

EQUITY AND INCLUSION ENFORCEMENT ACT OF 2021

NOVEMBER 23, 2021.—Ordered to be printed

Mr. SCOTT of Virginia, from the Committee on Education and Labor, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 730]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 730) to amend title VI of the Civil Rights Act of 1964 to restore the right to individual civil actions in cases involving disparate impact, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary .....	2
Committee Action .....	3
Committee Views .....	6
Section-by-Section Analysis .....	17
Explanation of Amendments .....	18
Application of Law to the Legislative Branch .....	18
Unfunded Mandate Statement .....	18
Earmark Statement .....	18
Roll Call Votes .....	18
Statement of Performance Goals and Objectives .....	21
Duplication of Federal Programs .....	21
Hearings .....	21
Statement of Oversight Findings and Recommendations of the Committee .....	21
New Budget Authority and CBO Cost Estimate .....	21
Committee Cost Estimate .....	23
Changes in Existing Law Made by the Bill, as Reported .....	23
Minority Views .....	28

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Equity and Inclusion Enforcement Act of 2021”.

**SEC. 2. RESTORATION OF RIGHT TO CIVIL ACTION IN DISPARATE IMPACT CASES UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.**

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) is amended by adding at the end the following:

“SEC. 607. The violation of any regulation relating to disparate impact issued under section 602 shall give rise to a private civil cause of action for its enforcement to the same extent as does an intentional violation of the prohibition of section 601.”.

**SEC. 3. DESIGNATION OF MONITORS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964.**

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) is further amended by adding at the end the following:

“SEC. 608. (a) Each recipient shall—

“(1) designate at least one employee to—

“(A) coordinate its efforts to comply with requirements adopted pursuant to section 602 and carry out the responsibilities of the recipient under this title, including any investigation of any complaint alleging the noncompliance of the recipient with such requirements or alleging any actions in violation of this title; and

“(B) provide guidance, education, and other assistance as necessary to ensure students and employees are aware of rights and responsibilities under this title; and

“(2) notify all its students and employees of the name, office address, email address, and telephone number of each employee designated under paragraph (1) by such recipient.

“(b) In this section, the term ‘recipient’ means a recipient referred to in section 602 that operates an education program or activity receiving Federal financial assistance authorized or extended by the Secretary of Education.”.

**SEC. 4. SPECIAL ASSISTANT FOR EQUITY AND INCLUSION; CIVIL RIGHTS DATA COLLECTION.**

(a) SPECIAL ASSISTANT FOR EQUITY AND INCLUSION.—Section 202(b) of the Department of Education Organization Act (20 U.S.C. 3412(b)) is amended—

(1) by redesignating paragraph (4) as paragraph (5); and

(2) by inserting after paragraph (3), the following:

“(4) There shall be in the Department, a Special Assistant for Equity and Inclusion who shall be appointed by the Secretary. The Special Assistant shall study, promote, coordinate, and evaluate efforts to engender program compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and inform individuals of their rights under such Act, including the dissemination of information, technical assistance, and coordination of research activities, in a manner consistent with such Act. The Special Assistant shall advise both the Secretary and Deputy Secretary on matters relating to compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.)”.

(b) CIVIL RIGHTS DATA COLLECTION.—Section 203(c)(1) of the Department of Education Organization Act (20 U.S.C. 3413(c)(1)) is amended by inserting before the semicolon the following: “, including data with respect to complaints alleging any actions in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) by a recipient (as defined in section 608(b) of title VI of the Civil Rights Act of 1964)”.

PURPOSE AND SUMMARY

H.R. 730, the *Equity Inclusion and Enforcement Act of 2021*, introduced by Committee Chairman Robert C. “Bobby” Scott (D–VA), and House Judiciary Committee Chairman Jerrold Nadler (D–NY), amends title VI of the *Civil Rights Act of 1964* (Title VI) to strengthen federal civil rights laws in educational settings. By restoring essential civil rights protections for private citizens, ensuring that all education settings that receive federal dollars have staff to deal with specific civil rights violations, and coordinating their work at the Department of Education, the Committee hopes H.R. 730 will result in a decrease in policies or practices that dis-

criminate or have the effect of discriminating on the basis of race, color, or national origin.<sup>1</sup>

In 2001, the Supreme Court’s 5–4 decision in *Alexander v. Sandoval* struck down the right of individuals to challenge certain discriminatory policies or practices under Title VI, a mechanism to address discrimination that had been legal for decades.<sup>2</sup> The decision barred a victim of a civil rights violation from bringing a private right of action against a federally-funded entity if that violation was based on the theory of disparate impact. As a result, this decision has limited individuals from pursuing legal action to remedy many civil rights violations, including those in our nation’s education system.

In addition to providing a private right of action to cure discriminatory practices and policies that deny equal educational opportunity in education,<sup>3</sup> H.R. 730 also requires all local educational agencies and institutions of higher education to have Title VI monitors to ensure school policies and practices are in compliance with Title VI, and to investigate discrimination complaints arising under Title VI. The bill also creates an Assistant Secretary position at the U.S. Department of Education (Department) to proactively monitor and enforce institutional compliance with Title VI. Taken together, the provisions in H.R. 730 give power to individuals to pursue remedies for civil rights violations and create safeguards that will hopefully result in fewer unreported civil rights violations in our nation’s schools and universities.

#### COMMITTEE ACTION

##### 114TH CONGRESS

On May 17, 2016, Ranking Member Scott and House Judiciary Committee Ranking Member John Conyers (D–MI) introduced H.R. 5260, the *Equity and Inclusion Enforcement Act*. The bill was referred to the House Committee on Education and the Workforce and the House Committee on the Judiciary. No further action was taken on the bill.

##### 115TH CONGRESS

On May 17, 2017, Ranking Member Scott and Ranking Member Conyers introduced H.R. 2486, the *Equity and Inclusion Enforcement Act*. The bill was referred to the House Committee on Education and the Workforce and the House Committee on the Judiciary. No further action was taken on the bill.

On May 17, 2018, the Committee held a legislative hearing titled “Protecting Privacy, Promoting Data Security: Exploring How Schools and States Keep Data Safe.” The Committee heard testimony on privacy concerns related to data sharing and how schools can comply with privacy requirements. The Committee heard testimony from: David Couch, K–12 CIO and Associate Commissioner,

<sup>1</sup> 42 U.S.C. § 2000d et seq. (2018).

<sup>2</sup> 532 U.S. 275, 293 (2001).

<sup>3</sup> See generally JESSICA CARDICHON & LINDA DARLING-HAMMOND, PROTECTING STUDENTS CIVIL RIGHTS: THE FEDERAL ROLE IN SCHOOL DISCIPLINE 4–7 (Learning Policy Institute, May 2019) (describing efforts of the Obama administration to issue guidance to support state and local efforts to end exclusionary discipline and other practices researchers have found deny equal access to educational opportunity) available at [https://learningpolicyinstitute.org/sites/default/files/product-files/Federal\\_Role\\_School\\_Discipline\\_REPORT.pdf](https://learningpolicyinstitute.org/sites/default/files/product-files/Federal_Role_School_Discipline_REPORT.pdf).

Frankfort, Kentucky; Gary Lilly, Superintendent and Director of Schools, Bristol, Tennessee; and Amelia Vance, Director of Education Privacy and Policy Counsel, Washington, DC. Committee Democrats, recognizing the hearing was held on the 64th anniversary of the landmark Supreme Court decision *Brown v. Board of Education*, invited Catherine Lhamon, Former Assistant Secretary for Civil Rights at the Department of Education and Chair of the U.S. Commission on Civil Rights, Washington, DC to provide testimony. Ms. Lhamon provided testimony on both issues of data privacy and the larger issue of protection of the civil rights of students generally, specifically in the context of a retreat in civil rights enforcement at the Department under the current administration.

116TH CONGRESS

On April 30, 2019, the Committee held a legislative hearing titled “*Brown v. Board of Education* at 65: A Promise Unfulfilled,” which was used to inform the development of H.R. 2574. The Committee heard testimony on the importance of robust enforcement of Title VI among entities receiving federal funding through the Department, along with discussion on racial segregation in public schools, the prevalence of racial disparities in school discipline and the allocation of public resources. The Committee heard testimony from: Mr. John C. Brittain, Professor of Law, University of the District of Columbia Law School, Washington, DC; Ms. Linda Darling-Hammond, Ed.D., President and CEO of the Learning Policy Institute, Palo Alto, CA; Ms. Maritza White, Parent Advocate, Washington DC; Mr. Daniel J. Losen, M.ED, J.D., Director of the Center for Civil Rights Remedies at the Civil Rights Project at UCLA, Lexington, MA; Mr. Dion J. Pierre, Research Associate, National Association of Scholars, Ridgewood, NY; and Mr. Richard A. Carranza, Chancellor, New York City Schools, New York, NY.

On May 8, 2019, Chairman Scott and Chairman Nadler introduced H.R. 2574, the *Equity and Inclusion Enforcement Act*, with Rep. Gregorio Sablan (D-MP), Chair of the Subcommittee on Early Childhood, Elementary, and Secondary Education, and Rep. Alma Adams (D-NC), Chair of the Subcommittee on Workforce Protections as original co-sponsors. On May 16, 2019, the Committee considered H.R. 2574 in a legislative session and reported it favorably, as amended, to the House of Representative by a vote of 26–20. The Committee considered and adopted the following amendment to H.R. 2574:

Rep. Scott offered an Amendment in the Nature of a Substitute (ANS) that made technical improvements to H.R. 2574. The ANS amended the Short Title of the bill, and made clear that under section 4, the newly created Special Assistant position shall advise both the Secretary and Deputy Secretary on all matters relating to equity and inclusion in a manner consistent with Title VI.

During the legislative session the Committee considered one amendment to the ANS:

Rep. James Comer (R-KY) offered an amendment to the ANS that would strike language from the bill restoring the private right of action under Title VI and would modify the new Special Assistant for Equity and Inclusion at the Department, consolidating its duties with an existing Special Assistant for Gender Equity. Because the amendment proposed to amend a portion of the bill out-

side of the jurisdiction of the Committee (as defined in Rule X of the Rules of the House of Representatives), the amendment was ruled out of order.

On September 16, 2020, pursuant to the provisions of H. Res. 1107, the House debated H.R. 2574, and on the question of passage it passed by a recorded vote of 232–188. The Senate did not take further action on H.R. 2574 in the 116th Congress.

#### 117TH CONGRESS

On February 2, 2021, Chairman Robert C. “Bobby” Scott (D–VA) introduced H.R. 730, the *Equity and Inclusion Enforcement Act*.

On March 25, 2021, the Subcommittee on Early Childhood, Elementary, and Secondary Education held a hearing entitled “*Lessons Learned: Charting the Path to Educational Equity Post-COVID–19.*” The hearing examined the impact of the COVID–19 pandemic on public schools and aided in the development of H.R. 730. Witnesses discussed strategies for safely reopening classrooms and addressing educational disparities present in our public education system. The Committee heard testimony from Mr. Marc H. Morial, President and CEO of the National Urban League; Mrs. Jennifer Dale, a parent from Lake Oswego, OR; Ms. Selene A. Almazan, Legal Director for the Council of Parent Attorneys and Advocates, Inc.; and Mr. Alberto M. Carvalho, Superintendent of Schools for Miami-Dade County Public Schools.

On Thursday, June 24, 2021, the Committee held the Hearing entitled: *Examining the Policies and Priorities of the U.S. Department of Education*. During the hearing, Secretary of Education Dr. Miguel Cardona testified on the U.S. Department of Education (ED) Budget Request for Fiscal Year 2022 and discussed support for equity grant programs.

On July 16, 2021, the Committee considered H.R. 730 in a legislative session and reported it favorably, as amended, to the House of Representative by a vote of 26–20. The Committee considered and adopted the following amendments to H.R. 730:

During the legislative session the Committee considered one amendment to H.R. 730:

Rep. Scott offered an Amendment in the Nature of a Substitute (ANS) that made technical improvements to H.R. 730. The ANS made clear that under section 3, the Title VI monitors should ensure all students are aware of their relevant rights and responsibilities and are provided with contact information of Title VI Monitors at their school. Under section 4, the ANS expands the duties of the newly created Special Assistant position to include studying efforts to engender program compliance with Title VI of the Civil Rights Act and authorizes the Department of Education to report include data in the Civil Rights Data Collection (CDRC) relating to complaints of Title VI violations filed against schools. The ANS was adopted by voice vote.

During the legislative session the Committee considered one amendment to the ANS:

Rep. Burgess Owens (R–OH) offered an amendment to the ANS that would ensure that no funds authorized or extended by the Department of Education condition or incentivize the use of content or pedagogy that violates Title VI, including by separating students or teachers based on race, color, or national origin, or assigning

characteristics or assumptions to individuals based on race, color, or national origin. The amendment to the ANS was defeated on a recorded vote of 19–27.

#### COMMITTEE VIEWS

The Committee is concerned with our nation’s continued struggle to provide a public education “to all on equal terms,” as mandated by the Supreme Court in *Brown v. Board of Education*.<sup>4</sup> Particularly, students of color continue to face persistent systemic barriers to full participation, equal opportunity, and achievement in K–12 and higher education. Title VI should ensure that all students have equal access to educational opportunities. The law plainly states, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving Federal financial assistance”<sup>5</sup> H.R. 730, the *Equity and Inclusion Enforcement Act*, builds upon Title VI and if passed, will aid in breaking down remaining systemic barriers within our public school system.

Title VI is firmly grounded in the world of public education. The concept that became Title VI was first introduced by the former Chairman of the Committee, Rep. Adam Clayton Powell, Jr. (D–NY). In 1946, when “separate but equal” was still the law, Rep. Powell successfully attached an anti-discrimination provision to a school lunch program bill, stating “No funds made available pursuant to this title shall be paid or disbursed to any state or school if, in carrying out its functions under this title, it makes any discrimination because of race, creed, color or national origins of children or between types of schools, or with respect to a state that maintains separate schools for minority and majority races, it discriminates between such schools on this account.”<sup>6</sup> After *Brown*, Powell modified his amendment—it subsequently prohibited funds from going to any school district that continued to segregate schools.<sup>7</sup> The Powell amendment sank efforts to authorize federal education spending in both the Eisenhower and Kennedy administrations.<sup>8</sup>

Congress eventually did pass a federal education spending law, the *Elementary and Secondary Education Act of 1965* (ESEA), after passage of the *Civil Rights Act*. Congress appropriated to Southern and border states almost \$590 million in 1966 under the new ESEA law.<sup>9</sup> Pursuant to Title VI, these states risked losing out on receiving this federal funding if they continued to drag their feet on integration, which many historians suggest accelerated States’ efforts to implement desegregation plans.<sup>10</sup> This history gives con-

<sup>4</sup> 347 U.S. 483 (1954).

<sup>5</sup> 42 U.S.C. § 2000d (2018).

<sup>6</sup> Jeffrey Jenkins, *Building Toward Major Policy Change: Congressional Action on Civil Rights, 1941–1950*, 31 L. & HIST. REV. 139, 191 (2013).

<sup>7</sup> See Joy Milligan, *Subsidizing Segregation*, 104 VA. L. REV. 847, 869–70, 891–94 (2018); Jeffrey Jenkins, *Building Toward Major Policy Change: Congressional Action on Civil Rights, 1941–1950*, 31 L. & HIST. REV. 139, 191 (2013).

<sup>8</sup> *Id.*

<sup>9</sup> Erica Frankenberg & Kendra Taylor, *ESEA and the Civil Rights Act: An Interbranch Approach to Furthering Desegregation*, 1 RUSSELL SAGE FOUND. J. OF THE SCI. 3, 37 (2015).

<sup>10</sup> *Id.*

text as to how enmeshed Title VI is in the pursuit of equity in education.

Aside from incentivizing school integration, Title VI protects students' civil rights in schools and on college campuses. The law and its implementing regulations do so by prohibiting both intentional discrimination, and policies and practices that have a discriminatory effect or impact.<sup>11</sup> Data show that robust enforcement of compliance with Title VI's protections by programs receiving federal funds from the Department is necessary to achieve equity of educational opportunity.<sup>12</sup>

Remedies achieved through individual challenges under Title VI to discriminatory policies and practices were once an essential tool to bring about this robust enforcement, especially during periods of demonstrated hostility to proactive federal enforcement.<sup>13</sup> Because discrimination is rarely explicit, identifying potential cases of discrimination by analyzing their impact—rather than just their motive—was critical to the enforcement of civil rights protections. Disparate impact theory was used for decades by private individuals in education settings, challenging practices that while facially race neutral, had an obvious disparate effect on Americans of different races or national origins.<sup>14</sup> President Kennedy most eloquently explained the need for civil rights law to find violations linked to effect and not just to intent:

“Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination. Direct discrimination by Federal, State, or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation.”<sup>15</sup>

In *Alexander v. Sandoval*,<sup>16</sup> the Court overturned four decades of statutory protection against discrimination by removing the private right of action of individuals to bring cases based upon disparate impact, leaving federal agencies as the only entities that can enforce disparate impact regulations. Ms. Sandoval was denied a drivers' license because she could not pass the state's written exam. The voters of Alabama had passed an English-Only law, and the state interpreted that law to require that drivers' license exams be offered only in English. Ms. Sandoval's working knowledge of English was sufficient to read road signs, but not to take the exam.

The Supreme Court did not decide the case on whether the “English-Only” law violated Title VI. While the case did not reach this question, prior Supreme Court cases had held that different English-only situations did constitute discrimination on the basis of

<sup>11</sup> *Id.*; 28 C.F.R. §42.104 (b)(2) (2019).

<sup>12</sup> U.S. COMM'N ON CIVIL RIGHTS, ARE RIGHTS A REALITY? EVALUATING FEDERAL CIVIL RIGHTS ENFORCEMENT 511, Nov. 2019, available at <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf>.

<sup>13</sup> See *Alexander v. Sandoval*, 532 U.S. 275, 301–303 (2001) (Stevens, J., dissenting).

<sup>14</sup> *E.g.* *Lau v. Nichols*, 414 U.S. 563 (1974).

<sup>15</sup> See H.R. Misc. Doc. No. 124, 88th Cong., 1st Sess. 3, 12 (1963).

<sup>16</sup> 532 U.S. 275 (2001).

race, color, or national origin.<sup>17</sup> Instead the Court held that the language of Title VI did not give Ms. Sandoval the right to bring a disparate impact cause of action, holding that cases based in that theory could only be invoked by the federal government in administrative actions. If Ms. Sandoval wanted to go to court and prove her rights under Title VI had been violated, she would have to show that officials interpreting the English-Only law *intended* to discriminate against her on the basis of race, ethnicity, or national origin; the discriminatory *effect* of the law was not proof enough.

Since 2001, private citizens challenging state action in court under Title VI must prove intentional discrimination, making enforcement of anti-discrimination laws under Title VI extremely difficult. It is the view of the Committee that both administrative enforcement and enforcement via private claims are necessary to ensure full compliance with Title VI and to protect the civil rights of individuals participating in programs receiving federal education funds.

The Committee notes that section 2 of the bill, that restores the private right of action under Title VI, is not in the jurisdiction of the Committee. As such, the legal theories of disparate impact and the jurisprudence around its use in both educational and other civil rights contexts, will not be discussed in any depth in this report. Simply put, in the post-*Sandoval* world, private citizens may have their civil rights violated under Title VI in a way that can only be proven via a disparate impact test, but if the government is not willing to take administrative action on their behalf, they have no remedy. The Committee strongly believes, however that disparate impact theory is a tool necessary to ensure full compliance with Title VI, and that Congress intended to create a private right of action to enforce anti-discrimination provisions including all violations based in disparate impact theory.<sup>18</sup> As the *Sandoval* decision stripped a vital tool from private individuals seeking to prove the government was violating their civil rights, H.R. 730 restores that tool. Specifically, the bill states that a violation of any regulation relating to disparate impact issued under section 602 of the *Civil Rights Act* shall give rise to a private civil cause of action for its enforcement to the same extent as does an intentional violation of the prohibition of *Civil Rights Act* section 601.

Although H.R. 730 would allow private citizens to bring lawsuits challenging government action due to disparate racial impact under Title VI, the Committee does not expect to see a substantial increase in civil rights lawsuits upon its enactment into law. Because of the high bars to proving a case under disparate impact theory, such cases are generally quite resource intensive for plaintiffs; as most attorneys bringing these claims do so on a contingency fee basis, there is little incentive to file frivolous claims. Even before *Sandoval*, there were very few disparate impact cases brought under Title VI because of the difficulty in mounting such challenges. Despite these facts, restoring a private right of action for disparate impact cases is necessary to ensure that meritorious

---

<sup>17</sup> *Lau*, 414 U.S. at 567–68 (“Discrimination is barred which has that effect even though no purposeful design is present: a recipient “may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination” or have “the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.”).

<sup>18</sup> *Id.* at 297–99 (2001) (Stevens, J., dissenting).

cases that document civil rights violations can be brought. For example, a private right of action allowed six Black elementary schoolchildren in the San Francisco Unified School District to successfully challenge the use of standardized I.Q. tests to place children in classes for the “mentally retarded”, a practice that disproportionately placed Black children in these classes.<sup>19</sup> Without a private right of enforcement of disparate impact regulations, that case would not have likely been able to proceed and such practices might have continued unchallenged until they were effecting a large enough number of students to attract administrative review. And administrative review at that point is not a given—it assumes the hypothetical administration believes that such practice not only violates Title VI but is also willing to bring a lawsuit. As we have seen in recent years, that assumption is not always well-founded. In discussion of different educational civil rights issues, especially those involving racial disparities, the Committee believes private citizens should have the ability to challenge facially race-neutral policies that have obvious and disastrous disparate effects, especially when federal entities, the only ones that can currently bring disparate impact cases, fail to do so.

### *K–12 Education*

Racial inequality has been at the foundation of our nation’s public education system.<sup>20</sup> Despite some progress in narrowing racial achievement gaps thanks to federal civil rights enforcement in the period following the *Brown* decision and passage of ESEA and the *Civil Rights Act*,<sup>21</sup> decades of retreat in civil rights enforcement have coincided with a re-widening of the achievement gap. Recent reading and math scores on the 2019 National Assessment of Educational Progress reveal the achievement gap is widening for Black and Latino students compared to their White peers.<sup>22</sup> The National Center on Education Statistics data indicate Black students continue to lag in high school graduation attainment.<sup>23</sup> In the 2016–2017 school year, the graduation rate for public high school students was 87 percent.<sup>24</sup> For Black students, the graduation rate was 78 percent.<sup>25</sup> Initial test scores have confirmed what experts expected, that the learning loss experienced by students as a result of the novel coronavirus (COVID–19) pandemic response disproportionately affected Black and Latino students.<sup>26</sup> This was no sur-

<sup>19</sup>3See Larry P. v. Riles, 793 F.2d 969, 981–83 (9th Cir. 1984) (holding that the educational practices that disproportionately placed black students in special education classes lacked adequate justification and violated Title VI).

<sup>20</sup>Brown v. Board of Education at 65: *A Promise Unfulfilled, Hearing Before the H. Comm. on Educ. & Lab.*, 116th Cong. (2019) (statement of Linda Darling-Hammond, President and CEO of the Learning Policy Institute) available at <https://edlabor.house.gov/download/linda-darling-hammond-testimony>.

<sup>21</sup>*Id.*

<sup>22</sup>NAT’L CTR. FOR EDUC. STATS., NAEP DASHBOARDS: ACHIEVEMENT GAPS DASHBOARD, Oct. 2019, available at [https://www.nationsreportcard.gov/dashboards/achievement\\_gaps.aspx](https://www.nationsreportcard.gov/dashboards/achievement_gaps.aspx).

<sup>23</sup>NAT’L CTR. FOR EDUC. STATS., THE NCES FAST FACTS TOOL, U.S. Department of Education, <https://nces.ed.gov/fastfacts/display.asp?id=805>.

<sup>24</sup>*Id.*

<sup>25</sup>*Id.*

<sup>26</sup>*E.g.*, Matt Barnum, *The pandemic’s toll: National test scores show progress slowed, gaps widened*, CHALKBEAT (Jul. 28, 2021) <https://www.chalkbeat.org/2021/7/28/22596904/pandemic-covid-school-learning-loss-nwea-mckinsey>;

prise as we know that the pandemic itself has had a disproportionate effect on Black and Latino workers and families.<sup>27</sup>

Research shows that these achievement gaps are linked to racial segregation in schools.<sup>28</sup> Recent reports suggest that public schools are now more segregated by race and class than any time since the 1960s.<sup>29</sup> In fact, research shows that 40 percent of Black students and 41 percent of Latino students nationwide attend intensely segregated, high-poverty schools where students of color makeup 90–100 percent of the student population.<sup>30</sup> Many of these schools have fewer resources, less access to math, science, and college preparatory courses.<sup>31</sup> Furthermore, they disproportionately suspended, expelled, or held back students of color.<sup>32</sup> Faced with a system that perpetuates gaps in educational achievement, children of color do not receive adequate resources to learn and reach their full potential. According to research from EdBuild, school districts that serve students of color receive \$23 billion less in funding than school districts that serve the same or similar number of predominantly white students.<sup>33</sup> Accordingly, researchers at Stanford University found that racial segregation in schools leads to larger achievement gaps, exacerbating unequal educational opportunity.<sup>34</sup> Under current law, students and their families cannot challenge policies that, while racially neutral on their face, may perpetuate the achievement gap due to their disparate impact on Black students.

Along with the achievement gap, researchers have identified a school discipline gap—that is, a severe disparity in how students of color are disciplined for the same or similar school discipline infractions when compared to their predominantly white peers. According to a 2018 GAO report on bias in school discipline, Black students, boys, and students with disabilities are disciplined at disproportionately high rates and Black students are subject to harsher discipline than their white counterparts regardless of income.<sup>35</sup> Specifically, the report indicates that while 15.5 percent of all public school students are Black, 39 percent of students suspended from school are Black.<sup>36</sup>

<sup>27</sup> See *infra* notes 42- and accompanying text; but see Michael J. Petrilli, *Declining NAEP Scores Are Flashing Red Lights for the Covid Generation*, EDUCATION NEXT, (Oct. 21, 2021) <https://www.educationnext.org/declining-naep-scores-are-flashing-red-lights-for-the-covid-generation/> (suggesting that recent declines in NAEP scores and widening achievement gaps are not directly attributable to pandemic school closures, but suggest that subsequent declines attributable to COVID will be even greater).

<sup>28</sup> Sean Reardon, et al., *Is Separate Still Unequal? New Evidence on School Segregation and Racial Academic Achievement Gaps* 29–30 (Stanford University Ctr. for Educ. Pol’y Anal., Working paper No. 19–106, 2019) available at <https://cepa.stanford.edu/content/separate-still-unequal-new-evidence-school-segregation-and-racial-academic-achievement-gaps>.

<sup>29</sup> Erica Frankenberg, et al. *Harming Our Common Future: America’s Segregated Schools 65 Years after Brown*, 10 May 2019, [www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown/Brown-65-050919v4-final.pdf](http://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown/Brown-65-050919v4-final.pdf); see also U.S. GOV’T ACCOUNTABILITY OFFICE, GAO–16–345, K–12 EDUCATION: BETTER USE OF INFORMATION COULD HELP AGENCIES IDENTIFY DISPARITIES AND ADDRESS RACIAL DISCRIMINATION (2016)(documenting the growth in school districts with high concentrations of low-income Black and Hispanic students, and recognizing the inequitable conditions many of them share).

<sup>30</sup> Frankenberg, *supra* note 27, at 25, 28.

<sup>31</sup> GAO–16–345 *supra* note 27, at 16–22.

<sup>32</sup> *Id.*

<sup>33</sup> EDBUILD, *\$23 Billion*, (last visited Dec. 6, 2019), <https://edbuild.org/content/23-billion>.

<sup>34</sup> Reardon, *supra* note 26, at 29–20.

<sup>35</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO–18–258, K–12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES, 12–21 (2018).

<sup>36</sup> *Id.* at 12.

According to a report on racial inequity in school discipline practices across the Richmond, Virginia area by the Metropolitan Educational Research Consortium, a partnership between the Virginia Commonwealth University School of Education and seven school divisions in the Richmond region, disproportionate school discipline in the Richmond area exceeds the national average and is driven by subjective forms of behavior like being disrespectful or loitering.<sup>37</sup> The researchers found that Black students were suspended at about four times the rate of white students in 2016.<sup>38</sup> The report shows that Black students made up 23 percent of total student enrollment, but accounted for between 50 and 58 percent of short and long-term suspensions and expulsions in 2016.<sup>39</sup> In addition, the report indicates that racial disproportionality in school discipline was the most severe in racially segregated schools and in schools with concentrated poverty.<sup>40</sup>

This discipline gap has the perverse side effect of reinforcing the existing achievement gap. In the 116th Congress, during the Committee's April 30, 2019 hearing, Dan Losen, Director of the Center for Civil Rights Remedies at the Civil Rights Project at UCLA, testified about the importance of Title VI enforcement as it pertains to racial disparities in school discipline through discussion of race neutral discipline policies that have a racially discriminatory impact on students.<sup>41</sup> According to Director Losen, Black students in Richmond City, Virginia lost 500 days of instruction per 100 Black students enrolled due to school suspensions.<sup>42</sup> Director Losen found that the Black-white suspension gap of 446 days in Richmond, Virginia was 12 times larger than the Black-white suspension gap in Virginia Beach, Virginia.<sup>43</sup> In addition, Director Losen referenced research that indicates school suspensions led to a decrease in the national graduation rate by 15 percent percentage points and a \$35 billion dollar economic loss to our nation for one-year cohort.<sup>44</sup> Mr. Losen concluded his oral remarks stating:

Keeping kids safe is of course of paramount importance, but safety includes protecting our children from injustice. Unfortunately, the Trump Administration has signaled that it will no longer protect children of color from the disparate harm that is caused by unjustified policies. Therefore, I encourage Congress to act by passing Chairman Scott's Equity and Inclusion Enforcement Act, which would restore a private right of action so parents and civil rights advocates could bring disparate impact claims to court.<sup>45</sup>

---

<sup>37</sup> GENEVIEVE SIEGEL-HAWLEY ET AL., UNDERSTANDING RACIAL INEQUITIES IN SCHOOL DISCIPLINE ACROSS THE RICHMOND REGION 7 (VCU MERC Publications 2019).

<sup>38</sup> *Id.* at 64.

<sup>39</sup> *Id.* at 13.

<sup>40</sup> *Id.* at 9.

<sup>41</sup> *Brown v. Board of Education at 65: A Promise Unfulfilled, Hearing Before the H. Comm. on Educ. & Lab.*, 116th Cong. (2019) (statement of Dan Losen, Director for the Center for Civil Rights Remedies, UCLA Civil Rights Project) available at <https://edlabor.house.gov/imo/media/doc/LosenTestimony043019.pdf>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

*Equity in K–12 in the time of COVID–19*

The need to ensure equity in K–12 education has become overly apparent in the national response to the COVID–19 pandemic. COVID–19 has exposed existing racial inequities in all facets of American life, including public education. State and local education agencies implemented remote learning programs to close out the 2019–20 school year. Many of these programs were heavily dependent on student access to broadband internet connectivity and devices for participation, even though there is an established “digital divide” showing drastic disparities in broadband internet access among 5 17-year-old children by race.<sup>46</sup> Nationally, 27 percent of American Indian / Alaskan Native students, 19 percent of Black students and 17 percent of Hispanic students have either no internet access or only dial-up access at home, compared to only 7 percent of White students.<sup>47</sup> Even though some aspects of the digital divide are geographic, with urban and suburban households more likely to have access than rural households, access in rural areas is still heavily disparate by race: 41 percent of Black remote rural area students had either no internet access or dial-up at home compared to 13 percent of White rural remote area students.<sup>48</sup> Further, early reports suggest that students who had an adult capable of monitoring students from home were more engaged in virtual instruction than parents who had to still work outside the home during the pandemic; these same reports suggest essential workers unable to work from home are predominantly Black and brown.<sup>49</sup>

The Committee understands the need schools faced to act expeditiously to ensure the continuation of educational instruction. And thanks to passage of the American Rescue Plan (ARP), they have also had more resources to address equity.<sup>50</sup> The Committee, in its portion of the ARP, provided more than \$120 billion to K–12 schools via the Elementary and Secondary School Emergency Relief Fund, and required that at least 20% of all dollars received by states from the fund be targeted to addressing learning loss and the disproportionate impact of the COVID–19 pandemic on underserved student groups.<sup>51</sup>

Congressional action has also been met by an Administration that recognizes its duty to educational equity. In his first day in office, President Biden issued an Executive Order that proclaimed,

“Entrenched disparities in our laws and public policies, and in our public and private institutions, have often denied that equal opportunity to individuals and communities. . . . It is therefore the policy of my Administration that the Federal Government should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent

<sup>46</sup>NAT’L CTR. FOR EDUC. STATS., STUDENT ACCESS TO DIGITAL LEARNING RESOURCES OUTSIDE THE CLASSROOM, April 2018, *available at* <https://nces.ed.gov/pubs2017/2017098.pdf>.

<sup>47</sup>*Id.* at 75.

<sup>48</sup>*Id.* at 76–79.

<sup>49</sup>Paloma Esquivel & Howard Blume, L.A. Latino, Black students suffered deep disparities in online learning, records show, L.A. TIMES, July 16, 2020, *available at* <https://www.latimes.com/california/story/2020-07-16/latino-and-black-students-hard-hit-with-disparities-in-their-struggle-with-online-learning>.

<sup>50</sup>Pub. L. No. 117–2, 135 Stat. 4 (2021).

<sup>51</sup>*Id.* at § 2001(a), (e)(1).

poverty and inequality. Affirmatively advancing equity, civil rights, racial justice, and equal opportunity is the responsibility of the whole of our Government. Because advancing equity requires a systematic approach to embedding fairness in decision-making processes, executive departments and agencies (agencies) must recognize and work to redress inequities in their policies and programs that serve as barriers to equal opportunity.”<sup>52</sup>

The following day, President Biden issued another executive order specifically regarding federal efforts to support the reopening of public schools.<sup>53</sup> In its initial statement of policy, the Executive Order declared that the twin pillars of a successful school reopening are the health and safety of students, teachers, and their families and communities, and the opportunity for every student to receive a high-quality education.<sup>54</sup> Based on those two principles, the Executive Order states that it is the policy of the Biden Administration to “. . . mitigate learning loss caused by the pandemic; and address educational disparities and inequities that the pandemic has created and exacerbated.”<sup>55</sup>

In June 2021, based on a directive from the Executive Order on reopening schools and its duties under various civil rights laws (including Title VI), the Department’s Office for Civil Rights (OCR) released a report, *Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students*. In her introductory letter, Acting Assistant Secretary for Civil Rights, Suzanne Goldberg outlined the nexus between the hard data accumulated in the report, and the rights of students:

Although the pandemic’s effects will be studied for many years to come, we know from early studies that for many students, the educational gaps that existed before the pandemic—in access, opportunities, achievement, and outcomes—are widening. And we can see already that many of these impacts are falling disproportionately on students who went into the pandemic with the greatest educational needs and fewest opportunities—many of them from historically marginalized and underserved groups. These disparities can be a cause for great concern, especially when they interfere with a student’s opportunity to learn, grow, and contribute to our nation’s future. Although this Report provides a data-driven account of COVID-19’s disparate impacts on students, rather than a legal analysis, it is important to recognize that disparities can sometimes be evidence of legal injuries under Federal civil rights laws, even when policies and practices do not directly single out a group of people for harm. These laws include Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including in

<sup>52</sup> Exec. Order No. 13985, 86 Fed. Reg. 7009 (Jan. 25, 2021).

<sup>53</sup> Exec. Order No. 14000, 86 Fed. Reg. 7215 (Jan. 25, 2021).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

educational programs and activities that receive Federal financial assistance.<sup>56</sup>

Recognizing the expanse of possible disparities brought on by the pandemic, even an active OCR may not be able to fully investigate every claim of disparate impact. Lifting the bar on disparate impact claims brought under a private right of action will provide another source of possible relief to our nation's students and their families.

Based on this renewed focus on equity at the federal level, H.R. 730's requirement of Title VI monitors in recipients of federal assistance will complement this federal priority. Having at least one employee tasked with looking at schools' decisions through the lens of equity will ensure that policies like those enacted in response to COVID-19 promote and sustain equity in learning for all children regardless of their race. The concept of Title VI monitors in H.R. 730 mirrors the Department's regulatory requirement that every educational institution have a Title IX coordinator.<sup>57</sup> Title IX was modeled after Title VI, but in the education sphere, Title IX has had the benefit of more proactive implementation and compliance. H.R. 730 attempts to require the same proactive compliance with Title VI as is required under Title IX.

Title IX coordinators have been and continue to be instrumental in addressing gender-based education and resource gaps, and systemic biases in education settings.<sup>58</sup> However, Title IX coordinators are not present in educational settings merely to respond to cases of sex discrimination. They also coordinate education and training efforts on the law, ensure continual compliance with the law by the institution, and examine policies and practices the institution may have in place that frustrate the law. Under H.R. 730, Title VI monitors would work to ensure that schools are free from discrimination by monitoring compliance with Title VI and investigating discrimination complaints. By being proactive and educating students, faculty, and staff on Title VI, monitors would work to stem discrimination in schools before it occurs. In the real-world example of the COVID-19 pandemic, a Title VI monitor would be the official charged with ensuring that newly implemented virtual learning programs took Title VI into account *before* they went into effect. And if these monitors were not aware or did not investigate a complaint based on a facially race-neutral policy with a disparate impact on one race, students and parents could still pursue the claim themselves thanks to H.R. 730. The Committee expects Title VI monitors would effectively educate, provide guidance on, and help to enforce the rights of students and personnel at educational institutions by confronting policies and practices that discriminate on the basis of race, color, and nationality.

<sup>56</sup>U.S. Dept. of Educ., *Education in a Pandemic: The Disparate Impacts of COVID-19 on America's Students*, ii (2021) <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>.

<sup>57</sup>34 C.F.R. § 106.8 (2019).

<sup>58</sup>U.S. Dept. of Educ. Guidance Letter, Off. for C.R., *Guidance Letter on Title IX Coordinators* (Apr. 24, 2015) ("Your Title IX coordinator plays an essential role in helping you ensure that every person affected by the operations of your educational institution—including students, their parents or guardians, employees, and applicants for admission and employment—is aware of the legal rights Title IX affords and that your institution and its officials comply with their legal obligations under Title IX.")(*rescinded*).

### Higher Education

H.R. 730 also addresses civil rights violations on the basis of race, color, and nationality that persists at postsecondary educational institutions. The number of hate crimes, or “criminal offenses motivated, in whole or in part, by an offender’s bias(es) against a race, religion, disability, sexual orientation, ethnicity, gender or gender identity,”<sup>59</sup> reached a 16-year high in 2018,<sup>60</sup> and college campuses were not immune. On college campuses alone, the number of on-campus hate crimes rose from 864 in 2015 to 1,070 in 2016, an increase of 24 percent in a single year.<sup>61</sup> On campuses, more than half (57 percent) of the reported hate crimes by campus police were race-related.<sup>62</sup>

According to the Anti-Defamation League, in the spring of 2019, there were more white-supremacist fliers, stickers, and posters on college campuses than at any other time in the recent past—this is already after a 77 percent from September 2017 to May 2018.<sup>63</sup> Just from November 17, 2019 to November 22, 2019, there were four incidents of hate crimes reported on college campuses which received national attention—including swastika and racist stickers in dorm rooms, racist graffiti and verbal assaults towards minorities.<sup>64</sup>

To make matters worse, most experts agree that hate crimes remain woefully underreported—with the Department of Justice estimating that only 2 percent of hate crimes are actually reported to the FBI.<sup>65</sup> The Center for American Progress believes underreporting may be even more prevalent on college campuses due to limited reporting options and the overreliance on online reporting systems.<sup>66</sup> This underreporting stymies efforts to address and eliminate threats on campuses. Hate crimes on college campuses and universities deny marginalized students’ educational benefits and the opportunity for social and economic mobility. Hate crimes on college campuses also deny our nation the talents and skills of

<sup>59</sup>FEDERAL BUREAU OF INVESTIGATION, HATE CRIMES, (2019) <https://www.fbi.gov/investigate/civil-rights/hate-crimes>.

<sup>60</sup>Adeel Hassan, *Hate-Crime Violence Hits 16-Year High, F.B.I. Reports*, N.Y. TIMES, Nov. 13, 2019, at A14, <https://www.nytimes.com/2019/11/12/us/eeeeeeeeeeate-crimes-fbi-report.html>.

<sup>61</sup>NAT’L CTR. FOR EDUC. STATS., ON-CAMPUS HATE CRIMES AT DEGREE-GRANTING POSTSECONDARY INSTITUTIONS, BY LEVEL AND CONTROL OF INSTITUTION, TYPE OF CRIME, AND CATEGORY OF BIAS MOTIVATING THE CRIME: 2010 THROUGH 2016, Sept. 2018, available at [https://www.nationsreportcard.gov/dashboards/achievement\\_gaps.aspx](https://www.nationsreportcard.gov/dashboards/achievement_gaps.aspx).

<sup>62</sup>Natalie Schwartz, *Campus Police Departments Report Uptick In Hate Crimes To FBI*, EDUCATIONLIVE (Nov. 16, 2018) <https://www.educationlive.com/news/campus-police-departments-report-uptick-in-hate-crimes-to-fbi/542383/> (last accessed Nov. 22, 2019). While note expressly relevant to H.R. 2574 it is important to note that race alone is not the sole motivator of hate crimes on college campuses. The same study found that 26 percent of the incidents involved religion and nearly 16 percent involved sexual orientation. *Id.*

<sup>63</sup>Anti-Defamation League, *White Supremacists Increase College Campus Recruiting Efforts For Third Straight Year*, June 27, 2019, <https://www.adl.org/news/press-releases/white-supremacists-increase-college-campus-recruiting-efforts-for-third> (last accessed Nov. 22, 2019).

<sup>64</sup>Faith Karimi, *There Have Been At Least 4 Hate Incidents Reported On College Campuses This Week*, CNN, (November 22, 2019) <https://www.cnn.com/2019/11/22/us/college-campuses-racist-incidents/index.html> (last accessed Nov. 22, 2019).

<sup>65</sup>DEPT OF JUSTICE, BUR. OF J. STATS., HATE CRIME VICTIMIZATION, 2004–2015 (June 29, 2017). <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5967> (last accessed Nov. 22, 2019).

<sup>66</sup>Victoria Nelson, *Addressing Racial Trauma and Hate Crimes on College Campuses*, CTR. FOR AM. PROG. (August 9, 2019), <https://www.americanprogress.org/issues/race/news/2019/08/09/473299/addressing-racial-trauma-hate-crimes-college-campuses/> (last accessed Nov. 22, 2019).

students who do not receive a fair chance of competing in the labor market.<sup>67</sup>

Title VI monitors established under H.R. 730 would address these issues and ensure implementation and enforcement of civil rights laws, notably Title VI, across all institutions of higher education. Proper enforcement of civil rights protections, investigations into hate crimes on campuses, and efforts to ensure that students are protected will greatly improve campus safety and ensure that students are given the full opportunity to succeed in college, career, and life.

### *Civil Rights Under President Trump*

While the Biden Administration has shown they are invested in the work of ensuring educational equity, H.R. 730 is still necessary in the wake of the Trump Administration's lack of protection of civil rights in education. In a comprehensive analysis of federal civil rights enforcement, the U.S. Commission on Civil Rights (the Commission) found numerous disturbing trends. For example, during her tenure, Education Secretary Betsy DeVos rescinded critical guidance to protect students' civil rights, narrowed the scope and reduced the number of investigations conducted, and decreased the budget and staffing capacity of the Office for Civil Rights (OCR) at the Department.<sup>68</sup> The Commission's report indicated that OCR issued 38 guidance documents to improve program understanding of and compliance with federal civil rights statute under the Obama Administration.<sup>69</sup> By comparison, OCR under the Trump Administration issued few guidance documents and instead rescinded critical guidance documents.<sup>70</sup> Specifically, in 2018, Secretary DeVos rescinded guidance documents to support the constitutionally-protected<sup>71</sup> use of race in admissions or assignment to improve diversity in higher education and K–12.<sup>72</sup> Also, in 2018, Secretary DeVos rescinded the 2014 School Discipline Guidance package, which provided local educational agencies with technical assistance to reform discipline policies and practices that, though racially neutral, disproportionately impact students of color, in violation of Title VI.<sup>73</sup> In addition to the actions of OCR, Secretary DeVos unlawfully delayed the implementation of the *Equity in Individuals with Disabilities Education Act* (IDEA) rule, which requires states to identify school districts with rates of significant disproportionality in the identification, placement, and discipline of students of color with disabilities.<sup>74</sup> It is also worth noting that the

<sup>67</sup> Conference Education Fund, *Civil Rights Principles for Higher Education*, (July 2019), <http://civilrightsdocs.info/pdf/reports/Higher-Ed-Civil-Rights-Principles.pdf> (last accessed Nov. 22, 2019).

<sup>68</sup> See ARE RIGHTS A REALITY?, *supra* note 12, at 159–92.

<sup>69</sup> *Id.* at 188.

<sup>70</sup> *Id.*

<sup>71</sup> *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701, 797–98 (2007) (“*This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children. A compelling interest exists in avoiding racial isolation, an interest that a school district, in its discretion and expertise, may choose to pursue . . . The decision today should not prevent school districts from continuing the important work of bringing together students of different racial, ethnic, and economic backgrounds.*”) (Kennedy, J., concurring).

<sup>72</sup> ARE RIGHTS A REALITY?, *supra* note 12, at 188–89.

<sup>73</sup> *Id.*

<sup>74</sup> Tal Axelrod, *Federal Judge Rules DeVos Illegally Delayed Obama-Era Special Education Rule*. THE HILL, Mar. 8, 2019, available at <https://thehill.com/homenews/administration/433312-federal-judge-rules-devos-illegally-delayed-obama-era-special>.

Commission’s report also found that OCR’s reduction in full-time staff and changes to its case processing manual dramatically reduced the agency’s enforcement and investigation efforts.<sup>75</sup>

The previous administration illustrates why H.R. 730 is so necessary. In an administration where the Department intentionally shrank its footprint in civil rights enforcement, it stands to reason it should not be the only entity able to bring a disparate impact civil rights case to court. H.R. 730 is needed so that regardless of who holds the White House we have meaningful avenues for civil rights enforcement to dissuade educational policies or practices that disparately impact students and others in educational institutions on the basis of race, color, or national origin.

Under the bill, the Department would be required to have a Special Assistant for Equity and Inclusion advising the Secretary and Deputy Secretary on all matters related to equity and inclusion under Title VI. The Special Assistant would also disseminate information, provide technical assistance and coordinate research on related activities. The Committee would fully expect that such an Assistant would have a wealth of research to suggest that the most effective way to ensure the just resolution of civil rights complaints would be to provide the staff and resources necessary to fully investigate such charges.

### *Conclusion*

The nation’s public education system has a long way to go to overcome systemic racism and to deliver on the promise of quality education “to all on equal terms.” Regrettably, the previous Administration largely abdicated its responsibility to enforce civil rights laws, leaving many students in our educational institutions vulnerable to the negative impacts of discrimination.

Even with a new Administration in place, Congress must use its powers to fulfill our nation’s promise of equal opportunity in education. As such, Congress must act to pass the *Equity Inclusion and Enforcement Act* to ensure that the tools are in place to rid our schools of discrimination. By establishing Title VI monitors, the bill will protect students’ civil rights and safeguard equal access to educational opportunity in K–12 and higher education. And by passing the *Equity Inclusion and Enforcement Act*, Congress will restore to the American public the right to pursue judicial remedy when federal dollars are misapplied to promote policies and practices that disparately impact groups on the basis of race, color, or national origin.

## SECTION-BY-SECTION ANALYSIS

### *Section 1. Short title*

This Act is called the “*Equity and Inclusion Enforcement Act of 2021*.”

### *Section 2. Restoration of right to civil action in disparate impact cases under Title VI of the Civil Rights Act of 1964*

This section amends Title VI of the Civil Rights Act of 1964 to restore a private right of action to file disparate impact claims.

<sup>75</sup> See ARE RIGHTS A REALITY?, *supra* note 12, at 163–67.

*Section 3. Designation of monitors under Title VI of the Civil Rights Act of 1964*

This section requires schools as recipients of federal financial assistance under Title VI of the *Civil Rights Act of 1964* to designate at least one employee to serve as the Title VI monitor to carry out the responsibilities of the law and to notify all students and employees of the name, office address, email address and telephone number of the Title VI monitor. The Title VI monitor is responsible for investigating any complaints of discrimination based on race, color, or national origin. The Title VI monitor will also educate and provide other assistance, as necessary, to ensure that students and personnel are aware of their relevant rights and responsibilities.

*Section 4. Special Assistant for equity and inclusion*

This section requires the Secretary of Education to appoint a Special Assistant at the Department of Education to coordinate, promote, study, and evaluate Title VI enforcement of equity and inclusion in education. The Special Assistant is responsible for advising the Secretary of Education and the Deputy Secretary of Education on all matters relating to equity and inclusion consistent with Title VI of the *Civil Rights Act of 1964*. This section also authorizes the Department of Education to report data in the Civil Rights Data Collection (CRDC) relating to complaints of Title VI violations filed against schools.

EXPLANATION OF AMENDMENTS

The amendments offered during markup of H.R. 730 are explained in other descriptive portions of this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

H.R. 730 does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104-4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 2574, as amended, prepared by the Director of the Congressional Budget Office.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2574 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of Rule XXI.

ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call vote occurred during the Committee's consideration of H.R. 2574.

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:1

Bill: H.R. 730

Amendment Number:2

Disposition: Defeated by a 19-27 vote

Sponsor/Amendment: Owens/OWENUT\_012.XML

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)		X		Mrs. FOXX (NC) (Ranking)	X		
Mr. GRIJALVA (AZ)		X		Mr. WILSON (SC)	X		
Mr. COURNTEY (CT)		X		Mr. THOMPSON (PA)			X
Mr. SABLAN (MP)		X		Mr. WALBERG (MI)	X		
Ms. WILSON (FL)		X		Mr. GROTHMAN (WI)			X
Ms. BONAMICI (OR)		X		Ms. STEFANIK (NY)	X		
Mr. TAKANO (CA)		X		Mr. ALLEN (GA)	X		
Ms. ADAMS (NC)		X		Mr. BANKS (IN)	X		
Mr. DESAULNIER (CA)		X		Mr. COMER (KY)	X		
Mr. NORCROSS (NJ)		X		Mr. FULCHER (ID)	X		
Ms. JAYAPAL (WA)		X		Mr. KELLER (PA)	X		
Mr. MORELLE (NY)		X		Mr. MURPHY (NC)	X		
Ms. WILD (PA)		X		Ms. MILLER-MEEKS (IA)	X		
Mrs. MCBATH (GA)		X		Mr. OWENS (UT)	X		
Mrs. HAYES (CT)		X		Mr. GOOD (VA)	X		
Mr. LEVIN (MI)		X		Mrs. MCCLAIN (MI)	X		
Ms. OMAR (MN)			X	Mrs. HARSHBARGER (TN)	X		
Ms. STEVENS (MI)		X		Mrs. MILLER (IL)	X		
Ms. LEGER FERNÁNDEZ (NM)		X		Mrs. SPARTZ (IN)	X		
Mr. JONES (NY)		X		Mr. FITZGERALD (WI)			X
Ms. MANNING (NC)		X		Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)		X		Mrs. STEEL (CA)	X		
Mr. BOWMAN (NY)		X		Ms. LETLOW (LA)	X		
Mr. POCAN (WI)			X	<i>Vacancy</i>			
Mr. CASTRO (TX)		X					
Ms. SHERRILL (NJ)		X					
Mr. YARMUTH (KY)		X					
Mr. ESPAILLAT (NY)		X					
Mr. KWEISI MFUME (MD)		X					

TOTALS: Ayes: 19

Nos:27

Not Voting:6

Total:53 / Quorum: / Report:

(29 D - 24 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

## COMMITTEE ON EDUCATION AND LABOR RECORD OF COMMITTEE VOTE

Roll Call:2

Bill: H.R. 730

Amendment Number: Motion

Disposition: Adopted by a Full Committee vote of 27 ayes; 19 noes

Sponsor/Amendment: Bowman/to report to the House with an amendment and with the recommendation that the amendment be agreed to, and the bill as amended, do pass

Name & State	Aye	No	Not Voting	Name & State	Aye	No	Not Voting
Mr. SCOTT (VA) (Chairman)	X			Mrs. FOXX (NC) (Ranking)		X	
Mr. GRIJALVA (AZ)	X			Mr. WILSON (SC)		X	
Mr. COURNTEY (CT)	X			Mr. THOMPSON (PA)			X
Mr. SABLAN (MP)	X			Mr. WALBERG (MI)		X	
Ms. WILSON (FL)	X			Mr. GROTHMAN (WI)			X
Ms. BONAMICI (OR)	X			Ms. STEFANIK (NY)		X	
Mr. TAKANO (CA)	X			Mr. ALLEN (GA)		X	
Ms. ADAMS (NC)	X			Mr. BANKS (IN)		X	
Mr. DESAULNIER (CA)	X			Mr. COMER (KY)		X	
Mr. NORCROSS (NJ)	X			Mr. FULCHER (ID)		X	
Ms. JAYAPAL (WA)	X			Mr. KELLER (PA)		X	
Mr. MORELLE (NY)	X			Mr. MURPHY (NC)		X	
Ms. WILD (PA)	X			Ms. MILLER-MEEKS (IA)		X	
Mrs. MCBATH (GA)	X			Mr. OWENS (UT)		X	
Mrs. HAYES (CT)	X			Mr. GOOD (VA)		X	
Mr. LEVIN (MI)	X			Mrs. MCCLAIN (MI)		X	
Ms. OMAR (MN)			X	Mrs. HARSHBARGER (TN)		X	
Ms. STEVENS (MI)	X			Mrs. MILLER (IL)		X	
Ms. LEGER FERNANDEZ (NM)	X			Mrs. SPARTZ (IN)		X	
Mr. JONES (NY)	X			Mr. FITZGERALD (WI)			X
Ms. MANNING (NC)	X			Mr. CAWTHORN (NC)			X
Mr. MRVAN (IN)	X			Mrs. STEEL (CA)		X	
Mr. BOWMAN (NY)	X			Ms. LETLOW (LA)		X	
Mr. POCAN (WI)			X	<i>Vacancy</i>			
Mr. CASTRO (TX)	X						
Ms. SHERRILL (NJ)	X						
Mr. YARMUTH (KY)	X						
Mr. ESPAILLAT (NY)	X						
Mr. KWEISI MFUME (MD)	X						

TOTALS: Ayes: 27

Nos: 19

Not Voting: 6

Total: 53 / Quorum: / Report:

(29 D - 24 R)

\*Although not present for the recorded vote, Member expressed he/she would have voted AYE if present at time of vote.

\*Although not present for the recorded vote, Member expressed he/she would have voted NO if present at time of vote.

## STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 730 are to reauthorize and strengthen federal programs to prevent and treat child abuse and neglect.

## DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 730 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## HEARINGS

For the purposes of Section 2(r) of H. Res. 8 for the 117th Congress, the hearing entitled “*Lessons Learned: Charting the Path to Educational Equity Post-COVID–19*” held on March 25, 2021 informed the development of H.R. 730.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF  
THE COMMITTEE

In compliance with Clause 3(c)(1) of rule XIII and Clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee’s oversight findings and recommendations are reflected in the descriptive portions of this report.

## NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and Section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and Section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 730 from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 1, 2021.*

Hon. ROBERT C. (BOBBY) SCOTT,  
*Chairman, Committee on Education and Labor,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 730, the Equity and Inclusion Enforcement Act of 2021.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lindsay Wylie.

Sincerely,

PHILLIP L. SWAGEL,  
*Director.*

## Enclosure.

<b>H.R. 730, Equity and Inclusion Enforcement Act of 2021</b>			
As ordered reported by the House Committee on Education and Labor on July 15, 2021			
By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	*	*	*
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	1	not estimated
Statutory pay-as-you-go procedures apply?	Yes	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	No	Contains intergovernmental mandate?	Excluded from UMRA
		Contains private-sector mandate?	Excluded from UMRA
* = between -\$500,000 and \$500,000.			

H.R. 730 would amend title VI of the Civil Rights Act of 1964 to create a private right of action to file disparate impact claims.<sup>1</sup> Disparate impact refers to the discriminatory effects caused by policies that, on their face, appear neutral as instituted by an organization or employer. According to legal experts and an analysis of court filing data from the federal judiciary over the past 30 years, disparate impact claims brought under title VI are most often related to education (although they are applicable to housing and public transportation, among other settings) and have historically constituted a small portion of civil rights litigation—most such claims are filed under other titles of the act regarding employment issues.

CBO expects that enacting H.R.730 could result in an increase in the number of suits filed in federal courts related to disparate impact cases under title VI. The federal judiciary charges fees to file suit in district court. Those fees are recorded as revenues and can be spent without further appropriation action and are thus classified as direct spending. Because CBO expects that any additional fees charged by the judiciary would be spent, enacting H.R. 730 would have an insignificant effect on the deficit over the 2022-2031 period.

In addition, H.R. 730 would require recipients of federal funding from the Department of Education that operate educational programs or activities to establish at least one employee coordinator to carry out those recipients' responsibilities under title VI, which include investigating complaints of discrimination based on race, color, or national origin.

The bill also would require the Department of Education to appoint a special assistant for equity and inclusion to promote, coordi-

<sup>1</sup> Until the Supreme Court's decision in *Alexander v. Sandoval* (532, U.S. 275, 2001), private lawsuits bringing disparate impact cases under title VI were permissible. That decision prevents private plaintiffs from bringing such suits against recipients of federal aid as defined in the statute (42 U.S.C. 2000d-1). For more information, see Jared P. Cole, *Civil Rights at School: Agency Enforcement of Title VI of the Civil Rights Act of 1964*, CRS Report R45665, version 5 (Congressional Research Service, April 4, 2019), <https://go.usa.gov/xvNh4>.

nate, and evaluate equity and inclusion programs in education. CBO estimates that implementing that requirement would cost \$1 million over the 2022–2026 period.

CBO has not reviewed H.R. 730 for intergovernmental or private-sector mandates. Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that would establish or enforce statutory rights prohibiting discrimination. CBO has determined that this legislation falls within that exclusion because it would extend protections against discrimination in education on the basis of race, color, or national origin.

The CBO staff contacts for this estimate are Leah Koestner (for education), Lindsey Wylie (for the judiciary), and Lilia Ledezma (for mandates). The estimate was reviewed by H.Samuel Papenfuss, Deputy Director of Budget Analysis.

#### COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 730. However, Clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with Clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, H.R. 730, as reported, are shown as follows:

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

### CIVIL RIGHTS ACT OF 1964

\* \* \* \* \*

#### TITLE VI—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

\* \* \* \* \*

*SEC. 607. The violation of any regulation relating to disparate impact issued under section 602 shall give rise to a private civil cause of action for its enforcement to the same extent as does an intentional violation of the prohibition of section 601.*

*SEC. 608. (a) Each recipient shall—*

*(1) designate at least one employee to—*

*(A) coordinate its efforts to comply with requirements adopted pursuant to section 602 and carry out the responsibilities of the recipient under this title, including any in-*

*vestigation of any complaint alleging the noncompliance of the recipient with such requirements or alleging any actions in violation of this title; and*

*(B) provide guidance, education, and other assistance as necessary to ensure students and employees are aware of rights and responsibilities under this title; and*

*(2) notify all its students and employees of the name, office address, email address, and telephone number of each employee designated under paragraph (1) by such recipient.*

*(b) In this section, the term "recipient" means a recipient referred to in section 602 that operates an education program or activity receiving Federal financial assistance authorized or extended by the Secretary of Education.*

\* \* \* \* \*

---

**DEPARTMENT OF EDUCATION ORGANIZATION ACT**

\* \* \* \* \*

**TITLE II—ESTABLISHMENT OF THE DEPARTMENT**

\* \* \* \* \*

**PRINCIPAL OFFICERS**

SEC. 202. (a)(1) There shall be in the Department a Deputy Secretary of Education who shall be appointed by the President, by and with the advice and consent of the Senate. During the absence or disability of the Secretary, or in the event of a vacancy in the office of the Secretary, the Deputy Secretary shall act as Secretary. The Secretary shall designate the order in which other officials of the Department shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(2)(A) The Deputy Secretary shall have responsibility for the conduct of intergovernmental relations of the Department, including assuring (i) that the Department carries out its functions in a manner which supplements and complements the education policies, programs, and procedures of the States and the local school systems and other instrumentalities of the States, and (ii) that appropriate officials of the Department consult with individuals responsible for making policy relating to education in the States and the local school systems and other instrumentalities of the States concerning differences over education policies, programs, and procedures and concerning the impact of the rules and regulations of the Department on the States and the local school systems and other instrumentalities of the States.

(B) Local education authorities may inform the Deputy Secretary of any rules or regulations of the Department which are in conflict with another rule or regulation issued by any other Federal department or agency or with any other office of the Department. If the Deputy Secretary determines, after consultation with the appropriate Federal department or agency, that such a conflict does exist, the Deputy Secretary shall report such conflict or conflicts to

the appropriate Federal department or agency together with recommendations for the correction of the conflict.

(b)(1) There shall be in the Department—

(A) an Assistant Secretary for Elementary and Secondary Education;

(B) an Assistant Secretary for Postsecondary Education;

(C) an Assistant Secretary for Career, Technical, and Adult Education;

(D) an Assistant Secretary for Special Education and Rehabilitative Services;

(E) an Assistant Secretary for Civil Rights; and

(F) a General Counsel.

(2) Each of the Assistant Secretaries and the General Counsel shall be appointed by the President, by and with the advice and consent of the Senate.

(3) There shall be in the Department, a Special Assistant for Gender Equity who shall be appointed by the Secretary. The Special Assistant shall promote, coordinate, and evaluate gender equity programs, including the dissemination of information, technical assistance, and coordination of research activities. The Special Assistant shall advise the Secretary and Deputy Secretary on all matters relating to gender equity.

*(4) There shall be in the Department, a Special Assistant for Equity and Inclusion who shall be appointed by the Secretary. The Special Assistant shall study, promote, coordinate, and evaluate efforts to engender program compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and inform individuals of their rights under such Act, including the dissemination of information, technical assistance, and coordination of research activities, in a manner consistent with such Act. The Special Assistant shall advise both the Secretary and Deputy Secretary on matters relating to compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).*

**[(4)]** (5) There shall be in the Department a Director of the Institute of Education Sciences who shall be appointed in accordance with section 114(a) of the Education Sciences Reform Act of 2002 and perform the duties described in that Act.

(c) There shall be in the Department an Inspector General appointed in accordance with the Inspector General Act of 1978 (as amended by section 508(n) of this Act).

(d) There may be in the Department an Under Secretary of Education who shall perform such functions as the Secretary may prescribe. The Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(e) There shall be in the Department four additional officers who shall be appointed by the President, by and with the advice and consent of the Senate. Notwithstanding the previous sentence, the appointments of individuals to serve as the Assistant Secretary for Management shall not be subject to the advice and consent of the Senate. The officers appointed under this subsection shall perform such functions as the Secretary shall prescribe, including—

(1) congressional relations functions;

(2) public information functions, including the provision, through the use of the latest technologies, of useful information

about education and related opportunities to students, parents, and communities;

(3) functions related to monitoring parental and public participation in programs where such participation is required by law, and encouraging the involvement of parents, students, and the public in the development and implementation of departmental programs;

(4) management and budget functions;

(5) planning, evaluation, and policy development functions, including development of policies to promote the efficient and coordinated administration of the Department and its programs and to encourage improvements in education; and

(6) functions related to encouraging and promoting the study of foreign languages and the study of cultures of other countries at the elementary, secondary, and postsecondary levels.

(f) Whenever the President submits the name of an individual to the Senate for confirmation as an officer of the Department under this section, the President shall state the particular functions of the Department such individual will exercise upon taking office.

(g) Each officer of the Department established under this section shall report directly to the Secretary and shall, in addition to any functions vested in or required to be delegated to such officer, perform such additional functions as the Secretary may prescribe.

(h) The Assistant Secretary for Career, Technical, and Adult Education, in addition to performing such functions as the Secretary may prescribe, shall have responsibility for coordination of all literacy related programs and policy initiatives in the Department. The Assistant Secretary for Career, Technical, and Adult Education shall assist in coordinating the related activities and programs of other Federal departments and agencies.

(i)(1) There shall be in the Department a Liaison for Community and Junior Colleges, who shall be an officer of the Department appointed by the Secretary.

(2) The Secretary shall appoint, not later than 6 months after the date of enactment of the Higher Education Amendments of 1992, as the Liaison for Community and Junior Colleges a person who—

(A) has attained an associate degree from a community or junior college; or

(B) has been employed in a community or junior college setting for not less than 5 years.

(3) The Liaison for Community and Junior Colleges shall—

(A) serve as principal advisor to the Secretary on matters affecting community and junior colleges;

(B) provide guidance to programs within the Department dealing with functions affecting community and junior colleges; and

(C) work with the Federal Interagency Committee on Education to improve coordination of—

(i) the outreach programs in the numerous Federal departments and agencies that administer education and job training programs;

(ii) collaborative business education partnerships; and

(iii) education programs located in, and regarding, rural areas.

## OFFICE FOR CIVIL RIGHTS

SEC. 203. (a) There shall be in the Department an Office for Civil Rights, to be administered by the Assistant Secretary for Civil Rights appointed under section 202(b). Notwithstanding the provisions of section 412 of this Act, the Secretary shall delegate to the Assistant Secretary for Civil Rights all functions, other than administrative and support functions, transferred to the Secretary under section 301(a)(3).

(b)(1) The Assistant Secretary for Civil Rights shall make an annual report to the Secretary, the President, and the Congress summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems as to which such Office has made a recommendation for corrective action and as to which, in the judgment of the Assistant Secretary, adequate progress is not being made.

(2) Notwithstanding any other provision of law, the report required by paragraph (1) shall be transmitted to the Secretary, the President, and the Congress by the Assistant Secretary for Civil Rights without further clearance or approval. The Assistant Secretary shall provide copies of the report required by paragraph (1) to the Secretary sufficiently in advance of its submission to the President and the Congress to provide a reasonable opportunity for comments of the Secretary to be appended to the report.

(c) In addition to the authority otherwise provided under this section, the Assistant Secretary for Civil Rights, in carrying out the provisions of this section, is authorized—

(1) to collect or coordinate the collection of data necessary to ensure compliance with civil rights laws within the jurisdiction of the Office for Civil Rights, *including data with respect to complaints alleging any actions in violation of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) by a recipient (as defined in section 608(b) of title VI of the Civil Rights Act of 1964)*;

(2) to select, appoint, and employ such officers and employees, including staff attorneys, as may be necessary to carry out the functions of such Office, subject to the provisions of title 5, United States Code, governing appointments in the competitive service and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(3) to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private organizations and persons, and to make such payments as may be necessary to carry out the compliance and enforcement functions of such Office; and

(4) notwithstanding any other provision of this Act, to obtain services as authorized by section 3109 of title 5, United States Code, at a rate not to exceed the equivalent daily rate payable for grade GS-18 of the General Schedule under section 5332 of such title.

\* \* \* \* \*

## MINORITY VIEWS

### INTRODUCTION

In 1954, Chief Justice Earl Warren wrote for the unanimous Supreme Court in *Brown v. Board of Education (Brown)* that “[Education], where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”<sup>1</sup> This was a long-overdue and welcomed acknowledgment that separate is not, and can never be, equal. Discrimination and segregation are inhumane, illegal, and immoral. Unfortunately, while segregation is gone from our laws, its lingering effects are not. We know that too many students attend racially and economically isolated schools<sup>2</sup> and that better integrated schools have academic benefits for all students.<sup>3</sup> Unfortunately, H.R. 730 has nothing to do with the challenges of ensuring that all students have equal access to a high-quality education that prepares them for success; instead, this bill advances a radical rewrite of civil rights law while doing nothing to increase educational options for students desperate for them.

### COMMITTEE CONSIDERATION OF H.R. 730—LIBERAL RADICALISM DISGUISED AS AN EDUCATION BILL

On July 15, 2021, the House Committee on Education and Labor met to mark up H.R. 730. Democrats argued this bill is necessary to improve educational outcomes for students. In fact, this is not an education bill; it is a radical change to civil rights law Democrats are trying to pass without anyone noticing.

The Democrats’ assertion that this bill restores a private right of action to section 602 of Title VI of the Civil Rights Act (Title VI) is false. The Supreme Court ruled in 2001 that section 602 does not and has never authorized a private right of action.<sup>4</sup> Instead, this bill represents a dramatic rewrite of civil rights law with no input from the appropriate committee. The Judiciary Committee, the committee with jurisdiction over the *Civil Rights Act*, has primary jurisdiction over this bill and should have considered the legislation first. If the Democrats were serious about reforming the *Civil Rights Act*, they would have marked it up in that committee.

While Title VI is most used in the context of education policy, the law itself is not confined to that issue. Title VI applies to any program or entity that receives federal funding, which would include education, policing, housing, employment, healthcare, transpor-

<sup>1</sup> *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). Page 493.

<sup>2</sup> “Better Use of Information Could Help Agencies Identify Disparities and Address Racial Discrimination.” U.S. Government Accountability Office. May 17, 2016. <https://www.gao.gov/products/GAO-16-345>.

<sup>3</sup> Ayscue, Jennifer, et. al. Research Brief: The Complementary Benefits of Racial and Socio-economic Diversity in Schools. The National Coalition on School Diversity. March 2017. [https://school-diversity.org/pdf/Diversity\\_Research\\_BriefNo10.pdf](https://school-diversity.org/pdf/Diversity_Research_BriefNo10.pdf).

<sup>4</sup> See *Sandoval v Alexander*, 532 U.S. 275 (2001).

tation, agriculture, the environment, and other programs. The left-ist Center for American Progress has called Title VI and section 602 disparate impact claims the “sleeping giant of civil rights laws” that is a “potentially powerful tool” to advance liberal goals through activist litigation.<sup>5</sup> This bill would force state and local governments to defend themselves against tenuous claims in lawsuits that could require the adoption of myriad liberal policies that neither Congress nor state and local lawmakers either authorized or intended.

While it might be possible to come to a bipartisan agreement on the provisions of this bill actually in the Committee’s jurisdiction, the majority has held no hearings or made any attempt to negotiate. Unfortunately, this bill is designed to score political points rather than build on a history of bipartisan and bicameral solutions to racial inequality and discrimination.

#### ADVANCING THE RACIST AGENDA OF THE LEFT

During consideration of H.R. 730, Democrats also ignored an opportunity to stand for students of color and against Critical Race Theory (CRT) and CRT-inspired curriculum and pedagogy. Rep. Burgess Owens (R-UT) offered an amendment that would have added protections to the special assistant position created at the Department of Education (Department) in the underlying bill to ensure that no funds authorized or extended by the Department condition or incentivize the use of content or pedagogy that violates Title VI, including by separating students or teachers based on race, color, or national origin, or assigning characteristics or assumptions to individuals based on race, color, or national origin. While Republican support for the amendment was unanimous, the amendment was defeated on a party line vote.

CRT has been defined in different ways, but at its essence it argues that American society is and always has been fundamentally racist and that an individual’s race is determinative of his or her life outcomes. In seeking to divide Americans on racial grounds, CRT adherents share common cause with white supremacists in reducing the content of peoples’ character to the color of their skin.

While debates about CRT can be abstract, a concrete example of CRT in action occurred earlier this year in Oregon. The Democrat-controlled legislature passed, and Democrat governor Kate Brown signed into law, SB 744.<sup>6</sup> The bill suspends high school Essential Learning Skills assessments for graduation through the 2023–2024 school year and requires the Oregon Department of Education to conduct a review of state high school graduation requirements. The review must include recommendations for changes to the state’s high school graduation requirements that will, among other things, ensure “that the processes and outcomes related to the requirements for high school diplomas are equitable, accessible and inclusive.”

Oregon is rightfully concerned that students of color graduate high school at lower rates than other students. However, rather

<sup>5</sup> See *The Civil Rights Act 40 Years Later*, CTR. FOR AM. PROGRESS (Jul. 2, 2004), <https://www.americanprogress.org/issues/women/news/2004/07/02/891/the-civil-rights-act-40-years-later/>.

<sup>6</sup> <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB744/Enrolled>.

than taking steps to improve its schools and expand educational freedom for students of color, the state has set in motion a process with clear intentions. The state plans to lower its high school graduation requirements so that more students will meet them. Former President George W. Bush famously referred to the sentiment among the public education establishment that schools are powerless to improve the educational outcomes of disadvantaged students as the soft bigotry of low expectations. Sadly, that bigotry is now Democrat Party orthodoxy.

#### FULFILLING THE PROMISE OF BROWN—EXPANDING OPPORTUNITY

While Democrats want to advance radical and partisan legislation like H.R. 730 and to lower academic standards to create more “equitable” outcomes, Committee Republicans believe expanding opportunities for students should be a priority. School choice gives families the opportunity to break the cycle of poverty and enroll their children in challenging environments that better develop their skills and intellect, encouraging them to reach higher. Studies show that when students are given the freedom to attend school in a learning environment best suited to their abilities, they pursue and complete postsecondary opportunities at higher rates.<sup>7</sup>

In April 2019, the Committee held a hearing examining the legacy of Brown as its 65th anniversary approached. Virginia Walden Ford, a parent who advocates for more educational freedom for families, wrote to the Committee and said:

The same schools that we fought hard to get into in the 1960’s after the [*Brown*] decision have become the schools we must diligently find a way to get minority children out of. These schools and programs that our children are now forced to attend are creating environments where our kids cannot get the education they deserve.<sup>8</sup>

Loisa Maritza White, another parent advocate, testified to the Committee about her family’s use of the DC Opportunity Scholarship Program and the importance of school choice. She said:

Each family has the right to decide what education works best for their individual child(ren) . . . No, indeed, [the *Brown*] mandate has NOT been fulfilled in the last 65 years. But school choice is a step in the right direction in reaching the mandated outcome.<sup>9</sup>

Committee Republicans stand ready to work with our colleagues in the majority to expand educational opportunities to families. *Brown* prohibited the state from assigning students to schools based on race. We should take the next step and eliminate the right of the state to trap children in low-performing schools with no means of escape.

<sup>7</sup> Chingos, Matthew, et. al. “The Effects of the Florida Tax Credit Scholarship Program on College Enrollment and Graduation.” February 2019. [https://www.urban.org/research/publication/effects-florida-tax-credit-scholarship-program-college-enrollment-and-graduation?utm\\_source=urban\\_EA&utm\\_medium=email&utm\\_campaign=florida\\_school\\_choice&utm\\_term=edu&utm\\_content=r](https://www.urban.org/research/publication/effects-florida-tax-credit-scholarship-program-college-enrollment-and-graduation?utm_source=urban_EA&utm_medium=email&utm_campaign=florida_school_choice&utm_term=edu&utm_content=r).

<sup>8</sup> Ford, Virginia Walden. Letter to the Committee on Education and Labor. April 27, 2019.

<sup>9</sup> Testimony before the Committee on Education and Labor, “Brown v. Board of Education at 65: A Promise Unfulfilled.” April 30, 2019. [https://republicans-edlabor.house.gov/uploadedfiles/white\\_testimony.pdf](https://republicans-edlabor.house.gov/uploadedfiles/white_testimony.pdf).

## CONCLUSION

As outlined in these Minority Views, H.R. 730 advances a radical rewrite of civil rights law without any debate from the committee of jurisdiction while failing to expand educational opportunities for families desperate for them. Bipartisan compromise was possible to advance the shared goals of equity and inclusion in education. Unfortunately, Committee Democrats chose a partisan path. Additionally, Democrats ignored the opportunity to stand up for students of color by denouncing the racist CRT ideology. Finally, Committee Republicans believe no effort to erase the evil legacy of segregation and discrimination can be complete without eliminating the state's ability to trap students in low-performing schools. We invite Democrats to listen to parents desperate for better educational options for their children and to work with Committee Republicans to help provide those options.

VIRGINIA FOXX,  
*Ranking Member.*  
JOE WILSON.  
GLENN "GT" THOMPSON.  
TIM WALBERG.  
GLENN GROTHMAN.  
ELISE M. STEFANIK.  
RICK W. ALLEN.  
JIM BANKS.  
JAMES COMER.  
RUSS FULCHER.  
FRED KELLER.  
GREGORY F. MURPHY, M.D.  
MARIANNETTE MILLER-MEEKS,  
M.D.  
BURGESS OWENS.  
BOB GOOD.  
LISA C. McCLAIN.  
SCOTT FITZGERALD.  
MADISON CAWTHORN.  
JULIA LETLOW.