

September 20, 2017

The Honorable Betsy De Vos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Re: Docket ID: ED-2017-OS-0074

Dear Secretary De Vos,

Asian Americans Advancing Justice | AAJC (“Advancing Justice-AAJC”) appreciates the opportunity to provide comments to the U.S. Department of Education’s (“DOE”) notice published in the Federal Register on July 22, 2017 in accordance with Executive Order 13777 “Enforcing the Regulatory Reform Agenda” and requesting input on regulations that may be appropriate for repeal, replacement, or modification.

By way of background, Advancing Justice – AAJC is a national non-profit, non-partisan organization founded in 1991. Our mission is to advance the civil and human rights of Asian Americans, and build and promote a fair and equitable society for all. Our wide-ranging efforts include promoting civic engagement, forging strong and safe communities, and creating an inclusive society. Advancing Justice – AAJC is part of Asian Americans Advancing Justice (Advancing Justice), a national affiliation of five independent nonprofit organizations dedicated to serving our nation’s most rapidly growing racial minority community. The Advancing Justice affiliation is comprised of our nation’s oldest Asian American legal advocacy center located in San Francisco (Advancing Justice – Asian Law Caucus), our nation’s largest Asian American advocacy service organization located in Los Angeles (Advancing Justice – Los Angeles), the largest national Asian American policy advocacy organization located in Washington D.C. (Advancing Justice – AAJC), the leading Midwest Asian American advocacy organization (Advancing Justice – Chicago), and the Atlanta-based Asian American advocacy organization that serves one of the largest and most rapidly growing Asian American communities in the South (Advancing Justice – Atlanta). Additionally, over 150 local organizations are involved in Advancing Justice – AAJC’s Community Partners Network, serving communities in 32 states and the District of Columbia.

As such, we present our comments as advocates for the excellent and equitable education of all children in the United States, including those who are Asian American or Pacific Islander

(“AAPI”), Arab, Middle Eastern, Muslim, and South Asian (“AMEMSA”), immigrants, and English learners.¹

The DOE is a civil rights agency, and together with the U.S. Department of Justice (“DOJ”), is responsible for protecting students from discrimination on the basis of race, color, national origin, sex, and disability. Under Title VI of the Civil Rights act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act, the DOE is tasked with enforcing the law in response to complaints of discrimination and through proactive compliance reviews, data collection, regulations, and policy guidance. DOJ is also responsible for enforcing the Equal Educational Opportunities Act (“EEOA”) which requires public schools and State educational agencies to overcome language barriers that impede equal participation by students in their instructional programs. DOE awards grants pursuant to the Elementary and Secondary Education Act (“ESEA”), to improve the education of English learner students and achieve the promise of EEOA. In addition to the ESEA, landmark education laws including the Individuals with Disabilities Education Act (“IDEA”), the Carl D. Perkins Career and Technical Education Act, and the Higher Education Act (“HEA”) provide critical funding—and associated requirements of recipients—that help to make equal opportunity meaningful in the lives of students. All of these laws require regulations and guidance, with oversight and enforcement, in order to provide their intended benefit to students.

Advancing Justice-AAJC is particularly concerned that this request for comment is an invitation to undermine the protections and supports of the laws discussed above. These laws, as well as the regulations and guidances derived therefrom, are necessary for the equal educational opportunities and advancement of AAPI and AMEMSA students. Any rescission or dilution of the regulations and guidances listed below² will be nothing short of an evisceration of the rights and opportunities of AAPI, AMEMSA, immigrant, and English Learner students. We note that while the Administration purports to seek to protect the civil rights of Asian American students by seeking to “investigate one administrative complaint” regarding college admissions, we find this effort an attempt by this Administration not to protect Asian Americans, but rather to use Asian Americans as a tool to end affirmative action policies,³ especially given within context of

¹ Advancing Justice-AAJC also joins in the comments submitted by the Leadership Conference on Civil and Human Rights.

² Or the regulations or guidances set forth in the comment from the Leadership Conference of Civil and Human Rights.

³ We reference the internal hiring posting from DOJ for “investigations and possible litigation related to intentional race-based discrimination in college and university admissions” and an article on August 1, 2017 by the *New York Times* which reported that DOJ is preparing to redirect resources into investigating and/or pursuing legal action against American colleges and universities over admissions policies that seek to provide students with racially diverse and inclusive learning environments. See Justice Dept. to Take on Affirmative Action in College Admissions, *New York Times*, Aug. 1, 2017, available at <https://www.nytimes.com/2017/08/01/us/politics/trump-affirmative-action-universities.html>. In response to the public outcry to that report, a DOJ representative said, “The posting sought volunteers to investigate one administrative complaint filed by a coalition of 64 Asian-American associations in May 2015 that the prior Administration left unresolved.” See DOJ: Affirmative action case a limited one, *Politico*, Aug. 2, 2017, available at <http://www.politico.com/story/2017/08/02/affirmative-action-department-justice-241272>.

the President's Executive Order and the DOE's attempt to rescind regulations and guidances that currently protect the civil rights of AAPI students. Affirmative Action policies are proven to help all students, and in particular AAPI and AMEMSA students, obtain higher education in an inclusive and diverse environment. And the rules and guidances listed herein directly assist AAPI and AMEMSA students attain their higher educational goals.

Although not an exhaustive list, the regulations and guidances listed below, are but a few examples that significantly impact the educational opportunities of AAPI, AMEMSA, immigrant, and English learner students:

Regulations

1. Prohibitions against retaliation for bringing claims under Federal civil rights laws.
 - a. 34 C.F.R. § 100.7(e) (Title VI).
 - b. 34 C.F.R. § 106.71 (Title IX).
 - c. 34 C.F.R. § 104.61 (Section 504).
 - d. 28 C.F.R. § 42.107(e) (Title VI).
 - e. 28 C.F.R. § 54.605 (Title IX).
 - f. 28 C.F.R. § 35.134 (Title II).
2. English Learners
 - a. 34 C.F.R. § 200.6
 - b. 34 C.F.R. § 427 et seq.
 - c. 34 C.F.R. § 428 et seq.
 - d. 34 C.F.R. § 429 et seq.
3. Immigrant Students
 - a. 34 C.F.R. § 100 et seq.
 - b. 34 C.F.R. § 637 et seq.

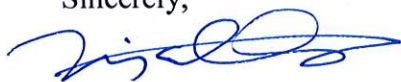
Guidance

1. English Learners
 - a. 2015-01-07 English Learner Students and Limited English Proficient Parents.
 - b. 1985-12-03 Policy Regarding the Treatment of National Origin Minority Students Who Are Limited English Proficient (originally issued December 3, 1985; reissued April 6, 1990).
 - c. 1991-09-27 Policy Update on Schools' Obligation Toward National Origin Minority Students with Limited-English Proficiency.
 - d. 2014-07-18 Questions and answers Regarding Inclusion of English Learners with Disabilities in English Language Proficiency Assessments and Title III Annual Measurable Achievement Objectives.
 - e. 2007-05 Accountability for LEP Students
2. Immigrant Students
 - a. 2014-05-08 School Enrollment Procedures.
 - b. 1970-07-18 Identification of Discrimination and Denial of Services on the Basis of National Origin.
 - c. 2007-10-19 Final Guidance on Maintaining, Collecting, and Reporting Racial and Ethnic Data to the U.S. Department of Education

Advancing Justice-AAJC notes that many of these regulations and guidances can be strengthened further to protect AAPI, AMEMSA, immigrant, and English learner students. At a minimum, these and other regulations and guidances protecting the civil rights and educational opportunities of *all* students should be maintained and enforced fully.

If you have further questions, please feel free to contact me by email at nshah@advancingjustice-aajc.org or by telephone at 202.296.2300, ext. 0130.

Sincerely,



Niyati Shah*

Assistant Director of Legal Advocacy

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