

September 13, 2017

Dear Secretary DeVos,

In June of 2017, the Department of Education called for input on regulations that may be appropriate for repeal, replacement, or modification, in accordance with Executive Order 13777, “Enforcing the Regulatory Reform Agenda.” The Center for American Progress has reviewed the regulations and guidance currently enforced by the Department and submit this response for the record.

For decades, the federal government has helped to ensure factors such as race, gender, disability, income, and language are not barriers to quality schooling and that higher education is attainable and affordable. The Department of Education leads these efforts by enforcing the law and providing protections for students. It does this work with one of the smallest bureaucracies in the federal government according to the [CBO](#). With high school graduation rates hitting record highs; dropout rates at historic lows; and college going rates near the highest they have ever been, rolling back critical protections and safeguards now would be devastating.

Many, if not most, of the regulations and guidance currently in place are critically important to protecting vulnerable students, and to the efficient functioning of the Department and its programs. While we do not have the capacity in this response to detail the importance of each of the current regulations, we have identified three that we believe are of the utmost importance as they form the basis of how the Department of Education approaches civil rights investigations and supports students with disabilities. The following regulations must be maintained in their current form to ensure the Office for Civil Rights can effectively investigate and enforce key civil rights protections.

**[Part 100](#): Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Education Effectuation of Title VI of The Civil Rights Act of 1964**

Part 100 requires the Department of Education to make a prompt investigation whenever a compliance review, report, or complaint indicates a **possible failure** to comply with Title VI. This regulation, and the [subsequent Dear Colleague Letter from January 8, 2014](#), also allows the Department to analyze and investigate the disparate impact of a particular policy or practice.

For example, an OCR investigation of the Tupelo Public School District in Mississippi revealed that in the school years 2010-11 and 2011-12, black students at the three schools in the district constituted 78-81 percent of discipline referrals but just 48-49 percent of enrollment. The district’s discipline codes also included undefined and arbitrary terms like “improper behavior at school.” OCR reached an agreement with the district to revise their discipline practices and rectify this disparity.

OCR investigations under Part 100 provide information to districts and communities on the way students are being affected by local policies. States and districts vary greatly and operate within a set of challenges that are unique to their local context. The investigations resulting from this regulation allow the state and/or district to work with OCR to find a mutually agreeable outcome that will be effective in the local context. Limiting the enforcement power or rolling back the disparate impact analysis approach could result in unintended discrimination, with no option for recourse.

**[Part 104](#): Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance**

Part 104 requires schools to afford students with disabilities with equal opportunities “to obtain the same result, to gain the same benefit, or to reach the same level of achievement” as students without disabilities.

For example, in Texas, it was discovered that the state placed an arbitrary cap on the number of students who could be classified as having a disability. As a result, Texas provides special education services to the lowest percentage of any state in the country by far, capping services at 8.5 percent compared to 13.5 percent nationally. OCR began an investigation last year, and this spring, the Texas State Senate approved a bill that would ban the practice of imposing caps.

This investigation and subsequent legislative action are a prime example of how the Department, local stakeholders, and states can work together to understand and resolve civil rights issues that may otherwise be ignored. Additionally, it is preferable for the federal government and a college, state, or district to reach a mutually agreeable outcome without litigating the case in court.

**Part 106: Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Financial Assistance**

Under Part 106, and a subsequent [Dear Colleague letter from April 4, 2011](#), the sexual harassment of students, including sexual violence, is considered an interference to a “students’ right to receive an education free from discrimination.” OCR requires a fair and equitable process, including due process, but lessened the burden of proof from “clear and convincing” to a “preponderance of evidence” standard for Title IX discrimination. Colleges also use the preponderance of evidence standard for other discipline hearings – including plagiarism and alcohol abuse.

This regulation provides victims of sexual assault and gender-based discrimination with the option to easily report the crime, publicly or anonymously. OCR examines every case, and works with the college or school to create processes for dealing with these situations and ensure safe communities. If the Department of Education changes or rescinds the guidance, it could make reporting more difficult.

Supporting and protecting the country’s students, with a keen focus on the most vulnerable student populations, should be a priority of every administration. Please keep these critical safeguards in place.

Thank you for your consideration,

Catherine Brown  
Vice President, Education Policy  
Center for American Progress