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TITLE VI CIVIL RIGHTS NEWS @FCS

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Dear Colleagues,

October brought a new federal fiscal year, accompanied by anticipation of transition and yet a constancy of focus: to ensure that federal funds do not subsidize race, color, or national origin discrimination. Federal civil rights agencies advance this mission each day through efforts, both routine and exceptional, to dismantle discriminatory policies, and practices, and their invidious effects.

In this newsletter, Assistant Secretary Catherine E. Lhamon, head of the U.S. Department of Education's Office for Civil Rights, reflects on the robust efforts she and her staff engaged in during fiscal year 2016, and the continued need for federal enforcement and technical assistance so that no student is deprived an opportunity because of discrimination.

This issue also highlights federal agency action to open up housing opportunities, unemployment services, and the court system to all, regardless of race or national origin. We spotlight investigations, compliance reviews, guidance documents, and litigation. And we underscore that Title VI remains a powerful tool to address racial disparities in the discipline practices of our schools, to tackle bias in policing and emergency response, and to ensure nondiscriminatory access to benefits.

Just since the August newsletter, the long-term efforts of the remarkable staff at the Federal Coordination and Compliance Section (FCS) have culminated in important guidance, technical assistance, and enforcement. FCS began publishing updated and expanded portions of the Title VI Legal Manual covering key Title VI concepts, including legislative history, the Department of Justice (DOJ) role, and scope of coverage. We also issued multi-agency guidance on Title VI and emergencies, joint guidance on Title VI and child welfare, and a report advancing the important work of ensuring language access to the courts. Read on, and you will find information on briefs, settlements, and litigation updates as well.

I look forward to continued collaboration to advance our collective mission to ensure that federal funds do not support discrimination.

Sincerely,
Christine Stoneman
Acting Chief
Federal Coordination and Compliance Section
Civil Rights Division
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 Catherine E. Lhamon, Assistant Secretary,
Office for Civil Rights, U.S. Department of Education**

The Office for Civil Rights (OCR) in the Department of Education enforces federal civil rights laws to protect students from discrimination and to ensure they are afforded equitable educational opportunities, from preschool through completion of postsecondary education. The unfortunate reality is that, despite substantial progress, too many students still lack meaningful access to a quality education, too often because of discriminatory barriers in their educational environments. My terrific staff and I come to work every day with the goal of ensuring that no student is deprived an opportunity because of his or her race, sex, or disability.

Our enforcement of federal civil rights laws has been robust. In fiscal year 2016, we received a record number of complaints – approximately 15,500, including some 2,400 complaints that implicate Title VI of the Civil Rights Act of 1964. We are currently investigating more than 3,600 cases (including approximately 1,100 under Title VI) and monitoring 2,300 more (500 under Title VI). We have resolved some 8,300 cases in 2016, with approximately 750 resulting in resolution agreements. Examples of our Title VI enforcement, highlighted in this and previous newsletters, include resolution of cases involving the [Lodi Unified School District](http://go.usa.gov/xKzYu) (go.usa.gov/xKzYu), ending the racially discriminatory impact and application of the district's discipline policies; the [Arizona Department of Education](http://go.usa.gov/xKzYS) (go.usa.gov/xKzYS), together with the DOJ, ensuring that English Learners are properly identified and provided with appropriate services; and the [Toledo Public Schools](http://go.usa.gov/xKzYh) (go.usa.gov/xKzYh), to ensure that the district provides equitable resources to black students.

In June, [we released the 2013-14 Civil Rights Data Collection](http://go.usa.gov/xKzgg) (go.usa.gov/xKzgg), which includes data on education barriers and opportunity gaps in nearly 100,000 schools nationwide, showing that, among other findings:



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- In kindergarten through the 12th grade, black students are nearly four times as likely to be suspended as are white students. Black students also are nearly twice as likely to be expelled—removed from school with no services—as are white students.
- English learners have disproportionately low participation rates in Gifted and Talented Education (GATE) programs: while English learners are 11% of all students in schools offering GATE programs, fewer than 3% of GATE students nationwide are English learners.
- Eleven percent of black students, 9% of Latino students and 7% of American Indian or Alaska Native students attend schools where more than 20% of teachers are in their first year of teaching, compared to 5% of white students.

Over the course of fiscal year 2016, OCR has been fortunate to work with other federal agencies and the White House to continue to break down discriminatory barriers and widen the door of opportunity for more students. Our Title VI work includes, for example, joining the DOJ in announcing a new interagency community engagement initiative to challenge religious discrimination and enhance enforcement of religion-based hate crimes; providing resources to assist states, schools and local law enforcement agencies in assessing the proper role of school resource officers and campus police; and working with the White House Initiative on Asian Americans and Pacific Islanders, issuing a fact sheet that includes examples of forms of discrimination that members of the Asian American, Native Hawaiian, and Pacific Islander and Muslim, Arab, Sikh, and South Asian communities commonly face. We have also worked with other agencies (including the Departments of Housing and Urban Development, Transportation, and Health and Human Services) on initiatives focused on fostering racial and socioeconomic diversity in schools and communities and supporting dual language learners in early childhood programs.

We are proud to work with our sister agencies to protect the civil rights of students nationwide. For more information on our work, please visit ed.gov/ocr.



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Highlights

During July through mid-September 2016, OCR received approximately 310 complaints under Title VI of the Civil Rights Act of 1964. During that same period, OCR resolved 13 cases involving Title VI issues with resolution agreements. Additionally, from June to August, OCR provided 15 technical assistance presentations on Title VI obligations and enforcement.

Title VI Enforcement Activities

Lodi Unified School District, CA:

On August 24, [OCR entered into a resolution agreement with the Lodi Unified School District](#) in Lodi, California to end the racially discriminatory impact of the district's discipline policies and address concerns that it disciplines black students more harshly than white students.

OCR found that Lodi's discipline policy, while neutral on its face and not adopted with discriminatory intent, had a disproportionate impact on black students and was not necessary to meet the district's educational goals, thereby violating Title VI. Specifically, the district permitted individual schools to develop and impose different consequences for discipline incidents than described in the district's Conduct Code.

These school site deviations not only undermine Lodi's stated educational goal of consistency in discipline practices, but also permit district-wide disparities in discipline practices for black students in contrast with white students. Schools with higher percentages of black students established harsher punishment for discipline incidents and black students received disproportionately higher levels of discipline than white students.

OCR found that black students were overrepresented at almost every level of discipline to a statistically significant degree – from referral to in-school-suspension, out-of-school suspension, expulsion, and citation – every year analyzed, including each of the four school-years from 2011 to 2015.

A press release is available at go.usa.gov/xKzgc. The resolution letter is available at go.usa.gov/xKzgr and a copy of the agreement is available at go.usa.gov/xKzg4.

Events and Convenings

Back to School Bus Tour:

In September, U.S. Secretary of Education John B. King, Jr. boarded the bus for the Administration's final Back to School [bus tour](#) (go.usa.gov/xKzgT), titled "Opportunity Across America" of the American Southeast. Over five days, Secretary King and senior Department officials held 13 events in 11 cities and six states, speaking on a variety of issues, including language access, classroom diversity, access to education, and school discipline. Additionally, senior Department officials [travelled across the country](#) (go.usa.gov/xKzgD) for events on similar themes. The [tour web site](#) (go.usa.gov/xKzgj) has many stories, pictures, and videos chronicling the tour, and the Department posted on the social journalism blog, Medium, a series of fact sheets highlighting the nation's educational progress over the last eight years. The fact sheets, with infographics, cover:

["Quality Preschool: Providing Every Child with a Strong Start"](#)

["Protecting Students' Civil Rights"](#)

["Advancing Opportunity and Success in Elementary and Secondary Schools"](#)

["Connecting America's Classrooms"](#)



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[“Expanding Equity and Opportunity through Strong Student Supports”](#)

[“Making Science, Technology, Engineering, and Math \(STEM\) Education a National Priority”](#)

[“Elevating the Teaching Profession and Supporting Educators”](#)

[“Increasing Postsecondary Access, Affordability, and Completion”](#)

Trauma-Informed Approaches in School: Supporting Girls of Color and Rethinking Discipline:

On September 19, the White House Council on Women and Girls, U.S. Department of Education, and Georgetown University Law Center on Poverty and Inequality hosted a conference at the White House called, [“Trauma-Informed Approaches in School: Supporting Girls of Color and Rethinking Discipline”](#) (go.usa.gov/xKzg8) where Secretary of Education John B. King, Jr. and Assistant Secretary for Civil Rights Catherine E. Lhamon, among others, gave remarks on improving school systems’ approach to better serve girls of color who have experienced trauma. Despite progress made over recent years in academic achievement, access and school support, girls, and particularly girls of color, continue to disproportionately face barriers in education. The conference brought together state and district teams, key researchers and experts, nonprofit partners, community organizers, and Administration officials who share a commitment to promoting policies and practices, such as Title VI enforcement, that support the needs and potential of underserved populations, including marginalized girls, young women, and their families.

Policy, Publications and Other Information

Guidance on Providing Effective Services to English Learners Through Title III of the Every Student Succeeds Act:

On September 23, the Department released [non-regulatory guidance](#) (go.usa.gov/xKz4C) to help states, districts, and schools provide effective services to improve the English language proficiency and academic achievement of English Learners (ELs) through Title III of the Every Student Succeeds Act. This guidance is an effort to ensure that students who are English learners receive the high-quality services they need to be college and career ready. Among other topics, the guidance touches upon: use of Title III funds to serve ELs; design and delivery of language instruction educational programs - which include educators of ELs; information on parent, family, and community engagement; information on distinct populations of ELs, including early learners, former ELs, immigrant students, and ELs who are also students with disabilities; and publications and resources for administrators and educators who work with ELs. The guidance clarifies that all services provided to ELs using Title III funds must supplement, and not supplant, the services that must be provided to ELs under Title VI.

[Resources for Schools, Colleges to Ensure Appropriate Use of School Resource Officers and Campus Police:](#)

On September 9, to assist states, schools, and their law enforcement partners in assessing the proper role of school resource officers (SROs) and campus law enforcement professionals, both the U.S. Department of Education and the DOJ’s Office of Community Oriented Policing Services released [letters to states and districts](#) (go.usa.gov/xKzgu) emphasizing the importance of well-designed SRO programs and calling on leaders of institutions of higher education to commit to implementing recommendations from the [President's Task Force on 21st Century Policing](#) (go.usa.gov/xKzgJ) in the campus policing context.

To assist in the K-12 context, the Departments also jointly released the [Safe School-based Enforcement through Collaboration, Understanding, and Respect \(SECURE\) Rubrics](#) (go.usa.gov/xKzgS). These new resources can help education and law enforcement agencies that use SROs to review and, if necessary, revise SRO-related policies in alignment with common-sense action steps that can lead to improved school safety and better outcomes for students while safeguarding their civil rights. These resources also serve to remind school leaders, campus police, and SROs to comply with nondiscrimination laws including Title VI.



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Letters:

[Campus letter from Education](http://go.usa.gov/xKzgh) (go.usa.gov/xKzgh)

[P-12 letter from Education](http://go.usa.gov/xKz4q) (go.usa.gov/xKz4q)

[Campus letter from DOJ](http://go.usa.gov/xKz43) (go.usa.gov/xKz43)

[P-12 letter from DOJ](http://go.usa.gov/xKz4c) (go.usa.gov/xKz4c)

Rubrics:

[State and local policy](http://go.usa.gov/xKz4x) (go.usa.gov/xKz4x)

[Local implementation](http://go.usa.gov/xKz4a) (go.usa.gov/xKz4a)

U.S. Department of Education Takes Actions to Address Religious and National Origin Discrimination:

On July 22, OCR announced a series of actions to confront discrimination and promote inclusive school environments, including unveiling a new [web page on religious discrimination](http://go.usa.gov/xKzgE) (go.usa.gov/xKzgE), updating its [online civil rights complaint form](http://ocrdata.ed.gov/cas.cfm) (ocrdata.ed.gov/cas.cfm) to clarify when OCR can investigate complaints of discrimination involving religion, and expanding its [survey of public schools](http://ocrdata.ed.gov) (ocrdata.ed.gov) on religious-based bullying ([press release](http://go.usa.gov/xKzgd) at go.usa.gov/xKzgd and [blog post](http://go.usa.gov/xKzgv) at go.usa.gov/xKzgv). The new web page has information about federal laws, including Title VI, that protect students from discrimination involving their religion or national origin, and links to OCR policy guidance, notable case resolutions, and resources in multiple languages and from other federal agencies.

OCR's updated online complaint form clarifies that the office can investigate complaints regarding racial, ethnic or national origin discrimination involving religion and reaffirms that students, parents, and persons of all faiths can file such complaints with OCR even though the laws OCR enforces do not expressly address religious discrimination in education. Additionally, OCR will start collecting, through its [Civil Rights Data Collection](http://ocrdata.ed.gov) (ocrdata.ed.gov), information from every public school across the country, for the first time, on the number of incidents of religious-based bullying or harassment in their schools in the 2015-16 school year. This new collection will give stakeholders, policymakers, and educators critical data that will allow them to further understand the problem of religious discrimination and to measure progress going forward.

Further, in response to "an increasing number of incidents of anti-Semitic bullying and harassment in public schools . . . [and] reports documenting that students who are or are perceived as Hindu, Muslim, Sikh, Arab, Middle Eastern, South Asian, or Southeast Asian are frequent targets of bullying and harassment," the Department adopted new [regulations](http://go.usa.gov/xKzgw) (go.usa.gov/xKzgw) for its [Equity Assistance Centers \(EACs\)](http://go.usa.gov/xKzgf) that will enable them, starting in October, to provide technical assistance, on request, to public school districts, students and parents, and community organizations about religious discrimination and harassment (go.usa.gov/xKzgf). A press release is available at go.usa.gov/xKzgU.

U.S. Secretary of Education John B. King, Jr.'s Statement on the U.S. Supreme Court Decision in *Fisher v. University of Texas*, 579 U.S. __ (2016):

"More than ever before, 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. It is no surprise, then, that CEOs, university presidents, the military and other leaders have expressed a strong interest in increasing diversity. I am pleased that the Supreme Court upheld the University of Texas at Austin's admissions plan. The Department will continue to be a strong supporter of diversity and will work to ensure that all students benefit from school environments as diverse as America itself. As a nation, we are stronger together." A link to the press release is available at go.usa.gov/xKzgn.

For more information on the *Fisher* decision and Title VI enforcement, please view the *Fisher* Note in the Summer Issue of the Title VI Newsletter at go.usa.gov/xkG3R.



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Agency Title VI Investigations and Resolutions



Department of Housing and Urban Development Approves Settlement Agreement Between City of Phoenix and Fair Housing Organizations:

On August 18, the U.S. Department of Housing and Urban Development (HUD) approved the agreement between the City of Phoenix and local fair housing organizations to resolve discrimination claims based on race and national origin under Title VI of the Civil Rights Act of 1964, as well as claims under the Fair Housing Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973. Specifically, the organizations claimed the city did not make its online pre-application process accessible to persons with disabilities, provided vital documents in English only, and failed to notify limited English proficient (LEP) applicants that they could request language assistance. A [press release](#) and accompanying documents are available at go.usa.gov/xKz4g.

Department of Housing and Urban Development Reaches Agreement with City of Richmond, VA, to Resolve Discrimination Complaints by Hispanic Residents:

On August 4, HUD announced that it approved an agreement with the City of Richmond, Virginia, settling 14 complaints of housing discrimination filed against the city by Hispanic residents under the Fair Housing Act and Title VI. The complaints alleged that the City of Richmond selectively enforced its code requirements against residents of the city's mobile home parks, who are predominantly Hispanic.

The complainants alleged that, due to their national origin, the city imposed unreasonable and legally unjustified requirements that they had to meet to avoid condemnation of their homes; intimidated and harassed them by conducting intrusive inspections with armed police escorts and threatening criminal court action and large monetary fines; and failed to provide meaningful language access to LEP residents.

Under the terms of the agreement, Richmond will pay \$30,000 in damages to some of the complainants, analyze its language access needs, develop a language access plan, and conduct outreach to the Spanish speaking community. The city will also update its Analysis of Impediments to Fair Housing (AI), hold regular meetings with relevant city offices about the AI, and take steps to identify additional funding that mobile home park tenants can use for repairs to their units. [The agreement with HUD and the City of Richmond is](#) located at go.usa.gov/xKz4r. Several of the HUD

complainants were plaintiffs in a separate lawsuit filed in federal court, and received an additional \$40,000 from the city for relocation or home safety repairs.



Department of Justice Reaches Settlement Agreement with the Superior Court of California, County of Los Angeles on Timely and Accurate Language Assistance Services:

On September 20, DOJ's Federal Coordination and Compliance Section (FCS) of the Civil Rights Division and the U.S. Attorney's Office for the Central District of California (USAO) reached an [agreement](http://go.usa.gov/xKz4d) (go.usa.gov/xKz4d) with the Superior Court of California, County of Los Angeles (LASC) to ensure that LEP court users will have access to timely and accurate language assistance services. The agreement resolves an investigation of a complaint alleging that LASC failed to provide LEP individuals with meaningful access to its court services, including civil proceedings and court operations, in violation of Title VI and its implementing regulations. During the investigation, LASC began expanding the services it provided to LEP individuals in all criminal and most civil matters. Under the agreement, LASC will expand free interpreter services in civil matters where not yet provided by December 1, 2017. LASC also agreed to translate local forms, provide broader notice about the availability of free interpreter



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services for court proceedings, and make it easier to request an interpreter. Under the agreement, LASC will continue to work with community stakeholders and provide FCS and the USAO with periodic updates through the end of 2017. A press release is available at go.usa.gov/xKz4H. The agreement is available in English (go.usa.gov/xKz4d), Spanish (go.usa.gov/xKz4s) and Korean (go.usa.gov/xkG37). See the map below for LEP population diversity in Los Angeles County.

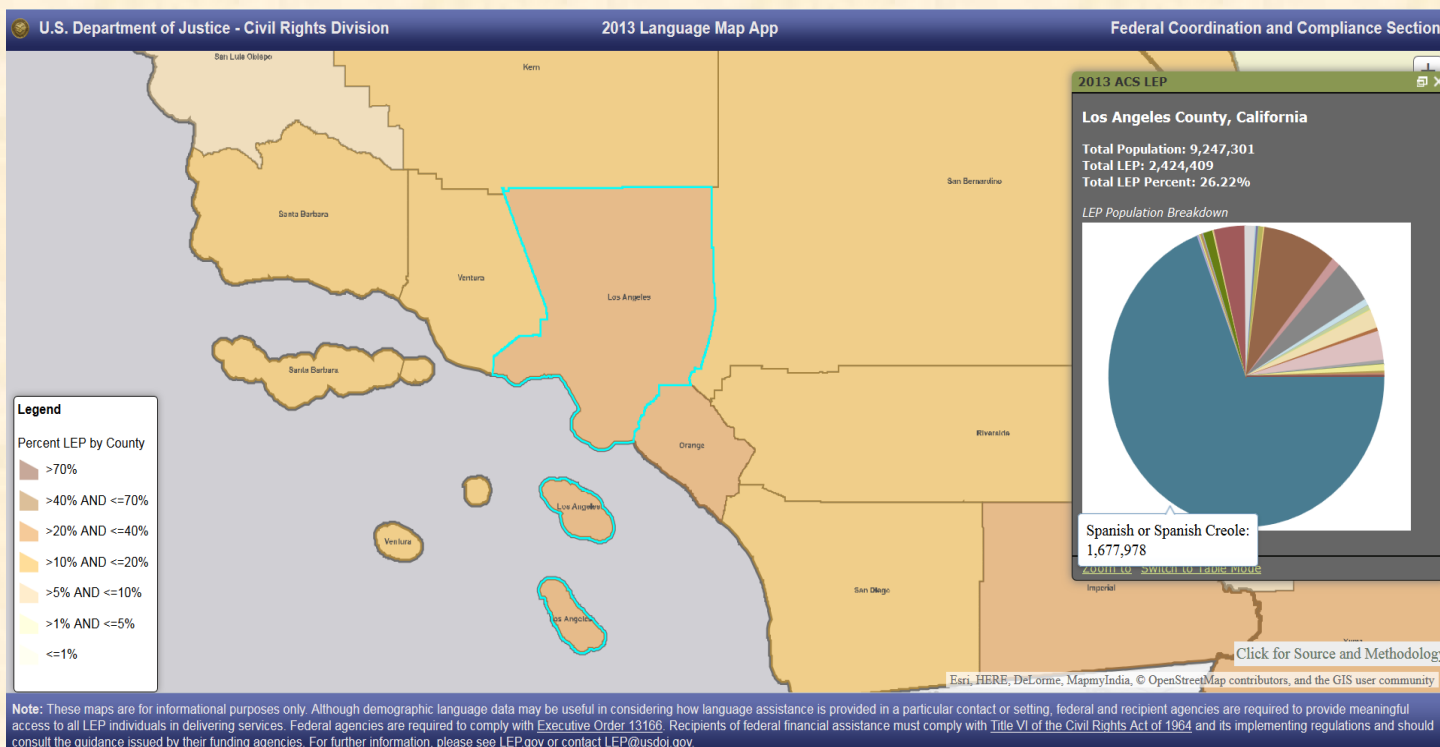
Department of Justice Reaches Settlement Agreement with California to Ensure Equal Educational Opportunities for English Learners:

On September 9, DOJ's Educational Opportunities Section (EOS) of the Civil Rights Division reached a comprehensive settlement agreement

with the California Department of Education (CDE) and the California State Board of Education to improve their compliance monitoring systems and ensure language instruction services to the approximately 1.4 million English Learner (EL) students in the state's public schools. The settlement resolves DOJ's May 2015 findings that California's system for monitoring its public schools' provision of language services to EL students did not satisfy the state's obligations under the Equal Educational Opportunities Act (EEOA) of 1974. These obligations closely resemble those of federally funded state education agencies under Title VI, as explained in the 2015 Dear Colleague Letter on EL students and LEP parents issued by DOJ and the Department of Education (go.usa.gov/xkG29). The state cooperated fully during the review.

DOJ concluded that the state had failed to respond appropriately to schools' certified reports showing that over 20,000 EL students were not receiving instructional language services each school year since 2007 to 2008. The two-year agreement requires the state to undertake several actions, including:

- Respond in a timely and effective manner to credible evidence that schools are failing to serve EL students, including notifying them of violations and providing a protocol by which they must submit to CDE documented evidence that resolves the violations;
- When selecting schools for monitoring reviews, consider their reports of unserved EL students and include charter schools in the selection process for such reviews each year;



LEP population diversity in Los Angeles County, Department of Justice Language Map App, available at www.LEP.gov/maps



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- Improve CDE's online monitoring tool and require that schools found to be out of compliance with specific requirements in this online tool receive onsite monitoring if they fail to provide adequate evidence that the noncompliance has been resolved; and
- Develop and implement policies and training on the monitoring, review and corrective action processes of CDE's monitoring of schools for EL service violations, and ensure that all EL monitoring consultants receive such training.

The agreement is available at go.usa.gov/xKz4K. For more information, contact EOS at education@usdoj.gov.

Department of Justice Enters Agreement with the Richland County, SC Sheriff's Department to Ensure Civil Rights Protections for Students:

On August 10, DOJ, through the Office of Justice Programs' Office for Civil Rights (OJP OCR), entered into an agreement with the Richland County Sheriff's Department (RCSD) to resolve a civil rights compliance review of its School Resource Officer (SRO) program. The compliance review examined whether the SRO program was discriminating against students based on race, color, national origin, or disability. The agreement requires RCSD to undertake a comprehensive assessment and overhaul of its SRO program, including:

- Developing policies to minimize school-based seizures and arrests

and meet the needs of students with disabilities;

- Providing intensive, annual training to its SROs on bias-free policing, de-escalation, and youth development;
- Conducting detailed data collection and analysis; and
- Establishing a community working group to recommend program improvements.

For further information on this matter, please see the [agreement \(go.usa.gov/xKz48\)](http://go.usa.gov/xKz48) and associated [press release \(go.usa.gov/xKz49\)](http://go.usa.gov/xKz49). OJP OCR is responsible for ensuring that recipients of federal financial assistance from the Office of Justice Programs and its components comply with applicable federal civil rights laws.

Department of Justice Finds Title VI and Pattern or Practice Violations by the Baltimore Police Department:

On August 10, DOJ's Special Litigation Section of the Civil Rights Division announced that it found reasonable cause to believe that the Baltimore City Police Department (BPD) engages in a pattern or practice of conduct that violates the First and Fourth Amendments of the Constitution, as well as federal anti-discrimination laws, including Title VI. DOJ found that BPD makes stops, searches and arrests without the required justification; uses enforcement strategies that unlawfully subject African-Americans to disproportionate rates of stops, searches and arrests; uses excessive force; and retaliates

against individuals for their constitutionally-protected expression. The city and DOJ have entered into an agreement in principle to work together, with community input, to create a federal court-enforceable consent decree addressing the deficiencies found during the investigation.

The agreement in principle highlights specific areas of reform to be included in the consent decree, including:

- Policies, training, data collection and analysis to allow for the assessment of officer activity and to ensure that officers' actions conform to legal and constitutional requirements;
- Technology and infrastructure to ensure capability to effectively monitor officer activity;
- Officer support to ensure that officers are equipped to perform their jobs effectively and constitutionally; and
- Community policing strategies to guide all aspects of BPD's operations and help rebuild the relationship between BPD and the various communities it serves.

DOJ will be conducting community outreach to solicit input in developing comprehensive reforms. Comments may be provided by email at Community.Baltimore@usdoj.gov.

The full report is available at go.usa.gov/xKz45 with a press release available at go.usa.gov/xKz4N.



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Department of Labor Reaches Agreement with KY Unemployment Insurance Program to Improve Access for Limited English Proficient Individuals:

On September 27, the Department of Labor's Civil Rights Center (DOL CRC) entered into an agreement with the Kentucky Office of Employment and Training (KOET) to address deficiencies in providing meaningful access to its unemployment insurance (UI) program for limited English proficient (LEP) individuals. DOL CRC conducted a compliance review of KOET pursuant to Title VI and Section 188 of the Workforce Investment Act of 1998 and regulations implementing these statutes. As a result of CRC's investigation of KOET's UI division, KOET voluntarily and affirmatively agreed to the following:

- Assess the language needs of the LEP populations they serve by identifying the highest-demand languages and specific needs of these populations at both the state and local level;
- Develop and implement a language access plan for providing meaningful access to LEP individuals;
- Correct deficiencies in translations of written materials, including web pages and online filing system;
- Provide training to all staff on language access obligations and how to provide meaningful access to LEP individuals through language assistance services; and

- Publicize the availability of language assistance.

Further information on the agreement is available at go.usa.gov/xkGT8.

Department of Labor Reaches Agreement with NC Department of Commerce to Improve Access for Limited English Proficient Individuals in Workforce Programs:

On September 22, DOL CRC entered into an agreement with the North Carolina Department of Commerce (NCDOC) to address deficiencies in providing meaningful access in the provision of unemployment insurance and employment services programs to LEP individuals. DOL CRC conducted a compliance review of NCDOC's Divisions of Employment Security and Workforce Solutions pursuant to Title VI and Section 188 of the Workforce Investment Act of 1998 and regulations implementing these statutes. As a result, NCDOC voluntarily and affirmatively agreed to the following:

- Assess the language needs of the LEP populations they serve by identifying the highest-demand languages, adequately tracking and reporting future encounters with these individuals and addressing specific translation needs of these populations at both the state and local level;
- Develop and implement language access plans for providing meaningful access to LEP individuals;
- Correct deficiencies in translations of written materials, including web pages and online filing systems;
- Identify and correct deficiencies with the provision of interpretation services to LEP individuals;
- Provide training to all staff on language access obligations and

providing meaningful access to LEP individuals through language assistance services;

- Publicize the availability of language assistance and the right of potentially aggrieved LEP individuals to file claims of delay/denial
- Further information on the agreement is available at go.usa.gov/xKz4h.



Environmental Protection Agency Accepts Settlement Agreement Resolving Title VI Complaints Involving the CA Kettleman Hills Hazardous Waste Facility:

On August 10, the Environmental Protection Agency's Office of Civil Rights (EPA OCR) reviewed and found acceptable the terms of a settlement agreement between the California Environmental Protection Agency, the California Department of Toxic Substances Control, Greenaction for Health and Environmental Justice, and El Pueblo Para El Aire y Agua Limpia to resolve issues related to a Title VI complaint involving the Kettleman Hills Hazardous Waste Facility. Although EPA OCR is not a party to the settlement agreement, the parties reached this settlement through EPA OCR's Alternative Dispute Resolution Process with the assistance of a mediator provided by EPA OCR. In light of the settlement, EPA OCR plans to issue a resolution letter officially closing the complaint.

The resolution agreement is available at perma.cc/6RLR-NV67.



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Agency Title VI Briefs and Decisions



Seventh Circuit Court of Appeals Affirms Lower Court Ruling Enjoining Indiana from Withholding Payment for Services to Syrian Refugees:

On October 3, a three-judge panel of the 7th Circuit Court of Appeals unanimously affirmed a district court ruling in *Exodus Refugee Immigration, Inc. v. Pence et al.*, 1:15-cv-01858 (7th Cir. Oct. 3, 2016) enjoining Indiana from withholding payments to private refugee resettlement agencies for services provided to Syrian refugees. Exodus Refugee Immigration, Inc., a resettlement agency, filed suit alleging the State's actions violated the Equal Protection Clause of the U.S. Constitution, Title VI of the Civil Rights Act of 1964, and the Refugee Act of 1980.

The United States filed briefs in [the district court proceedings](#) and at the [appellate level](#). Both briefs argued that the discriminatory treatment of Syrian refugees violates prohibitions of discrimination based on alienage, national origin, and nationality. In order to survive an equal protection or Title VI challenge, such discriminatory treatment must be narrowly tailored to achieving a compelling state interest. The briefs make clear that, while preserving safety and security is a compelling interest, Indiana's policy of withholding payments for services provided to Syrian refugees is not narrowly tailored to protect that

interest and therefore would violate the Equal Protection Clause and Title VI. The district court found that the State's conduct "clearly discriminates against Syrian refugees based on their national origin." In affirming the lower court, the 7th Circuit also found the state's alleged safety and security concerns to be unfounded and unsupported.

In a related matter, the United States had raised similar Title VI concerns in *Tex. Health & Human Servs. Comm'n v. United States*, No. 3:15-cv-3851, a lawsuit in which Texas sought to prevent the federal government and refugee resettlement agencies from placing Syrian refugees in the state. In preliminary orders, the district court ruled in favor of the United States, declining to "interfere with the executive's discharge of its foreign affairs and national security duties" in the absence of a demonstration of a substantial threat of irreparable injury or legal right to relief. *See* Order denying Motion for Injunction, *Tex. Health & Human Servs. Comm'n v. United States*, No. 3:15-cv-3851 (DCG) (N.D. Tex. Feb. 8, 2016), ECF No. 70. In June 2016, the [court](#) dismissed the state's lawsuit in its entirety. On August 12, Texas [appealed](#) the ruling; however on October 7, Texas [withdrew its appeal](#).

Department of Justice Files Brief Clarifying Intentional Discrimination Standards under Title VI:

On September 26, the Civil Rights Division of DOJ (EOS and FCS), filed a brief in *Methelus v. School Board of Collier County, Fl.*, (M.D. Fla.) addressing discrimination under Title VI and the Equal Educational Opportunities Act (EEOA). The underlying complaint alleged that the school board denied recently-arrived

immigrant high school age students equal educational opportunities based on national origin by denying them entry to the local high school and directing them instead to fee-based adult English language courses. The Department's brief clarifies the applicable standard under the EEOA as established under *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981); the application of *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 266 (1977), in a Title VI intent case involving a neutral policy; and the correct interpretation of *Mumid v. Abraham Lincoln High Sch.*, 618 F.3d 789 (8th Cir. 2010). The brief is available at go.usa.gov/xKz46.

Department of Justice Files Brief to Enforce Summary Judgment in Civil Rights Lawsuit Against Maricopa County, AZ, and the Maricopa County Sheriff's Office:

On September 16, the Civil Rights Division of DOJ filed a brief as appellee in *United States v. Maricopa*, No. 15-17558 (9th Cir. Sept. 16, 2016), to affirm summary judgment in favor of the United States (go.usa.gov/xkGcD). On appeal, the Department argues that Maricopa County is directly liable for the unlawful policies of its sheriff, and that the district court correctly applied the doctrine of offensive, non-mutual issue preclusion to resolve the merits.

The Department brought this case under 42 U.S.C. 14141 and Title VI of the Civil Rights Act, alleging that Sheriff Joseph M. Arpaio and the Maricopa County Sheriff's Office (MCSO) engaged in a pattern or practice of unlawful discriminatory law enforcement conduct. In December 2015, the county appealed



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the lower court's ruling as to the county's liability for Sheriff Arpaio's and MCSO's policies and conduct. The county also appealed the court's ruling that the county is precluded from re-litigating the court's findings in *Melendres v. Arpaio*, a parallel action by private plaintiffs alleging intentional discrimination against Hispanic individuals when MCSO conducted immigration-related law enforcement during traffic stops. 989 F.Supp 2d 822 (D. Ariz. 2013), aff'd in part and vacated in part on other grounds, 784 F.3d 1254 (9th Cir.) (*Melendres II*), cert. denied, 136 S. Ct 79 (2015). The brief is available at go.usa.gov/xkGc4.

Agency Title VI Guidance, Directives, Initiatives, and Reports



Department of Health and Human Services' Office for Civil Rights Issues National HIV/AIDS Compliance Review Report to Strengthen Civil Rights and Health Information Privacy for People Living with HIV/AIDS:

On July 12, the U.S. Department of Health and Human Services Office for Civil Rights (HHS OCR) issued a report on its National HIV/AIDS Compliance Review Initiative. The Initiative began in 2014, when HHS OCR conducted coordinated compliance reviews at twelve

hospitals – one hospital in each of the twelve cities most impacted by HIV/AIDS: Atlanta, GA; Baltimore, MD; Chicago, IL; Dallas, TX; Houston, TX; Los Angeles, CA; Miami, FL; New York City, NY; Philadelphia, PA; San Francisco, CA; San Juan, PR; and Washington, D.C. The compliance reviews examined the ways in which each hospital ensures: (1) equal access for HIV-positive individuals to programs and services, in compliance with Section 504 of the Rehabilitation Act of 1973; (2) meaningful access for limited English proficient (LEP) individuals in compliance with Title VI of the Civil Rights Act of 1964; and (3) the privacy and security of individuals' health information and their rights with regard to that information, in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The report emphasizes that, pursuant to Title VI and Section 1557 of the Affordable Care Act, hospitals and other health care providers ("covered entities") must:

- Adopt and post Notices and Nondiscrimination Statements which explain that the covered entity does not discriminate on the basis of race, color, national origin, sex, age, or disability, including HIV status;
- Designate Civil Rights Coordinators to establish and implement grievance procedures for patients and consumers;
- Provide auxiliary aids and services to ensure effective communication for individuals with disabilities;

- Take reasonable steps to provide meaningful access to each LEP individual eligible to be served or likely to be encountered in the covered entity's health programs or activities. Reasonable steps may include: (1) the provision of qualified interpreters to LEP individuals when oral interpretation is required to provide meaningful access; and (2) the provision of qualified translators to translate written documents or web content.
- Ensure that such language assistance services are provided free of charge, are accurate and timely, and protect the privacy and independence of LEP individuals. Covered entities, with limited exceptions, are prohibited from allowing children, family members or friends of the patient to serve as interpreters.

To read the full report, visit go.usa.gov/xKz4j. To download and share HHS OCR's *Information Is Powerful Medicine* public education campaign, visit aids.gov/privacy.



Department of Housing and Urban Development Issues New Guidance on Fair Housing Protections for People with Limited English Proficiency:

On September 15, HUD issued guidance that addresses how the Fair Housing Act would apply to claims



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of housing discrimination brought by people who do not speak, read, or write English proficiently. The guidance addresses how various legal approaches, such as discriminatory effects and disparate treatment, apply in Fair Housing Act cases in which a housing-related decision – such as a landlord’s refusal to rent or renew a lease – involves a person’s limited ability to speak, read, write, or understand English.

Discriminatory practices, for example, could include applying a language-related requirement to people of certain races or nationalities; posting advertisements that contain blanket statements, such as “all tenants must speak English;” or immediately turning away applicants who are not fluent in English. Targeting racial or national origin groups for scams related to housing also constitutes intentional discrimination.

The guidance is available at [go.usa.gov/xKz42](https://www.go.usa.gov/xKz42). HUD’s 2007 [*Notice of Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*](#) is available at [go.usa.gov/xKz4T](https://www.go.usa.gov/xKz4T).



Department of Justice Publishes Updated and Expanded Segments of its Title VI Legal Manual:

On September 27, FCS released the

first portion of the updated and expanded [Title VI Legal Manual \(go.usa.gov/xKz4F\)](https://www.go.usa.gov/xKz4F). Updated sections cover key concepts under Title VI, including legislative history of Title VI, the role of DOJ, and the scope of Title VI coverage. DOJ issued the Title VI Legal Manual, pursuant to its mandate under Executive Order 12250, to ensure the consistent and effective enforcement of Title VI and related statutes. Publication of the Title VI Legal Manual is a part of DOJ’s ongoing initiative to restructure, reevaluate and strengthen Title VI enforcement government-wide. DOJ will release additional portions of the Manual, with updates that will address conduct prohibited by Title VI, including intentional discrimination, disparate impact, and retaliation in the future. More information on this initiative [is available at go.usa.gov/xKz4M](https://www.go.usa.gov/xKz4M).

Department of Justice Releases Report on Language Access in State Courts:

On September 14, FCS released its report, [*Language Access in State Courts*](#), on the Civil Rights Division’s Courts Language Access Initiative. The report explains the benefits of language access to limited English proficient individuals and to court systems alike. It further outlines the enforcement and technical assistance efforts of the initiative, including case examples and resources. The report is available in [English \(go.usa.gov/xKz4e\)](https://www.go.usa.gov/xKz4e) and [Spanish \(go.usa.gov/xKz4t\)](https://www.go.usa.gov/xKz4t), with translations in Vietnamese, Korean, and Chinese (both Simplified and Traditional) coming soon.



Department of Health and Human Services and Department of Justice Issue Joint Guidance on Child Welfare and Title VI:

On October 19, DOJ and HHS issued [joint guidance \(go.usa.gov/xkGD3\)](https://www.go.usa.gov/xkGD3) to state and local child welfare agencies and courts on the requirements of Title VI and its implementing regulations. Data shows that particular racial and ethnic groups are overrepresented in the child welfare system compared to their numbers in the general population. The guidance provides an overview of Title VI and Frequently Asked Questions on how Title VI applies to child welfare programs and activities, including investigations, assessments, guardianship, removal of children from their homes, reunification, case planning, adoption, and foster care and family court hearings.

The guidance addresses race and language access complaints that the Departments have received. These complaints have alleged unnecessary removal of children from their biological families; biological parents being denied equal access to culturally competent reunification services; denial of relative or kinship placements; unnecessarily long stays in foster care; and family members being denied full and informed participation in family courts and social services because of limited English proficiency. The guidance

THE FEDERAL COORDINATION AND COMPLIANCE SECTION

Ensuring Consistent and Effective Title VI Enforcement Across the Federal Government

highlights the clear need for frank and productive discussion about how child welfare laws, policies, practices and implicit bias affect communities of color. The guidance is part of an ongoing partnership between the Departments to help child welfare agencies protect the well-being of children and ensure compliance with federal nondiscrimination laws. The press release can be found [here](https://www.go.usa.gov/xkGjY) ([go.usa.gov/xkGjY](https://www.go.usa.gov/xkGjY)).



Departments of Justice, Homeland Security, Health and Human

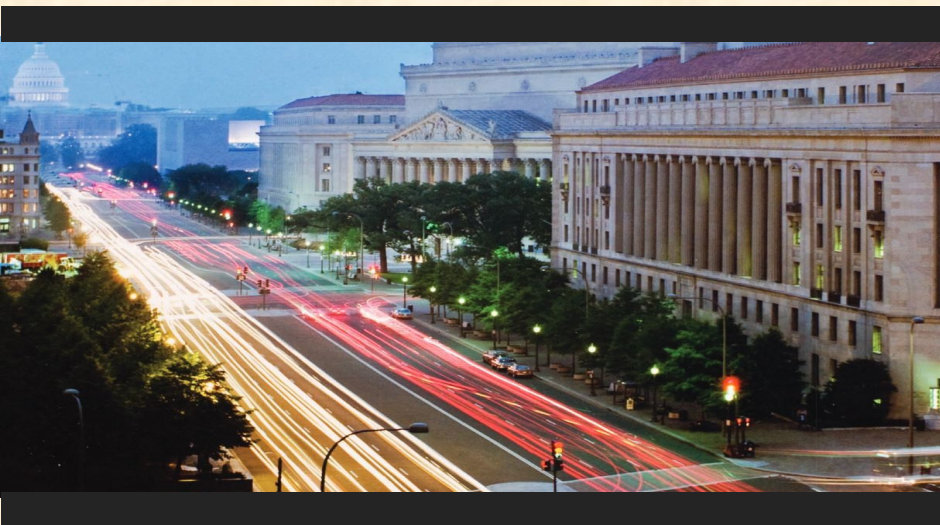
Services, Housing and Urban Development and Transportation Issue Guidance on Title VI Protections in Emergency Preparedness, Response and Recovery:

On August 16, the Departments of Justice, Homeland Security, Health and Human Services, Housing and Urban Development, and Transportation issued joint agency guidance, [Guidance to State and Local Governments and Other Federally Assisted Recipients Engaged in Emergency Preparedness, Response, Mitigation, and Recovery Activities on Compliance with Title VI of the Civil Rights Act of 1964](https://www.go.usa.gov/xkGW5) ([go.usa.gov/xkGW5](https://www.go.usa.gov/xkGW5)) ([en Español](https://www.go.usa.gov/xkGZ3) - [go.usa.gov/xkGZ3](https://www.go.usa.gov/xkGZ3), [Tiếng Việt](https://www.go.usa.gov/xkGZw) - [go.usa.gov/xkGZw](https://www.go.usa.gov/xkGZw), [Kreyòl Ayisyen](https://www.go.usa.gov/xkGZS) - [go.usa.gov/xkGZS](https://www.go.usa.gov/xkGZS)), to recipients of federal financial assistance on the

nondiscrimination protections of Title VI in emergency and disaster preparedness, response, and recovery.

The guidance provides an overview of the application of Title VI in emergency and disaster management and examples of promising practices that recipients of federal financial assistance can take now, in advance of emergencies and disasters, to ensure Title VI compliance. Notably, the guidance emphasizes that Title VI obligations and protections cannot be waived during emergencies and disasters. Although every emergency or disaster situation will be different and pose its own set of unique challenges, effective planning can help avoid Title VI violations. The guidance highlights that preparation for exigent circumstances, including addressing meaningful access to services and benefits by limited English proficient communities can often make all the difference in preserving the lives of first-responders and the people they help.

Two new resources to assist recipients of federal financial assistance also accompany the guidance: the Department of Justice's [Tips and Tools for Reaching Limited English Proficient Communities in Emergency Preparedness, Response and Recovery](https://www.go.usa.gov/xkGBs) ([go.usa.gov/xkGBs](https://www.go.usa.gov/xkGBs)) and the Department of Health and Human Services' [Checklist for Recipients of Federal Financial Assistance](https://www.go.usa.gov/xkGBJ) ([go.usa.gov/xkGBJ](https://www.go.usa.gov/xkGBJ)), which facilitates the integration of the whole community into emergency-related activities. The press release announcing the guidance and accompanying materials can be found [here](https://www.go.usa.gov/xkGKj) ([go.usa.gov/xkGKj](https://www.go.usa.gov/xkGKj)).



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