Clause applies to public educational institutions. However, under Title VI of the Civil Rights Act of 1964, the *Fisher* decision has implications for all federally funded educational institutions because courts have held that Title VI is coextensive with the Fourteenth Amendment. Accordingly, recipients of federal assistance may be permitted to consider race, color, or national origin as part of a selection policy when narrowly tailored and in furtherance of compelling interests such as remedying the effects of past discrimination, achieving the benefits of diversity in education, or reducing racial isolation. *See, Parents Involved in Comty. Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 721-22 (2007) (seeking diversity and avoiding racial isolation in education); *Associated Gen. Contractors of Am. v. Cal. Dep’t of Transp.*, 713 F.3d 1187 (9th Cir. 2013) (race-based preferences in transportation contracts to remedy discrimination in the state transportation industry); *Wittmer v. Peters*, 87 F.3d 916, 920 (7th Cir. 1996) (diversity in law enforcement).

Secretary of Education John B. King, Jr. said of the *Fisher* decision, “today’s students need to be prepared to succeed in a diverse, global workforce. Diversity benefits communities, schools and students from all backgrounds, and research has shown that more diverse organizations make better decisions with better results. . . . The Department will continue to be a strong supporter of diversity

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Across the Federal Government*

and will work to ensure that all students benefit from school environments as diverse as America itself. As a nation, we are stronger together." (go.usa.gov/xTCTd)

Guidance documents from the Departments of Justice and Education review applicable legal principles and set out detailed considerations explaining how educational institutions can lawfully pursue voluntary policies to achieve diversity or avoid racial isolation within the framework of Titles IV and VI of the Civil Rights Act of 1964, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. See [Dep't of Educ. and Dep't of Justice, "Dear Colleague" Letter on the U.S. Supreme Court ruling in *Schuetz v. Coalition to Defend Affirmative Action*](#) (May 6, 2014); [Dep't of Educ. and Dep't of Justice, "Dear Colleague" Letter and Guidance Documents on the Voluntary use of Race](#) (Dec. 2, 2011). Guidance is presented in three documents, one for [elementary and secondary schools](#) (go.usa.gov/xTgCm) and the other for [postsecondary institutions](#) (go.usa.gov/xTgCJ), and a third in [question and answer form](#) (go.usa.gov/xTgrw) after the Supreme Court decided the first *Fisher* case. These also may be useful in understanding how and when recipients may consider race in other contexts.



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