UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et al., Plaintiffs, v. U.S. DEPARTMENT OF EDUCATION, et al., Defendants.	Case No. 1:25-cv-744-PLF

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Nikki S. Carter; A.W.; K.D., on behalf of herself and her minor child, M.W.; Melissa Combs, on behalf of herself and her minor child, D.P.; A.M.; Elizabeth Stewart-Williams; A.S.; Amy Cupp, on behalf of herself and her minor child, G.C.; and the Council of Parent Attorneys and Advocates, Inc. (together, "Plaintiffs"), respectfully move for a preliminary injunction requiring Defendants to restore the investigation and processing capacity of the Office for Civil Rights of the United States Department of Education ("OCR") and to process complaints from the public promptly and equitably in accordance with OCR's statutory and regulatory obligations.

As discussed in the accompanying Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, Plaintiffs have met the standards warranting a preliminary injunction, because they are likely to succeed on the merits of their Administrative Procedure Act and ultra vires claims presented in the motion and memorandum in support, they presently suffer and will continue to suffer irreparable injury absent a preliminary injunction, the balance of equities tips in their favor, and the issuance of the injunction would be in the public's interest. The grounds

for this motion are set forth in Plaintiffs' accompanying memorandum in support, and a proposed order is attached. Plaintiffs request oral argument, as necessary.

STATEMENT PURSUANT TO LOCAL CIVIL RULE 7(m)

Consistent with Local Rule 7(m), Plaintiffs conferred on their Motion for Preliminary Injunction with counsel for Defendants, Brad Rosenberg, Special Counsel in the U.S. Department of Justice. Mr. Rosenberg advised Plaintiffs that Defendants oppose the motion.

Dated: May 2, 2025

Respectfully submitted,

/s/ David G. Hinojosa

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on this 2nd day of May, 2025, this document was filed with the Clerk of the Court through the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

Dated: May 2, 2025

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Every day, students attend schools and colleges across the nation, seeking a great education that will help lay a foundation for good citizenship and pave the way to a productive career and prosperous life. Unfortunately, many students and families encounter terrible acts of discrimination, impeding their access to equal educational opportunities. Decades ago, Congress recognized these same barriers and passed several laws protecting students against discrimination based on race, national origin, sex, and disability. Recognizing that the laws themselves were not stopping federal funding recipient institutions from discriminating against students, Congress created the Office for Civil Rights in the Department of Education ("OCR") to enforce them.

Throughout the years and across administrations, Congress has continued to fund OCR and the Department of Education has continued to implement and support the laws it is mandated to follow—until now. In direct conflict with civil rights laws, Defendant Secretary McMahon has shared her own vision: a "final mission" to dismantle the Department of Education and OCR. And she has begun to put that plan into action by placing on leave nearly half of the OCR career staff (who will soon lose their positions permanently on June 9, 2025) and closing seven of twelve regional offices, all without any rhyme or reason.

The results have been catastrophic. Plaintiff students and parents are among thousands across the nation who filed complaints of race, sex, and disability discrimination with OCR, hoping for some relief, but are now without recourse. Their schools continue to receive federal funds without any repercussions while children face continual bullying and harassment, are denied basic, essential accommodations, and are forced to encounter daily the students and school officials who committed and supported the discriminatory acts. One plaintiff child with

disabilities was frequently secluded in a "blue room" and once was held down by four school officials, including a football and wrestling coach. She now attends school only two hours a day out of fear for her safety. Another plaintiff child, one of the only Black students at her school, was falsely accused of fighting while trying to break up a fight and suspended, even after a video proved she was innocent. Classmates harassed her, hurling racial epithets like the "n-word" and "black monkey" at her; sadly, the harassment continues to this day. Another plaintiff child, who identifies as LGBTQ+, experienced severe bullying and harassment. A faculty member analogized identifying as LGBTQ+ to a "mental illness" and punished students for taking part in an annual day of action to spread awareness about the effects of bullying and harassment on LGBTQ+ students. Classmates subjected the plaintiff child and other LGBTQ+ students to a hostile environment, including using constant homophobic and transphobic slurs during class and telling LGBTQ+ students to "go die" and "go kill" themselves multiple times.

These harms are just a sampling of the severe, imminent, and ongoing harm plaintiff students and others experience today in schools. The students relive the trauma each day and some have even been forced to leave their schools. After filing their complaints with OCR, some families were beginning to see some action prior to the new administration taking office in 2025. However, Defendants' recent evisceration of OCR's capacity to address and fully investigate students' and families' complaints by gutting OCR's workforce and closing several regional offices has effectively halted OCR's statutorily mandated investigations of Plaintiffs' complaints. The remaining staff are handling two to three times the number of cases, when their caseloads were already unmanageable.

Faced with imminent and irreparable harm, Plaintiffs respectfully urge the Court to enter a preliminary injunction under Federal Rule of Civil Procedure 65 ordering Defendants to restore

the investigation and enforcement capacity of OCR that would enable OCR to process complaints promptly and equitably, as required by law.

As demonstrated further below, Plaintiffs are likely to succeed on their claims that Defendants' actions are final agency actions that run afoul of the Administrative Procedure Act ("APA"), 5 U.S.C. § 701, *et seq.*, and exceed Defendants' lawful authority. Granting the preliminary injunction to require Defendants to comply with the laws and regulations governing the investigative process by restoring the capacity of OCR would both address the continuing harm at stake and serve the public interest, tipping the balance of equities in favor of Plaintiffs.

STATEMENT OF FACTS

I. Purpose and History of OCR

The mission of OCR is "to ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in the nation's schools."[1] Congress created OCR at the same time it created the Department of Education, to "assume responsibility for [] carrying out the nation's civil rights laws in education."[2] Accordingly, OCR and its Assistant Secretary have specific authority and duties set out by statute, 20 U.S.C. § 3413, including the authority "to select, appoint, and employ such officers and employees, including staff attorneys, as may be necessary to carry out the functions of such Office," *id.* § 3413(c)(2).

The Department is charged with enforcing various civil rights laws prohibiting discrimination in all programs and activities that receive federal financial assistance, including Title VI of the Civil Rights Acts of 1964 ("Title VI"), 42 U.S.C. §§ 2000d *et seq.*; Title IX of the Education Amendments of 1972, as amended ("Title IX"), 20 U.S.C. §§ 1681 *et seq.*; Section

[1] U.S. Dep't of Educ., Office for Civil Rights (OCR), https://www.ed.gov/about/ed-offices/ocr (last reviewed April 11, 2025).
[2] S. Rep. No. 96-49, at 35-36 (Mar. 27, 1979).

504 of the Rehabilitation Act of 1973, as amended ("Section 504"), 29 U.S.C. § 794; and Title II of the Americans with Disabilities Act ("Title II"), 42 U.S.C. §§ 12131 *et seq.*[3] With respect to Title VI and Title IX, Congress expressly requires that the Department effectuate those statutes. *See* 42 U.S.C. § 2000d-1; 20 U.S.C. § 1682 (directing "[e]ach Federal department and agency which is empowered to extend Federal financial assistance to" educational programs and activities "to effectuate the provisions of" Title VI and Title IX, respectively).

Federal regulations require OCR to enforce Title VI (34 C.F.R. Part 100), Title IX (34 C.F.R. Part 106), and Title II (28 C.F.R. § 35.171). Under 34 C.F.R. § 100.7(c), OCR must "make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with" Title VI. 34 C.F.R. § 100.7(c). The investigation must include, as appropriate, review of relevant policies and practices, the circumstances at issue, and other relevant factors. *Id.* If an investigation identifies noncompliance, OCR must "inform the recipient [of federal funding]" and, when possible, resolve the matter "by informal means." 34 C.F.R. § 100.7(d)(1). If there is no finding of noncompliance, OCR must "inform the recipient and the complainant, if any, in writing." 34 C.F.R. § 100.7(d)(2). Either way, OCR must actually complete investigations to determine whether there has been noncompliance with Title VI.

Similarly, 34 C.F.R. Part 106 requires OCR to enforce Title IX, adopting the same investigative procedures and obligations that apply under Title VI. *See* 34 C.F.R. § 106.81 ("[T]he procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein."). For complaints filed under Title II, OCR must "promptly

[3] *See also* 34 C.F.R. Part 100, 34 C.F.R. Part 106, 34 C.F.R. Part 104, and 28 C.F.R. Part 35 (implementing Title VI, Title IX, Section 504, and Title II, respectively).

review the complaint to determine whether it has jurisdiction . . . under section 504" and, if so, "promptly notify" complainants and public entities of its receipt and acceptance, and "process the complaint according to its procedures for enforcing section 504." 28 C.F.R. § 35.171.

OCR has a long-established structure for complying with its statutory duty to enforce the nation's civil rights laws. Traditionally, "[m]ost of OCR's critical activities take place in its enforcement offices,"[4] which "are responsible for investigating and resolving complaints of discrimination, conducting compliance reviews, monitoring corrective action agreements, and providing technical assistance."[5] OCR has had at least ten regional offices since at least 1990.[6] From 1996 until March 11, 2025, OCR had twelve regional offices: Washington D.C., Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, and Seattle.[7] Until March 11, 2025, OCR had four Enforcement Directors who each oversaw three regional offices and served as a conduit between the regional offices and OCR headquarters. Doe 8 Decl. ¶ 6; Doe 5 Decl. ¶ 7.

OCR has developed well-established policies and procedures for the receipt, processing, investigation, and prompt resolution of civil rights complaints, as described in its Case Processing Manual.[8] For instance, OCR's Early Mediation Process ("EMP") allows for

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[4] U.S. Dep't of Educ., OCR *Annual Report, Fiscal Year 1995* at 4 (1995), *available at* https://files.eric.ed.gov/fulltext/ED422669.pdf (last visited May 2, 2025).
[5] U.S. Dep't of Educ., "Ensuring Access to High-Quality Education" at 3 (Jan. 2011), *available at* https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ensure03.pdf (last visited May 2, 2025).
[6] U.S. Dep't of Educ., *OCR Annual Report, Fiscal Year 1990* at 10 (1990), *available at* https://files.eric.ed.gov/fulltext/ED396451.pdf (last visited May 2, 2025).
[7] U.S. Dep't of Educ., *OCR Annual Report, Fiscal Year 1996* at 13 (1996), *available at* https://files.eric.ed.gov/fulltext/ED422670.pdf (last visited May 1, 2025).
[8] *See* U.S. Dep't of Educ., *OCR Case Processing Manual* (Feb. 19, 2025), *available at* https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocrcpm.pdf; *see also* U.S. Dep't of Educ., *Questions and Answers on OCR's Complaint Process*, *available at*

facilitated settlement discussion between parties soon after a complaint is filed.[9] Like other federal agencies, the Department sets performance targets pursuant to the Government Performance and Results Act ("GPRA"). OCR's GPRA performance targets include that OCR will resolve 80% of complaints within 180 days of receipt, and make "significant progress toward having no more than 25% of all pending complaints over 180 days old."[10]

OCR also has a well-established practice of identifying manageable caseload numbers for OCR investigators and seeking federal funding to meet that goal. As of the beginning of January 2025, OCR had around 600 staff members. Of those, around 375 were investigative staff, handling complaints alleging discrimination.[11] Doe 3 Decl. ¶ 18. While the number of full-time employees, and thus caseloads, has fluctuated somewhat in accordance with federal budget appropriations over the years, it has never before dropped below 540.[12] As Assistant Secretary

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https://www.ed.gov/laws-and-policy/civil-rights-laws/civil-rights-faqs/questions-and-answers-on-ocrs-complaint-process ("OCR's role is to . . . promptly resolve complaints."). This is not a new requirement. *See* U.S. Dep't. of Educ., *OCR Case Processing Manual* (Aug. 26, 2020), *available at* https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocrcpm-20202608.pdf.

[9] U.S. Dep't of Educ., *Discrimination Complaint Form* (2023), *available at* https://www.ed.gov/sites/ed/files/about/offices/list/ocr/complaintform.pdf.

[10] U.S. Dep't of Educ., *Office For Civil Rights Fiscal Year 2025 Budget Request* at 26 (2025), *available at* https://www.ed.gov/media/document/ocr-fiscal-year-2025-budget-request-39373.pdf; OCR Alumni Report, *Safeguarding Access and Protection: A Blueprint for Restoring the Office for Civil Rights* (on file), at 5, Ex. 6.

[11] Tyler Kingkade & Adam Edelman, *What the Education Department Layoffs Could Mean for Students with Disabilities, NBC News* (Mar. 12, 2025), https://www.nbcnews.com/news/usnews/education-department-layoffs-students-disabilities-rcna196114.

[12] *U.S. Dep't of Educ.*, *OCR Annual Report, Fiscal Year 2016* at 8 (2016), *available at* https://www.ed.gov/sites/ed/files/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2016.pdf; *see* U.S. Dep't of Educ., *OCR Annual Report, Fiscal Year 2021* at 8 (2021), *available at* https://www.ed.gov/sites/ed/files/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2021.pdf; U.S. Dep't of Educ., *OCR Annual Report, Fiscal Year 2022* at 8 (2022), *available at* https://www.ed.gov/sites/ed/files/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2022.pdf; U.S. Dep't of Educ., *OCR Annual Report, Fiscal Year 2023* at 9 (2023), *available* at https://www.ed.gov/sites/ed/files/about/reports/annual/ocr/report-to-president-and-secretary-of-

for Civil Rights Norma V. Cantu testified in 1998: "There is a direct relationship between the level of funding" and attendant levels of staffing "and [OCR's] ability to serve customers and resolve real civil rights problems."[13]

In contrast, the number of complaints filed with OCR has increased dramatically over recent years, tripling since 2009.[14] In Fiscal Year 2024, OCR received 22,687 complaints.[15] That year, ten of the twelve regional offices failed to meet GPRA targets. Doe 3 Decl., Ex A, FY 2024 CMS Report. The offices that met GPRA targets had the lowest caseloads per investigator. *Id.* That year, Secretary of Education Miguel Cardona requested additional funding to hire more investigators to prevent caseloads from rising from forty-one cases—which was already "untenable"—to seventy-one cases per investigator.[16]

As of the beginning of January 2025, OCR investigators had caseloads averaging fifty or more.[17] *See* Doe 3 Decl. ¶ 18. As of March 11, 2025, OCR had 16,022 open cases and an additional 2,765 cases in monitoring. Doe 3 Decl. ¶¶ 18, 22.

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education-2023.pdf; U.S. Dep't of Educ., *OCR Annual Report to Congress, Fiscal Year 2024* at 8 (2024), *available at* https://www.ed.gov/media/document/ocr-report-president-and-secretary-of-education-2024-109012.pdf.

[13] *Hearing on Appropriations for Dep'ts of Labor, Health and Human Servs., Educ., and Related Agencies Appropriations for 1999 before the H. Subcomm. on Appropriations for the Dept's of Labor, Health and Human Servs., and Related Agencies*, 105 Cong. 648 (Apr. 1, 1998) (testimony of Norma V. Cantu, Assistant Sec'y for C.R.).

[14] U.S. Dep't of Educ., *OCR Annual Report to Congress, Fiscal Year 2024* at 8, *see supra* n. 12.

[15] *Id*. at 5.

[16] Naaz Modan, *Cardona pushes for more OCR funding given increased caseload*, K-12 Dive (May 8, 2024), https://www.k12dive.com/news/ocr-increase-funding-fy-2025-budget-request-education-department/715516/.

[17] Kingkade & Edelman, *What the Education Department Layoffs Could Mean for Students with Disabilities, see supra* n. 11.

II. The Decimation of OCR

On March 11, 2025, Secretary McMahon eliminated seven of the twelve regional enforcement offices and gutted OCR's workforce through mass terminations, leaving skeleton staffing at the remaining offices. Doe 7 Decl. ¶¶ 15-17. Defendants shuttered the Boston, Chicago, Cleveland, Dallas, New York, Philadelphia, and San Francisco offices. Doe 3 Decl. ¶ 13. Around half of OCR employees—at least 243 union-eligible staff members and an unknown number of supervisors—were told they would be laid off and placed on administrative leave as of March 21, 2025, and that their employment would be terminated around June 9, 2025.[18] Currently, there are no more than 151 OCR investigators. Doe 3 Decl. ¶ 20.

Terminated OCR employees immediately lost access to the case management and document management systems and were unable to send or reply to external emails. Doe 2 Decl. ¶ 14; Doe 4 Decl. ¶ 13; Doe 5 Decl. ¶ 12; Doe 6 Decl. ¶ 15. Allegedly, OCR planned for staff at the remaining five offices to absorb their peers' cases. Doe 2 Decl. ¶ 18. But Defendants created no standard mechanism for employees from closed offices to transfer their cases, and accordingly, most were not transferred. Doe 4 Decl.¶ 13; Doe 6 Decl.¶¶ 15, 17; Doe 7 Decl. ¶ 21. For instance, OCR employees typically store draft documents and informal notes on their Department computers, rather than storing all case-related documents on the case and document management systems. Doe 7 Decl. ¶ 23. Many such files were lost as a result of the March 11, 2025 mass terminations, because affected employees could not add them to the system to make them available to staff receiving transferred cases. Doe 7 Decl. ¶ 23. As of today, staff in open offices do not have access to email and voicemail inboxes for terminated staff whose cases they

[18] *See* Jodi S. Cohen & Jennifer Smith Richards, *Massive Layoffs at the Department of Education Erode Its Civil Rights Division*, ProPublica (Mar. 12, 2025), https://www.propublica.org/article/education-department-civil-rights-division-eroded-by-massive-layoffs.

are expected to cover. Doe 7 Decl. ¶ 24. OCR staff at some open offices have been unable to access and/or make changes to necessary information and records for transferred cases in the document management and case management systems. Doe 7 Decl. ¶ 21; Doe 8 Decl. ¶ 15.

The agency has also left in the dark, and even misled, OCR complainants and other members of the public who rely on OCR for civil rights enforcement. By early April, the Department set up out of office email responses for eliminated staff, but those emails are inaccurate and misleading, stating that the employee from the closed office "is currently engaged in closing out their work activities and responsibilities as part of a planned transition. They are working to ensure a smooth handover of key matters." Doe 1 Decl. ¶ 17; Doe 6 Decl. ¶ 17. That statement is false, because the employees from closed offices are on forced administrative leave and unable to work. *Id; see also* Ex. 4. Moreover, to date, OCR's website has not been updated to reflect office closures.[19]

Even if cases had been properly transitioned, Defendants have knowingly decimated OCR's staffing to a point where the caseload exceeds any approximation of reasonableness. Doe 3 Decl. ¶¶ 20-21; Doe 4 Decl. ¶¶ 20, 22; Doe 8 Decl. ¶ 18; Decl. of Catherine E. Lhamon, Exhibit 5 ¶¶ 28, 30, 43. Currently, the average caseload is 106 open cases per investigator, not counting cases in monitoring. Doe 3 Decl. ¶ 20. In one open office, caseloads for most staff currently range from 200-300 per investigator. Doe 7 Decl. ¶ 19. These are impossible and unmanageable caseloads for even the most experienced and dedicated civil rights investigators. Doe 7 Decl. ¶ 20; Doe 3 Decl. ¶ 23. Furthermore, staff in the open offices are less able to effectively investigate cases transferred from the now-closed regions. For instance, in-person

[19] *See e.g.*, U.S. Dep't of Educ., *Office for Civil Rights Complaint Assessment System,* https://ocrcas.ed.gov/contact-ocr?field_state_value=657 (last visited May 2, 2025).

investigation is sometimes necessary to meet witnesses, interview people with interpretation needs, or assess physical accessibility barriers. Doe 7 Decl. ¶ 26; Doe 8 Decl. ¶ 19. Although OCR investigators are now geographically much further from some of the places they investigate, all funding for travel has effectively been cut off. Doe 7 Decl. ¶ 26; Doe 8 Decl. ¶¶ 18-19. And investigators need to start from square one in building the kind of relationships with parents, students, and recipients that allow them to effectively and efficiently resolve cases. Doe 7 Decl. ¶ 31; Doe 5 Decl. ¶ 20.

Defendants also gutted the infrastructure that formerly allowed the regional offices to carry out their statutorily and regulatorily mandated duties. For instance, they have eliminated all but one of the Enforcement Directors. Doe 7 Decl. ¶ 17; Doe 8 Decl. ¶ 20. For "cases of interest"—many if not most Title VI and Title IX cases, and disability harassment, restraint, and seclusion cases—investigative staff need approval from headquarters at almost every stage of the case. Doe 7 Decl. ¶ 27. Enforcement Directors are critical to that approval process and must, for instance, approve findings of insufficient evidence or findings of non-compliance for cases of interest. Doe 7 Decl. ¶ 27. One Director is woefully insufficient to get cases approved in a timely manner *Id.* In fact, one current investigator reports that they are unaware of any approvals for such findings in cases of interest from a regional office since March 11, 2025. Doe 7 Decl. ¶ 27. Additionally, OCR's case management and document management systems were developed in-house, and Defendants laid off all OCR information technology staff responsible for maintaining and updating those systems, leaving staff without anyone to help with the complicated transition of cases from closed to open offices. Doe 7 Decl. ¶ 22; Doe 8 Decl. ¶ 20.

Ultimately, the closing of seven regional offices and the gutting of OCR's staff will undoubtedly imperil investigations moving forward and prevent OCR from carrying out its

mission and statutory duties. Ex. 5 ¶¶ 28, 30, 43; Doe 2 Decl. ¶ 25; Doe 3 Decl. ¶ 23; Doe 5 Decl. ¶ 23; Doe 6 Decl. ¶¶ 32-33; Doe 8 Decl. ¶¶ 22-23. While Secretary McMahon stated that the office closures and mass termination were part of the Department's commitment to "efficiency, accountability, and ensuring that resources are directed where they matter most: to students, parents, and teachers," she provided no data or analysis supporting this.[20] Secretary McMahon boasted of impacting "nearly 50% of the Department's workforce," stating that the office closures and mass terminations are part of the Department's "final mission" of eliminating itself.[21] Defendants have actively obstructed OCR's ability to meet its obligation to make prompt investigations and functionally halted investigations.

Defendants have made no effort to determine which agency staff are necessary to conduct its statutorily mandated mission. In fact, Defendants targeted some of the most effective OCR regional offices for closure. Doe 7 Decl. ¶ 17, *see also Id.* And there is no evidence that the Department considered the interest of students, parents, and others alleging discrimination in their schools when changing its policy on investigations and undermining its enforcement responsibilities. In neither her final mission memo nor in her announcement of the mass terminations and office closures does Secretary McMahon mention how her actions to decimate OCR comport with her obligations to comply with Congressional directives.

III. Profound Impact of Defendants' Actions

Defendants' March 11, 2025 actions have had a direct and immediate effect on Plaintiffs and other students and families who rely on OCR to perform its statutorily and regulatorily

[20] U.S. Dep't of Education, Press Release, *U.S. Department of Education Initiates Reduction in Force* (Mar. 11, 2025), Ex. 2, https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force.
[21] *Id*.

mandated duties. Many families who have filed complaints with the reasonable expectation that OCR will follow its legal mandates and longstanding practice of investigating and processing their cases have been left without any information about the status of their complaints or the prospect of obtaining relief. Because of the decimation of OCR, students with pending complaints are losing out on their right to access an education free from discrimination. Others are losing significant instructional time. Some families have been forced to send their children to school far from their home communities. Plaintiffs in this case have suffered and will continue to suffer these types of irreparable harm in the absence of a preliminary injunction.

First, the failure to resolve Plaintiffs' complaints has resulted in and continues to result in the interruption of Plaintiff children's education. Plaintiff M.W. continues to experience racial harassment in school because OCR has failed to resolve a complaint filed on her behalf by her mother, Plaintiff K.D. Decl. of K.D. ("K.D. Decl.") ¶¶ 40-56. Earlier this year, before OCR laid off staff and closed offices, the OCR complaint was close to resolution. OCR had proposed a voluntary resolution agreement to the school board, and though the school board did not initially accept the agreement, it had requested more information about M.W.'s experiences of discrimination. K.D. Decl. ¶¶ 35-37. Plaintiff K.D. provided this information to OCR and was waiting to hear back about further progress as the San Francisco office was shutting down. K.D. Decl. ¶ 37. K.D. was told that her complaint would be moved to the Seattle office, and though her case had been flagged as important and close to resolution, it could be six months to a year before she received an update; she has not heard anything since. K.D. Decl. ¶¶ 38-39.

M.W. has continued to experience racial harassment. Since K.D. filed the complaint, other students have called M.W. the "n-word," made jokes about the Ku Klux Klan and slavery, and called her a "black monkey." K.D. Decl. ¶¶ 26-28. M.W. faces obvious interruptions in her

schooling. She steps out of class to cry when other students are harassing her, and has taken a period of independent study instead of attending school out of fear for her safety. K.D. Decl. ¶¶ 18, 50. M.W. has a class with one of the students who has harassed her, and next year she will have to share an office with a teacher who made fun of her for being suspended. K.D. Decl. ¶¶ 42, 44. In addition, as M.W.'s high school will be merging with the middle school where the original incident happened, M.W. will have to see and interact with the same staff members referenced in K.D.'s OCR complaint, including the middle school principal who lied to the police about M.W. kicking a white student. K.D. Decl. ¶ 41. Unsurprisingly, M.W.'s school performance has worsened. K.D. Decl. ¶ 49. She has had to attend therapy because of her treatment at school, and "now feels hopeless and like nothing will change" and "doesn't think that anyone cares about what happened to her." K.D. Decl. ¶¶ 24, 52. K.D. experiences constant anxiety about her daughter's safety and well-being at school. K.D. Decl. ¶¶ 53-54. The school has not implemented M.W.'s safety plan, and the problems that caused K.D. to file her OCR complaint have still not been addressed. K.D. Decl. ¶¶ 44, 46. As K.D. shares: "I understand why my daughter feels hopeless. When I heard that the San Francisco OCR office was closed, I started to lose hope. OCR was my last hope that something would be done to help my daughter. And now we are just left in the dark and waiting." K.D. Decl. ¶ 56.

Similarly, Plaintiff G.C., who is currently in the sixth grade and has several identified disabilities for which she receives services at school, continues to experience disruption of her education due to OCR's failures. She has been subjected to frequent incidents of restraint and seclusion for various behaviors—many of which are manifestations of her disabilities—since starting sixth grade, including approximately fifteen incidents of restraint and fourteen incidents of seclusion this year, totaling over twenty-three hours. Cupp Decl. ¶¶ 4, 6, 8-9, 19. As a

necessary protective measure, Ms. Cupp has G.C. attend school for only two hours a day. Cupp Decl. ¶ 40. G.C. used to love school, but is now scared of going in case she is again put in the "blue room"—the room used for seclusion. Cupp Decl. ¶¶ 41-42. Ms. Cupp filed an OCR complaint on December 6, 2024. Cupp Decl. ¶ 7. On January 14, 2025, OCR notified her via email that they would open her complaint for investigation and that she would receive the opening letter soon. Cupp Decl. ¶ 26. On March 11, 2025, OCR once again told Ms. Cupp that it was opening her complaint for investigation and she would receive the opening letter in a week. Cupp Decl. ¶ 30. Ms. Cupp did not receive the opening letter until April 23, 2025, about two weeks after she joined this lawsuit and resulting news coverage of her complaint. Cupp Decl. ¶¶ 33-35. If Ms. Cupp and G.C. received the relief requested in their OCR complaint, Ms. Cupp would be able to return G.C. to full school days. Cupp Decl. ¶ 46. But with the OCR closures and mass terminations, resolution of G.C.'s case is likely to be significantly delayed. As Ms. Cupp stated: "OCR gave me hope when I had nowhere else to turn in my state. That sense of hope diminished when I heard about the OCR investigation pause and subsequent mass termination and office closures." Cupp Decl. ¶ 44.

Other plaintiffs are forced to attend school outside of their home communities because of ongoing harassment due to OCR's failures. Plaintiff Melissa Combs was forced to take her child, D.P., out of their local public school due to the school's failure to address the bullying D.P. faced based on their gender identity. Decl. of Melissa Combs ("Combs Decl.") ¶¶ 4, 7, 20. Because of the school's failure, D.P.'s mental well-being and academic achievement plummeted. Combs Decl. ¶¶ 19, 23. D.P. has also lost out on a number of extracurricular opportunities because they have had to change schools as a result of the district's failure to remedy the discrimination and harassment they experienced. Combs Decl. ¶ 22. D.P.'s current school has significantly fewer

clubs and extracurricular programs than the public school in their home community, which had, for instance, a theater club that D.P would like to join. Combs Decl. ¶ 22. If D.P.'s case was favorably resolved, D.P. would be able to safely return to their local school and participate in extracurricular academic and social opportunities like other children in their district. Combs Decl. ¶ 25. Combs and D.P. must currently drive twenty to forty minutes each way, depending on traffic, to D.P.'s new school outside their home district. Combs Decl. ¶ 21.

Similarly, Plaintiff A.M. currently drives about half an hour each way to take her daughter to a school outside of their home district, even though their local public high school is less than two blocks away from their home. Decl. of A.M. ("A.M. Decl.") ¶ 45. Because of the school district's failure to appropriately investigate her daughter's sexual assault and subsequent harassment, her daughter experienced trauma, which led to a decline in her daughter's mental health and hospitalizations, including for self- harm. A.M. Decl. ¶¶ 1, 3, 15-17, 21, 46. A.M. pulled her daughter out of the school district because it is unsafe. A.M. Decl. ¶ 12. Since then, A.M.'s daughter has switched schools multiple times. A.M. Decl. ¶ 45. Even enrolling A.M.'s daughter in her new school was difficult because it required changing school districts. A.M. Decl. ¶ 45. A.M.'s daughter continues to experience trauma and continues to require therapy and medication. A.M. Decl. ¶¶ 44, 46-47. If A.M. obtained the relief she requested from OCR, she and her daughter would be able to hold the district accountable. A.M. Decl. ¶ 48.

Plaintiff Nikki S. Carter is a Black community activist and advocate in Demopolis, Alabama. Decl. of Nikki S. Carter ("Carter Decl.") ¶ 5. Because of Ms. Carter's race and advocacy, the Demopolis City School District issued two trespass orders against Ms. Carter, first banning her from the high school two of her children now attend, then from all district events and premises. Carter Decl. ¶¶ 30, 32. The trespass orders prevented Ms. Carter from dropping off

or picking up her children at school, going to school-related events, attending school board meetings, or advocating on behalf of children with disabilities in the district. Carter Decl. ¶¶ 37, 38. In September 2022, Ms. Carter filed an OCR complaint, and in December 2022, OCR opened an investigation into the complaint, specifically with respect to her allegations of Title VI and Section 504 violations. Carter Decl. ¶¶ 40, 49-50. After that complaint, the school superintendent notified the police that Ms. Carter's trespass order had expired and she was allowed back on school property. Carter Decl. ¶ 54. Ms. Carter is worried that with OCR's mass elimination of almost half of its workforce, "there is nothing stopping Demopolis City School District from issuing additional trespass orders" in response to her advocacy. Carter Decl. ¶¶ 58-59. Ms. Carter has been put in a position where her "job as an advocate threatens [her] ability to participate as a parent in [her] children's education" as a result of the district's failure to remedy its discriminatory and retaliatory practices. Carter Decl. ¶ 67.

Finally, Plaintiff COPAA is suffering irreparable harm because Defendants' conduct is causing it to divert and expend its resources to address concerns and inquiries and update its training materials. COPAA's primary mission is to protect and enforce the legal and civil rights of students with disabilities and their families, and to secure appropriate educational services for children with disabilities in accordance with federal laws. Decl. of Denise Marshall ("Marshall Decl.") ¶ 4. As part of this mission, COPAA also seeks to protect the rights of children with disabilities to be free from discrimination based on their disability, race, sex, sexual orientation, and gender identity. Marshall Decl. ¶ 4. COPAA accomplishes its mission by providing resources, training, and information to members; helping parents and advocates file administrative complaints; helping parents and advocates find attorneys and legal resources;

educating the public and policymakers; and educating COPAA members about developments in federal laws and policies affecting the education of children with disabilities. Marshall Decl. ¶ 6.

As COPAA's Chief Executive Officer detailed in her declaration, COPAA has had to divert significant resources as a result of OCR's actions, resulting in various financial and operational burdens on the organization. As a result of the OCR office closures and mass terminations, COPAA "must rewrite many of [its] manuals, update [its] trainings, and retrain many of [its] members," all of which will "take a great deal of time, money and effort—time, money, and effort that could instead be spent working to ensure access to education for children with disabilities." Marshall Decl. ¶ 11. Because the impact of the closures will be to "severely limit, if not entirely eliminate, OCR complaints as a viable means to resolve violations of established federal law," COPAA staff will need to update materials and advise members on non-OCR paths for enforcing student's rights, which will necessarily involve litigation if the OCR complaint process is foreclosed, as well as state complaint processes. Marshall Decl. ¶¶ 12-13, 16. COPAA has already had to update its training materials and webinars, which primarily focus on filing OCR complaints, for new attorneys and advocates. Marshall Decl. ¶ 21. COPAA also had to add information regarding closed OCR offices and information on filing state complaints in lieu of OCR complaints to its Special Education Advocacy training (SEAT) curriculum. Marshall Decl. ¶ 21. But for the Department's actions, "COPAA would not need to undertake such extensive efforts." Marshall Decl. ¶ 24.

COPAA members, which include some Plaintiff parents, are also suffering irreparable harm. It has 3,600 members across the United States advocating for children with disabilities. Marshall Decl. ¶ 5. COPAA members file OCR complaints regularly. Marshall Decl. ¶ 8. Removing the OCR complaint process means those members will need to hire more attorneys or

be left without a remedy for violations of children's rights. Marshall Decl. ¶ 13. The absence of meaningful scrutiny from OCR will also remove a deterrent to Districts' infringing on students' rights. Marshall Decl. ¶ 14. COPAA members with active pending cases before OCR will suffer harm directly analogous to the individual Plaintiffs' harm. Marshall Decl. ¶¶ 26-27.

The harms that Plaintiff families face are representative of ones faced by students and families across the country who have filed complaints with OCR. Declarants in this case cite to several critical investigations that were nearing resolution or that involved dire circumstances that have now been shelved. *See, e.g.*, Doe 1 Decl. ¶¶ 19-20 (San Francisco OCR office); Doe 2 Decl. ¶¶ 21-22 (New York OCR office); Doe 5 Decl. ¶¶ 15, 17-18 (unnamed closed OCR office); Doe 6 Decl. ¶¶ 14, 18, 19-28 (unnamed closed OCR office); Decl. of Andrew R. Hairston ("Hairston Decl.") ¶¶ 6-14. For example, Texas Appleseed, a civil rights organization located in Texas, filed a Title VI complaint with OCR in October 2024 on behalf of a Black teenager in Beaumont, Texas who was beaten up on her high school campus by a Beaumont Independent School District (ISD) police officer. Hairston Decl. ¶¶ 3, 6. Texas Appleseed's OCR complaint alleged that the Beaumont ISD Police Department engaged in illegal racial discrimination against Black students; the complaint also provided data from the Civil Rights Data Collection showing that all of the students referred to law enforcement in Beaumont ISD in a previous academic year were Black. Hairston Decl. ¶¶ 6-7. An OCR attorney from the Dallas Office emailed Texas Appleseed a set of questions to get a better understanding of the discrimination alleged. Hairston Decl. ¶¶ 8-9. On February 25, 2025, the OCR attorney reached out notifying Texas Appleseed that their complaint was pending. Hairston Decl. ¶ 11. When attempting to respond to that email, Texas Appleseed received an automated bounce-back message. Hairston Decl. ¶ 11. That was the last status update Texas Appleseed received from OCR. Hairston Decl. ¶ 11.

Following Defendants' actions challenged here, Texas Appleseed is doubtful that OCR will "meaningfully address the harmful practices of the Beaumont ISD Police Department through its resolution of the complaint." Hairston Decl. ¶ 13. All the while, Black students in Beaumont ISD continue to be subjected to discriminatory practices by the district and police department. Hairston Decl. ¶¶ 13-14. Further, the student on behalf of whom Texas Appleseed's complaint was initially filed "is still anxious that the same police department is patrolling the halls of her current campus" and "is fearful that she could be subjected to . . . abuse again." Hairston Decl. ¶ 14.

ARGUMENT

Plaintiffs have satisfied their burden demonstrating the need for a preliminary injunction that requires Defendants to restore OCR's capacity and fulfill its statutory and regulatory duties and enforce civil rights laws. As evidenced below, Plaintiffs are likely to succeed on their APA claims. First, Defendants' final agency action to decimate the OCR workforce in furtherance of their ultimate goal to eliminate the Department of Education is a textbook example of arbitrary and capricious action. Defendants failed to offer any reasoned explanation for their decision and any proffered basis for the decision was untethered to their statutory duties to enforce civil rights laws. In making their decision, Defendants also failed to consider the substantial reliance interests of students, parents, and others alleging discrimination at schools receiving federal funding, let alone provide the more detailed justification required given the serious reliance interests at stake.

Second, Defendants' actions were not in accordance with law, and in fact, contradicted the very laws and regulations requiring them to investigate civil rights complaints and enforce civil rights laws. Third, Defendants' actions violate the APA because they unlawfully withheld

and unreasonably delayed agency action by failing to make "prompt investigation" in response to civil rights complaints filed by Plaintiffs.

Finally, Defendants' decisions to undermine their obligation to enforce laws also constitute unlawful ultra vires actions. Congress prescribed Defendants' duties to carry out civil rights laws, but Defendants have functionally ended the processing of scores of complaints.

Defendants' unlawful actions have caused irreparable harm to Plaintiff students and parents. As further described above and below, this harm is imminent and ongoing and will continue unless the Court enters a preliminary injunction. Clearly, the balance of equities and the public interest weigh heavily in favor of Plaintiffs' motion for preliminary injunction.

I. Standard of Review/Legal Standard

A party seeking a preliminary injunction "bears the burden of persuasion and must demonstrate, by a clear showing, that the requested relief is warranted." *Jacinto-Castanon de Nolasco v. U.S. Immigr. & Customs Enf't*, 319 F. Supp. 3d 491, 497 (D.D.C. 2018) (cleaned up). In determining whether a preliminary injunction is warranted, the courts examine four factors: (1) the likelihood of success on the merits; (2) the likelihood of irreparable injury to the movant if the injunction is not granted; (3) whether the irreparable injury is greater than the potential harm to the nonmovant if the injunction is granted (also called "the balance of equities"); and (4) the effect of the decision on the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008)*; see also League of Women Voters of the United States v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016). When the federal government is the opposing party, courts frequently combine the balance of equities and public interest factors. *NAACP v. U.S. Postal Serv.*, 496 F. Supp. 3d 1, 8 (D.D.C. 2020).

II. Plaintiffs Are Likely To Succeed On Their APA And Ultra Vires Claims.

A. Defendants' actions are "final agency action" subject to judicial review under the APA.

Defendants' actions challenged here are final agency actions subject to review under the APA. "[F]inal agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. The APA's definition of agency action "is expansive ... [and] is meant to cover comprehensively every manner in which an agency may exercise its power." *Drs. for Am. v. Off. of Pers. Mgmt.*, --- F. Supp. 3d ---, 2025 WL 452707 at *5 (D.D.C. Feb. 11, 2025) (alteration in original) (quoting *Fund for Animals, Inc. v. U.S. Bureau of Land Mgmt.*, 460 F.3d 13, 20 (D.C. Cir. 2006)). The Supreme Court established a two-prong test to determine whether an agency action is final: (1) "The action must mark the consummation of the agency's decisionmaking process," and (2) "[T]he action must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (citations omitted).

Under the first prong, final agency actions are not "merely tentative or interlocutory [in] nature." *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1022 (D.C. Cir. 2000). "The core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties." *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992). Clearly, the Department has completed its decision-making process. The elimination of several OCR offices and nearly half of its staff can hardly be considered a temporary or interim measure. *Cf. Appalachian Power Co.*, 208 F.3d at 1022. These are not informal actions or "ruling[s] of a subordinate official." *Abbott Lab'ys v. Gardner*, 387 U.S. 136, 151 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). Rather, Defendants have, throughout this process, openly and expressly intended to obstruct OCR's

ability to process and investigate civil rights complaints in their haste to permanently eliminate the Department.

The second prong is a pragmatic inquiry. "An agency action is deemed final if it is definitive and has a direct and immediate effect on the day-to-day business of the party challenging the agency action." *Reliable Automatic Sprinkler Co., Inc. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003) (cleaned up).

Plaintiffs and thousands of other families with pending OCR complaints experienced "direct and immediate" consequences from Defendants' actions. *Id*. These families are unable to avail themselves of OCR's statutorily and regulatorily required complaint investigation process. "[A]n agency determines rights and obligations when the statute creates a right . . . and . . . fails to provide Plaintiffs with access to" that right. *Drs. for Am.*, 2025 WL 452707 at *6 (cleaned up). Defendants' actions "commanding" staff placed on leave and in the closed offices to discontinue their work and render the meager remaining staff incapable of fulfilling their statutory duties to review, investigate, and enforce the applicable civil rights laws, has greatly undermined people's right to file OCR complaints. *See, e.g.*, Ex. 5 ¶ 28, 30, 43; Doe 6 Decl. ¶ 32; Doe 7 Decl. ¶¶ 19-21, 31; Doe 8 Decl. ¶¶ 17-18, 22-23.

Clearly, Defendants' dismissal of OCR staff and their closure of seven OCR offices is final agency action that is foreclosing the statutory and regulatory responsibilities of OCR to investigate Plaintiffs' complaints in a prompt manner.

B. Defendants' actions are arbitrary and capricious under the APA.

The APA "sets forth procedures by which federal agencies are accountable to the public and their actions subject to review by the courts." *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992). Under section 706(2)(A) of the APA, reviewing courts are to "hold unlawful and set

aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

In general, an agency action is considered arbitrary and capricious if the agency (1) "has relied on factors which Congress has not intended it to consider," (2) "entirely failed to consider an important aspect of the problem," (3) "offered an explanation for its decision that runs counter to the evidence before the agency," or (4) "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.*

As discussed below, Defendants' actions are arbitrary and capricious because of: (i) the Department's failure to offer a reasoned basis for its decision when firing half the staff of OCR and closing seven of twelve regional offices, which has largely stopped the investigation of thousands of complaints, including those of Plaintiffs, undermining the core statutory functions of the division and (ii) the Department's lack of consideration of the serious reliance interests implicated by its decisions.

i. The Department failed to proffer any explanation for its decision to decimate OCR.

The Department's failure to offer a reasoned explanation for its decision to obliterate the already under-resourced OCR likely constitutes a violation of the APA. The APA requires an agency to proffer a basis or explanation for its decisions and actions; failure to do so renders that decision or action arbitrary and capricious. *See Department of Commerce v. New York,* 588 U.S. 752, 780 (2019) (quoting *Burlington Truck Lines, Inc., v. United States,* 371 U.S. 156, 167-169 (1962) ("in order to permit meaningful judicial review" under the APA, "an agency must 'disclose the basis' of its action.")); *see also Jackson v. Mabus*, 919 F. Supp. 2d 117, 120 (D.D.C. 2013) (finding agency's action arbitrary and capricious because agency "failed to provide even the barest explanation for its decision"). Generally, agencies must offer explanations for their actions contemporaneously with executing those actions. *See Dep't of*

Homeland Security v. Regents of the Univ. of California, 591 U.S. 1, 20 (2020) (quoting *Michigan v. EPA*, 576 U.S. 743, 758 (2015) (judicial review of agency action is "limited to 'the grounds that the agency invoked when it took action'"); *American Trucking Associations, Inc. v. Federal Motor Carrier Safety Admin.,* 724 F.3d 243, 253 (D.C. Cir. 2013) ("conclusory, post-hoc rationalization falls far short of what is required under *State Farm*"). When "an agency's initial explanation 'indicate[s] the determinative reason for the final action taken,' the agency may elaborate on that reason (or reasons);" however, the agency "may not provide new ones." *Regents of the Univ. of California*, 591 U.S. at 21 (quoting *Camp v. Pitts,* 411 U.S. 138, 143 (1973) (*per curiam*)).

The core question "is whether the agency's decision was 'the product of reasoned decisionmaking.'" *Al-Eryani v. Immigrant Investor Program Office,* 2024 WL 4285895 (D.D.C. Sept. 25, 2024) (quoting *State Farm,* 463 U.S. at 52 (1983)); *see also Nat'l Telephone Co-Op Ass'n v. FCC,* 563 F.3d 536, 540 (D.C. Cir. 2009) ("The APA's arbitrary-and-capricious standard requires that agency rules be reasonable and reasonably explained."). A court reviewing an agency decision under this standard "must 'consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Bowman Transp. Inc. v. Arkansas-Best Freight System*, 419 U.S. 281, 285 (1974)). Furthermore, a reviewing court "may not supply a reasoned basis for the agency's action that the agency itself has not given." *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947).

Here, the Department failed to proffer any reasoned basis for any of its actions when gutting OCR and its regional offices, imperiling investigations from moving forward. Shortly after her Senate confirmation, on March 3, 2025, Secretary McMahon issued a memorandum

instructing the entire Department of Education that her "historic final mission" would be the "elimination" and "transfer of educational oversight" out of the Department.[22] Although she acknowledged that she would need to partner with Congress and other federal agencies in the coming months to see that final mission through, she stressed in her memo that her actions follow the will of President Trump, not Congress.

Thereafter, on March 11, 2025, she unilaterally took action to undermine the critical work of OCR by displacing half of its workers and closing seven of the twelve regional offices. Doe 8 Decl. ¶¶ 14, 22. In Secretary McMahon's reduction in force ("RIF") announcement, she boasted of impacting "nearly 50% of the Department's workforce," and that the RIF was part of the Department's "final mission."[23] She asserted that the RIF was a commitment to "efficiency, accountability, and ensuring that resources are directed where they matter most: to students, parents, and teachers."[24] However, she failed to provide the data or analysis supporting the reduction in force needed to ensure efficiency and accountability. Any explanation offered by an agency must be based on "relevant data" and must demonstrate a "rational connection between the facts found and the choice made" to be considered "satisfactory," or not arbitrary or capricious. *State Farm,* 463 U.S. at 43 (1983) (internal citations omitted); *see also Jackson v. Mabus*, 919 F. Supp. 2d 117, 121 (D.D.C. 2013) (finding agency action arbitrary and capricious because agency "failed to address any facts found, let alone, provide an adequate explanation connecting those facts to its decision").

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[22] Linda McMahon, *Secretary McMahon: Our Department's Final Mission,* U.S. Dep't of Educ. (Mar. 3, 2025), Ex. 1, https://www.ed.gov/about/news/speech/secretary-mcmahon-our-departments-final-mission.
[23] U.S. Dep't. of Education, *U.S. Department of Education Initiates Reduction in Force* (Mar. 11, 2025), Ex. 2, https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force.
[24] *Id.*

Even if an agency has "legitimate reasons" for making a decision, those reasons must be related to the purposes of the statutes enabling the agency. *Judulang v. Holder*, 565 U.S. 42, 55 (2011) (finding the Board of Immigration Appeal's decision arbitrary and capricious because even if the agency had "legitimate reasons" for its decision, the reasons the agency relied on "must [have] be[en] tied, even if loosely, to the purposes of the immigration laws or the appropriate operation of the immigration system"). Here, the Department offered no contemporaneous reasoned explanation or analysis justifying its actions, much less one based on relevant facts and guided by reasons or rationale that are tied to the statutes and regulations the Department is tasked with implementing and enforcing. *See Batterton v. Marshall*, 648 F.2d 694, 708 (1980) ("The critical question is whether the agency action jeopardizes the rights and interest of parties, for if it does, it must be subject to public comment prior to taking effect."). Indeed, Secretary McMahon's actions contradict the Department's own statutory duties and the very mission of OCR: "[T]o ensure equal access to education and to promote educational excellence through vigorous enforcement of civil rights in the nation's schools."[25] *See, e.g.*, Ex. 5 ¶ 29-30, 43; Doe 8 Decl. ¶ 22-23.

ii. The Department failed to consider serious reliance interests.

Defendants' actions are also arbitrary and capricious because Defendants failed to consider serious reliance interests in deciding to close most OCR offices and to eliminate a significant proportion of OCR's workforce. "When an agency changes course, . . . it must 'be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.' It would be arbitrary and capricious to ignore such matters." *Regents of the Univ. of California*, 591 U.S. at 30 (quoting *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211,

[25] U.S. Dep't of Educ., *Office for Civil Rights (OCR)* (Jan. 19, 2025), https://www.ed.gov/about/ed-offices/ocr.

222 (2016)). Agencies that modify pre-existing policies, rather than starting from a blank slate, must "assess whether there [a]re reliance interests, determine whether they [a]re significant, and weigh any such interests against competing policy concerns." *Id*. at 33. When an agency implements a "new policy [that] rests upon factual findings that contradict those which underlay its prior policy[,] or when its prior policy has engendered serious reliance interests," the agency must provide a "more detailed justification" for the change. *FCC v. Fox Television Stations*, *Inc.*, 556 U.S. 502, 515 (2009).

Defendants' decision to decimate OCR implicates serious reliance interests, affecting not only Plaintiffs and thousands of complainants with pending cases, but also members of the public who rely on OCR to enforce civil rights laws. OCR has an established history of responding to the public's civil rights complaints, *see* Ex. 5 ¶¶ 7-13, and currently has over 20,000 open cases and 12,000 pending investigations.[26] Defendants' recent actions have resulted in unmanageable caseloads for the staff members who remain. Ex. 5 ¶¶ 28, 30, 43; Doe 7 Decl. ¶ 20; Doe 3 Decl. ¶ 23. Their effectiveness is further compromised by the difficulties of picking up reassigned investigations midstream, such as the need to rebuild relationships with stakeholders and the physical distance between the offices that remain open and the school sites previously investigated by staff at the closed offices. Doe 7 Decl. ¶¶ 25-26. Students and families who filed their complaints with the reasonable expectation that OCR would promptly and diligently evaluate and investigate their cases and hold school districts accountable for

[26] Collin Binkley, *Education Department Layoffs Gut Its Civil Rights Office, Leaving Discrimination Cases In Limbo*, Associated Press (Mar. 12, 2025), Ex. 4, https://apnews.com/article/trump-education-department-layoffs-civil-rights-8cbf463cce765f497c10d688ab4d51e1; U.S. Dep't of Educ., *Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Schools* (accessed Mar. 13, 2025), https://ocrcas.ed.gov/open-investigations.

discrimination on the basis of race, sex, and disability now face the prospect that their cases will stall, unresolved, with OCR too understaffed and under-resourced to move them forward.

There is no evidence that the Department considered the reliance interests of students, parents, and others alleging discrimination at school when eliminating OCR offices and staff positions, let alone evidence of the "more detailed justification" required given the serious reliance interests at stake. *Fox Television Stations*, 556 U.S. at 515. As in *Regents*, where the Department of Homeland Security wholly failed to consider the reliance interests of Deferred Action for Childhood Arrivals ("DACA") program recipients and their families and communities when rescinding the program, here too, there is no indication that the Department of Education balanced the interests of students and their families in ordering the office closures and OCR reduction in force – "[m]aking that difficult decision was the agency's job, but the agency failed to do it." *Regents*, 591 U.S. at 30-33; *see also American Bar Ass'n v. United States Dep't of Educ.*, 370 F. Supp. 3d 1, 33 (D.D.C. 2019) (finding agency's action in adopting new standards affecting student borrowers seeking loan forgiveness arbitrary and capricious in part because "there [wa]s no indication in the record" that the Department "had considered the substantial reliance interests at stake"); *CSL Plasma Inc. v. U.S. Customs & Border Prot.*, 628 F. Supp. 3d 243, 261 (D.D.C. 2022) (rejecting "a one-sentence acknowledgement" of "the role of the plasma donation business" as insufficient consideration of reliance interests implicated by change in temporary visa policy).

In undertaking an agency action that critically undermines the Department's own enforcement capabilities and abdicates the agency's statutory responsibilities to students and their communities, Defendants failed to acknowledge, let alone meaningfully consider, balance, and justify their rejection of, the significant reliance interests at stake. Plaintiffs are therefore

likely to succeed on the merits of their claim that Defendants' actions were arbitrary and capricious under the APA.

C. Defendants' actions violate the APA because they are not in accordance with law.

Under the APA, courts must "hold unlawful and set aside" agency actions that are "not in accordance with law." 5 U.S.C. § 706(2)(A); *see also F.C.C. v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 300 (2003) (emphasis in original) (contrary to law "means, of course, *any* law, and not merely those laws that the agency itself is charged with administering"). Congress enacted the APA "as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 391 (2024) (quoting *U.S. v. Morton Salt Co.*, 338 U.S. 632, 644 (1950)). Defendants' actions violate the law in two ways: they directly contradict relevant statutes and regulations and they violate the Department's own rules.

i. OCR's failure to effectuate civil rights laws is "Not In Accordance with the Law" and thus violates Section 706(2) of the APA.

Defendants' gutting of OCR is only one of this administration's many efforts to dismantle statutorily-mandated agency functions. Those efforts are all unlawful. Where a congressional statute requires an agency to take certain actions, the government may not terminate staff necessary to carry out that action. *See Nat'l Treasury Emps. Union v. Vought* ("*NTEU*"), No. CV 25-0381 (ABJ), 2025 WL 942772, at *40 (D.D.C. Mar. 28, 2025) (plaintiffs likely to succeed on the merits of their claim that shut down of the Consumer Financial Protection Bureau (CFPB) was contrary to law where Defendants presented no evidence of an effort to ensure that the agency continued to perform statutorily-mandated duties). The D.C. Circuit allowed that order to go into effect, ruling that the agency could not lay off any employees without a "particularized assessment" of whether the agency would "be able to

perform any statutorily required duties of that division or office without the employees subject to the [reduction in force]." Order 2113309, *NTEU v. Vought*, Case No. 25-5091 (D.C. Cir. Apr. 28, 2025) (per curiam); *cf. State Farm,* 463 U.S. at 43 (an agency action is considered arbitrary and capricious when the "the agency has relied on factors which Congress has not intended it to consider"); *Cayuga Nation v. United States,* 594 F. Supp. 3d 64, 74 (D.D.C. 2022) (decisions that are "inconsistent with Congress's delegation of authority" are generally considered arbitrary and capricious).

Here, just as in *NTEU*, Defendants have made no effort to determine which agency staff are necessary to conduct its statutorily mandated mission. Instead, as explained in section II(B) above, they have arbitrarily eliminated entire offices and laid off staff necessary to ensure all complaints are addressed. These actions directly violate Congress' express mandate that the Department effectuate Title VI and Title IX. OCR's decimation of the OCR workforce has, as laid out above, resulted in valid complaints of violations of these statutes not being investigated or addressed by the Department. Defendants' actions thus ensure that the objectives of these statutes—to prevent discrimination by federal funding recipients by creating a mechanism for investigation and remedy of violations of them—will not be "effectuate[d]." 42 U.S.C. § 2000d-1; 20 U.S.C. § 1682.

ii. OCR's failure to enforce its own regulations constitutes agency action "Not in Accordance with the Law," per the *Accardi* Doctrine.

Federal agencies and their officials are required to follow their own "existing valid regulations." *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954). As long as a "regulation remains in force[,] the Executive Branch is bound by it." *United States v. Nixon*, 418 U.S. 683, 696 (1974). Though "it is within the power of [an] agency to amend or repeal its own regulations, [an] agency is not free to ignore or violate its regulations while they

remain in effect." *U.S. Lines, Inc. v. Fed. Mar. Comm'n*, 584 F.2d 519, 526 n. 20 (D.C. Cir. 1978). In the D.C. Circuit, "*Accardi* has come to stand for the proposition that agencies may not violate their own rules and regulations to the prejudice of others." *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir. 2005); *see also Brock v. Cathedral Bluffs Shale Oil Co.*, 796 F.2d 533, 536 (D.C. Cir. 1986) (citing *Accardi*, 347 U.S. at 265–67 ("It is axiomatic that an agency must adhere to its own regulations.")). *Accardi* claims can be brought through the APA. *See Damus v. Nielsen*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) (collecting authority).

This proposition "appl[ies] with particular force in those cases in which 'the rights of individuals are affected.'" *Id.* at 335 (quoting *Morton v. Ruiz*, 415 U.S. 199, 235 (1974)). In such cases, "it is incumbent upon agencies to follow their own procedures . . . even where [they] are possibly more rigorous than otherwise would be required." *Morton v. Ruiz*, 415 U.S. at 235. An agency's failure to follow its own rules, regulations, or binding policy constitutes "agency action . . . not in accordance with law" under Section 706(2)(A) of the APA. *See Damus,* 313 F.Supp.3d at 337 (internal citations omitted) ("A fundamental principle of federal law is that a federal agency must follow its own procedures. For an agency to violate this government maxim . . . would amount to an 'unlawful' action under the APA.").

As explained above (SOF at 3-5), Federal regulations require OCR to enforce Title VI, Title IX, Title II, and Section 504. Because the Department's actions prevent it from doing so, they are unlawful under *Accardi*. Moreover, *Accardi* applies with "particular force" here because OCR's failure to investigate allegations of discrimination greatly affects "the rights of individuals." *Damus,* 313 F. Supp. 3d at 335 (internal citations omitted). Defendants' efforts to eviscerate OCR violate the regulations delineated in 34 C.F.R. Part 100, 34 C.F.R. Part 106, and 28 C.F.R. Part 35. OCR's non-compliance with its own regulations violates the *Accardi* principle

and constitutes agency action "not in accordance with the law." *See Accardi,* 347 U.S. at 268; *Morton v. Ruiz*, 415 U.S. at 235 (1974).

D. Defendants' actions violate the APA because they have unlawfully withheld or unreasonably delayed agency action.

Under the APA, a reviewing court shall "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). "Even where an agency's statutory mandate does not impose a specific, non-discretionary duty, the 'general' duty of the APA is sufficient grounds" to compel agency action. *Arabzada v. Donis*, 725 F. Supp. 3d 1, 12 (D.D.C. 2024) (quoting *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1099 (D.C. Cir. 2003)). The D.C. Circuit has identified six relevant considerations for determining when a delay is unreasonable:

> (1) the time agencies take to make decisions must be governed by a "rule of reason"; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

In re United Mine Workers of Am. Int'l Union, 190 F.3d 545, 549 (D.C. Cir. 1999) (internal quotation marks omitted) (*citing Telecomms. Rsch. and Action Ctr. v. F.C.C. ("TRAC")*, 750 F.2d 70, 80 (D.C. Cir. 1984)).

Defendants' decimation of OCR's ability to process and investigate complaints by eliminating OCR regional offices and substantially reducing staff is grounds for compelling the agency to reverse course and meet its statutory obligations. As noted above, OCR is required to "make a prompt investigation" in response to indications of possible failures to comply with

Title VI, Title IX, and Section 504. *See, e.g.*, 34 C.F.R § 100.7(c); 34 C.F.R. § 106.81; 34 C.F.R § 104.61. For Title II complaints, OCR is required to "promptly review the complaint to determine whether it has jurisdiction over the complaint under section 504," accept all completed complaints over which it has jurisdiction, and "promptly notify the complainant and the public entity of the receipt and acceptance of the complaint." 28 C.F.R § 35.171.

Doe Declarants and Plaintiffs have made clear that delays caused by Defendants' actions are unreasonably long. *See supra* SOF at 12-18; Doe 7 Decl. ¶¶ 19-21, 27-28; Doe 8 Decl. ¶ 18. Most Plaintiffs still have not heard from OCR for months, even those whose that cases were very close to resolution. K.D. Decl. ¶¶ 35-39, 55; Combs Decl. ¶¶ 15-18; Carter Decl. ¶¶ 50-56. As to factor two, while Congress has not set a specific timetable for complaint-processing, it is reasonable to assume that it should be fast enough to not interfere with students' education. A complaint delayed for years may end up moot before it is resolved when the child leaves the school. The delays are particularly egregious under factor three because OCR exists to prevent discrimination against children, and thus to prevent harm to their welfare. Factor four also strongly favors Plaintiffs—Defendants have simply laid off staff and shut down activities and replaced them with nothing at all, so no other priority would be affected by reversing that decision. As to factor five, Defendants' delay will ensure discrimination of many forms goes unaddressed, a very serious prejudice to the children affected. Finally, while courts need not find impropriety lurking behind a delay to address it, there is certainly impropriety here. Defendants are shutting down congressionally-mandated programs for no apparent reason other than they disagree with Congress's decision to mandate them and they do not believe the Department of Education and OCR should exist.

By decimating OCR's ability to process and investigate complaints through the elimination of OCR regional offices and staff, Defendants have actively obstructed OCR's ability to meet its obligation to make prompt investigations and, in fact, functionally halted investigations. Defendants thus cannot promptly investigate complaints and have unlawfully withheld and/or unreasonably delayed investigations of complaints within OCR's jurisdiction. The courts should compel the Department to act under Section 706(1) of the APA.

E. Defendants' challenged conduct constitutes ultra vires agency action.

In the alternative, if the APA does not provide a remedy for Plaintiffs' claims, Plaintiffs are nonetheless likely to succeed on the merits of their claim that Defendants have engaged in unlawful ultra vires agency action. An executive agency's power to act under a federal statute is "authoritatively prescribed by Congress." *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013). Consequently, "an agency literally has no power to act . . . unless and until Congress confers power upon it." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986). Federal courts may set aside agency action or inaction that exceeds an agency's powers, including action or inaction that violates a clear and mandatory statutory command or that lacks a contemporaneous, reasoned justification. *NTEU*, 2025 WL 942772 at *20-23.

The decimation of OCR's ability to process and investigate complaints violates the clear mandates of Title VI, 42 U.S.C. § 2000d-1, and Title IX, 20 U.S.C. § 1682, to effectuate the provisions of those statutes. Nothing in those statutes permits the Department to functionally end the processing of large volumes of complaints. To the contrary, they require the Department to "effectuate" Titles VI and IX "by issuing rules, regulations, or orders of general applicability." *See* 42 U.S.C. § 2000d-1; 20 U.S.C. § 1682. OCR and its Assistant Secretary have specific authorities set out by statute. 20 U.S.C. § 3413. These include "to select, appoint, and employ

such officers and employees, including staff attorneys, as may be necessary to carry out the functions of such Office." *Id.* § 3413(c)(2). The Department's gutting of OCR prevents it from "carry[ing] out [its] functions" and from effectuating the purposes of Title IX and Title VI. It is therefore ultra vires and unlawful. *See NTEU*, 2025 WL 942772, at *20-22 (mass layoffs at CFPB were ultra vires where they violated separation of powers by interfering with statutory scheme of financial regulation).

This is just one of many cases where courts have recognized that many actions of this administration have gone far beyond its statutory authority. *See, e.g.*, *Am. Fed'n of Lab.& Cong. of Indus. Organizations v. Dep't of Lab*., No. CV 25-339 (JDB), 2025 WL 1129227, at *22 (D.D.C. Apr. 16, 2025) (allowing claim that US DOGE service acted ultra vires by exercising authority over other agencies without any statutory basis). Courts have specifically held that attempts to shut down entire agencies and thereby prevent them from carrying out statutorily-mandated functions are ultra vires and hence unlawful. *NTEU,* 2025 WL 942772 at *20-23 (shutting down most functions of CFPB was ultra vires); *Aids Vaccine Advoc. Coal. v. United States Dep't of State,* No. CV 25-00400 (AHA), 2025 WL 752378, at *18 n.18 (D.D.C. Mar. 10, 2025) (plaintiffs likely to succeed on the merits of ultra vires claims where defendants refused to carry out congressionally-mandated spending on foreign aid). Here, too, Defendants' efforts to carry out the will of President Trump, as opposed to Congress, by beginning to eliminate the Department of Education and OCR are unlawful ultra vires actions.

III. Plaintiffs Have Demonstrated A Likelihood Of Irreparable Harm.

As a result of Defendants' unlawful actions, Plaintiffs are presently suffering and, absent preliminary injunctive relief, will continue to suffer from the deprivation of their right to have their discrimination complaints addressed by OCR and the attending denial of equal educational

opportunities. A preliminary injunction requires movants to establish a likelihood of irreparable harm. *See League of Women Voters of United States,* 838 F.3d at 8–9 (citing *Winter*, 555 U.S. at 22, (2008)). While the harm must be "imminent," that means only that there must be a "clear and present need for equitable relief to prevent irreparable harm." *Id.* at 8 (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). The harm also "must be beyond remediation." *Id.* (quoting *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297).

Plaintiffs clearly satisfy this factor. As detailed in the Statement of Facts (*see supra* pp. 12-18) and explained further below, OCR's abdication of its statutory duties causes irreparable harm to Plaintiffs in several ways. These harms have already begun to manifest, and will persist until OCR is ordered to comply with its statutorily mandated duties to timely and equitably process, investigate, and resolve complaints.

First, even where youth still physically attend school, they suffer irreparable harm when they are unable to engage on the same basis as other students because of unremediated discrimination. Plaintiff M.W. continues to experience racial harassment in school, including the use of racial slurs, because of OCR's failure to resolve her family's complaint, even though it was close to resolution before the closure of the San Francisco office. K.D. Decl. ¶¶ 26-28, 35-39. Other students across the country with pending OCR complaints confront the same reality. *See, e.g.*, Hairston Decl. ¶ 14 (describing continued discrimination against Black students while OCR complaint challenging racial disparities in law enforcement referrals is stalled, as well as the individual complainant's fear of additional abuse); Doe 6 Decl. ¶¶ 15-23; Doe 7 Decl. ¶¶ 19-21, 27-28; Doe 8 Decl. ¶ 18. This "'denial of equal treatment' *itself* counts as" the "kind of harm [that] is irreparable." *Mathis v. United States Parole Commission,* 749 F. Supp. 3d 8, 25 (D.D.C. 2024) (emphasis in original).

Youth who are experiencing discrimination, threats, harassment, and other types of mistreatment, like M.W., are likely to perform worse in school, which can have lifelong consequences for access to higher education and employment. K.D. Decl. ¶¶ 24, 49, 52 (describing M.W.'s declining performance at school and need for therapy); Combs Decl. ¶¶ 19, 23 (describing D.P.'s plummeting mental well-being and academic achievement, including serious self-harm and refusal to attend school out of fear of continued discrimination and harassment); A.M. Decl. ¶¶ 1, 3, 15-17, 21, 46 (describing daughter's trauma following school district's failure to appropriately investigate sexual assault and harassment, leading to a decline in her mental health and hospitalizations, including for serious self-harm).

When students are forced to change schools due to unaddressed discrimination or the school's inability to provide a safe education, like Plaintiff D.P. and the daughter of Plaintiff A.M., youth lose instructional time, credits, and progress. Combs Decl. ¶¶ 4, 7, 20 (explaining decision to remove D.P. from local public school due to school's failure to address bullying based on D.P.'s gender identity); A.M. Decl. ¶¶ 12, 45 (describing decision to pull her daughter out of school for her safety when the school district failed to appropriately investigate and respond to sexual harassment and assault, as well as the educational instability caused by multiple school and school district changes); *see also, e.g.*, Janette E. Herbers, et al., *School Mobility and Developmental Outcomes in Youth Adulthood*, 25 Developmental Psychopathology at 501 (2021) ("School mobility has been shown to increase the risk of poor achievement, behavior problems, grade retention, and high school drop-out."). Students like D.P. and the daughter of A.M. who are forced to attend schools outside of their home districts also lose time and access to extracurricular and social activities due to long commutes. Combs Decl. ¶¶ 21-22, 25 (D.P. has lost out on a number of extracurricular opportunities, both because the new school

has significantly fewer clubs and programs and because of the commute; a favorable resolution of their family's OCR complaint would mean a safe return to school and equal access to these programs); A.M. Decl. ¶¶ 12, 45 (describing her thirty-minute commute to school, even though the local high school is less than two blocks away). The failure of OCR to fulfill its duties to these youth and their families contributes to these harms.

The risk of continued discrimination and denial of equal educational opportunity are harms which can only be remedied via "forward-looking equitable remedies." *Mathis*, 749 F.Supp. 3d at 25 (D.D.C. 2024). Because the "[c]ourt cannot undo the discrimination" Plaintiffs have already and will continue to face as result of OCR's inability to timely and equitably resolve their complaints, Plaintiffs have a high likelihood of suffering irreparable harm. *Id.*

Second, the psychological toll of educational instability on students causes irreparable harm. *Petties v. D.C.*, 881 F. Supp. 63, 70 (D.D.C. 1995) (uncertainty over whether students could maintain their educational placement "exact[ed] a psychological, emotional and physical toll on many of the students" that constituted irreparable harm). While not every OCR complaint will result in the resolution sought by the student and their family, the end of the OCR process would bring closure. Whether the complaint brings the desired relief or not, students and their families could make decisions about schooling moving forward knowing that a complaint is no longer pending, that their case has been fairly and impartially reviewed, and that OCR has obtained any possible relief. But due to OCR's cuts, students and families are left in limbo indefinitely without knowing whether or when OCR will process, investigate, and resolve their complaints. Plaintiff M.W., for example, "now feels hopeless and like nothing will change. She doesn't think that anyone cares about what happened to her." K.D. Decl. ¶¶ 24, 52; *see also*

A.M. Decl. ¶ 52 (explaining that with her OCR case resolved, she and her daughter would be able to move on with their lives and find peace).

Third, the failure to resolve Plaintiffs' complaints has resulted in and continues to result in educational disruption. For example, student Plaintiff G.C., a child with several identified disabilities, currently attends school for only two hours per day, because her mother fears that her school will again subject her to repeated episodes of restraint and seclusion. Cupp Decl. ¶¶ 4, 6, 8-9, 40. It is undisputed being unable to attend school harms children. *Massey v. D.C.*, 400 F. Supp. 2d 66, 75 (D.D.C. 2005). As the Supreme Court has noted, "[t]he harm caused . . . children by lack of education needs little elucidation." *Certain Named & Unnamed Non-Citizen Child. & Their Parents v. Texas*, 448 U.S. 1327, 1332 (1980). This harm rises to an even higher level when youth have disabilities: "A child without disabilities would suffer harm from being unable to attend school; such harm is heightened for a disabled child with much greater need for daily structure and consistency." *Massey*, 400 F. Supp at 75; *see also Cox v. Brown,* 498 F. Supp. 823, 829 (D.D.C. 1980) (children experience irreparable harm when they "lack[] each day of their young lives an appropriate education, one that is sensitive to their particular disabilities, commensurate to their levels of understanding, and fulfilling of their immediate needs").

Interruption of education is uniquely irreparable because a student "has a finite amount of time to receive educational services." *Lofton v. D.C.*, 7 F. Supp. 3d 117, 124 (D.D.C. 2013); *see also Massey*, 400 F. Supp at 75 (lack of assurances that school would follow procedural timeline contributed to finding of irreparable harm). Every week that a youth is not in school is a lost week that cannot be regained. *Lofton*, 7 F. Supp 3d at 124. With staffing suddenly cut by at least forty percent, regional offices eliminated, and complaints continuing to rise, OCR is likely to fall

further and further behind, unable to meet its basic statutory obligations,[27] with students losing "a year or more of education."[28] Plaintiffs and other complainants risk waiting for a resolution until they have graduated, aged out of entitlement to public education, or given up and left the school district.

Fourth, the irreparable harms described above are suffered not only by the students themselves, but also by their parents. Parent Plaintiff K.D. experiences constant anxiety about her daughter's safety and well-being at school; "OCR was [her] last hope that something would be done to help [her] daughter." K.D. Decl. ¶¶ 46, 53-55. Similarly, parent Plaintiff Amy Cupp's "sense of hope [that her daughter would be able to return to school full time] diminished when [she] heard about the OCR investigation pause and subsequent mass termination and office closures." Cupp Decl. ¶ 44. Interference with a child's "free educational rights" harms parents "as guardians of their children and protectors of their emotional, physical, and educational well-being" who have the "duty, responsibility, and right" to demand that their children's educational needs are met. *Cox v. Brown*, 498 F. Supp. 823, 828-29 (D.D.C. 1980).

Plaintiff Nikki S. Carter, whose OCR complaint concerns discrimination against herself as a parent advocate, faces a continued risk of discrimination and retaliation, which has chilled and continues to chill her ability to advocate on behalf of children with disabilities in her community. Carter Decl. ¶¶ 40, 49-50, 54-59. As a result of her children's school district's failure to remedy its discriminatory and retaliatory practices—a failure OCR could push the district to correct if it moved her case forward—Ms. Carter faces a situation where her "job as an

[27] *See* OCR Alumni Report, Ex. 6. ("When we state OCR cannot possibly fulfill its statutory mission in its current decimated staff levels, we are not making an 'assertion,' we are stating, with complete certainty, a matter of fact based on our experience with the agency."). *See also* Doe 7 Decl. ¶ 20; Doe 3 Decl. ¶ 23.
[28] Ex. 6 at 4 (OCR Alumni Report).

advocate threatens [her] ability to participate as a parent in [her] children's education." Carter Decl. ¶ 67. This harm is irreparable. *Giri v. National Board of Medical Examiners,* 718 F. Supp. 3d 30, 44 (D.D.C. 2024) ("The loss of opportunity to pursue one's chosen profession due to alleged discrimination is widely recognized as constituting an irreparable injury . . . even when the barrier to plaintiffs' pursuit is only temporary."); *see also Bonnette v. District of Columbia Court of Appeals*, 796 F. Supp. 2d 164, 186 (D.D.C. 2011) ("The lost opportunity to engage in one's preferred occupation goes beyond monetary deprivation.").

Finally, Plaintiff COPAA is suffering irreparable harm because Defendants' conduct is causing it to divert and expend its resources to address concerns and inquiries and update its training materials. For organizational plaintiffs, "obstacles" that "unquestionably make it more difficult for [an organization] to accomplish [its] primary mission . . . provide injury for purposes both of standing and irreparable harm." *League of Women Voters,* 838 F.3d 1, 9. Irreparable harm may be found when an organization's "ability to provide services" is "perceptibly impair[ed]," and the organization has demonstrated that it "will likely experience an array of financial and operational burdens." *Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health and Human Services*, 485 F. Supp. 3d 1, 56 (D.D.C. 2020).

COPAA accomplishes its mission—to protect and enforce the legal and civil rights of students with disabilities and their families, and to secure appropriate educational services for children with disabilities in accordance with federal laws—by providing resources, training, and information to members; helping parents and advocates file administrative complaints; helping parents and advocates find attorneys and legal resources; educating the public and policymakers; and educating COPAA members about developments in federal laws and policies affecting the education of children with disabilities. Marshall Decl. ¶¶ 4, 6.

COPAA has had to divert significant resources as a result of OCR's actions, resulting in various financial and operational burdens. Because of the OCR office closures and mass terminations, COPAA must now "rewrite many of [its] manuals, update [its] trainings, and retrain many of [its] members," all of which will "take a great deal of time, money and effort—time, money, and effort that could instead be spent working to ensure access to education for children with disabilities." Marshall Decl. ¶ 11. With the OCR pathway blocked, COPAA staff must update materials, such as training materials and webinars, and advise members on other paths to enforce students' rights, such as litigation and state complaint processes. Marshall Decl. ¶¶ 12-13, 16, 21. But for the Department's actions, "COPAA would not need to undertake such extensive efforts." Marshall Decl. ¶ 24. In addition, several of COPAA's individual attorney, parent, and advocate members, including Plaintiffs Carter, Combs and Cupp, have suffered harms as a result of OCR failing to investigate and resolve their claims. Marshall Decl. ¶¶ 1, 26.

All of the aforementioned harms to Plaintiffs are irreparable and will continue absent a preliminary injunction.

IV. The Balance Of Equities And Public Interest Weigh Heavily In Favor Of Granting A Preliminary Injunction.

In considering a motion for a preliminary injunction, a court must evaluate the parties' "competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Winter,* 555 U.S. at 24 (2008). In "balanc[ing] the equities as the litigation moves forward," a court may issue a preliminary injunction that serves to "preserve the relative positions of the parties until a trial on the merits can be held." *NAACP v. U.S. Postal Serv.*, 496 F. Supp. 3d 1, 20 (D.D.C. 2020) (citations omitted). A court must also consider "the overall public interest." *Winter*, 555 U.S. at 26. The balance of equities and public

interest factors typically merge in cases against the federal government. *NAACP v. Postal Serv.*, 496 F. Supp. 3d at 8 (*citing Nken v. Holder*, 556 U.S. 418, 435 (2009)).

Here, absent a preliminary injunction, the individual Plaintiffs, organizational Plaintiff COPAA and its members, and students and families nationwide who rely on OCR to fulfill its statutory and regulatory obligations to investigate and resolve their civil rights complaints will suffer serious, immediate harms that could not be adequately remedied at the conclusion of the litigation. *See supra* Section III. Students' educational, academic, and emotional development cannot wait pending the resolution of this case; these harms should be avoided now.

On the other side of the ledger, "[i]t is well established that the Government cannot suffer harm from an injunction that merely ends an unlawful practice." *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 218 (D.D.C. 2020) (quotation marks and citations omitted); *M.G.U. v. Nielsen*, 325 F. Supp. 3d 111 (123) (D.D.C. 2018). Defendants will not be harmed by an order that compels them to comply with their statutory and regulatory obligations, and that maintains an established agency performing routine functions while the Court has an opportunity to decide the merits of the case.

Indeed, "there is a substantial public interest in 'having governmental agencies abide by the federal laws that govern their existence and operations,'" *League of Women Voters,* 838 F.3d 1, 12 (*quoting Washington v. Reno*, 35 F. 3d 1093, 1103 (6th Cir. 1994)), and, conversely, "generally no public interest in the perpetuation of unlawful agency action." *Id.* (*citing Pursuing America's Greatness v. FEC*, 831 F.3d 500, 511-12 (D.C. Cir. 2016)). The public has a strong interest in ensuring that federal agencies, like the Department of Education, fulfill their statutory and regulatory mandates, and that OCR investigates recipients of federal funding that perpetuate discrimination against students and other members of the public. A grant of preliminary injunctive relief before OCR staff currently on administrative leave are permanently terminated,

on June 9, 2025, and before Defendants further dismantle the Department, as contemplated by the March 20, 2025, Executive Order, will preserve the functionality of OCR and maintain this key lifeline for students and families seeking protection from and accountability for civil rights violations.

These final factors weigh sharply in favor of Plaintiffs' requested relief.

CONCLUSION

Accordingly, Plaintiffs respectfully urge the Court to grant Plaintiffs' Motion for Preliminary Injunction and order Defendants to restore the investigation and enforcement capacity of OCR that would enable OCR to process complaints promptly and equitably, as required by law. Plaintiffs ask the Court to require Defendants to submit a restoration plan and expeditious timetable to carry out the Court's preliminary injunction within seven calendar days of the order, to explain the basis of the restoration plan with relevant and accurate data and supporting credible facts that provide a reasoned basis for the proposed plan, and to provide Plaintiffs an opportunity to review and comment on the plan. Once the plan is approved by the Court, Plaintiffs request that the Court order Defendants to submit periodic status reports on their compliance and implementation and allow for Plaintiffs the opportunity to conduct discovery related to Defendants' status reports. Plaintiffs request all other relief so entitled.

Dated: May 2, 2025

Respectfully submitted,

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EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et al. Plaintiffs, v. U.S. DEPARTMENT OF EDUCATION, et al. Defendants.	Case No. 1:25-cv-744-PLF

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

After consideration of Plaintiffs' Motion for Preliminary Injunction and all responses and arguments of the parties, it is hereby **ORDERED** this ____ day of _____, 2025, that Plaintiffs' motion seeking to require Defendants to restore the investigation and enforcement capacity of the U.S. Department of Education's Office for Civil Rights that would enable OCR to process complaints promptly and equitably, as required by law, is **GRANTED**. The Court finds and concludes that Plaintiffs are likely to succeed on the merits of the Administrative Procedure Act and ultra vires claims presented in their Memorandum in Support of their Motion for Preliminary Injunction, that Plaintiffs are suffering and will continue to suffer from irreparable harm absent an injunction, that this injunction is in the public interest, and that the balance of equities tips in favor of Plaintiffs.

Within seven calendar days of this Order, Defendants shall submit to this Court and Plaintiffs a restoration plan that would enable OCR to process complaints promptly and equitably, as required by law. Defendants shall include in the restoration plan an expeditious timetable to carry out the Court's preliminary injunction and a thorough explanation for the

basis of the restoration plan with relevant and accurate data and supporting credible facts that provide a reasoned basis for the proposed plan. Defendants shall provide Plaintiffs a copy of all documents supporting the reasoned basis for the plan. Plaintiffs shall present to this Court and Defendants any responses and objections to the plan within seven calendar days of receiving the plan and documentation from Defendants. Once the plan is approved by the Court, Defendants are Ordered to fully implement the plan and shall not take further action to frustrate or delay the plan's implementation.

Furthermore, Defendants shall submit to this Court and Plaintiffs periodic status reports on their compliance and implementation beginning fourteen calendar days following the date of this Order and on the first Monday of each month thereafter. At least three business days prior to the submission of each status report, Defendants shall present to and confer with Plaintiffs on the status report. Plaintiffs shall have an opportunity to submit a response to the status reports within seven calendar days. It is further Ordered that Plaintiffs shall have a right to conduct discovery related to Defendants' status reports.

SO ORDERED.

_____

Hon. Paul L. Friedman
U.S. District Court Judge

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

NIKKI S. CARTER, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF EDUCATION, *et al.*,

Defendants.

Case No. 1:25-cv-744-PLF

DECLARATION OF AVNEET CHHABRA

DECLARATION OF AVNEET K. CHHABRA

Pursuant to 28 U.S.C. § 1746, I, Avneet K. Chhabra, hereby declare under penalty of perjury that the following is true and correct.

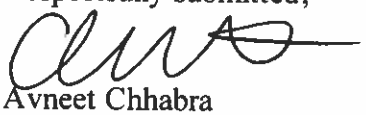
1. I am a paralegal at the National Center for Youth Law, counsel to Plaintiffs in the above-captioned matter. I submit this declaration in support of the Plaintiffs' Motion for Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65.
2. Exhibits 1-6 listed below and attached are all true and accurate copies of original materials.

Exhibit	Description of Exhibit
1	Linda McMahon, Secretary of the Dep't of Education. *Secretary McMahon: Our Department's Final Mission* (Mar. 3, 2025), https://www.ed.gov/about/news/speech/secretary-mcmahon-our-departments-final-mission.
2	U.S. Dep't. of Education, Press Release, *U.S. Department of Education Initiates Reduction in Force* (Mar. 11, 2025) https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force.
3	Email from Jacqueline Clay to CHCO, with attachments (Mar. 11, 2025)
4	Collin Binkley, *Education Department Layoffs Gut Its Civil Rights Office, Leaving Discrimination Cases in Limbo*, Associated Press (Mar. 12, 2025), https://apnews.com/article/trump-education-department-layoffs-civil-rights-8cbf463cce765f497c10d688ab4d51e1
5	Declaration of Catherine Lhamon, former Assistant Secretary for the U.S. Department of Education, Office for Civil Rights; State of New York v. McMahon, No. 1:25-cv-10601, Ex. 48
6	OCR Alumni Report, *Safeguarding Access and Protection: A Blueprint for Restoring the Office for Civil Rights*

3. The Declarations from Plaintiffs, current and former employees of the U.S. Department of Education's Office for Civil Rights, and Andrew Hairston, that will be filed separately with the Motion for Preliminary Injunction, are true and accurate copies.

I declare under penalty of perjury that the foregoing is true and correct. Executed May 2, 2025, at Washington, District of Columbia.

Respectfully submitted,



Avneet Chhabra
Paralegal/DC Office Manager
National Center for Youth Law

U.S. Department of Education

SPEECH

Secretary McMahon: Our Department's Final Mission

MARCH 3, 2025

By: Secretary Linda McMahon

When I took the oath of office as Secretary of Education, I accepted responsibility for overseeing the U.S. Department of Education and those who work here. But more importantly, I took responsibility for supporting over 100 million American children and college students who are counting on their education to create opportunity and prepare them for a rewarding career.

I want to do right by both.

As you are all aware, President Trump nominated me to take the lead on one of his most momentous campaign promises to families. My vision is aligned with the President's: to send education back to the states and empower all parents to choose an excellent education for their children. As a mother and grandmother, I know there is nobody more qualified than a parent to make educational decisions for their children. I also started my career studying to be a teacher, and as a Connecticut Board of Education member and college trustee, I have long held that teaching is the most noble of professions. As a businesswoman, I know the power of education to prepare workers for fulfilling careers.

American education can be the greatest in the world. It ought not to be

corrupted by political ideologies, special interests, and unjust discrimination. Parents, teachers, and students alike deserve better.

After President Trump's inauguration last month, he steadily signed a slate of executive orders to keep his promises: combatting critical race theory, DEI, gender ideology, discrimination in admissions, promoting school choice for every child, and restoring patriotic education and civics. He has also been focused on eliminating waste, red tape, and harmful programs in the federal government. The Department of Education's role in this new era of accountability is to restore the rightful role of state oversight in education and to end the overreach from Washington.

This restoration will profoundly impact staff, budgets, and agency operations here at the Department. In coming months, we will partner with Congress and other federal agencies to determine the best path forward to fulfill the expectations of the President and the American people. We will eliminate unnecessary bureaucracy so that our colleges, K-12 schools, students, and teachers can innovate and thrive.

This review of our programs is long overdue. The Department of Education is not working as intended. Since its establishment in 1980, taxpayers have entrusted the department with over $1 trillion, yet student outcomes have consistently languished. Millions of young Americans are trapped in failing schools, subjected to radical anti-American ideology, or saddled with college debt for a degree that has not provided a meaningful return on their investment. Teachers are leaving the profession in droves after just a few years—and citing red tape as one of their primary reasons.

The reality of our education system is stark, and the American people have elected President Trump to make significant changes in Washington. Our job is to respect the will of the American people and the President they elected, who has tasked us with accomplishing the elimination of bureaucratic bloat here at the Department of Education—a momentous final mission—quickly and responsibly.

As I've learned many times throughout my career, disruption leads to innovation and gets results. We must start thinking about our final mission at the department as an overhaul—a last chance to restore the culture of liberty and excellence that made American education great. Changing the status quo can be daunting. But every staff member of this Department should be enthusiastic about any change that will benefit students.

True change does not happen overnight—especially the historic overhaul of a federal agency. Over the coming months, as we work hard to carry out the President's directives, we will focus on a positive vision for what American education can be.

These are our convictions:

1. Parents are the primary decision makers in their children's education.
2. Taxpayer-funded education should refocus on meaningful learning in math, reading, science, and history—not divisive DEI programs and gender ideology.
3. Postsecondary education should be a path to a well-paying career aligned with workforce needs.

Removing red tape and bureaucratic barriers will empower parents to make the best educational choices for their children. An effective transfer of educational oversight to the states will mean more autonomy for local communities. Teachers, too, will benefit from less micromanagement in the classroom—enabling them to get back to basics.

I hope each of you will embrace this vision going forward and use these convictions as a guide for conscientious and pragmatic action. The elimination of bureaucracy should free us, not limit us, in our pursuit of these goals. I want to invite all employees to join us in this historic final mission on behalf of all students, with the same dedication and excellence that you have brought to your careers as public servants.

This is our opportunity to perform one final, unforgettable public service to future generations of students. I hope you will join me in ensuring that when our final mission is complete, we will all be able to say that we left American education freer, stronger, and with more hope for the future.

Sincerely,

Linda McMahon
Secretary of Education

CONTACT

Press Office | (202) 401-1576 | press@ed.gov |
Office of Communications and Outreach (OCO)

Office of Communications and Outreach (OCO)

Page Last Reviewed: March 4, 2025

Pay for College

Fill out the FAFSA

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Loan Forgiveness

1098 Tax Forms

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504 Plans

FERPA

IEPs (Individualized Education Program)

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Professional Resources

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Teaching Abroad

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U.S. Department of Education

PRESS RELEASE

U.S. Department of Education Initiates Reduction in Force

MARCH 11, 2025

As part of the Department of Education's final mission, the Department today initiated a reduction in force (RIF) impacting nearly 50% of the Department's workforce. Impacted Department staff will be placed on administrative leave beginning Friday, March 21st.

"Today's reduction in force reflects the Department of Education's commitment to efficiency, accountability, and ensuring that resources are directed where they matter most: to students, parents, and teachers," said **Secretary of Education Linda McMahon.** "I appreciate the work of the dedicated public servants and their contributions to the Department. This is a significant step toward restoring the greatness of the United States education system."

The Department of Education will continue to deliver on all statutory programs that fall under the agency's purview, including formula funding, student loans, Pell Grants, funding for special needs students, and competitive grantmaking.

All divisions within the Department are impacted by the reduction, with some divisions requiring significant reorganization to better serve students, parents, educators, and taxpayers.

Background

When President Trump was inaugurated, the Department's workforce stood at 4,133 workers. After today's actions, the Department's workforce will total roughly

2,183 workers. Included in the reduction in force are nearly 600 employees who accepted voluntary resignation opportunities and retirement over the last seven weeks, including:

- 259 employees accepted the Deferred Resignation Program
- 313 employees accepted the Voluntary Separation Incentive Payment

Remaining employees impacted by the reduction in force will be placed on administrative leave beginning next Friday, March 21. Pursuant to regulatory requirements and the Department's collective bargaining agreement, all impacted employees will receive full pay and benefits until June 9th, as well as substantial severance pay or retirement benefits based upon their length of service.

CONTACT

Press Office | press@ed.gov | (202) 401-1576 | Office of Communications and Outreach (OCO)

Office of Communications and Outreach (OCO)

Page Last Reviewed: March 27, 2025

Educational Resources

- 504 Plans
- FERPA
- IEPs (Individualized Education Program)

Teaching Resources

- Become a Teacher
- Professional Resources
- School Safety and Security
- Teaching Abroad

File a Report

- Report Fraud, Waste, or Abuse
- Report a Civil Rights Violation
- Student Privacy Complaint Forms

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[redacted]

Subject: FW: FW: CHCO - Notice to Employees Impacted by Reduction in Force (RIF)
Attachments: image001.png; Instructions for ED Employees Impacted by RIF, 3-11-25.docx; ED RIF Information and Resources, 3-11-25.docx; Office Hours – Retirement Paperwork and Process _ Questions and An....eml (8.44 MB); Office Hours - Retirement Paperwork and Process_Questions and Answers FINAL.pdf; FERS Retirement Forms.zip; CSRS Retirement Forms.zip

From: Clay, Jacqueline <Jacqueline.Clay@ed.gov>
Sent: Tuesday, March 11, 2025 4:36 PM
To: CHCO <CHCO@ed.gov>
Subject: CHCO - Notice to Employees Impacted by Reduction in Force (RIF)

Dear Colleagues,

I am writing to share some difficult news. This email serves as notice that your organizational unit is being abolished along with all positions within the unit – including yours. Please note, if you elected to separate under another program e.g., Deferred Resignation Program, Voluntary Early Retirement Authority (Early-Out), or Voluntary Separation Incentive Payment (Buy-Out), you are NOT impacted by the Reduction in Force (RIF).

To provide you with the maximum opportunity to focus on your transition, you will be placed on paid administrative leave starting **Friday, March 21, 2025**.

- ***Please take immediate action to review and comply with the Instructions for Employees Impacted by the RIF (attached). This document contains important information regarding access to ED facilities, transitioning your work, and preparing for administrative leave.***

- ***Ensure* your Principal Operating Component (POC) has your current mailing address, and a good personal phone number and email address to contact you.**

- During the transition period, you will retain limited equipment and systems access to enable official communications regarding your RIF standing. Please note:

- You are only authorized to back up your data to a network device or approved backup device.
- You are prohibited from storing sensitive or mission-critical data on your systems' hard drive or handheld device.
- All Department of Education system resources, including hardware, software programs, files, paper reports, and data are the sole property of the Department of Education, and there should be no expectation of privacy.
- You are prohibited from transmitting electronic copies of Department of Education materials to your home or other personal accounts.
- Personnel using remote access shall not download or store Government information on private equipment, optical or digital media.

- Unauthorized or improper use of this system may result in disciplinary action, as well as civil and criminal penalties.

- No earlier than 30 days from the date of this email you will receive your official RIF notice, which will begin an additional 60 days of paid administrative leave prior to your separation from the agency.

- This will give you a total of 90 days on paid leave to help facilitate your transition.

- Your official RIF notice will provide more detailed information on your specific benefits and standing and be delivered to your mailing address on file.

- You will only retain your Ed.gov email to facilitate communications with the agency through March 21, 2025.

ED has made the determination to initiate RIF procedures as part of the agency's restructuring process. These actions support Executive Order (EO) 14158, Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative, dated February 11, 2025 and Office of Personnel Management Guidance on Agency RIF and Reorganization Plans, dated February 26, 2025. This decision is in no way a reflection of your performance or contributions, which we deeply appreciate.

I recognize that this is a challenging moment, and my team is committed to supporting you through this transition.

➢ For additional information about Reductions in Force, visit the Office of Personnel Management RIF site.

➢ For general questions regarding next steps, please email workforcereshaping@ed.gov.

➢ For specific retirement or benefits questions, please contact benefits@ed.gov.

➢ Use the Employee Assistance Program, if needed. The Employee Assisstance Program (EAP) and WorkLife4You Program, provided by Federal Occupational Health (FOH), are available 24

hours a day, 7 days a week at 1-800-222-0364 (TTY: 1-888-262-7848) or at www.FOH4you.com or www.worklife4you.com.

- Should you lose access or need IT support, please contact the Help Desk at ocioenterprisehelpdesk@ed.gov; or call 202-708-HELP (202-708-4357) and select Option 2.

With regard,

Jacqueline Clay

Chief Human Capital Officer

Attachments:

Instructions for ED Employees Impacted by RIF

ED RIF Information and Resources

Benefits and Work/Life Email: Office Hours – Retirement Paperwork and Process

INSTRUCTIONS
FOR
EMPLOYEES IMPACTED BY REDUCTION IN FORCE (RIF)
3/11/25

PHYSICAL ACCESS TO ED FACILITY:
Effective 9:00 pm on March 11, 2025, your PIV card access to ED facilities will be removed. You are no longer permitted to use it to access federal buildings or property, including your former ED office space, without prior ED approval.

- The agency will schedule a period of time for those employees who may need to pick-up personal belongings.

TRANSITION OF WORK:
March 12, 2025 - March 21, 2025: During this period, you will have limited IT access to complete work transition activities – you will have access to ed.gov email, Quicktime, FedTalent and Login.gov.

NOTE 1: **Please ensure your Principal Operating Component (POC) has your current mailing address, and a good phone number and email address to contact you.**
NOTE 2: Please follow the instruction on Login.gov to change your account settings (i.e., phone number, email, etc.) and authentication method. This will help you retain access to Employee Express (Leave and Earnings Statements, W-2 tax prep forms).
NOTE 3: See item 5 in the attached Information and Resources document for important instructions on downloading eOPF records.

TIME AND ATTENDANCE:
During your transition period make sure you:

- Cancel all leave requests in Quicktime.
- Code your timecards for Pay Periods 7 through 13 as follows:
  PP 7: 3/10/25-3/21/25: Code your timecard as you normally would
  PP 8: Use Code 065 for week 1 and week 2
  PP 9: Use Code 065 for week 1 and week 2
  PP 10: Use Code 065 for week 1 and week 2
  PP 11: Use Code 065 for week 1 and week 2
  PP 12: Use Code 065 for week 1 and week 2
  PP 13: Use Code 065 for 6/2/25 and 6/9/25. Leave the remainder blank.

Once these timekeeping tasks are complete, do NOT continue to report your time and do NOT make any other changes to past timesheets. The payroll team will confirm that your timecard is coded properly for the duration of your administrative leave.

ADMINISTRATIVE LEAVE AND LIMITED TECHNOLOGY ACCESS:
Effective 5:00 pm on March 21, 2025, you will be placed on administrative leave and no longer have access to ED accounts or systems.

- Once your IT account is disabled, you will be mailed a shipping box and label to return government property (IT equipment, phone, PIV Card, Travel Card, etc.). You are required to return all government property within 7 days of receipt.
- **Returning Government Property: It is very important that your POC has your current mailing address and a good phone number and email address to contact you**.

OFFICIAL SPECIFIC EMPLOYEE RIF NOTICE:
On or about April 9, 2025, you will receive your employee specific RIF notice. It will include information regarding severance pay and retirement benefits.

SEPARATION FROM THE DEPARTMENT OF EDUCATION:
On or about June 9, 2025, your employment with the Department of Education will end.

For additional information about Reductions in Force, visit the Office of Personnel Management RIF site.

For questions, please email WorkforceRestructuring@ed.gov.

Reduction in Force (RIF)
Information and Resources
3/11/25

To help you navigate during this transition period, please use the information below in conjunction with the information provided in the ***Instructions for ED Employees Impacted by RIF***.

1. REDUCTION IN FORCE INTENT

ED has made the determination to initiate RIF procedures as part of the agency's restructuring process. These actions support Executive Order (EO) 14158, Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative, dated February 11, 2025 and Office of Personnel Management Guidance on Agency RIF and Reorganization Plans, dated February 26, 2025.

2. ADMINISTRATIVE LEAVE

Once you receive written notice that you have been impacted by the RIF, you will be afforded a brief period to transition work activities; after which, you will be placed on paid administrative leave effective **Friday, March 21, 2025.**

You will remain on paid administrative leave for the duration of the "notice period" as specified in your written notice.

Once on administrative leave, you will no longer be permitted to conduct the duties of your position and your accounts will be disabled.

NOTE 1: **Please ensure your Principal Operating Component (POC) has your current mailing address, and a good phone number and email address to contact you**.
NOTE 2: Please follow the instruction on Login.gov to change your account settings (i.e., phone number, email, etc.) and authentication method. This will help you retain access to Employee Express (Leave and Earnings Statements, W-2 tax prep forms).
NOTE 3: See item 5 below for important instructions on downloading eOPF records.
NOTE 4: Once your IT account is disabled, you will be mailed a shipping box and label to return government property (IT equipment, phone, PIV Card, Travel Card, etc.). You are required to return all government property within 7 days of receipt.

3. PAY AND BENEFITS

Pay During Administrative Leave
While on paid administrative leave:

- You will continue to be paid at the same rate and frequency as you did before you were placed on administrative leave.
- You will continue to accrue annual and sick leave.
- You will receive any scheduled Within Grade (Step) Increases.
- You will maintain the same benefits as you did before you were placed on administrative leave.

Pay After Separating from the Agency

Once you separate from the agency:

- You will receive your RIF severance payout, if eligible.
- OPM's Severance Pay Estimation Worksheet is intended to allow those eligible for severance pay to calculate the approximate amount of severance pay he or she may receive.
- The actual calculation formula is somewhat more complicated and technical therefore the actual payout will be provided by Office of Human Resources, Benefits and Retirement Branch.

Federal Employee Health Benefits

While on paid administrative leave, your health benefits will not change. Upon separation from the agency:

- Federal Employee Health Benefits (FEHB) will continue for 31 days and may continue, with the employee paying 100%, plus a 2% administrative fee of the premium (with no contribution from the agency) for up to 18 months.
- Federal Dental and Vision Insurance Program (FEDVIP) coverage ends upon separation.
- Flexible spending accounts are closed on separation. Unspent money in a health care FSA is not refunded, although claims for purchases up to the date of separation will still be paid. Unspent money in a childcare FSA will remain available for use through the plan year.
- For more information, visit OPM's RIF Benefits Summary page.

4. VOLUNTARY SEPARATION INCENTIVES

Voluntary Early Retirement Authority (VERA): ED is currently offering Voluntary Early Retirement (Early Out), **through March 25, 2025**. VERA is a strictly voluntary option that allows eligible employees to retire early. This authority encourages more voluntary separations and helps agencies to complete needed organizational changes with minimal disruption to the workforce.

- There is no reduction in annuity if you are under the age of 62 as a FERS employee, unlike retiring under the normal Minimum Retirement Age (MRA) +10 rules. However, you must be at your MRA to become eligible for the FERS supplement.

As a reminder, employees who meet age and service requirements for Voluntary Retirement do not need the VERA authority to retire and may apply to retire at any time.

Who is eligible for VERA?

If you are covered by the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), then you are eligible for VERA if you meet the following requirements:

- At least 20 years of creditable service and at least 50 years old OR completed at least 25 years of creditable service regardless of age.
- Continuously employed by ED since at least January 12, 2025.
- Be in good standing with the agency (i.e., not in receipt of a final removal decision based upon misconduct, or unacceptable performance).
- **Agree to separate from the Department by March 31, 2025**

Application Procedures

- **To request a VERA, you must submit a complete retirement package by March 25, 2025. For your convenience, the attached Benefits and Work/Life email provides important information and forms required to apply for retirement.**
- **All VERA applications must be received by 5:00 pm ET on March 25, 2025.**
- **Incomplete packages will not be considered.**

- **SUBMIT APPLICATION VIA EMAIL to** BenefitsandWork/Life@ed.gov

5. SEPARATION

Retaining Personnel Records - Electronic Official Personnel Folder (eOPF)
To download and save your entire eOPF, please follow the instructions below using **your ED account**:

- Go into the eOPF portal at OPM
- Click "My eOPF Print Folder" tab at the top
- Check "Select All"
- Click one of the two print buttons
- Click "My eOPF Print Status" tab at the top
  - Wait for the print request to process (this can take several minutes or longer depending on volume)
  - While waiting, read the instructions describing what the password will be for your document password
  - Password will be your last name plus the print number, which you will see in a box as the request is processing. Example: John Doe requested the print job and the system assigned 1234 as the job number. The password would be Doe1234
- When "View" appears in the "Action" box, click on it.
- Save as a PDF
- Open the PDF in Adobe and enter password

Outside Employment and Unemployment Benefits
While on administrative leave:

- You are not eligible to receive state unemployment benefits.
- You are free to accept other employment subject to the ethics rules for outside employment and applicable federal law; however, you may not accept employment with another federal agency.

Once you are separated:

- You are eligible to receive state unemployment benefits.
- You are free to accept federal or non-federal employment, subject to the post-government employment ethics rules and applicable federal law.
- You are entitled to reinstatement rights afforded all federal "displaced employees" for a period of three years.

Retention Standing
Your retention standing will be provided in your individual official RIF notice. Retention standing is an employee's relative standing on a retention register based on tenure, veterans' preference, and length of service augmented by performance credit.

6. CAREER TRANSITION

Available Employee Support

- The Employee Assisstance Program (EAP) and WorkLife4You Program, provided by Federal Occupational Health (FOH), are available 24 hours a day, 7 days a week at 1-800-222-0364 (TTY: 1-888-262-7848) or at www.FOH4you.com or www.worklife4you.com (new user registration code: ED) at no cost to you! You can also contact the benefits team at: BenefitsandWork/Life@ed.gov for additional information.

Career Transition Assistance Plan (CTAP)
The Career Transition Assistance Plan (CTAP) is an intra-agency program that helps surplus or displaced federal employees improve their chances of finding a new job in their agency, by giving them selection priority over other applicants, as long as they're qualified for the job.

You're eligible for CTAP if:

1. You're a current federal employee who meets the definition of a surplus or displaced employee—you've received official notice that your job is no longer needed or that you will lose your job by a Reduction in Force.
2. Your agency is accepting applications from within or outside of the permanent workforce.
3. You meet the qualifications and other requirements of the job you're applying for.

Interagency Career Transition Assistance Plan (ICTAP)
The Interagency Career Transition Assistance Plan (ICTAP) is an interagency program that helps surplus or displaced federal employees improve their chances of finding a new job at another agency (not their current or former agency), by giving them selection priority over other applicants from outside the agency.

You're eligible for ICTAP if:

1. You're a current federal employee who meets the definition of a surplus or displaced employee—you've received official notice that your job is no longer needed or that you will lose your job by a Reduction in Force.
2. The agency you're applying to is accepting applications from outside of their workforce.
3. The job you're applying to is in the local commuting area.
4. You meet the qualifications and other requirements of the job you're applying for. For more information on Career Transition, please visit the Employee's Guide to Career Transition

7. CONTACTS

- For additional information about Reductions in Force, visit the Office of Personnel Management RIF site.
- For general questions regarding next steps, please email workforcereshaping@ed.gov.
- For specific retirement or benefits questions, please contact benefits@ed.gov
- Use the Employee Assistance Program, if needed. The Employee Assisstance Program (EAP) and WorkLife4You Program, provided by Federal Occupational Health (FOH), are available 24 hours a day, 7 days a week at 1-800-222-0364 (TTY: 1-888-262-7848) or at www.FOH4you.com or www.worklife4you.com.
- Should you lose access or need IT support, please contact the Help Desk at ocioenterprisehelpdesk@ed.gov; or call 202-708-HELP (202-708-4357) and select Option 2.
-

From:	Benefits and Work/Life
Cc:	Benefits and Work/Life
Subject:	Office Hours – Retirement Paperwork and Process | Questions and Answers
Date:	Friday, February 21, 2025 8:31:05 AM
Attachments:	image001.png Office Hours - Retirement Paperwork and Process_Questions and Answers FINAL.pdf FERS Retirement Forms.zip CSRS Retirement Forms.zip

Distribution List: Employees who attended the *"Office Hours – Retirement Paperwork and Process"* meeting on Tuesday, February 18, 2025, 12:00 PM-1:00 PM Eastern

Colleagues,

Thank you for joining me to discuss paperwork and process regarding retirement. As promised, attached are the questions from the Teams Chat along with answers.

Thank you,

Mary Tittle
Branch Chief (Division of Benefits and Work/Life)
Office of Finance and Operations
U.S. Department of Education

Email: mary.tittle@ed.gov
Phone Number: (202) 987-1033

decorative

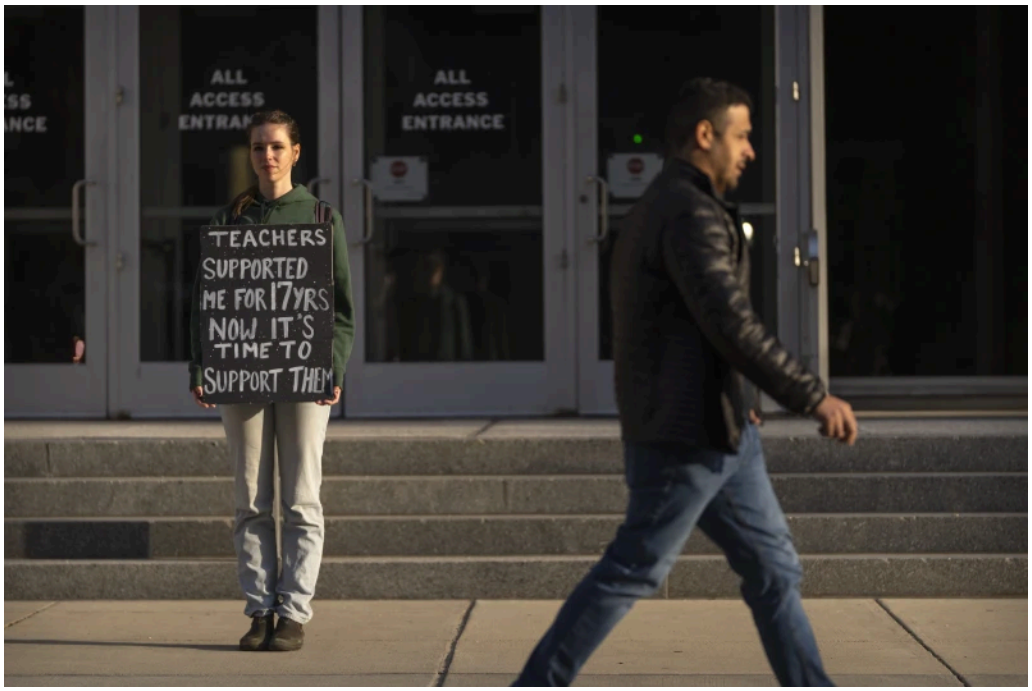
EDUCATION

Education Department layoffs gut its civil rights office, leaving discrimination cases in limbo

BY COLLIN BINKLEY
Updated 5:37 PM EDT, March 12, 2025

WASHINGTON (AP) — The Education Department's civil rights branch is losing nearly half its staff in the Trump administration's layoffs, effectively gutting an office that already faced a backlog of thousands of complaints from students and families across the nation.

Among a total of more than 1,300 layoffs announced Tuesday were roughly 240 in the department's Office for Civil Rights, according to a list obtained and verified by The Associated Press. Seven of the civil rights agency's 12 regional offices were entirely laid off, including busy hubs in New York, Chicago and Dallas. Despite assurances that the department's work will continue unaffected, huge numbers of cases appear to be in limbo.



Chloe Kienzle of Arlington, Va., holds a sign as she stands outside the headquarters of the U.S. Department of Eduction, which were ordered closed for the day for what officials described as security reasons amid large-scale layoffs, Wednesday, March 12, 2025, in Washington. (AP Photo/Mark Schiefelbein)

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The Trump administration has not said how it will proceed with thousands of cases being handled by staff it's eliminating. The cases involve families trying to get school services for students with disabilities, allegations of bias related to race and religion, and complaints over sexual violence at schools and college campuses.

Some staffers who remain said there's no way to pick up all of their fired colleagues' cases. Many were already struggling to keep pace with their own caseloads. With fewer than 300 workers, families likely will be waiting on resolution for years, they said.

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"I fear they won't get their calls answered, their complaints won't move," said Michael Pillera, a senior civil rights attorney for the Office for Civil Rights. "I truly don't understand how a handful of offices could handle the entire country."

Linda McMahon, President Donald Trump's nominee for Secretary of Education, attends a hearing of the Health, Education, and Labor Committee on her nomination, Thursday, Feb. 13, 2025, in Washington. (AP Photo/Jacquelyn Martin)

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Department officials insisted the cuts will not affect civil rights investigations. The reductions were "strategic decisions," spokesperson Madison Biedermann.

"OCR will be able to deliver the work," Biedermann said. "It will have to look different, and we know that."

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AP AUDIO: Education Department layoffs gut its civil rights office, leaving discrimination cases in limbo

AP correspondent Moriah Balingit reports on layoffs at the U.S. Education Department.

The layoffs are part of a dramatic downsizing directed by President Donald Trump as he moves to reduce the footprint of the federal government. Along with the Office of Civil Rights, the top divisions to lose hundreds of staffers in the layoffs included Federal Student Aid, which manages the federal student loan portfolio, and the Institute of Education Sciences, which oversees assessments of whether the education system is working and research into best teaching practices.

Trump has pushed for a full shutdown of the Education Department, calling it a "con job" and saying its power should be turned over to states. On Wednesday he told reporters many agency employees "don't work at all." Responding to the layoffs, he said his administration is "keeping the best ones."

After the cuts, the Office for Civil Rights will only have workers in Washington and five regional offices, which traditionally take the lead on investigating complaints and mediating resolutions with schools and colleges. Buildings are being closed and staff laid off in Dallas, Chicago, New York, Boston, Cleveland, Philadelphia and San Francisco.

Many lawyers at the New York City office were juggling 80 or more cases, said one staffer who spoke on the condition of anonymity out of fear for reprisals. The branch often mediated cases with New York City

schools, the nation's largest district, and its lawyers were handling a high-profile antisemitism investigation at Columbia University — a priority for Trump.

The staffer described several pending cases involving students with disabilities who are wrongly being kept out of school because of behavioral issues. With limited oversight from the office, they said, school districts will be less likely to comply with legal requirements.

The headquarters of the U.S. Department of Education, March 12, 2025, in Washington. (AP Photo/Mark Schi Read More

Pillera, who had said before the cuts that he was leaving the department, said it's unclear how complaints will be investigated in areas that no longer have offices.

"We have to physically go to schools," Pillera said. "We have to look at the playground to see if it's accessible for kids with disabilities. We have to measure doorways and bathrooms to see if everything is accessible for kids with disabilities."

Even before the layoffs, the civil rights office had been losing staff even as complaints rose to record levels. The workforce had fallen below 600 staffers before Trump took office, and they faced nearly 23,000 complaints filed last year, more than ever.

Trump officials ordered a freeze on most cases when they arrived at the department, adding to the backlog. When Education Secretary Linda McMahon lifted the freeze last week, there were more than 20,000 pending cases.

Historically, most of the office's work deals with disability rights cases, but it has fielded growing numbers of complaints alleging discrimination based on sex or race. It has also played a prominent role in investigating complaints of antisemitism and Islamophobia amid the Israel-Hamas war and a wave of campus demonstrations that spread across the country last year.

Craig Trainor, Trump's appointee over the office, directed staff to focus on antisemitism cases as a top priority last week. In a memo, he accused former President Joe Biden of failing to hold colleges accountable and promised tougher action against violators.

At her confirmation hearing, McMahon said the goal is not to defund key programs but to make them operate more efficiently. She vowed to uphold the agency's civil rights work but said it might fit better being moved to the Justice Department.

The civil rights office was not the only division to lose attorneys key to the Education Department's portfolio. Tuesday's layoffs have nearly eliminated all staff working in the department's Office of the General Counsel,

say two people familiar with the situation, who didn't want to speak publicly for fear of reprisals.

Attorneys in the division advised the department on the legality of its actions, helped enforce how states and schools spent federal money meant for disadvantaged K-12 students, and watched for conflicts of interest among internal staff and appointees, among other things.

Of the approximately 100 staff members working before Trump took office, only around two dozen remain. The majority of those still employed advise the department on higher education, including financial aid programs.

An email the Education Department sent to all staff after the layoffs said there will need to be significant changes to how they work.

"What we choose to prioritize, and in turn, not prioritize, will be critical in this transition," the message said.

A commuter walks past the headquarters of the U.S. Department of Eduction, which were ordered closed for the day for what officials described as security reasons amid large-scale layoffs, Wednesday, March 12, 2025, in Washington. (AP Photo/Mark Schiefelbein) Read More

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AP Education Writer Bianca Vázquez Toness contributed reporting.

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COLLIN BINKLEY
Binkley covers the U.S. Education Department and federal education policy for The Associated Press, along with a wide range of issues from K-12 through higher education.

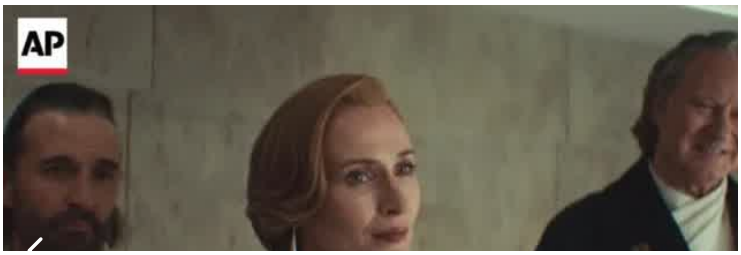

EXHIBIT 48

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STATE OF NEW YORK, *et al.*, Plaintiffs, v. LINDA McMAHON, *et al.*, Defendants.	C.A. No. 1:25-cv-10601 **DECLARATION OF CATHERINE E. LHAMON**

DECLARATION OF CATHERINE E. LHAMON

I, Catherine E. Lhamon, declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a resident of the state of Maryland. I am over the age of 18 and have personal knowledge of all the facts stated herein, except to those matters stated upon information and belief; as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the matters set forth below.

2. I twice served as Assistant Secretary for the United States Department of Education, Office for Civil Rights (OCR). In that role, I served as the principal advisor to the United States Secretary of Education on civil rights matters. I was first nominated to the position in 2013 by President Obama and unanimously confirmed by the Senate. I remained in this position until January 2017. In 2021, I was again nominated to the position by President Biden and confirmed by the Senate, serving until January 2025.

3. As Assistant Secretary for Civil Rights, I enforced federal civil rights laws in schools nationwide, supervised and reviewed the generation of regulations, published policy guidance, and oversaw the Civil Rights Data Collection, a mandatory survey of the nation's

schools that collects civil rights data about students' experiences. I oversaw a fulltime staff of approximately 600 employees in OCR's headquarters in Washington D.C., and OCR's 12 regional enforcement offices around the country.

4. I have spent my career of nearly three decades litigating and enforcing civil rights. I have a B.A. in American Studies from Amherst College and a J.D. from Yale Law School. Prior to my second appointment as Assistant Secretary for Civil Rights, I was Deputy Assistant to the President for Racial Justice and Equity from January to October 2021. Before that, I served as Chair of the United States Commission on Civil Rights from December 2016 to January 2021. Prior to that I was Legal Affairs Secretary to California Governor Gavin Newsom from January 2019 to January 2021. I have spent over a decade as a civil rights litigator at offices including National Center for Youth Law, Public Counsel, and ACLU Foundation of Southern California. I began my career as a Law Clerk to the Honorable William A. Norris in the United States Court of Appeals for the Ninth Circuit.

5. I am providing this declaration in connection with the announcement by the Department of Education ("the Department") on March 11, 2025 that it would be reducing its staff by 50%. *U.S. Department of Education Initiates Reduction in Force*, Press Release, Department of Education (Mar. 11, 2025), https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force ("March 11 Press Release"). I am also aware of the comments that same evening by Secretary of Education Linda McMahon that this reduction in force (RIF) marks the "first step" toward implementing President Trump's directive that she "shut down" the Department of Education. *Education Secretary: Mass Layoffs First Step Toward Total Shutdown*, The Hill (Mar. 12, 2025),

https://thehill.com/homenews/education/5190161-linda-mcmahon-education-department-mass-layoffs/.

6. I understand from reviewing the March 11, 2025 Press Release, that the Department initiated this RIF impacting nearly 50% of the Department's workforce; that the RIF affected all offices within the Department, with some offices undergoing significant reorganization; and that impacted Department staff will be placed on administrative leave beginning Friday, March 21, 2025.

Background on the Office for Civil Rights (OCR)

7. OCR enforces several federal civil rights laws that prohibit discrimination in programs or activities that received federal financial assistance from the Department of Education. OCR protects the civil rights of more than 49 million students in public pre-K-12 schools in more than 18,000 public school districts and over 19 million students in over 6,000 colleges and universities. *Protecting Civil Rights: Highlights of Activities, Office for Civil Rights (2021-2025)*, U.S. Dep't of Educ., (Jan. 2025) https://www.ed.gov/media/document/protecting-civil-rights-109409.pdf.

8. OCR enforces and investigates complaints related to federal civil rights laws including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, and Boy Scouts of America Equal Access Act. During my tenure, OCR employed about 400 investigators across 12 regional offices to process complaints and take on proactive investigations.

9. OCR investigates claims of discrimination based on disability, sex, race and national origin, and age as well as claims of retaliation discrimination and sexual assault. For

example, past investigations have covered claims that schools have failed to address harassment based on race, claims that schools have failed to provide physically accessible facilities to students with mobility disabilities, and claims that schools have failed to adequately respond to allegations of sexual harassment.

10. OCR regional staff conduct investigations and negotiate resolutions.

11. OCR investigators review complaints filed to determine whether OCR has jurisdiction, whether the complaint was timely filed, and whether OCR needs consent to proceed with investigation. When OCR opens a case for investigation the investigation typically includes requests for, and review of, documents and relevant information from various parties, interviews with school staff, witnesses, and others, and follow-up for additional documents and interviews as necessary. OCR investigative staff determine if the law as applied to the facts confirms a violation.

12. OCR may begin negotiations with recipients of federal funds to resolve violations or concerns that it identifies during the course of an investigation. OCR's Complaint Processing Manual specifies time periods for conducting these negotiations. OCR investigators follow a rigorous process upholding statutory requirements to provide schools with the opportunity to remedy any violation or concerns. The majority of investigations result in voluntary agreements, and fund termination is extremely rare.

13. Following resolution by agreement, OCR monitors to ensure the recipient of federal funds implements the terms of the agreement. In this monitoring phase, OCR often analyzes data and reviews whether policy changes were effective and legally compliant. If they are not, OCR continues working to secure more fulsome compliance. OCR does not cease monitoring until the resolution agreement is satisfied.

14. OCR also provides trainings and technical assistance to state and local educational agencies nationwide. OCR answers questions from schools, community organizations, and parent associations on topics including the laws in OCR's jurisdiction, OCR process, and types of civil rights harms. The office frequently receives questions about the law, and regional staff respond to these inquiries. It is very common, for example, to offer trainings on Section 504 of the Rehabilitation Act focused on access to school for students with disabilities. During my second appointment, regional office staff provided hundreds of legal trainings.

15. OCR issues policy guidance and drafts regulations related to the laws that OCR enforces. During the Biden administration, I oversaw the issuance of 65 policy guidance documents that explained the law to schools and communities. We also worked for years to develop the most comprehensive regulations to Title IX issued since 1975. We were working to update regulations to Section 504 of the Rehabilitation Act, which would have been the first update in nearly five decades.

16. OCR administers the Civil Rights Data Collection and publishes summaries of the data. OCR also maintains a public website with the data itself so that the data are available to the community. The public website includes data snapshots and reports related to equity indicators. Any individual can look at data for any single school, district, or state and pull indicators that are visually available on the website. These data are available to anyone, including researchers, parents, school principals and superintendents, and OCR investigators.

17. During my second appointment to OCR, I oversaw an update to the Complaint Processing Manual to create for first time an option for complainants to request at the time of filing for OCR to mediate their concerns. Mediation was an option prior to that, but it was not an

explicit option on the complaint form until this update. Following this update, OCR was able to resolve hundreds more cases through mediation, sometimes in as few as 12 days.

18. As part of this update, OCR provided mediation training to staff in every office to ensure they were prepared to accommodate mediation requests. OCR also trained staff about the various legal issues relevant to OCR's work to ensure every staff member was ready to respond.

19. OCR has a rapid resolution procedure that could be used at any stage of investigation. For example, if staff found a legal violation during the evaluation stage, they could invoke the rapid response procedure and immediately start negotiating a resolution.

20. The rapid resolution procedure led to fast, effective resolutions for heartbreaking issues. For example, a parent of a kindergartener who used a wheelchair reached out when the school refused to allow the student to bring their wheelchair on campus unless and until an Individualized Education Program meeting could be held. This type of meeting could take months to schedule, meaning the student would miss the start of the school year. OCR contacted the school to explain the legal violation and outline the remedy. Due to the rapid response, not only was the student was able to start school on time, but the school also changed the way it interacted with students with disabilities. OCR's efficient process was immensely consequential in the life of that five-year-old and future students.

21. I also worked directly with staff discussing issues and questions. As one example, I met twice a week with regional staff and the relevant Enforcement Director and the Deputy Assistant for Enforcement to talk through cases and move investigations efficiently.

The Harmful Impact of the RIF on OCR

22. On information and belief, OCR staff has been cut by approximately 50% as part of a massive RIF.

23. On information and belief, seven of the twelve regional offices—Boston, Dallas, New York, Chicago, Cleveland, San Francisco, and Philadelphia—will be closed in June 2025 and their staff placed on administrative leave as of March 21, 2025.

24. On information and belief, the remaining offices will take on open matters from closed offices and be responsible for processing new complaints and investigations from those regions.

25. At the time I left OCR, the average caseload was approximately 50 cases per OCR investigator.

26. On information and belief, the average caseload is now as high as 80 cases per investigator. With the closure of more than half of the regional offices, I expect that average to dramatically increase as high as 120 cases per investigator.

27. In my experience, 50 cases per investigator was already an untenable caseload. President Biden made budget requests to Congress every year in office to appropriate additional funds for hundreds more investigators. Despite instituting many efficiencies, including those described herein, more investigators were still needed.

28. I expect that investigators having more cases to handle will also result in investigations resolutions becoming slower and less comprehensive or thorough. Staff members will be swamped with a deluge of cases on their dockets which will impede the efficiency and effectiveness of their work.

29. Congress guarantees in the civil rights laws OCR enforces that no person shall experience discrimination in schools funded by the Department of Education. Congress created OCR to be a federal backstop against discriminatory harm to ensure we do not cross that line.

What is happening now is the Department is erasing that line and creating a situation where students who experience discrimination will have no federal redress.

30. Given my experience, I believe the Department's RIF will render the Department unable to fulfill its statutory functions. There are no extraneous functions in OCR. To remove seven of twelve regional offices and approximately half of OCR's enforcement personnel means the office will exist in name but not in actual function.

31. The Department claims it has updated the OCR Complaint Processing Manual in February 2025. I reviewed the latest version and found minimal changes that will not make up for losing half the staff. With the complaint volume, complaint processing changes could not make up for the significant loss of the investigators who do the work.

32. This RIF will cause great harm to school communities.

33. Civil rights enforcement staff in OCR have the most concentrated expertise in the country when it comes to civil rights in the education context. There is no other entity that has the expertise that OCR does because OCR has been doing this work for decades in every state and as applied to the very wide variety of kinds of civil rights harms that could and do occur in schools. Even the newest investigators have the benefit of robust training materials and are able to work on their cases with experienced and knowledgeable staff.

34. Often school communities may not understand the application of a particular law, but OCR does. And OCR has the benefit of institutional knowledge and experience, having often seen fact patterns or issues that may be novel to a particular school community. In those situations, what is new and unfamiliar to that community often is an issue that someone on the OCR staff has seen before and knows how to investigate, address, and resolve. Losing this

expertise by indiscriminately terminating half of the workforce is guaranteed to slow down justice for students and families.

35. The RIFs will not only result in the loss of institutional knowledge but also in the loss of community relationships built over decades. In theory and practice, the regional offices know the school communities they serve. They often know school administrators as well as the specific state and local laws and requirements. These relationships and knowledge allow them to more effectively navigate investigations. School mores and practices are different in different states. Regional staff familiarity with these mores and practices allows the office to negotiate resolutions more quickly. That familiarity also means people in the community are often willing to reach out to OCR based on established relationships. It is dangerous and counterproductive not to have people with those relationships at OCR.

36. For example, regional office expertise and relationship building helped resolve an investigation in a school district regarding whether Native American students were subject to discriminatory discipline and lacked access to rigorous coursework in comparison to their white peers. During an investigative interview, the superintendent repeatedly said that Native American families operated on “Indian time” and that’s why their kids had higher truancy rates and experienced greater discipline. OCR worked with local Tribes to confirm that the superintendent’s characterization was untrue and based on stereotypes. It matters that regional office staff have local relationships.

37. Cutting staff means cutting expertise and relationships. That seems to me designed to result in insufficient relief for kids.

38. OCR promises that it will investigate every case within its jurisdiction that is timely filed. It is an exceptionally beautiful promise to fulfill Congress’s charge that no person

shall experience discrimination in school. Families are entitled to timely answers to their civil rights questions and concerns.

39. During my tenure as Assistant Secretary, OCR got lean, effective, and efficient. During my second stint in the job, I had the particular benefit of having served in the role before, so I was not learning about OCR's work and processes for the first time. And yet, I cannot think of anything else we could have done to make the work move more quickly with the resources we had.

40. During my second term as Assistant Secretary, OCR managed the highest caseload in its history and resolved the second, third, and fourth highest number of cases per year during fiscal years 2022, 2023, and 2024. U.S. Dep't of Educ., cited *supra* ¶ 7.

41. Even though OCR saw a 64% increase in complaint volume during the Biden-Harris Administration compared to the prior Trump Administration, OCR resolved 14% more cases during the Biden-Harris Administration than OCR resolved during the prior Trump Administration. In fact, during the four years of the Biden-Harris Administration OCR resolved fully 80% of the total number of cases OCR had resolved during all eight years of the Obama Administration. *Id.*

42. But despite these successes, OCR strained to meet the volume of need. It was heartbreaking to OCR staff not to be able to answer every question in the most timely fashion.

43. A RIF of this size will devastate OCR and render it unable to meet the existing need for its services. If this RIF proceeds as announced, it is impossible to conceive how OCR can service its function and fulfill Congress's promise for the nation's families.

The Harmful Impact of the RIF on Other Department of Education Functions

44. As Assistant Secretary for Civil Rights, I also worked closely with other offices within the Department.

45. I worked closely with the Department of Education Office of General Counsel (OGC) in many different areas. The Department's practice under Presidents Obama and Biden was to have intra-agency review of any policy document to be published. If an office published guidance, both OCR and OGC would review for legal sufficiency. OCR's review focused on civil rights laws, and OGC's review encompassed a broader legal charge.

46. On information and belief, OGC will lose of the vast majority of its staff as a result of this RIF.

47. I do not know how OGC could now complete legal sufficiency review for guidance and grants. I cannot imagine they could assure lawfulness of those drafts. I am aghast that OGC would have so few people in it given this critical responsibility.

48. I know from working with colleagues across offices that people draft their proposed guidance and grant solicitations with every good intention, but there is value in having the eyes of different offices review to ensure one office's policy is not in conflict with the work of another. If not crafted this way, I expect there will be wrong answers and information that does not comply with the law in what the Department of Education publishes, causing great harm to states and schools.

49. Without the lawyers in OGC to explain what is unlawful, I expect unlawful actions will follow. Losing OGC expertise means guidance or grant applications or other publications from the Department will be likely to be legally insufficient because nonlawyers in

the Department offices may not know about statutory limitations or conflicts with other laws, and that will harm delivery of education in the states.

50. During my time at OCR, I benefitted from working with OGC on decisions related to hiring and personnel actions. From my experience of federal hiring over many years, OGC's great expertise clarifies a sometimes Byzantine process and provides necessary guardrails to protect against unlawful action. I expect the Department to be harmed in its ability to carry out lawful hiring and personnel actions without OGC expertise in determining what is and is not permissible

51. I also spent three years working on two large bodies of regulation that we crafted hand in glove with OGC. They reviewed our view of legal sufficiency in draft regulations and also covered laws beyond OCR's jurisdiction.

52. Publication of regulations must go through interagency review. OGC negotiates those conversations among agencies including, Health and Human Services, Equal Employment and Opportunity Commission, and any other federal agency with interest in the topic to be regulated.

53. When the President issues an Executive Order, typically that draft undergoes this interagency review before publication. OGC navigates that process among the agencies. OGC helped negotiate differences of opinion so that the Executive Order accurately stated the law and the obligations of various entities. I expect this will be harder to do with much fewer staff to do it. And, I expect, it will either slow down the issuance of regulations and Executive Orders that can impact many millions of people or that those regulations and Executive Orders will be promulgated without sufficient review.

54. I also worked closely with Office of Special Education and Rehabilitative Services (OSERS) which enforces the Individuals with Disabilities Education Act (IDEA) because OCR enforces a separate, but related law, Section 504 of the Rehabilitation Act.

55. On information and belief, OSERS staff who worked on policy drafting have been eliminated as well as staff in outreach to school communities. I cannot imagine how students with disabilities served under IDEA can be effectively served without these staff.

56. During my tenure under the Obama administration, the Department received reports that the state of Texas had set a cap on number of students with disabilities it would serve. And OSERS policy and outreach staff negotiated to correct that. If those staff do not exist, and a state, for example, again limits services to students with disabilities, this violation of the law would not be remedied by the Department. I know from my enforcement experience in OCR, including from resolving a specific investigation in which a school district outside of Texas had similarly imposed a cap on students with disabilities being served, that violations of this type continue to happen. I know, therefore, how important it is not to lose these staff in OSERS.

57. OCR and OSERS resources provide necessary information and resources for state and local education entities. But OSERS guidance on issues that can range, for example, from services to students with disabilities, to student restraint, to behavioral assessment are not likely to be published and updated without the staff. This will leave the states and their educators without answers to questions they encounter every day in classrooms.

I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, the foregoing is true and correct.

Executed on March 19, 2025, at Takoma Park, Maryland.

/s/ Catherine E. Lhamon

Catherine E. Lhamon

Safeguarding Access and Protection
A Blueprint for Restoring the Office for Civil Rights
U.S. Department of Education

Executive Summary

This paper reflects the institutional knowledge and expertise of a group of former career staff of the Office for Civil Rights (OCR) of the U.S. Department of Education (ED). It outlines the mission and history of the Office for Civil Rights (OCR) at the U.S. Department of Education. It explains how OCR enforces laws like Title VI of the Civil Rights Act, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act. It expresses grave concern about recent actions taken by the current administration in 2025 that have severely reduced OCR's capacity to fulfill its historic statutory mission of enforcing civil rights laws in education.

Specifically, the paper details how the Administration has closed 7 of twelve regional OCR offices, terminated approximately 40% of OCR staff (240 employees), and reoriented priorities away from OCR's traditional broad civil rights enforcement. The authors authoritatively explain how these changes make it impossible for OCR to properly investigate and resolve complaints of discrimination in educational institutions receiving federal funding.

The paper details why OCR's technical assistance and training functions are indispensable to accomplishing its mission and why these essential functions will not survive the recent cuts. It takes a comprehensive look at all ED programs and, for synergistic reasons, why it is imperative that they remain together within one department.

The authors assert that the staffing cuts and office closures constitute an unlawful attempt to dismantle a congressionally created agency without congressional approval, and they call for immediate intervention by the courts to restore OCR's capacity to fulfill its statutory obligations. The authors offer their support to those challenging the Administration's actions through public statements, declarations, serving as expert witnesses, and possibly developing an amicus brief.

In appendices, the paper suggests possible legal remedies, including writs of mandamus and challenges to the administration's actions as unconstitutional bills of attainder. The appendices include information about the authors (former OCR officials), a letter to the current administration regarding DEI policies, and detailed legal analyses of potential remedial strategies.

Safeguarding Access and Protection
A Blueprint for Restoring the Office for Civil Rights
U.S. Department of Education

Introduction

This paper reflects the institutional knowledge and expertise of a group of former career staff of the Office for Civil Rights (OCR) of the U.S. Department of Education (ED or Department).[1] We are an inter-generational community, yet there are many commonalities among us:

- We all believe in public service.
- We believe that every person in America is entitled to an equal educational opportunity and that wherever discriminatory practices, standards, and barriers exist to that opportunity they must be removed for the benefit and security of the nation as a whole.
- We all have first-hand, direct knowledge and insight into how OCR functions as well as what it accomplishes for our nation.
- We continue to be actively engaged and informed on the current civil rights landscape through teaching, publishing, conducting continuing legal education classes for professional organizations, *pro bono* work, serving as an expert witness, etc.
- We would like to use our expertise and institutional knowledge to address the current decimation of the enforcement of civil rights and misinterpretation of the civil rights laws and regulations.

Many students in America's schools still, today, suffer the injuries of race, sex, national origin, and disability discrimination, contrary to the civil rights statutes entrusted to OCR for enforcement. When we state OCR cannot possibly fulfill its statutory mission in its current, decimated staff levels, we are not making an "assertion," we are stating, with complete certainty, a matter of fact based on our experience with the agency. With similar deep direct experience, we also state that there is no short cut, clever administrative device or digital intervention that can change this conclusion.

The paper is intended to be used for public statements on behalf of the group, to provide information about the agency to parties in litigation against ED for the current Administration's recent actions towards OCR and ED as a whole and to offer our services as expert witnesses and/or declarants, and to possibly serve as the basis for an *amicus* brief on behalf of the group. Our group is deeply grateful to the advocates who seek to defend and restore ED and OCR. We wish to be their allies and supporters.

The paper discusses the mission of OCR; its formation; its responsibilities for investigating, redressing, and monitoring compliance with the laws it enforces; how it coordinates with and supports other offices that are part of ED to accomplish this work; and the impacts of its cuts. In addition, because our group believes that the strongest and most immediate possible intervention by the courts is necessary to protect and restore OCR, the paper and its appendices suggest several possible remedial strategies to ensure that the actions of the current Administration do

[1] The individuals contributing to this paper and their former positions with OCR and ED are listed in Appendix A.

not undermine OCR's mission – seeking a writ of mandamus and challenging the actions as bills of attainder.

Again, based on our many years of experience with OCR, it is evident and certain that there is no rational interpretation of the current circumstances under which OCR can operate at its current reduced staffing level and fulfill the duties assigned to it by law. This will result in significant harm to students, parents, teachers, school districts, and post-secondary institutions. Immediate redress is necessary.

Mission of OCR

As set forth in its ***2024 Annual Report to the President and the Secretary of Education***:[2]

> [OCR] safeguards the rights of students through the investigation of possible violations of civil rights laws, including Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), the Age Discrimination Act of 1975, and the Boy Scouts of America Equal Access Act of 2001. In addition, OCR safeguards students' rights by developing policy guidance to assist schools and other educational institutions receiving federal financial assistance in understanding how OCR interprets and enforces federal civil rights laws, by disseminating information and technical assistance about students' rights and schools' responsibilities, and by collecting and reporting data on key education and civil rights issues in our nation's public schools.

OCR has established a positive reputation for enforcing these civil rights statutes. The Section 504 enforcement has furthered the rights to a free appropriate public education for K-12 students with disabilities and reasonable accommodations (in OCR-speak, "academic adjustments and auxiliary aids and services") to postsecondary students with disabilities. Under Title IX, education free of harassment for girls and women and fair and equal athletic opportunities including scholarships has become an expectation due to the policies, regulations, and investigative outcomes of OCR. Under Title VI, OCR investigations have provided equal access to curriculum options and academic challenges, including advanced academic classes and treatment without biased discipline for African American students. Opportunities for pregnant and LGBTQ+ students have been furthered by OCR. Meaningful and effective education instruction for English language learners is a well-known success story for the agency. Students at K-12 and postsecondary education levels have filed complaints with OCR as a known avenue for acquiring their rights to an education free from discrimination and harassment. These achievements have provided OCR experience with complex and sensitive issues leading to the development of clarifying policy and regulations to further civil rights. OCR's investigators, lawyers, and managers have developed case processing steps that lead to thorough and fair investigations resulting in numerous settlements of fair education policies in programs and activities in schools and colleges that are recipients of federal financial assistance.

[2] https://www.ed.gov/media/document/ocr-report-president-and-secretary-of-education-2024-109012.pdf, last accessed April 15, 2025.

Background

The current Administration has acted unlawfully and contrary to the requirements of the US Constitution by taking actions to dissolve the Department of Education without congressional approval. Under the foundational principles of separation of powers, no Executive Order, by fiat, can close an agency created by Congress. The President's long-time hostility to the Department is well known. The President cannot rely on fictitious findings by the Department of Government Efficiency to bolster an illegal attempt to close the Department. The Secretary cannot simply fire people without cause and move statutorily created offices to other agencies outside of ED. In effect, the Secretary is attempting to close and cripple an agency without the approval of Congress.

As former OCR attorneys and managers, we are focusing our concerns on what has happened to OCR and the people and institutions it serves. OCR was included in the Department of Education Organization Act in 1979 and made a Cabinet-level agency in 1980. Prior to this time, it was a part of the Department of Health, Education, and Welfare, with an early role in desegregating public schools and other federal civil rights tasks. OCR, unlike most other offices in the Department, is not a source of funding. Its breadth is much broader. Its mission is to ensure that educational agencies that receive federal financial assistance ("FFA") do not discriminate on the basis of sex, race, color, national origin, language minority status, age, or disability. It has its own budget to ensure that these goals can be met.

OCR has established, through regulations that have been in existence for almost 50 years, an investigative and enforcement approach to its work. OCR receives complaints that, once accepted as meeting the appropriate standards for jurisdiction and timeliness, must be investigated. OCR does not charge for investigation or resolution of complaints. Consequently, for many parents and students, OCR is the sole route to protecting their civil rights while attending school. Moreover, OCR cannot merely close out complaints by issuing a "right to sue letter" to complainants, as is permissible under Title VII of the Civil Rights Act of 1964, enforced by the U.S. Equal Employment Opportunity Commission.

OCR's investigative work is carried out by regional offices with trained investigators and attorneys. The complaint caseload has increased and the staffing has decreased over the past 40 years. In the last decade, the number of discrimination complaints has more than doubled, while the number of investigators has been cut in half. In FY 2024, OCR had a staff of 588 people and received more than 22,687 complaints, up from 19,201 in FY 2023, an all-time high,[3] and had a backlog of 12,000 investigations.[4] Despite this, Education Secretary McMahon fired more than 240 OCR employees, almost 40 percent of the staff -- with just 348 staff members remaining, the number of cases per investigator could increase from the current 42-50 per employee to 86[5] to

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[3] OCR 2024 Fiscal Year Annual Report, https://www.ed.gov/media/document/ocr-report-president-and-secretary-of-education-2024-109012.pdf, last accessed April 15, 2025.

[4] https://www.insidehighered.com/news/students/safety/2025/04/15/students-and-institutions-limbo-after-mass-layoffs-ocr?utm_source=Inside+Higher+Ed&utm_campaign=af0a9e0e99-DNU_2021_COPY_03&utm_medium=email&utm_term=0_1fcbc04421-af0a9e0e99-237303025&mc_cid=af0a9e0e99&mc_eid=c13f133d9e, last accessed April 15, 2025.

[5] *Id; see* Collin Binkley, *Education Department Layoffs Gut Its Civil Rights Office, Leaving Discrimination Cases in Limbo*, Associated Press (Mar. 12, 2025), https://bit.ly/3DZHl4k, last accessed April 15, 2025.

200 per employee.[6] Last year, President Biden requested an additional $22.4 million for OCR to deal with the volume of complaints, a 14-percent increase from the previous year. A portion of the money would have gone toward hiring more than 75 additional OCR investigators. Congress rejected the president's request. In short, OCR has been charged over the years to do more with less. More complaints, less staff.

On March 11, 2025, the Secretary of Education issued a mass termination notice that closed seven of the 12 OCR regional offices and informed all staff in the soon-to-be-closed offices that they were to be RIFed (government parlance for reduction in force; in other words, terminated).[7] As a result of this arbitrary and capricious decision to close more than half of the regional offices, complainants and recipients[8] have been in the dark as to what is happening with their already filed complaints, including the investigations, mediations, remedial negotiations in progress, and those agreements that were actively being monitored. Moreover, there is no information provided to the public in those 25 states and 2 territories that no longer are served by a regional office as to how and where to file complaints. Indeed, for weeks after the seven regional offices were closed – to at least April 16, 2025 -- OCR's webpage still stated that complaints could be filed with them.[9]

OCR was already short staffed and the Secretary's decision affecting 40% of its staff will have devastating consequences for students, teachers, and educational institutions. OCR will simply not be able to meet its statutory obligations. Particularly hard hit will be students asserting discrimination on the basis of disability – historically, more than half of new complaints filed annually. Many students with disabilities could effectively be barred from education because of the reduction in OCR investigative staff. Timeframes will be extended when resources are so diminished. Students may lose a year or more of education.

To fulfill its duties, the primary regulations enforced by OCR require that it "make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply."[10] OCR has long had performance standards under the Government Performance and Results Act (GPRA), including as to timeliness. The Act holds "Federal agencies … accountable for establishing organizational routines and management processes for setting performance goals and objectives that deliver results for the American taxpayer."[11] For OCR, the "results" are the timely and accurate resolution of complaints in order to determine whether discrimination has occurred and, if so, remedy it. Thus, the performance standards for the regional offices and their staff are based in part on the timeliness of completion of investigations, with the benchmark for satisfactory performance

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[6] https://www.chronicle.com/article/ed-department-wants-to-end-dei-does-it-have-the-staff, last accessed April 15, 2025.

[7] The employees were placed on administrative leave and notified in mid-April that they would be removed from the payroll on June 10, 2025.

[8] School districts, higher education institutions, and other institutions that receive FFA from ED.

[9] https://ocrcas.ed.gov/contactfor weeksfd-ocr?field_state_value=. The webpage had been updated by April 25, 2025, but the weeks with the incorrect information contributed to uncertainty and anxiety for many complainants and potential complainants.

[10] 34 C.F.R. § 100.7(c) (Title VI); *see also* 34 CFR §§ 104.61 (Section 504), 106.81 (Title IX), 110.30–33 (Age Discrimination Act), and 28 C.F.R. § 35.171 (Americans with Disabilities Act).

[11] https://www.performance.gov/about/performance-framework/, last accessed April 15, 2025.

being resolution of 80% of complaints within 180 days of receipt and making significant progress toward having no more than 25% of all pending complaints that are over 180 days old – all to ensure that complainants and respondents are provided with timely resolution of complaints.

Career OCR staff have always been mindful that, with changes in administration, policy initiatives will change. However, the reorientation of OCR's priorities and resources away from the types of complaints that OCR has historically addressed will prevent OCR from fulfilling its statutory mandate to address all forms of discrimination prohibited by the statutes it is charged with enforcing.

The termination of hundreds of career attorneys, investigators, and managers who have knowledge and experience is also a tremendous loss to OCR. Even if there is a decision to hire more staff, the talented and experienced staff who were wrongfully fired by the Secretary are irreplaceable. As a result of this "brain drain," the agency, students, and recipients will suffer.

Indeed, they already have. A report by National Public Radio[12] describes in detail an OCR complaint alleging that a school district has unlawfully secluded a 12-year-old student with fetal alcohol syndrome, autism, ADHD, and a mild intellectual disability. Because the investigation of the complaint has stalled -- the attorney looking into the case was laid off in March and the parent hasn't received any updates since -- the student remains subject to continuing seclusion. Moreover, because the parent can no longer expect prompt action by OCR on the complaint, the parent has joined a lawsuit that aims to force OCR to act on complaints like hers. The lawsuit explains that the layoffs have undermined OCR's "ability to fulfill its statutory and regulatory mandate to enforce civil rights laws in schools." In the meantime, as the parent waits for the federal government to step in, she has cut the amount of time the student spends at school to just two hours a day. The student is the one to suffer.

Laid off employees (some of whom are unwilling to share their names because of fear of retribution) have described the impact of the cuts on the agency's ability to meet its statutory responsibilities. In many cases, this will exacerbate the harm to students, parents, and employees from the discrimination leading them to file their complaints. In one complaint, a school district would only allow a student with Down's Syndrome and autism to go on a field trip if the parent came along; the OCR attorney assigned to the case had scheduled a mediation that, if successful, would have authorized the student to participate. However, when OCR managers instructed staff to cease communications with complainants and recipients, the mediation didn't take place and the student lost the opportunity to participate. In another complaint in which OCR had determined that a student had been subjected to egregious racial harassment, the district signed a resolution agreement. The district's attorney subsequently contacted OCR with questions about implementation of the agreement, but the staff assigned to the case could not respond at the time – indeed, it is not clear if the district's attorney has ever received a response or if the agreement has in fact been implemented. In yet another complaint, OCR and a school district were close to resolving a complaint involving transportation of students with disabilities but, because of the cuts to the agency, there has been no agreement. In another matter, a sexual violence compliance

[12] https://www.npr.org/2025/04/16/nx-s1-5338830/trump-federal-cuts-civil-rights-education-investigations, last accessed April 16, 2025.

review initiated during the first Trump administration has been fully investigated. Yet, due to the recent cuts, there is no one at OCR sufficiently familiar with the case to write up a determination letter and resolution agreement.

The combination of a steep reduction in staffing and the redirection of OCR to a narrow set of political priorities (e.g., a narrow view of antisemitism, alleged discrimination against Whites, and transgender issues) must not be permitted to operate as a nearly complete preemption of the core objectives of Congress when it passed the laws enforced by OCR – laws that remain unchanged.

Reduction in Complaint Processing

Until now, OCR has always followed the regulations articulating the standards for resolutions of complaints and compliance reviews.[13] However, the recent actions by the Secretary of Education have exceeded her authority, thereby violating both statutory and Constitutional law.

There have been statements by the current Administration that the reduced staff will be able to deal with the complaint load more efficiently through approaches such as the Rapid Resolution Process (RRP) set out in OCR's Case Processing Manual (CPM).[14] However, RRP will not be appropriate for many complaints. OCR is not a claims adjustment agency, simply seeking an outcome that is acceptable to the parties. According to the CPM, the "outcomes in all RRP cases must meet OCR's standards for legal sufficiency and be consistent with applicable statutory and regulatory authority." Often, it is only through an investigation that OCR will be able to determine the nature and extent of any discrimination and what measures will be necessary to remedy it. Further, according to the CPM, "[a]ny resolution agreement reached through RRP must be aligned with the allegations in the complaint deemed appropriate for resolution pursuant to RRP." The CPM provides that RRP will only be used where the recipient is interested in immediately resolving the matter or has already taken action to do so. Since this option has long been offered to recipients, there is no reason to believe that recipients will suddenly find it more attractive now than in the past. Indeed, in FY 2024, only 638 complaints were resolved through this process.[15] For similar reasons, mediation (to reach a resolution acceptable to the parties, without necessarily meeting OCR's standards and to which OCR is not a party)[16] cannot be expected to be an effective method of keeping up with the complaint load – in FY 2024, only 778 complaints were resolved in this way.[17] Thus, it is abundantly clear that resolution of most complaints will continue to require at least some investigation.

During the course of an investigation, a recipient may express an interest in resolving the allegations. This can be an effective way to resolve a complaint, but only if "OCR's investigation has identified issues that can be addressed through a resolution agreement. The

[13] 34 C.F.R Part 100 (Title VI); 34 C.F.R. Part 104 (Section 504); 34 C.F.R. Part 106 (Title IX); and 34 CFR Part 108 (Age Discrimination Act).
[14] Section 110 of the CPM, https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/ocrcpm.pdf, last accessed April 16, 2025.
[15] OCR 2024 Fiscal Year Annual Report, https://www.ed.gov/media/document/ocr-report-president-and-secretary-of-education-2024-109012.pdf, last accessed April 15, 2025.
[16] Article III of the CPM.
[17] *Id.*

provisions of the resolution agreement must be tied to the allegations and the evidence obtained during the investigation, and will be consistent with applicable regulations."[18] In other cases, it may only be possible to resolve a case after a full investigation.

If there is a finding that the recipient has failed to comply with the civil rights statutes, the recipient and OCR then may enter into an agreement to address the violation.[19] Article V of the Case Processing Manual provides specific steps to be taken to monitor resolution agreements. It has been our experience that monitoring can take considerable time and resources – resources that the agency will no longer have as a result of the Administration's actions. Without effective monitoring, there is no assurance that the violations identified will actually be remedied.

If an agreement cannot be reached, the are several additional steps that OCR – or civil rights offices at other federal agencies -- must take to ensure compliance. These steps are set out by statute at 42 USC § 2000d-1 (Title VI) and 20 U.SC. § 1682 (Title IX) and elaborated on by the procedures in the Title VI regulations.[20]

Before ED or another federal agency can suspend, terminate, refuse to grant, or refuse to continue FFA, the agency must:

- notify the recipient of the failure to comply and attempt compliance by voluntary means,
- have a hearing with procedural and substantive due process requirements that results in an express finding on the record of a failure to comply,
- get approval of the agency's Secretary, and
- wait 30 days after the Secretary provides a written report to the appropriate House and Senate committees.

These steps require considerable resources, with no available shortcuts or "efficiencies."

Moreover, any fund termination is subject to the statutory requirement of "pinpointing":

> Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and *shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found*. [Emphasis added.]

As an alternative to fund termination, ED or another federal agency can refer the matter to the Department of Justice for suit in Federal court after the Secretary has determined that voluntary compliance cannot be reached, the recipient has been notified of the failure to comply and of the coming referral, and then wait at least 10 days after the notification.

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[18] Section 302 of the CPM.
[19] Section 303 of the CPM.
[20] *See, e.g.,* the procedures for OCR and the Department are at 34 CFR § 100.8, https://www.law.cornell.edu/cfr/text/34/100.8; Agriculture at 7 CFR § 15.8, https://ecfr.io/Title-7/Section-15.8; and Health and Human Services at 45 CFR § 80.8, https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-A/part-80. *See also* Article VI of OCR's Case Processing Manual.

And it's one or the other; e.g., 34 CFR § 100.8 provides:

> If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance ***or*** by any other means authorized by law. [Emphasis added.]

The current Administration did not follow these steps in several recent cases where FFA was summarily cut off. In the recently reported case against Columbia University, there was no finding, no attempt to resolve the case voluntarily, and no administrative hearing. Rather than pinpoint which FFA was to be terminated, all funds were. These actions are unlawful and certainly do not comport with the law or the rationale supporting these remedies. Other recipients have been subjected to similar actions; e.g., Maine and Harvard,[21] with the action against Maine resulting in an Emergency Temporary Restraining Order against the freezing of federal funds under the Administrative Procedures Act.[22] Moreover, in the Maine case, FFA was cut off (without pinpointing[23]) *and* the matter was referred to the Department of Justice: "If no such Resolution Agreement has been executed by close of business April 11, 2025, OCR will issue a Letter of Impending Enforcement Action to [the Maine Department of Education] and concurrently refer this matter to the Department of Justice for enforcement."[24] Other recipients have been threatened with similar actions. Since OCR was created, no recipients have been treated like this.[25]

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[21] While the Administration's letter to Harvard notifying it of the funding freeze did not specifically refer to Title VI, the multiagency Joint Task Force to Combat Anti-Semitism wrote: "Harvard's statement today reinforces the troubling entitlement mindset that is endemic in our nation's most prestigious universities and colleges — that federal investment does not come with the responsibility to uphold civil rights laws. Moreover, a spokesperson for the White House stated: " "President Trump is working to Make Higher Education Great Again by ending unchecked anti-Semitism and ensuring federal taxpayer dollars do not fund Harvard's support of dangerous racial discrimination or racially motivated violence. Harvard or any institution that wishes to violate Title VI is, by law, not eligible for federal funding." "https://www.washingtonpost.com/education/2025/04/14/harvard-rejects-trump-administration-demands/?utm_campaign=wp_todays_headlines&utm_medium=email&utm_source=newsletter&carta-url=https%3A%2F%2Fs2.washingtonpost.com%2Fcar-ln-tr%2F421a47f%2F67fe2e2c1c02d2281d8a207f%2F5981e5e39bbc0f6826da5c2d%2F14%2F63%2F67fe2e2c1c02d2281d8a207f, last accessed April 14, 2025.

[22] *State of Maine v. U.S. Department of Agriculture, et al.*, Case 1:25-cv-00131-NSW (D. Maine, April 11, 2025), https://storage.courtlistener.com/recap/gov.uscourts.med.67828/gov.uscourts.med.67828.12.0.pdf. On April 21, 2025, Harvard also sued the Administration for (among other things) bypassing the procedures required by Title VI for fund termination. https://www.harvard.edu/research-funding/wp-content/uploads/sites/16/2025/04/Harvard-Funding-Freeze-Order-Complaint.pdf, last accessed April 21, 2025; https://www.thecrimson.com/article/2025/4/22/harvard-sues-trump-admin/, last accessed April 21, 2025.

[23] In *State of Maine v. U.S. Department of Agriculture, Id.,* the court granted the Emergency TRO in part because USDA imposed restrictions on FFA for food assistance programs rather than on any FFA for athletics programs.

[24] https://www.ed.gov/media/document/mdoe-letter-of-impasse-109687.pdf.

[25] Curiously, while running roughshod over the required procedures in these matters, the certification form the Department recently sent to school districts and state educational agencies acknowledged that they are required before funds can be terminated or the matter can be referred to the Department of Justice. https://www.ed.gov/media/document/reminder-of-legal-obligations-undertaken-exchange-receiving-federal-

Note that there is one other alternative for enforcement of the civil rights laws. In 1979, the Supreme Court established a private right to sue under Title IX, which also applies to Title VI, Section 504, and the Age Discrimination Act.[26]

In an April 10, 2025, cabinet meeting, the President and the Secretary of Education asserted that funding was being or would be cut off for a number of universities because they had diversity, equity, and inclusion (DEI) programs. The Secretary further asserted that the investigations are ongoing. There have been no completed investigations, no findings of a violation of any civil rights statute, no attempts to reach a voluntary agreement, no administrative hearings prior to her decision to terminate FFA.

Again, career OCR staff have always been mindful that, with changes in administration, policy initiatives will change. However, any policy must comport with the law. In order to advance their policy objectives, a DEI portal has been created at OCR suggesting that DEI programs are a *per se* violation of Title VI. There is no legal authority for such an assertion. Institutions and school districts have been informed that they need to disband DEI programs that violate Title VI or risk losing federal grants. However, there is no clear definition of which DEI programs may violate Title VI.[27] On April 3, 2025, the Department raised the stakes. It sent a revised Certificate of Assurance to all state and local educational agencies (including school districts).[28] New language was added to the Certificate without the required OMB approval. The Department informed recipients that they had to ensure not only compliance with Title VI but also that they had to eliminate any DEI programs that violate Title VI. Once again, the Department has provided no clear guidance as to which programs might constitute a violation.[29] The Department has informed recipients that refusal to sign these certificates makes them ineligible to receive new Federal funds. If they do sign the certificates, they have been

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financial-assistance-and-request-certification-under-title-vi-and-sffa-v-harvard-april-3, nn. 3 & 4. Last accessed April 16, 2025.

[26] *Cannon v. U. of Chicago*, 441 U.S. 677 (1979). When Geraldine Cannon was denied admission to the University of Chicago Medical School, she filed a complaint at OCR's Chicago Regional Office alleging discrimination based on her sex (female) and age (39) years. The Medical School asserted that their policy against admitting applicants who are more than 30 years old was based upon the premise that older students were not likely to practice medicine long enough to justify providing resources needed to them. Ms. Cannon provided actuarial tables showing that women had longer life expectations than men, thus rebutting the claim of a shorter length of time for practicing medicine. Furthermore, this policy had a disparate impact on women, who more frequently take child rearing breaks before continuing advance degree education. The Supreme Court recognized her right to bring suit against the School and required her admission to the Medical School.

[27] OCR initially announced its interpretation of Title VI as prohibiting DEI programs in a February 14, 2025, Dear Colleague Letter, https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf. It provided some guidance on what programs it considered to be prohibited in a March 1, 2025, FAQ document, https://www.ed.gov/media/document/frequently-asked-questions-about-racial-preferences-and-stereotypes-under-title-vi-of-civil-rights-act-109530.pdf. Taken together, the documents provide a confused, skewed, and inaccurate picture of what programs are and are not acceptable. *See, e.g.,* February 27, 2025, letter from former OCR employees to Trainor on the February 14, 2025, Dear Colleague Letter on DEI at Appendix B; *NEA, et al. v. United States Department of Education, et al,* Civil No. 25-cv-091-LM (D.N.H. April 24, 2025), granting plaintiff's motion for preliminary injunction, https://storage.courtlistener.com/recap/gov.uscourts.nhd.65138/gov.uscourts.nhd.65138.74.0.pdf, last accessed April 26, 2025.

[28] *Id.*

[29] *Id.*; *see, e.g.,* criticisms of the FAQ document in https://www.naacpldf.org/wp-content/uploads/Civil-Rights-Organizations-Letter-to-SEAs-and-LEAs-Re-ED-Certification-Request-1.pdf, last accessed April 16, 2025.

threatened with possible Federal False Claim[30] actions if they later have been found to have continued DEI programs that are deemed to violate Title VI. This is a draconian threat that could lead to triple damages. This is a new and threatening mode of enforcement that would have devastating consequences for elementary and secondary schools and their students.

As former career civil rights attorneys, investigators, and managers, we have served under both Republican and Democratic administrations. We know that new administrations have different policy initiatives. But we have never seen a complete failure to follow the laws and regulations, nor the arbitrary dismantling of an agency as we do now. OCR's interactions with recipients have always had the end goal of working together to achieve a resolution to a civil rights concern, not to starve them of necessary resources. This attack on recipients will have devastating consequences for students, teachers, and parents. OCR has always been an agency that investigated and enforced the law without bias. The Trump-envisioned new OCR has been given quite a different charge.

The Destruction of Human Capital Assets

To accurately understand the resources that are essential for OCR to fulfill its statutorily mandated responsibilities, one must take into account the quality of the human capital necessary for OCR to develop and retain its institutional expertise and skills. The body of knowledge each OCR employee must gain is vast. No one can arrive at OCR immediately ready to engage in complaint investigation, much less develop an effective remedy or provide technical assistance.

OCR develops the skills needed to support its required functions by engaging in multiple forms of expert development, including structured training, experiential training, mentoring, and facilitating "learning communities." By itself, structured training is not nearly sufficient to enable OCR employees to implement the mission of OCR. Experiential training, years of it, is crucial for OCR to develop its human capital.

OCR's core function is the investigation and resolution of complaints. Each OCR attorney and investigator must gain comprehensive familiarity with the regulations, policies, and precedents that establish the scope and limits of OCR's mission. These authorities detail what is lawful and what is not. To name just a few of the types of discrimination within the span of OCR's responsibilities: segregation, disparate treatment, disparate impact, and hostile environment. Each of these forms of discrimination may occur with regard to race, color, sex, national, national origin, or disability. Moreover, each of these protected categories has certain specialized issues; e.g., for disability, denial of reasonable accommodation; for sex, denial of equal athletic opportunity; for race, discrimination in discipline; for national origin, failure to address the needs of non- or limited English speakers.

Each OCR employee must also gain an understanding of the application to their work of the First Amendment and the privacy rights of students. For example, both of these issues apply to OCR's current assignments with regard to antisemitism and Islamophobia.

[30] 31 U.S.C. §§ 3729-3733.

With any given set of allegations, the investigator and attorney must be able to know which analytical elements to apply -- disparate treatment, disparate impact, FAPE, hostile environment, accommodations, etc. In turn, they must identify the data to collect and the questions to ask. Much like a judge, once the data has been collected, the investigator and attorney must make determinations as to relevance and reliability, applying the pertinent standards to the facts that are before them. Finally, along with their supervisors, they will have to reach sound, legally supportable conclusions.

For most investigators and attorneys, skillfully engaging in the above process is their core responsibility, but there is a great deal more to be learned. Each instance of noncompliance requires a remedy. Unlike in litigation, it is not the plaintiff or their experts who must develop the remedial proposal, it is OCR. This responsibility may require even more substantial skill development than learning how to investigate a complaint. Without understanding the way recipients operate, it will be difficult to craft a practical, workable, and effective remedy. Without understanding the harms that arise from harassment, there is little point to investigating harassment claims in the first place. For example, some employees at OCR will need to know:

- What are the most effective ways to help non-English speaking children acquire fluency in English?
- What procedures does a school district need to adopt to ensure that allegations of racial or sexual harassment are promptly and thoroughly investigated?
- What is necessary to assess whether a student has a learning disability, AD/HD, or any other disability?
- How do blind or deaf students attain effective access to on-line or digital course content?

This list could go on forever. For this reason, over time and through an organic process of specialization, each investigator and attorney will have to engage in deep-learning about a number of subject areas. This step may require returning to school, attending professional development conferences, reading educational or medical journals, and/or participating in an OCR learning community – over the years, OCR has had internal networks and discussion groups on disability, discipline, English language learners, gifted and talented, minorities and special education, racial harassment, Title IX athletics, Title IX sexual harassment and violence, and web accessibility. But most often, this knowledge is acquired through on-the-job assignments with more experienced peer mentors who have already faced these challenges.

Out of necessity and good public policy, and as already discussed, OCR seeks to resolve appropriate complaints through rapid resolution or mediation. Both processes require a vision for solutions to the problems that generated the complaint. Such insights do not arrive overnight. They come from experience. Mediation requires a command of the applicable ethical standards, advanced listening skills and, once again, a command of solutions. Here too, training, mentoring, and on-the-job experience are all necessary to skill development.

As exemplified by the National Disability Accessibility Team (discussed in the next section), delivering technical assistance may require the highest possible level of expertise. This knowledge can be acquired, in part, through training, attending higher education classes, and so

on. But, at bottom, there is no equal to peer-based training by OCR employees who have experience with implementable solutions to recurring problems.

Clear regulations are critically important to OCR's mission. As explained below, many OCR regulations need updating. To develop a new regulation, one must understand the reasoning behind the existing regulation. What was the original regulation attempting to address? Was there a compromise behind its wording? Who were the stakeholders? The reduction in OCR staffing likely has greatly reduced the number of employees with this kind of historical and institutional knowledge. Whatever is necessary to bring them back must be accomplished or indispensable knowledge will be permanently lost.

Thousands of students and their parents depend on OCR to do its job well. For most, OCR is the only viable path to justice in the classroom. Nonetheless, the skills and knowledge necessary to progress through the OCR investigative/case resolution processes cannot be conveyed quickly or simply through explicit training. Each hire must receive extensive practice and mentoring opportunities, usually spanning years. Many of the people who do have the necessary experience are now sitting at home, as a wasted asset. OCR cannot accomplish its mission without returning to work as many of them as possible. Consequently, it is all the more urgent that the recently RIFed employees of OCR, as well as those coerced into retirement, be given a legitimate, prompt opportunity to return to their employment at OCR.

Curtailing Helpful Technical Assistance

To understand the resources necessary for OCR to fulfill its statutory responsibilities, it is important to take into account the amount of human capital necessary for OCR to develop and provide technical assistance.

Investigation, negotiation, monitoring, or even litigation and termination are the most disruptive, least efficient ways to obtain compliance with the laws enforced by OCR. By far, the more constructive approach is to gain compliance through the adoption and promulgation of technical assistance to ED recipients. Even this approach to achieving compliance requires considerable resources. Moreover, given that the statutes and regulations enforced by OCR require the investigation of complaints but not technical assistance, when OCR human resources are in short supply, technical assistance services are all too often the first to be cut.

In the experience of the members of our group, we have learned that some students and recipients appreciate the work of OCR, while others, perhaps not so much. Regardless, we have learned that what both sides of the table want most is ***clarity***. In a given set of circumstances, what would OCR require, and what would it not? There is no downside to clarity! High quality technical assistance empowers students, parents, and advocates to stand up on their own to assert their civil rights. Clarity enables recipients to avoid noncompliance by benign neglect, ignorance, or accident. Clarity provides institutions that simply believe OCR's interpretation of the law is wrong with an explicit, established policy or guidance to challenge or appeal to the courts or Congress.

No law can anticipate every possibility, nor can any regulation. Some of the laws enforced by OCR are extremely succinct. Section 504 is approximately 70 words. Its implementing regulations are somewhat more detailed but they are 48 years old. They pre-date dramatic cultural changes, expectations, and concepts of equality of educational opportunity. They pre-date children surviving certain disabilities that used to be fatal, the Internet, digital remote instruction, online academic courseware, real time captioning, etc. The prohibition of sex discrimination in Title IX is less than 40 words, yet extensive regulations have proven necessary to effectuate that prohibition – with those regulations revised over time to deal with single sex classes, sexual harassment, and other developments in the educational context. Under all of these circumstances, ***there can be no clarity without technical assistance.***

Technical assistance can be provided through a number of routes, all essential. Regional OCR staff provide an "officer of the day" service, responding to calls from parents, students, recipient personnel, independent counsel, and advocates. Over time, this has led to constructive relationships with recipients at all levels that have saved both them and OCR a great deal of time and other resources. Sometimes, a technical assistance conversation can resolve an open complaint in just a few minutes. At other times, major decisions by recipients, capable of creating great liability, could be guided into the direction of compliance. On other occasions, the conversation could facilitate effective communication between recipients and OCR Headquarters over complex and sensitive matters, such as allegations of discrimination pertaining to alleged antisemitism and Islamophobia, that can inform the agency's development of policy guidance (discussed further below). It will be impossible for the reduced number of regional staff to maintain this technical assistance function.

Another major form of technical assistance is through public presentations at gatherings of relevant officials, parent or student advocates, recipient organizations, and attorney advocacy and civil rights organizations. Such presentations are often requested by state educational agencies, recipient organizations, student and advocacy groups, and national interest groups. OCR has long made presentations at annual meetings of such groups as the Association of Higher Education and Disability (a professional organization composed of thousands of disabled student service directors and a number of their house counsel) and its state affiliates, the National Association of College and University Attorneys, the National Association of ADA Coordinators, the Association of Title IX Administrators, the Stetson University Higher Education Law Conference, the education sections of state bar organizations, conferences of state-owned higher education institutions, and other national, regional, and local groups. These technical assistance presentations have a most vital goal, to amplify the work of OCR. Important OCR cases, often with innovative remedial agreements, rather than serving as a lesson or solution for the benefit of a single recipient, can be shared with a broad audience of responsible individuals. In this manner, OCR can achieve the maximum, constructive impact from its compliance efforts.

Through both the "office of the day" service and public presentations, OCR's regional offices were able to develop good working relationships with a great many recipients that proved useful when it came time to negotiate settlement agreements. According to quadrennial ***Highlights of Activity*** report to Congress, in 2021, OCR provided 164 such presentations; in 2022, 186

presentations; in 2023, 197 presentations; and, in 2024, 211 such presentations.[31] Each presentation requires an intense amount of preparation time; for example, reviewing a hundred OCR determination/resolution letters to find the dozen that would provide the greatest amount of insight to the pertinent OCR recipients, developing a PowerPoint deck, and, gaining approval of the content of the presentation from OCR headquarters. Obtaining such clearance might seem like a bureaucratic inefficiency, but, in fact, such review is essential to ensuring national uniformity and quality control. Further, this review process creates an opportunity for collaboration between headquarters and the regional offices on emerging issues. It will be impossible for OCR to continue to make anywhere near the same number of such presentations after the recent staff reductions.

In 2018, OCR started its Open Center program. It was originally established to address another resource-intensive OCR responsibility, responding to Freedom of Information Act requests. Subsequently, the Open Center became a hub for many technical assistance referrals and activities. The Center coordinated with other ED components, such as the Federal Student Aid office, and provided direct assistance with regard to the most sensitive technical assistance requests from recipients -- such as those pertaining to allegations of sexual violence, antisemitism, and Islamophobia. To our knowledge, there are no remaining employees staffing the Open Center.

It is our understanding that the single most common form of postsecondary disability complaint filed with OCR alleges digital inequality in the treatment of persons with visual or auditory impairments. These complaints allege that recipients are failing to ensure that all websites, electronic communication systems, and digital courseware are accessible to and useable by such persons/students. In addition, the Department of Justice has published a final rule updating its regulations for Title II of the Americans with Disabilities Act (ADA) to ensure that public entities do not discriminate with regard to digital sites and services.[32] The DOJ rule has specific requirements about how to ensure that web content and mobile applications are accessible to people with disabilities. Under this rule, most public postsecondary recipients now have just a little more than one year remaining to come into compliance with this highly-technical regulation. Under the authority of Section 504, it is likely that private recipients will be required to meet the same standards, though more clarity on this point would be highly beneficial.

In response to the high number of complaints to OCR alleging digital inequality, OCR formed the National Digital Accessibility Team (NDAT) in June of 2019. The purpose of NDAT was to provide the expert-level technical assistance necessary for recipients to provide digital access to their students and other program participants. According to a former member of the team, at its height, the team was composed of 15 staff members (attorneys and investigators), two digital technology experts, and two managers. Faced with other backlogs, the team was dismantled in October of 2024 but it was almost immediately reconstituted by the current Administration. Unfortunately, due to the OCR "brain drain," there is now a critical shortage of qualified personnel necessary to staff the NDAT. Both of the former digital technology experts are gone and only two experienced staff members and one manager remain on the team. The expertise necessary to develop and staff this team is in very short supply. Moreover, there are few private

[31] https://www.ed.gov/media/document/protecting-civil-rights-109409.pdf, last accessed April 16, 2025.
[32] 28 CFR Part 35, as amended, 89 F.R. 88 (April 24, 2024).

entities providing guidance in this area. Clearly, support from OCR is critical to recipients trying to achieve compliance with digital equality requirements but the necessary resources have been terminated.

Another valuable form of technical assistance is published guidance. In the quadrennial ***Highlights of Activity*** report to Congress, this form of assistance is collectively referred to as Policy Resources. These resources are largely conveyed in the forms of a "dear colleague letter," an FAQ, or a Fact Sheet. In addition, the NDAT published a comprehensive set of video lessons concerning digital access. According to the report, OCR produced 64 such resources during the four years 2021 through 2024:

> The policies OCR shared during these four years address complex and timely issues such as civil rights related to the use of artificial intelligence in schools, the rights of students against sex discrimination in equal athletic opportunities, the rights of students against discrimination based on stereotypes about their national origin including shared religious or other ancestral identities, and civil rights guardrails when considering and imposing discipline related to students with disabilities.

Report at page 51.[33] As with the other forms of technical assistance, OCR will not be able to maintain the previous level of service with its reduced staffing.

Though not usually labelled as a technical assistance activity, the most powerful tool for achieving clarity is the issuance of up-to-date regulations. On May 6, 2022, ED announced its Intent to Strengthen and Protect Rights for Students with Disabilities by Amending Regulations Implementing Section 504.[34] There was wide consensus both in the education and advocacy communities that this update was critically necessary. In response to an Advanced Notice of Proposed Rule Makings, OCR received over 400 comments.[35] Yet, to date, ED has not even published a first draft of a proposed update. The reason is evident -- even before the recent decimation of its staff, OCR lacked the personnel necessary to reach this essential goal.

Collaboration with Other ED Offices

Synergism is defined as follows: combined action of operation; a mutually advantageous conjunction or compatibility of distinct business participants or elements (such as resources or efforts).[36] "The whole is greater than the sum of its parts" expresses the basic meaning of synergy. OCR relies on its synergistic relationships with other offices and programs in the Department to carry out its charge to protect and further the right to an education free from discrimination and harassment. It is important that these offices and programs be maintained as

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[33] https://www.ed.gov/media/document/protecting-civil-rights-109409.pdf, last accessed April 16, 2025.
[34] https://spedlawspotlight.com/u-s-department-of-education-announces-plans-to-strengthen-section-504-in-upcoming-months/; https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=1870-AA18, last accessed April 16, 2025.
[35] https://www.ralaw.com/media/insights/Education%20Law%20Alert/section_504_notice_of_proposed_rulemaking_expected_august_2023, last accessed April 16, 2025.
[36] Merriam Webster Dictionary.

part of the Department to facilitate OCR's work and to improve educational outcomes throughout the nation.

Congress created the Department in 1979 in order to consolidate functions that affected students, agencies, and educational offices and programs. Congress recognized that the Department was necessary to ensure that there was no duplication (i.e., waste, fraud, and abuse) when a number of agencies, offices, and programs had competing relationships with educational institutions. The U.S. Constitution does not require the federal government to provide public education to U.S. citizens. Providing public education is the responsibility of the States and local governments. Nevertheless, the federal contribution to elementary, secondary, and postsecondary education is significant. Regarding funding for K-12 education, the federal contribution is about 8 percent, including the Department of Agriculture's School Lunch program[37] and the Department of Health and Human Services' Head Start program.[38] The largest proportion of the 8 percent is from ED.

The Elementary and Secondary Education Act (ESEA)[39] was passed by Congress and signed by President Johnson in 1965. The President urged its passage, believing that furthering children's education would lift them out of poverty. The ESEA has been reauthorized over the years to meet the changing needs of school districts under various titles and goals such as "Every Student Succeeds Act" and "No Child Left Behind." Title I of the ESEA provides awards to school districts and state educational agencies with high percentages of low-income students in poverty (and often, as a result, with high minority enrollments). The purposes of Title I are to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps. These purposes are consistent with the goals of OCR. Indeed, where grants alone cannot achieve the purposes of Title I, OCR can often motivate districts to do so.

The purpose of Title III of the ESEA is to help ensure that English learners attain English language proficiency and meet state academic standards. Formula grants under Title III are provided to states for supplemental services for English language learners. The landmark Supreme Court decision in *Lau v. Nichols, et al*,[40] required services to English learners and affirmed their rights to participate meaningfully in the educational programs offered in public schools. The decision led OCR to establish a requirement under Title VI for public schools to take affirmative steps towards meeting the language needs of their students, starting with OCR's May 25, 1970, memo identifying the responsibility of school districts to identify and provide equal education opportunity to those national origin minority group children who are deficient in English language skills. As a result of the combined requirements of Title III and Title VI, the services provided to limited-English-speaking children in many instances are provided under the terms of an OCR remedial agreement. Again, the work of two ED offices, working in tandem, can be the most efficient way to achieve the goal of equal educational opportunity.

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[37] P.L. 396, 79th Congress, June 4, 1946, 60 Stat. 231.
[38] 42 USC 9801 *et seq*.
[39] Title VII, 20 U.S. C. §7701-7714, 34 C.F.R. §222).
[40] 415 U.S. 563 (1974).

Impact Aid (Title VII of ESEA) is a federal education program that reimburses school districts that have lost local property tax revenue due to the presence of nontaxable federal property. ED is the primary agency with responsibility for administering Impact Aid. The amount of Impact Aid received by local school districts is based on the number of affected students who live on federal property or whose parents work in federal facilities. These situations are exempt from local property taxes, typically resources for local public education.

The Migrant Education Program[41] provides funds to support high quality education programs for migratory children, as they move among the states. The purpose of the Migrant Education Program is to ensure that migratory children are not penalized in any manner by disparities among states in curriculum, graduation requirements, or academic content and achievement standards. Supportive programs and services include: academic instruction, remedial and compensatory instruction, bilingual and multicultural instruction, vocational instruction, career education, special guidance, counseling and testing services, health services, and preschool services. These purposes support OCR goals of education equity, particularly for migratory children in poverty.

The Individuals with Disabilities Act (IDEA) provides grants to K-12 schools for the education of eligible children with disabilities, including health services, salaries for service providers, assistive technology equipment, hearing assistance, professional development and instructional supplies, materials, and software. Unlike other federal funds provided to state and local governments, IDEA funds contribute a more significant and higher proportional amount in funding for special education of students with disabilities. In return for these grants, the schools must meet a variety of requirements for providing the students with a free appropriate public education (FAPE). Applying the principles of *Lau v. Nichols*, OCR brought the requirements of the IDEA to provide disabled students a meaningful education program into Section 504. By establishing this requirement, OCR furthered the understanding of the meaning of FAPE as also a requirement under Section 504. OCR has always worked closely with the Office of Special Education and Rehabilitative Services in developing policies to ensure FAPE and crafting remedies when districts fail to provide it, including for such issues as restraint and seclusion, discipline, supplemental services, services for students with visual and hearing-related disabilities, etc.

Over many of the 53 years since the passage of Title IX, the law was best known for advancing athletic opportunities. In 1979, the Department of Health, Education, and Welfare published "*A Policy Interpretation: Title IX and Intercollegiate Athletics.*"[42] Before Title IX was enacted in 1972, 15% of college athletes were women. In 2023, 43% of sports opportunities go to women. Since Title IX was passed, 3 million more high school girls and 200,000 more college women have opportunities to play sports each year.[43] One in five girls plays sports, according to the Women's Sports Foundation Report.[44] In 1972 it was one in 27.

[41] Title I, Part C of the ESEA.
[42] 44 F.R. No.239, Dec. 11, 1979.
[43] NCAA Sports Sponsorship and Participation Report, 2023.
[44] "Play to Lead: The Generational Impact of Sports on Women's Leadership."

The Equity in Athletics Disclosure Act was enacted in 1994. Administered by the Office of Postsecondary Education, it requires co-educational postsecondary institutions that participate in federal student financial assistance programs under Title IV and have an intercollegiate athletic program to prepare an annual report to the Department on athletic participation, staffing, and revenues and expenses for men's and women's teams. These reports are invaluable to OCR in identifying issues in need of policy clarification and for identifying possible targets for OCR-initiated compliance reviews. The success of U.S. women Olympians has been attributed to the increase in the number of women and girls participating in sports because of Title IX.

The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), enforced by the Office of Student Financial Aid, requires colleges receiving federal financial aid to disclose campus crime statistics and security policies, including as to sexual violence and related misconduct. This information ensures that students, employees, and parents are adequately informed about campus safety and crime. An annual security report and fire safety report must be published by October 1st and made available to the campus community. Alerts and timely warnings must be issued for Clery Act crimes that pose serious threat. Notifications must be issued for significant emergencies. In particular, the Clery Act requires colleges and universities to have policies and procedures for responding to sexual violence and related misconduct – significantly overlapping with OCR's Title IX responsibilities and requirements. OCR first developed the guidance which led to establishing the requirements and standards for providing an education free of harassment under Title IX.[45] The information, warnings, and alerts of the Clery Act provide support for OCR's goals of providing an education environment free from sexual harassment on college campuses. Given this overlap, it is only logical that OCR continue to coordinate and collaborate with the Office of Student Financial Aid in its expectations and requirements regarding sexual violence and related misconduct and in targeting recipients for investigation. Coordination between these two offices is essential to the success of both programs.

The Safe and Drug Free Schools and Communities Act (SDFSCA) is the Federal Government's primary vehicle to support student academic achievement through the reduction of violence, alcohol and other drug use through education, prevention, and intervention activities in U.S. schools.

The Comprehensive Centers Network is comprised of 19 Region Comprehensive Centers (RCCs) and one National Center providing capacity-building services to state education agencies, regional education agencies, local education agencies, and individual schools to improve educational outcomes, close achievement gaps, and improve the quality of instruction for all students. This program provides important technical assistance that further goals consistent with the goals of OCR.

ED has several offices and programs that conduct research on the effects of education programs and on demonstration projects to help improve education. The Institute for Education Sciences[46]

[45] 62 F.R. 12034 (1997).

[46] The Administration has cancelled many of the IES contracts carrying out intensive studies and supporting data collection and dissemination and terminated nearly 90% of IES staff. These actions are being challenged in *AERA*

consists of the National Center for Education Statistics, charged with data collection and analysis; The National Center for Education Research and the National Center for Special Education Research, which fund and manage rigorous education research projects; and the National Center for Education Evaluation and Regional Assistance, which funds and operates critical dissemination functions for education research findings, including the What Works Clearinghouse, Regional Education Laboratories, and the Education Resource Information Center. These offices collect statistics on the status and progress of schools, school districts, and state educational agencies and throughout the nation and distribute data and information to further improvement. They provide technical assistance to school districts and state agencies on how to use these statistics to improve education. The longitudinal and comparative data they collect is indispensable to OCR in targeting subject areas and specific school districts for OCR's self-initiated investigations (compliance reviews.) *When the necessary resources are available*, such compliance reviews can be the single most effective investigative tool at OCR's disposal. Clearly, here, the total is greater than the sum of its parts.

In carrying out its charge to protect and further the right to an education free from discrimination and harassment, OCR has worked with offices and programs throughout ED. The many accomplishments of all these offices could not have been achieved separately. Indeed, these offices have also lost personnel, creating an information and expertise shortage that places an even greater burden on the remaining OCR employees. The goals of OCR and purposes of ED's other programs and offices share a positive synergistic working relationship. As described above, there is coordination and important relationships amongst OCR and the many ED offices that provide funding for programs that support and further the goals of OCR. There is no logic or administrative experience to support proposals to split apart the funding, statistical collection and analysis, technical assistance, and enforcement programs of ED, as the current Administration, with no authorization from Congress, has announced it intends to do. If nothing else, such a split would be wasteful, at times duplicative, and at other times leading to inconsistent but overlapping requirements. Only through one agency -- pulling in the same direction, knowledgeable and supportive of each other's priorities, actions, and guidance -- can the full measure of benefit be derived for our nation's children.

Possible Remedies to Ensure that OCR Meets its Statutory Requirements

This is not the first time that OCR has failed in its statutory duties. In 1972, the NAACP brought a suit against Department of Health, Education, & Welfare Secretary Eliot Richardson, alleging a failure to timely and effectively enforce Title VI.[47] Over the next 15 years, the NAACP expanded its claims and requests for relief. Additional advocacy organizations, including the Women's Equity Action League (WEAL), raised analogous claims of delayed or insufficient action by OCR. As a consequence, during this period of time, D.C. District Court Judge John Pratt ordered extensive relief (commonly-known as the *Adams Order*). In the multiple iterations of the *Order*, OCR's productivity was under intense, on-going scrutiny. For example, the Court required detailed new complaint handling procedures and tight timelines for investigation and resolution.

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and SREE v. U.S. Department of Education, et al., Case 8:25-cv-01230-SAG (S.D. MD, filed April 14, 2025), https://democracyforward.org/wp-content/uploads/2025/04/1-Complaint-IES.pdf, last accessed April 16, 2025.

[47] *Adams v. Richardson*, 351 F. Supp. 636 (D.D.C. 1972).

For example, one iteration of the *Adams Order* provided:

> Pursuant to this Court's November 16, 1972 Opinion finding that defendants had failed to enforce Title VI of the 1964 Civil Rights Act with respect to public higher education systems in ten states, on February 16, 1973 this Court ordered defendants within 120 days to commence Title VI enforcement proceedings against states which failed to undertake higher education desegregation.

In 1975 the court stated in a Supplemental Order:

> This Court has ruled in this case that HEW has a duty to commence prompt enforcement activity upon all complaints or other information of racial discrimination in violation of Title VI, and that where it appears that a school district is in violation or presumptive violation of Title VI the agency has a duty under Title VI to commence enforcement proceedings by administrative notice of hearing or any other means authorized by law where efforts to obtain voluntary compliance do not succeed within a reasonable period.
>
> HEW has often delayed too long in ascertaining whether a complaint or other information of racial discrimination constitutes a violation of Title VI. HEW has also frequently failed to commence enforcement proceedings by administrative notice of hearing or any other means authorized by law although the efforts to obtain voluntary compliance have not succeeded during a substantial period of time.

In compliance with the *Adams Order*, long-term OCR employees, including members of this group, had to report their productivity each week. Their evaluations, the allocation of new resources, nearly every discretionary resource, was tied to making the most efficient use of resources possible.

Those in our group who worked under the *Adams Order* found it to be an effective strategy for ensuring that OCR resolved complaints in a timely fashion and suggest that it might be an appropriate way to address the current Administration's decimation of the agency. More information about writs of mandamus can be found in Appendix C. Another possible remedial strategy is to challenge the actions by the current administration as bills of attainder, discussed in Appendix D.

Conclusion

Education remains the most promising path to achievement, excellence, and equality in America. The civil rights laws entrusted to OCR were enacted to see to it that ***all*** of America's students have the opportunity to meaningful benefit from their education. The leadership of OCR has long known how to operate efficiently in the service of its civil rights mission and it has done so, achieving much along the way. At the same time, due to budgetary and staffing constraints, it has fallen short of what it is mandated by law to accomplish. There is simply no way that OCR can survive a 40% or greater cut to its human capital and, going forward, come even close to effectively implementing these laws. At a minimum, OCR must be restored to its 2024 levels of

funding and personnel, preferably within the context and synergy of the U.S. Department of Education, and must be held accountable for complying with its own regulations and case processing procedures. It should be restrained from taking arbitrary and capricious actions under the Administrative Procedures Act, required to meet due process requirements under the Constitution, and required to fulfill the Constitutional right to redress of grievances.

Appendix A
OCR Alumni: Senior Leadership Group

Amy Berman, Enforcement Director, Headquarters, 2011-2012
- Also, Acting Section Chief and Principal Deputy at the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section

Susan Bowers, 1980-1986, 1992-2005
- Enforcement Director, Headquarters
- Deputy Director, PES (policy office)
- Also, Senior Trial Attorney DOJ Civil Rights Division Special Litigation Section

Marc Brenman, 1973-1995
- San Francisco Enforcement Office, PRMS Director and Branch Chief
- Boston Enforcement Office, Division Director
- Headquarters, Branch Chief, Program Legal Division (policy office)
- Also, Senior Policy Advisor for Civil Rights, Office of the Secretary, U.S. Department of Transportation
- Also, Executive Director, Washington State Human Rights Commission

Wendella Fox, 1997-2021
- Director, Philadelphia Regional Office

Paul Grossman, 1972-2013
- Chief Regional Attorney, San Francisco Office
- Attorney, Headquarters
- Also, Executive Counsel, AHEAD

Howard Kallem, 1993-2007, 2008-2013
- Chief Regional Attorney, DC Enforcement Office
- Supervisory Attorney, Program Legal Group
- Also, Director of Title Compliance/Title IX Coordinator, Duke University and UNC Chapel Hill

Elizabeth Keenan, Supervisory Investigator, San Francisco Enforcement Office, 1973-1985
- Previously, Investigator, Denver Enforcement Office
- Also, Deputy Section Chief, Civil Rights Division/Coordination and Review Section, U.S. Department of Justice.

Jeanette Lim Esbrook, 1979-2002
- Director, Program Legal Group (policy office), Headquarters
    - Acting Assistant Secretary, 1992-1993 and 2000-2001
- Also, Deputy Assistant Secretary, Office of Elementary and Secondary Education
- Also, Senior Advisor to Director Risk Management Service, Office of the Deputy Secretary, ED

- Also, Attorney, DOJ Civil Rights Division, Equal Opportunities Section

Alice Wender, 1979-2021

- Director, Washington, DC Enforcement Office
- Supervisor/Branch Chief, PES and Program Legal Group

Appendix B
February 27 Letter from Former OCR Staff to OCR re DEI

February 27, 2025

Dear Craig Trainor, Acting Assistant Secretary for Civil Rights, United States Department of Education,

RE: February 14, 2025 Dear Colleague Letter

The undersigned, former civil rights employees in the Department of Education, Office for Civil Rights (OCR), write in response to the request in the February 14, 2025, Dear Colleague Letter (DCL) for comments. As non-political, career civil servants serving under both Democratic and Republican administrations, we always supported the lawful policy goals of those administrations. We appreciate the DCL's emphasis on the importance of addressing unlawful discrimination in all its forms, but we believe that the DCL takes too expansive a view of the types of programs and decisions that could be unlawful under the Equal Protection Clause and Title VI. At the very least, we suggest further guidance from OCR clarifying the many common school practices that are permissible and often necessary to ensure equal access to educational opportunities for all students.

First, the Department's interpretation of *Students for Fair Admissions v. Harvard* (SFFA) is overly broad in its application and interpretation. The decision is explicitly limited to decisions about "whether a university may make admissions decisions that turn on an applicant's race." Thus, by its terms, it doesn't apply to a host of other school practices, such as:

- Affirmative recruitment for admissions and hiring designed to increase the pool of qualified candidates.
- Affinity groups or themed residence halls that are open to all students and have a focus on a particular group or identity.
- Academic support and other retention programs or policies that focus on the experience and barriers most often faced by students from specific groups but are available to all.
- Classes and courses examining the role of discrimination in American history.

Second, the Department relies only on SFFA to say that no consideration of race is permissible when that is not the holding of the court. To the contrary, Justice Roberts lauded the values of diversity as "worthy" and commendable." The DCL correctly states that use of personal essays as a means of determining a student's race and then making an admission decision based on race is impermissible. However, it is important for universities to understand that, as explained by Justice Roberts, it is permissible to consider the extent to which race impacts an individual student's lived experiences, writing: "nothing in this opinion should be construed as prohibiting universities from

considering an applicant's discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise."

Similarly, the DCL states: "If an educational institution treats a person of one race differently than it treats another person because of that person's race, the educational institution violates the law." However, this statement is not entirely correct. The SFFA decision is premised on the principle "that an individual's race may never be used against him." Thus, so long as schools do not limit opportunities to students from a particular racial group or apply different standards to individual students or applicants, there is no unlawful discrimination, even if the policy is designed to promote overtly racial goals like diversity, equity, or inclusion. This is an important distinction that would be helpful for schools to understand.

Third, the Department's assertion that race-neutral means may be unlawful is inconsistent with well-established policies and law interpreting constitutional principles permitting diversity-related goals through race-neutral means under which no student is treated differently based on race. As recently as 2013, in *Fisher v. University of Texas* a seven-Justice majority of the U.S. Supreme Court set forth rigorous race-neutral procedures and protocols to guide college and university efforts advancing their mission-related diversity goals. The Supreme Court's decision in SFFA did not affect this ruling. Further guidance that takes into account the holdings of recent decisions addressing the use of race-neutral practices, racial balance, and racial diversity would be helpful to schools in understanding their obligations and responsibilities. *See, e.g., Boston Parent Coalition for Academic Excellence v. School Committee of the City of Boston,* 89 F. 4th 46 (1st Cir. 2023), *cert. denied* 604 U.S. ___ (U.S. 2024) (holding that an intent to reduce racial disparities is not by itself enough to show an Equal Protection violation without there also being a disproportionate racial result, with the latter requiring more than awareness of consequences); *Coalition for TJ v. Fairfax Cnty. Sch. Bd*., 68 F.4th 864 (4th Cir. 2023), *cert. denied*, 218 L. Ed. 2d 71 (U.S. 2024) ("To the extent the Board may have adopted the challenged admissions policy out of a desire to increase the rates of Black and Hispanic student enrollment at TJ — that is, to improve racial diversity and inclusion by way of race-neutral measures — it was utilizing a practice that the Supreme Court has consistently declined to find constitutionally suspect").

Again, the Dear Colleague Letter states that OCR intends to provide further legal guidance. We respectfully request that our concerns be considered in the drafting of that guidance.

[Signed by over 60 former OCR employees.]

Appendix C[48]
Writs of Mandamus

Background

The problem presented by the current situation how to get a federal agency to carry out its statutorily required duties. These duties have their origin in the public good and in the legal requirements brought into existence through acts of Congress and signed by the President. The United States has a fraught history, and has not always had protected rights for all people in the U.S. To effectuate rights that have developed over time, Congress creates duties and agencies in the Executive Branch. Congress is a co-equal branch of the government and its laws are not to be taken lightly.

As discussed elsewhere, OCR has such duties and the current Administration is not carrying them out. There are various means of effecting public policy in a democracy, including electoral, public pressure, media coverage, and lawsuits. The method discussed here is a subset of the last, called the writ of mandamus. It has its origins in English common law, which is the foundation of much American law. Mandamus means "we command."

As with most statutes, regulations were issued to effectuate the laws enforced by OCR. Administrative agencies create rules to help them achieve the statute's goals, and conduct investigations to monitor compliance and identify and correct violations. These regulations are developed under the strict rules under the Administrative Procedure Act.[49] These regulations have the force and effect of law. While federal court decisions may modify the effective meaning and implementation of agency regulations, there have been no decisions that diminish the plain language of the laws enforced by OCR or the federal requirements to enforce them. A law that is not enforced becomes a mere suggestion, losing its power to shape behavior and maintain order, rendering it essentially meaningless. Laws are designed to establish rules and standards of conduct, to protect citizens and maintain social order. The effectiveness of any law hinges on its ability to be enforced, meaning that there must be mechanisms and consequences for violations. Unenforced laws can lead to widespread disregard for the legal system, eroding public trust and undermining the rule of law. If some laws are enforced while others are not, it can create an impression of unfairness and selective justice.

As discussed earlier, the current Administration in its first three months has cut the staffing and regional presence of OCR approximately in half, and by executive order has reoriented its priorities away from the usual types of complaints that OCR has historically received. Traditionally, OCR had no discretion in what complaints it investigated, as long as they met a relatively low threshold of timeliness, were against a recipient of federal financial assistance, and concerned an allegation which if true would constitute a violation of one or more of the laws it enforces. The current Administration has focused its remaining staff on specific issues (e.g., antisemitism, DEI, transgender issues), making it impossible for OCR to fulfill its statutorily required duties regarding all the many other types of prohibited discrimination. This lack of

[48] Prepared by Marc Brenman.
[49] 5 U.S.C. §§ 551-559.

ability based on lack of staff is covered in the body of this paper. The combination of a steep reduction in staffing and the direction of OCR by executive order to a narrow set of political priorities must not be permitted to operate as a nearly complete preemption against addressing the core objectives of Congress when it passed the laws enforced by OCR. OCR's enforcement of the law is not and should not be based on executive orders without legal support. The laws enforced by OCR remain unchanged.[50]

Sometimes federal agencies do not fulfill their duties under their "organic" and program statutes. There are various reasons why this happens. These can include lack of resources, national emergencies, policy decisions, lack of interest, lack of knowledge, and differing priorities of political administrations. As explained in the body of this paper, the drastic reduction in staffing will make it impossible for the current Administration to fulfill its duty to conduct prompt investigations of complaints from the persons protected from discrimination under the laws entrusted to OCR. As set out in the Title VI regulations[51]:

> The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part."

When a federal agency refuses or ceases to carry out its statutory duties, private individuals can request from an appropriate federal court a writ of mandamus. As Black's Law Dictionary states[52]:

> The common law writ of mandamus issues from a court of superior jurisdiction, and is directed to a private or municipal corporation, or any of its officers, or to an executive, administrative or judicial officer, or to an inferior court, commanding the performance of a particular act therein specified, and belonging to his or their public, official, or ministerial duty, directing the restoration of the complainant to rights or privileges of which they have been illegally deprived. A writ of mandamus is a judicial remedy in the form of an order from a court to a government official, public agency, or lower court that commands the performance of a specific duty that the body is legally obligated to complete.

A writ of mandamus is considered an extraordinary remedy, used only when other remedies are inadequate. In the situation under discussion, no other remedy than OCR investigating, analyzing, and resolving complaints under its jurisdiction in a timely manner would be adequate. There are no administrative remedies available.

> <u>Alternatives to Mandamus</u>

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[50] *See, e.g.,* February 27, 2025, letter from former OCR employees to Trainor on the February 14, 2025, Dear Colleague Letter on DEI at Appendix B.
[51] 34 CFR § 100.7(c).
[52] Black's Law Dictionary 1113 (4th ed. rev. 1968).

Other judicial remedies might be possible in order to ensure that OCR fulfills its statutory duties and should be considered before seeking a writ of mandamus or in addition to it. These include declaratory relief, seeking a judicial declaration of rights without the coercive element of mandamus; injunctive relief; requesting a court order prohibiting agency inaction or requiring specific performance; and Administrative Procedure Act (APA) claims; and filing suit under 5 U.S.C. § 706(1) to "compel agency action unlawfully withheld or unreasonably delayed." There is much overlap between mandamus and APA approaches. Many federal complaints include both mandamus claims (under 28 U.S.C. § 1361) and Administrative Procedure Act claims (under 5 U.S.C. § 706(1)) in the same filing. Courts often analyze these claims together as they involve similar standards for compelling agency action. Common concurrent approaches include the following: declaratory and mandamus relief; seeking both a declaration of plaintiff's rights and a mandamus order in the same action, giving courts flexibility in the type of relief granted; preliminary and permanent injunctive relief; and requesting preliminary injunctions alongside mandamus, particularly in time-sensitive matters.

Some less formal, but not required, approaches include the following: pre-litigation demand letters; formally notifying the agency of intent to seek mandamus if action isn't taken; public pressure, including using media coverage or advocacy campaigns to highlight agency inaction; class action organizing; and joining with similarly situated individuals to increase leverage.

Pursuing a Writ of Mandamus

In the U.S. federal system, the authority for courts to issue writs of mandamus comes from the All Writs Act[53] and Article III of the Constitution (as interpreted by the federal courts). The All Writs Act grants district courts:

> [J]urisdiction of any action in the nature of mandamus to compel an officer or employee of the United States…to perform a duty owed to the plaintiff. The relevant part of Article III states, "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States…

The Department of Justice Civil Resource Manual[54] states:

> Mandamus is an extraordinary remedy, which should only be used in exceptional circumstances of peculiar emergency or public importance. … The All Writs Act, 28 U.S.C. § 1651(a), confers the power of mandamus on federal appellate courts. ... The power of a district court to compel official action by mandatory order is limited to the enforcement of nondiscretionary, plainly defined, and purely ministerial duties. … An official action is not ministerial unless "the duty in a particular situation is so plainly prescribed as to be free from doubt and equivalent to a positive command." … (Citations omitted.)

[53] 28 U.S.C. § 1651.
[54] https://www.justice.gov/archives/usam/civil-resource-manual.

Civil rights enforcement is a matter of public importance, and can even be considered an emergency, since justice delayed is justice denied. The importance of public education on equal terms was emphasized by the Supreme Court in its landmark decision in *Brown v. Board of Education*:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Mandamus is an important but sparingly used tool in the American legal system, serving as a check on government inaction when legal duties are neglected. As we discuss elsewhere, not investigating the complaints of allegedly discriminated against people, including children, is neglect. The harm to the injured person can grow if the issue is not resolved in a neutral, objective, professional, and timely way.

A number of the current suits against the current Administration regarding its actions toward other agencies have asked for a writ of mandamus. For example, the suit in regard to funding for Radio Free Asia[55] states:

> It is necessary and appropriate for this Court to issue a writ of mandamus pursuant to 28 U.S.C. §§ 1361 and 1651 and under this Court's equitable authority to compel Defendants to grant, disburse, and otherwise make accessible RFA's appropriated funds…The Mandamus Act, 28 U.S.C. § 1361, vests this Court with original jurisdiction over "any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." The All Writs Act, 28 U.S.C. 1651, authorizes this Court to issue all writs "necessary or appropriate" in aid of its jurisdiction."

In *Center for Biological Diversity v. U.S. Department of Interior,*[56] the plaintiffs are seeking:

> [D]eclaratory judgement that DOGE and its sub-teams are subject to the [Federal Advisory Committee Act] and have violated the APA and FACA, an injunction stopping Department of Interior employees from meeting with or relying on work by DOGE employees, and an order of mandamus requiring compliance with FACA.

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[55] *Radio Free Asia v. USA et al*, Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandamus, Civil Action No. 1:2025cv00907 (D.D.C., filed 3/27/2025).
[56] Civil Action No. 1:25-cv-00612, (D.D.C., filed 3/3/2025).

In *Brehm v. Marocco*,[57] regarding the dismantling of the U.S. African Development Foundation by the current Administration, the plaintiffs have sought "a declaratory judgment that [Brehm] is the President of USADF and Marocco's appointment was unlawful; preliminary and permanent injunctive relief; and, in the alternative, a writ of mandamus prohibiting his removal by any entity other than the Board."

In *Storch et al. v. Hegseth et al.*,[58] regarding termination of several inspectors general from several federal departments and agencies, the plaintiffs have sought a writ of mandamus compelling defendants not to obstruct them in the exercise of their duties.

In *Federal Bureau of Investigation Agents Association v. Department of Justice*,[59] regarding firing of FBI agents who had participated in the investigation into the January 6, 2021, insurrection at the U.S. Capitol, the plaintiffs sought injunctive relief against "any further collection or dissemination" of personally identifiable information and a writ of mandamus as necessary to compel rescission of any unlawful termination orders.

In *Project on Government Oversight, Inc. v. Trump*,[60] concerning records under the Presidential Records Act, the plaintiffs seek declaratory judgment that DOGE's actions are arbitrary, capricious, and illegal, and injunctive and mandamus relief ordering DOGE to treat its records as subject to the Federal Records and Freedom of Information Acts.

To issue a writ of mandamus, courts typically require:

1. A clear legal right to the requested relief
2. A clear duty by the defendant to perform the act
3. No other adequate remedy is available.

In addition, in bringing an action for a writ a mandamus in regard to OCR's dereliction of duty, those interested would have to show that they have standing -- that their injury is separate and distinct from that of the public at large, and that the harm in question is traceable to some wrongful action of the defendant. Individuals who have filed complaints with OCR would likely have standing to seek a writ of mandamus based on the agency's inaction on their complaints. Similarly, an organization representing such individuals would likely have associational or organizational standing.

The question of whether federal agencies must provide sufficient resources to fulfill statutory duties is nuanced and has been addressed in various court decisions. In general, Federal agencies are not absolutely required to allocate sufficient resources to fulfill every statutory duty completely. Courts generally recognize that agencies have significant discretion in allocating limited resources among competing priorities. Agencies frequently and often successfully cite budgetary constraints as a defense when sued for failing to meet statutory obligations. However, courts typically consider whether the agency's duty is mandatory or discretionary, and whether the agency's resource

[57] Civil Action No. 1:25-cv-00660 (D.D.C., filed 3/5/2025.
[58] Civil Action No. 1:25-cv-00415 (D.D.C., filed 2/12/2025).
[59] Civil Action No. 1:25-cv-00328 (D.D.C., filed 2/4/2025).
[60] Civil Action No. 1:25-cv-00527 (D.D.C., filed 2/21/2025).

allocation decisions were arbitrary and capricious. For example, in *Massachusetts v. EPA,*[61] the Court held that, while resource constraints may influence how an agency carries out its obligations, they cannot justify a complete failure to fulfill mandatory duties.

Where an agency is challenged for delays in fulfilling its statutorily required duties, courts often apply an "unreasonable delay" standard considering he extent of delay, the reasonableness of the agency's explanation for the delay, the consequences of the delay, and whether human health and welfare are at stake. As explained in the body of this document, we do not believe that OCR will be able to meet its enforcement duties in a timely manner. The Secretary has provided no rational explanation for the decimation of OCR's staff and OCR's singular focus on specific issues (and the impact that will have on the other issues raised in complaints), despite Administrative Procedure Act requirements that a rational explanation be shown. This suggests that the agency has no adequate explanation. Human health and welfare are at stake because civil rights are an essential part of such health and welfare. OCR's duty to conduct prompt resolutions is non-discretionary and clearly defined by statute. The courts look askance at procedural manipulation, such as deliberately putting certain types of cases at the "bottom of the pile" despite chronological processing requirements. Section 301 of the Case Processing Manual states, "Case planning will begin as early as possible, will be thorough, and will be conducted throughout the life of *every* case to ensure high quality decisions, prompt investigations and efficient use of OCR resources." [Emphasis added.]

In evaluating bad faith, courts look for the following:

- Deviation from established procedures
- Substantial departures from past practice without explanation
- Evidence of political interference in technical decisions
- Inconsistent explanations for agency action
- Destruction or concealment of relevant documents
- Unusual timing of decisions coinciding with external political events

The Administration's actions toward OCR involve such deviation, departures, and political interference in technical decisions.

Mandamus has been used in other civil rights cases, especially fair housing ones. For example, in *Gautreaux v. Chicago Housing Authority*,[62] the court issued orders compelling the housing authority to implement non-discriminatory site selection and tenant assignment policies. In *NAACP v. HUD*, a series of cases in the 1980s-90s, multiple courts issued mandamus-type remedies ordering HUD to enforce Fair Housing Act requirements in various cities.

[61] 549 U.S. 497 (2007).
[62] 296 F. Supp. 907 (1969).

Appendix D[63]
Bills of Attainder

A possible legal basis that has appeared in extremely few of the cases filed against the current Administration and its elements is bills of attainder. However, there may be more pertinence, especially in regard to the situation of the Office for Civil Rights of the U.S. Department of Education.

A bill of attainder is a legislative act that declares a person or group of people guilty of a crime and punishes them without a trial. It is prohibited by the U.S. Constitution, as it infringes upon the principles of separation of powers and due process. The Constitution prohibits both the federal government (Article I, Section 9) and state governments (Article I, Section 10) from passing bills of attainder. Article 1, Section 9, Clause 3 states: "*No Bill of Attainder or ex post facto Law shall be passed.*"

In the history of England, the word "attainder" refers to people who were declared "attainted," meaning that their civil rights were nullified. In his work on the Blackstone Commentaries, St. George Tucker, in 1803, defined "Bills of Attainder" as follows:

"They are state-engines of oppression in the last resort, and of the most powerful and extensive operation, reaching to the absent and the dead, as well as to the present and the living. They supply the want of legal forms, legal evidence, and of every other barrier which the laws provide against tyranny and injustice in ordinary cases: being a legislative declaration of the guilt of the party, without trial, without a hearing, and often without the examination of witnesses, and subjecting his person to condign punishment, and his estate to confiscation and forfeiture."

Everything old is new again, and this sounds very familiar. In *U.S. v. Brown*,[64] the Supreme Court opined that "the Bill of Attainder Clause was intended not as a narrow, technical (and therefore soon to be outmoded) prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature… It was…looked to as a bulwark against tyranny."

Bills of attainder are best understood as a summary form of legal process, rather than a legislative act.

American dissatisfaction with British attainder laws resulted in their being prohibited in the U.S. Constitution in 1789. The fact that they were banned even under state law reflects the importance that the Framers attached to this issue. Within the Constitution, the clauses forbidding attainder laws serve two purposes. First, they reinforce the separation of powers by forbidding the legislature to perform judicial or executive functions, as a bill of attainder necessarily does. Second, they embody the concept of due process, which is reinforced by the Fifth Amendment.

[63] Prepared by Marc Brenman.
[64] 381 U.S. 437 (1965).

In *U.S. v. Brown*, Chief Justice Warren's majority opinion emphasized that the Bill of Attainder Clause was intended to reinforce separation of powers.[65]

Every state constitution also expressly forbids bills of attainder.

Here's a more detailed explanation:

- **Definition:**
  A bill of attainder is essentially a law that singles out specific individuals or groups and inflicts punishment on them without the right to a fair trial.
- **Historical Context:**
  In England, bills of attainder were used to punish individuals deemed to be traitors or rebels without the need for a trial.
- **Constitutional Prohibition:**
  The U.S. Constitution prohibits bills of attainder because they bypass the judicial process and allow the legislature to act as a court, which would violate the separation of powers.
- **Examples:**
  A law that declares a specific person guilty of a crime and imposes a death sentence, or a law that automatically strips citizenship from all members of a particular group, would be considered bills of attainder.
- **Supreme Court Interpretation:**
  The Supreme Court has interpreted the bill of attainder clause to prohibit legislation that targets specific individuals or groups and inflicts punishment without a judicial trial, even if the punishment is not as severe as death

"[W]ithin just the last couple of years, litigants have more aggressively utilized the Constitution's Bill of Attainder Clause in an increasing variety of cases involving the following issues: petitions of habeas corpus, the invalidation of regulatory schemes, housing ordinances, the constitutionality of a DNA database, and the Elizabeth Morgan Act. Perhaps the most controversial case involving bill of attainder analysis in our country's history was decided in the U.S. District Court for the District of Nebraska. In that case, the court decided to invalidate a state constitutional amendment' on the basis that it was "an unconstitutional bill of attainder" because it singled out gays, lesbians, bisexuals, and transsexuals for legislative punishment." Jacob Reynolds; *The Rule of Law and the Origins of the Bill of Attainder Clause*.[66]

Note that the current Administration has also singled out gays, lesbians, bisexuals, and transsexuals for punishment. One prominent example is the punishment of the Maine school system for permitting transgender (male to female) students to participate in women's athletic teams and contests. The Administration has even proposed taking away titles previously awarded to individuals and teams that had transgender athletes on them. This would be implementation of an ex post facto rule as well as an example of a bill of attainder.

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[65] *Id.*

[66] St. Thomas Law Review; Vol. 18, Iss. 1 (2005), https://scholarship.stu.edu/cgi/viewcontent.cgi?article=1337&context=stlr) (last accessed April 20, 2025).

The connection between bills of attainder and civil rights laws lies primarily in the Constitutional protections of due process and equal protection. Civil rights laws aim to protect individuals from discrimination and ensure equal treatment under the law, principles that would be violated by bills of attainder.
Several Supreme Court cases have addressed bills of attainder and their relationship to civil rights:

In *United States v. Brown* (1965), the Court struck down a law barring Communist Party members from serving as labor union leaders, ruling it was an unconstitutional bill of attainder.

In *Nixon v. Administrator of General Services* (1977), the Court established a three-part test to determine if legislation constitutes a bill of attainder:

- The law inflicts punishment, viewed historically.
- Whether the statute, viewed in terms of burdens and severity, can reasonably be said to further non-punitive purposes.
- The law targets specific named or identifiable individuals or groups.

The Supreme Court's test examines whether the challenged law has the following elements:

1. **Specification of the affected persons**: Does the law single out a specific individual or easily identifiable group? The Court looks at whether the legislation targets a person or group by name or by readily ascertainable characteristics.
2. **Punishment**: Does the law impose punishment? The Court considers whether the law imposes burdens traditionally associated with punishment, such as imprisonment, banishment, confiscation of property, or barring individuals from certain professions. The Court also examines whether the restriction serves legitimate non-punitive governmental purposes.
3. **Lack of judicial trial**: Does the law impose punishment without a judicial trial? This element focuses on whether the legislature has usurped the judiciary's role by determining guilt and imposing punishment without proper judicial proceedings.

This test has since been applied in numerous cases involving challenges to laws alleged to be bills of attainder, helping courts strike a balance between legislative authority and protecting individuals' rights to due process.

Here are several significant cases where the bill of attainder test from Nixon v. Administrator of General Services has been applied or developed further:

1. **Selective Service System v. Minnesota Public Interest Research Group (1984)** - The Supreme Court upheld a law denying federal financial aid to male students who failed to register for the draft. The Court ruled it wasn't a bill of attainder because it gave students the opportunity to register late and receive aid, and therefore didn't permanently designate a fixed class of persons for punishment.
2. **BellSouth Corp. v. FCC (1998)** - The D.C. Circuit Court applied the three-part test to evaluate restrictions on Baby Bell companies entering the long-distance market. The

court found these weren't bills of attainder because the restrictions served legitimate regulatory purposes rather than punishment.

3. **Foretich v. United States (2004)** - The D.C. Circuit Court struck down a law (the "Elizabeth Morgan Act") that specifically prevented Dr. Eric Foretich from having unsupervised visitation with his daughter. This rare successful bill of attainder challenge showed how legislation targeting a specific individual by name could fail the test.
4. **ACORN v. United States (2010)** - After Congress passed legislation specifically prohibiting federal funding to ACORN following controversy, the Second Circuit applied the Nixon test but ultimately vacated the case as moot when ACORN dissolved. This case raised important questions about legislation targeting specific organizations. After the U.S. House of Representatives passed a resolution in late 2009 barring the community organizing group Association of Community Organizations for Reform Now (ACORN) from receiving federal funding, the group sued the U.S. government. Another, broader bill, the Defund ACORN Act, was enacted by Congress later that year. In March 2010, a federal district court declared the funding ban an unconstitutional bill of attainder.[63] On 13 August 2010, the Court of Appeals for the Second Circuit reversed and remanded on the grounds that only 10% of ACORN's funding was federal and that did not constitute "punishment".
5. **Kaspersky Lab v. Department of Homeland Security (2018)** - The D.C. District Court rejected Kaspersky's bill of attainder challenge to legislation banning its software from government computers. The court found the law served the legitimate non-punitive purpose of protecting national security.

These cases demonstrate how courts have refined the application of the bill of attainder prohibition over time. The courts generally show significant deference to Congress, making successful bill of attainder challenges relatively rare. Most legislation passes the test if courts can identify any legitimate non-punitive purpose, even if the law specifically names individuals or organizations.

In the instant cases of federal civil rights laws ostensibly being used to cut off funds from recipients of federal financial assistance such as Harvard and Columbia Universities and the University of Maine system and other colleges and universities, these recipients would normally have judicial and administrative procedures available to them and which must be implemented by executive branch agencies before funds could be cut off. These procedures are discussed in detail elsewhere in this paper.

The current Administration is essentially creating a law that it is not authorized under the Constitution to create.

These tests are (1) historical, (2) functional, and (3) motivational. The historical test looks to the infamous history of bills of attainder to determine whether the law was one of a limited set of legislative actions that were deemed to be bills of attainder before the Founding and in prior Supreme Court cases. Those historical punishments included pre-Founding legislation imposing death sentences, imprisonment, and banishment, as well as the employment bans that were struck down in *Cummings*, *Lovett*, and *Brown*. The functional test considers whether the law under challenge, viewed in terms of the type and severity of burdens imposed, reasonably can be said

to further nonpunitive legislative purposes. The motivational test looks to legislative history to determine whether the legislative record evinces a congressional intent to punish.[34] Finding that none of the three tests were satisfied in *Nixon*, the Supreme Court concluded that the law requiring the transfer and preservation of the presidential records did not qualify as a punishment under any of these three tests. The Nixon decision limited the Bill of Attainder Clause's prohibition to laws not rationally advancing legitimate (i.e. nonpunitive) legislative purposes.

As noted elsewhere in this paper, Title VI of the Civil Rights Act of 1964 is a nondiscrimination statute. To use it for discriminatory purposes does not rationally advance its purpose. The Congressional Research Service has stated, "[I]t is a defense to a bill of attainder challenge to establish that a statute is not intended to punish, but rather to implement a legitimate regulatory scheme."[67] Clearly, that proffered defense does not apply here.

Another key feature of a bill of attainder is that it applies retroactively: the Supreme Court has held that the Bill of Attainder Clause does not apply to legislation that is intended to prevent future action rather than to punish past action.[68].

The Supreme Court applied the constitutional prohibitions on bills of attainder in a pair of Reconstruction-era cases, *Ex parte Garland*[69] and *Cummings v. Missouri*.[70] *Garland* concerned a federal statute, while *Cummings* involved a post-Civil War amendment to the Missouri constitution, but both of the challenged provisions required persons engaged in certain professions to swear an oath that they had never been disloyal to the United States. In both cases, the Court held that the effect of the challenged provisions was to punish a group of individuals who had been disloyal to the United States, and the punishment they faced was effective exclusion from the covered professions. One can note the similarity between the oath required here and the requirement imposed on all public school districts in the U.S. that they do not discriminate under the laws enforced by OCR. Based on that holding, the Supreme Court invalidated the provisions as unconstitutional bills of attainder.

In *Cummings*, the Court noted that the challenged state constitutional provisions did not expressly define any crimes, or declare that any punishment shall be inflicted, but they produced the same result upon the parties, against whom they are directed, as though the crimes were defined and the punishment was declared. The provisions aimed at past acts, and not future acts, and were intended to operate by depriving such persons of the right to hold certain offices and trusts, and to pursue their ordinary and regular avocations. The Court held that this deprivation constituted a punishment, and that the purported option to avoid the restriction by swearing a loyalty oath did not make it less so.

The framers of the constitution of Missouri knew at the time that whole classes of individuals would be unable to take the oath prescribed. To them . . . the deprivation was intended to be, and

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[67] Bills of Attainder: The Constitutional Implications of Congress Legislating Narrowly; August 24, 2014, https://sgp.fas.org/crs/misc/R40826.pdf (last accessed April 20, 2025).
[68] *American Communications Ass'n, C.I.O., v. Douds*, 339 U.S. 382, 414 (1950); *see also Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994)
[69] 71 U.S. 333 (1866).
[70] 71 U.S. 277 (1867).

is, absolute and perpetual. To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition, and such denial, enforced for a past act, is nothing less than punishment imposed for that act.

In *Garland*, the Court applied its reasoning in *Cummings* to strike down the similar federal law. The Court struck down a federal statute requiring attorneys practicing in federal courts to take an oath that they had never sympathized with the Rebel cause in the Civil War. The Court based its decision on *Cummings* and emphasized that "exclusion from any of the professions or any ordinary avocations of life for past conduct can be regarded as punishment for such conduct." The exclusion was based on alleged ideology, similar to the punishments meted out to law firms by the current Administration. Demanding and requiring ideological purity is unamerican.

A factor that may be relevant to a bill of attainder analysis is the duration of the burden imposed. In the case of the recissions of federal aid to educational institutions under discussion here, the Administration has posited no end date, other than the institutions “coming into line” with Administration policy. The burden on educational institutions would be extreme, especially in that it would require them to change their essential function of academic freedom and inquiry. In other civil rights issues such as religious and disability discrimination, a change to essential functions is sufficient defense to avoid making the change requested or demanded.

In the 1946 case *United States v. Lovett*,[71] the Supreme Court struck down as a bill of attainder an appropriations bill cutting off the pay of certain named federal employees accused of being subversives. The Court explained that the challenged legislation effectively declared specific persons guilty of the crime of subversive activities without the safeguards of a judicial trial. The legislation further permanently barred those persons from government service, which qualified as punishment . . . of a most severe type. Similarly, in the 1965 case *United States v. Brown*, the Court held that a federal statute making it a crime for a member of the Communist Party to serve as an officer of a labor union was a bill of attainder. The *Brown* Court eschewed a rigid historical view of the Bill of Attainder Clause, explaining that the clause was intended not as a narrow, technical prohibition, but rather as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply- trial by legislature.

The current Administration has cut off the pay of employees of the Office for Civil Rights of the U.S. Department of Education in part because they are implementing its rules about race and gender based efforts in education. The Civil Rights Act of 1964 and subsequent legislation reinforced the principle that individuals should be judged on their actions rather than through blanket legislative judgments against groups.

The intersection is fundamentally about protecting individuals from arbitrary punishment by the legislature and ensuring that everyone receives due process and equal protection under the law. Both prohibitions against bills of attainder and civil rights laws share the common goal of preventing government overreach and protecting individual rights.

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[71] 328 U.S. 303 (1946).

Cases which invoked the bill of attainder principle without being fully adjudicated include the following:

In 2009, the city of Portland, Oregon's attempt to prosecute more severely those on a "secret list" of 350 individuals deemed by police to have committed "livability crimes" in certain neighborhoods was challenged as an unconstitutional bill of attainder.

In 2011, the House voted to defund Planned Parenthood. Democratic Representative Jerry Nadler called that vote a bill of attainder, saying it was unconstitutional as such because the legislation was targeting a specific group.

In January 2017, the House reinstated the Holman Rule, a procedural rule that enables lawmakers to reduce the pay of an individual federal worker down to $1. It was once again removed at the beginning of the 116th U.S. Congress in January 2019, after Democrats had taken control of the chamber.

On November 5, 2019, the Supreme Court heard oral arguments in *Allen v. Cooper*. On March 23, 2020, the Court ruled in favor of North Carolina and struck down the Copyright Remedy Clarification Act, which Congress passed in 1989 to attempt to curb such infringements of copyright by states, in Allen v. Cooper. After the ruling, Nautilus Productions (the plaintiff in *Allen v. Cooper*) filed a motion for reconsideration in the U.S. District Court for the Eastern District of North Carolina. On August 18, 2021, Judge Terrence Boyle granted the motion for reconsideration which North Carolina promptly appealed to the Court of Appeals for the Fourth Circuit. The 4th Circuit denied the state's motion on October 14, 2022. Nautilus then filed their second amended complaint on February 8, 2023, alleging 5th and 14th Amendment violations of Nautilus' constitutional rights, additional copyright violations, and claiming that North Carolina's "Blackbeard's Law", N.C. Gen Stat §121-25(b), represents a Bill of Attainder. Eight years after the passage of the law, on June 30, 2023, North Carolina Gov. Roy Cooper signed a bill repealing the law.

President Trump's executive orders targeting specific law firms, such as the executive order on March 6, 2025, entitled "Addressing Risks from Perkins Coie, LLP, have been criticized as being essentially bills of attainder.[72] Perkins Coie's suit against the Department of Justice argues that the order "shares all the essential features of a bill of attainder."[73]

> Starting in late February, President Donald Trump began signing a series of unprecedented executive orders that imposed significant sanctions on prominent American law firms and lawyers: including Perkins Coie, WilmerHale, Paul Weiss, Covington & Burling, and Jenner & Block. The moves were in retaliation for the firms' or lawyers' prior legal work that the president characterized as personally harmful to him. The sweeping sanctions include suspension of security clearances, termination of

[72] https://www.wsj.com/opinion/trump-bills-of-attainder-target-law-firms-a15bf632, last accessed April 20, 2025.
[73] https://cdn.prod.website-files.com/67cf71f1f27ef68a8f5c5c70/67d098cae5905f455b133083_PerkinsCoieFiling1.pdf#page=43.12; https://www.courtlistener.com/docket/69725919/perkins-coie-llp-v-us-department-of-justice/, last accessed April 20, 2025.

> government contracts, and restrictions preventing firm employees from accessing federal buildings.[74]

In an *amicus* brief filed on Apr. 8, 2025, in *Perkins Coie LLP v. U.S. Department of Justice*, 27 former senior government officials of both political parties, who served in the last seven presidential administrations, confirmed that they "have never before seen or condoned an *ad hominem* punitive, and retaliatory order of this kind, attacking and intimidating lawyers and a law firm on the basis of their lawful activities." As the amici say in closing their brief:

> When [we] served in the United States government, executive orders of this nature would have been viewed as unthinkable violations of [our] constitutional oath. Yet the repeated issuance in recent weeks of punitive executive orders against specific lawyers and law firms, with perhaps more to come, makes clear that this Administration will continue to levy such sanctions unless enjoined by the courts.

Similarly, punishments imposed on educational institutional under color of law without due process are analogous.

At the initial temporary restraining order (TRO) hearing for the Perkins Coie case, Judge Beryl Howell seized on this separation of powers challenge by asking whether "executive orders that ... stand in for law ... could be subject to a bill of attainder constitutional bar."

According to several commentators:

> The Bill of Attainder clauses in the Constitution do not just protect against governmental abuse; they safeguard the separation of powers. America's constitutional order reserves to the judicial branch alone the power to determine guilt and impose punishment following due process. Executive orders that bypass this structure threaten not just the legal profession, but the very separation of powers that shields every citizen from the arbitrary exercise of authority the Framers so deeply feared. As the Supreme Court recently noted in *SEC v. Jarkesy*, the Framers took pains not to concentrate "the roles of prosecutor, judge, and jury in the hands of the Executive Branch." But the recent Trump executive orders unconstitutionally install the president in all three roles, levying retaliatory punishment against individuals and institutions who have been neither charged with nor found guilty of any crime… As the Supreme Court emphasized in Cummings v. Missouri, the "inhibition [on bills of attainder is] levelled at the *thing*, not the name"—"what cannot be done directly cannot be done indirectly.[75]

A common theme in these cases is the tension between legislative authority to address specific problems and the constitutional prohibition against legislative punishment without trial - a tension that remains relevant in civil rights contexts today. The bill of attainder prohibition also resonates with Ex post facto law, which prohibits retroactively changing the legal consequences of actions committed prior to a law's enactment. As discussed elsewhere in this paper, there are important considerations of the need for clarity for a recipient of federal financial assistance.

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[74] Koh, Halbhuber, and Pe'er; "No, the President Cannot Issue Bills of Attainder," Just Security, April 9, 2025).
[75] *Id.*

As one commentator wrote:

> The founders were attempting to preserve the Rule of Law by eliminating the arbitrariness often associated with supreme sovereigns that believed they were above the law. The founders protected against three distinct things in their framing of the Constitution: (1) "punishment without a previously existing law providing for it," (2) statutes with retrospective operation, and (3) magistrates that were unchecked by laws. The Constitution as a whole undoubtedly aims at accomplishing these goals and the Bill of Attainder Clause protects against all three."[76]

[76] Reynolds; *The Rule of Law and the Origins of the Bill of Attainder Clause*.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF EDUCATION, et. al, *Defendants*.	)	Case No. 1:25-cv-744-PLF

DECLARATION OF K.D.[1]

I, K.D., declare as follows:

Background Information

1. I am over the age of eighteen, have personal knowledge of the facts and matters below, and am competent to testify about these facts.
2. I am the parent of M.W., who is 16 years old. We live in California.
3. I and my daughter, M.W., are Plaintiffs in this case.
4. My daughter is in the 10th grade.
5. My daughter is Black.
6. I filed a complaint with the U.S. Department of Education Office for Civil Rights (OCR) on behalf of my daughter on May 15, 2023, alleging discrimination and harassment based on race.

[1] The motion for K.D. to proceed under pseudonym is pending. *See* ECF#s 17 & 21.

My OCR Complaint

7. On April 21, 2023, my daughter was 14 years old and a student in middle school.
8. On that day, she tried to break up a fight between a Latina friend of hers and a white student that was happening across the street from the school.
9. The principal of the middle school accused my daughter of stomping and kicking the white student. The principal called 911 and reported this to the police, and my daughter was suspended for four days.
10. That same day, I saw a video of the fight that showed that my daughter did not hurt anyone and was only trying to stop the fight.
11. That same day, my daughter started receiving online messages saying that she would be physically hurt when she came back to school.
12. My daughter became anxious and scared about returning to school because of the threats.
13. On April 24, 2023, I met with the school principal. The principal had seen the video and agreed that my daughter did not harm the white student.
14. The principal agreed to update my daughter's suspension documentation and school records and reduce her suspension to three days from four, but would not give me the contact information for the superintendent. I wanted the superintendent's information so I could ask him to investigate this incident.
15. I felt the suspension was very unfair because the video showed that my daughter was not involved in the fight and did not harm anyone. My daughter was not deserving of any punishment at all, let alone three days of suspension.
16. I received the police Dispatch Event Summary and saw that my daughter was listed as the aggressor.

17. On April 26, 2023, I requested a two-day medical absence from school for my daughter because of her anxiety and fear.
18. Because she feared for her safety, my daughter stayed home and did an independent study from May 1 to May 22, 2023, instead of returning to school.
19. On May 9, 2023, my daughter told me that she had learned from friends that a physical education teacher made fun of the fact that my daughter was suspended from school in the locker room in front of other students.
20. Prior to my daughter returning to school, I had to ask the school for a safety plan.
21. When my daughter returned to school, the school provided her a safety plan that only allowed her to use the bathroom during break and lunch and stated that if she had any contact with certain students for the rest of the year, she would be suspended, expelled, or disciplined.
22. I renegotiated the safety plan so my daughter could use the bathroom more and to take out the no-contact provision.
23. On May 15, 2023, I filed an OCR complaint based on how my daughter was treated by school administrators and the school's failure to stop and address the threats made to her by other students at school.
24. From July 17 to November 23, 2023, my daughter attended therapy sessions because of the anxiety arising from these events. The therapy was paid for by a local county fund that helps support youth mental health since I did not have the funds. My daughter had to stop going when she reached the maximum sessions paid for by the fund, and I could not afford to pay out of pocket for her to continue therapy.

25. At the beginning of the 2023-2024 school year, my daughter started high school. She has continued to experience bullying and harassment, both in person and on social media, because of her race and because of the fight.

26. For instance, on September 14, 2023, another student used the "n-word" in my daughter's English class. On October 9, 2023, non-Black students made jokes about the Ku Klux Klan to my daughter. On April 19, 2024, non-Black students called my daughter the "n-word" in her physical education class. My daughter reported all of these incidents to teachers, and was never told whether they were addressed, if at all.

27. On April 3, 2024, an Instagram story was posted calling my daughter a "bitch" and "a black monkey" and saying "you stink" with monkey sounds in the background. When I reported it to the high school principal, the principal offered to hold a meeting between my daughter and the boys who posted the story. My daughter declined because she did not want the boys to know that she had reported the Instagram story. She was afraid that if they knew, they would harass her and physically harm her.

28. On November 14, 2024, students in my daughter's classroom played a whipping sound during a history lesson about slavery.

29. I filed my complaint under Title VI.

30. My complaint alleged that the school racially discriminated against my daughter by subjecting her to disproportionate disciplinary actions and failed to investigate or address threats from other students against my daughter after the incident.

31. In my complaint, I requested that OCR investigate my allegations and take necessary steps to remedy unlawful conduct, require the District to provide training on Title VI

compliance, require the District to provide workshops to educate students on their Title VI rights, and monitor the District for Title VI compliance.

OCR's Response to My Complaint

32. My complaint was assigned to the San Francisco regional office.
33. On July 31, 2023, OCR opened an investigation into the school's disproportionate discipline and response to the harassment under Title VI.
34. In its opening letter, OCR notified me that they were investigating whether the school district "disciplined the Student more harshly than a white student who engaged in more serious conduct (fighting)" and whether it "subjected the Student to a hostile environment on the basis of race when it did not respond reasonably, timely and effectively to notice of harassment of the Student on the basis of race, including the use of racial epithets and other racially offensive harassment in her physical education class, and on social media."
35. In December 2024, OCR sent a proposed voluntary resolution agreement to the school district. The voluntary resolution included a proposal for my daughter to continue counseling and potential system changes to the district's disciplinary actions. I believe the proposal also included updating my daughter's disciplinary record.
36. In March 2025, I emailed OCR about the status of my case after learning about the mass layoffs and office closures. OCR staff called me and told me they were blocked from responding to emails and using office phones due to the office closure.
37. OCR staff told me that the school board had not agreed to the proposed voluntary resolution but had requested more information. OCR staff told me that they would be contacting the school district's attorney to provide additional information about the recent harassment my daughter experienced and to try again to get the school district to agree to

the voluntary resolution. OCR staff asked me to provide additional evidence to them of the recent harassment, which I did.

38. OCR staff told me that my case would be transferred to the Seattle office because of the closure of the San Francisco office. OCR staff told me it would flag my case due to its importance and proximity to resolution, but that it could be six months to a year before I received an update.

39. I have not received any update about my complaint from OCR since then.

Impact on My Family

40. The fact that my OCR complaint has not been resolved has had a big impact on my family.

41. My daughter is currently in high school in the same district, and her high school will be merging with the middle school she went to and where the original incident happened. My daughter has to interact with the staff members that her OCR complaint is about, including the middle school principal who lied to the police about her stomping and kicking a white student.

42. Next year, as a junior, my daughter will be a teaching assistant for the physical education program. She will have to share an office with the same physical education teachers who were part of the basis of the OCR complaint we made.

43. Some of these staff members seem to have a chip on their shoulder about the complaint. My daughter feels awkward and intimidated being around this staff. For instance, they stare at her but don't speak to her.

44. When my daughter moved from middle school to high school, her safety plan wasn't implemented. She currently has a class with one of the students who harassed her.

45. Teachers do not know how to protect my child or other children. In my OCR complaint, I asked for training so teachers would know what to do and students would know their rights and could stand up for themselves.

46. The racial harassment against my daughter has continued into high school. I am worried that at any minute another incident could occur because the problems that caused me to file the OCR complaint haven't been addressed.

47. I have to be an advocate for my child because the staff at school are not doing their jobs. I spend a lot of time in meetings with principals and teachers to try to make sure she is safe.

48. I am worried about the consequences for my daughter's future if she graduates before OCR resolves her complaint. I believe the inappropriate and discriminatory discipline that my daughter experienced is still on her school record. She is in high school and soon will be applying to colleges, and I am worried about how that disciplinary record will affect her future if it is not fixed. People seeing that record may think she has behavioral issues and it reflects badly on her, when it's really because of discrimination from the school.

49. My daughter's school performance is worse than it was before all of these incidents happened. She is just trying to fit in and not draw negative attention because she is the only Black kid in the classroom. It is hard for her to focus on school when she is just trying to stay safe.

50. My daughter has stepped out of class just to cry before when she is dealing with issues that teachers won't address, like using the n-word and making jokes about the Ku Klux Klan.

51. All of this discrimination has made my daughter not want to identify with her Blackness. She sees derogatory negative things about her race all the time at school. She never experienced this in other school districts.
52. My daughter feels hopeless and like nothing will change. She doesn't think that anyone cares about what happened to her.
53. I feel like I have to be my daughter's bodyguard. I always have to be available in case something happens, and I am anxious when I get a text message or call from my daughter during the school day.
54. As a mother, it makes me doubt myself because I am letting my daughter go into this environment where anyone can harass her and get away with it. I don't trust these adults at the school to keep my daughter safe, but I have to send my daughter to school every day.
55. My OCR complaint was almost resolved. I believe that if the OCR staff could get back in the office and back to work right now, my complaint would be resolved and done by now because it was so close.
56. I understand why my daughter feels hopeless. When I heard that the San Francisco OCR office was closed, I started to lose hope. OCR was my last hope that something would be done to help my daughter. And now we are just left in the dark and waiting.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 29, 2025.

Signature: 

K.D.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF EDUCATION, et. al, *Defendants*.	)	Case No. 1:25-cv-744-PLF

DECLARATION OF MELISSA COMBS

Pursuant to 28 U.S.C. § 1746, I, Melissa Combs, declare as follows:

Background Information

1. I am over the age of eighteen, have personal knowledge of the facts and matters below, and am competent to testify.

2. I am the parent of D.P., who is 16 years old. We live in Connecticut.

3. D.P. is a sophomore in high school. They are a Plaintiff in this case.

4. D.P. experienced discrimination and harassment while attending a public school district that receives federal funding.

5. D.P. identifies as LGBTQ+.

6. On June 10, 2022, I filed a complaint with the U.S. Department of Education Office for Civil Rights ("OCR") on behalf of D.P. and other students alleging discrimination on the basis of gender and sexual identity in violation of Title IX.

My OCR Complaint

7. I filed my OCR complaint on behalf of D.P. and other LGBTQ+ students, against their public district ("district"). I filed the complaint after these students experienced repeated discrimination and harassment from classmates and school staff, targeting their gender/sexual identity, and the district failed to adequately address it.

8. One of the issues challenged in my complaint was the district's treatment of the students' Gender Sexuality Alliance ("GSA") club. In the fall of 2021, the school removed the GSA's posters at school and its slide in the morning announcements. Other club's slides and posters remained, though. The GSA club was also prohibited from continuing to meet during the school's "RISE period" – an academic support block meant to allow free time for students to engage in various extracurricular activities – despite that other clubs were allowed to use the RISE period to meet. The district refused to intervene to correct this discrimination. And later that year, the GSA's Google Classroom – which students used to share community events and resources and talk to one another – was replaced with a new GSA Google Classroom that did not allow students to post or comment. But other student groups were allowed to post and comment in their Google Classrooms.

9. The complaint also challenged the district's failure to address a pattern of harassment faced by the student-complainants throughout the 2021-2022 school year at the hands of other students and staff. A teacher at the middle school referred to LGBTQ+ identification as a "mental illness." Another middle school teacher informed her class that anyone participating in the National Day of Silence – an annual day of action meant to spread awareness about the effects of bullying and harassment of LGBTQ+ students – would not receive credit for that day's period. The teachers were not disciplined. Three of the student-

complainants – including D.P. – also endured homophobic and transphobic harassment from classmates. They were called slurs and told to "go die" or "go kill" themselves multiple times.

10. I, and the parents of the other involved students, reported the bullying/harassment to the district. Although the district opened Title IX investigations for D.P. and one other student, it took nearly ten months for the district to resolve the complaints. During that time, the district did not take meaningful steps to resolve the harassment, such as separating the student-complainants from their harassers. One of the student-complainants missed over a week of school to avoid their harasser. By the time the district resolved their complaint – in their favor – that student had already moved out of the district. The district ultimately found against D.P., but I did not appeal because it felt pointless. And by that time, OCR was already investigating the district, so I thought OCR would be able to hold them accountable. The district never opened a Title IX investigation for the third student.

11. Throughout the school year, the harassment continued to escalate. In March of 2022, a group of students entered a teacher's classroom, tore a PRIDE flag off the wall, brought the flag into the hallway, and repeatedly stomped on it while chanting "burn it." There were teachers and lunch monitors around, but only one tried to step in. And none of the teachers or lunch monitors reported the incident to the district. I reported it, but the district refused to open an investigation. And in June 2022, D.P. was assaulted by another student, who attempted to yank a PRIDE flag off D.P.'s neck in the school hallway. A teacher saw it and did nothing. D.P. initially did not report the incident, because they did not think the district would do anything about it. I reported it to the principal – who verified that the incident occurred from video footage – and although she promised to follow up with me, she never did. She did not take any steps to address it, either.

12. On June 10, 2022, I filed a complaint with OCR alleging that the district had engaged in discrimination on the basis of gender/sexual identity, in violation of Title IX. I requested individual and district-wide relief, including compensatory education for students who missed instructional time as a result of the discrimination, expert review of the district's policies, guidelines, and regulations affecting LGBTQ+ students, funding and staffing for diversity, equity, and inclusion and inclusive curriculum initiatives to benefit LGBTQ+ students in the district, trainings for district staff, and review of the district's bullying and safe school climate plan.

13. I knew about OCR through my experiences advocating for my child. In Connecticut, there is an option for filing civil rights complaints through the Commission on Human Rights and Opportunities, but I chose to seek help from OCR because I wanted the weight of the federal government behind my claim. I hoped that OCR opening an investigation would incentivize the district to do better by these children. I also wanted to see changes for other students in the district, too. I felt that an OCR complaint was the best avenue to affect wider change.

14. Through my OCR complaint, I was hoping to achieve a safe learning environment for my child and other LGBTQ+ students in the district. I wanted my child to feel safe and included in their local public school, be able to meaningfully participate in the GSA, and be able to learn free of harassment and bullying.

OCR's Response to My Complaint

15. My complaint was assigned to the Boston regional office. On June 30, 2022, I received an email from an OCR investigator, setting up an interview in July. At the interview, we talked for an hour and forty-five minutes about my complaint. And on August 10, 2022,

OCR notified me that it was opening an investigation into my Title IX claims – in particular, whether the district engaged in different treatment on the basis of sex in its treatment of the GSA, and whether the district failed to adequately respond to complaints of sex-based harassment.

16. After that, I maintained regular contact with the OCR investigator, and she provided me with the process manuals and information about the investigation process. At the end of August, she provided me with process manuals and information about the investigation process.

17. On or around March 11, 2025, I heard on the news that OCR was laying off staff and that the Boston regional office would close. On March 13, 2025, I sent an email to my assigned investigator asking that she advise me on the next steps in light of the closure. But I never heard back. I have not heard anything from anyone else at OCR and have no idea if the case has been reassigned.

18. My understanding is that since the closure of the Boston regional office, there has not been any progress on investigating my OCR complaint.

Impact on My Family

19. After I filed the OCR complaint, my child continued to experience discrimination, bullying, and harassment from students and staff at school. School was a dangerous place for D.P. – they were constantly in fight or flight mode. Because of the ongoing discrimination and harassment, D.P.'s mental health deteriorated significantly, and they experienced serious self-harm. D.P. also missed a significant amount of learning time because of fear-based absences. For a while, I could not leave D.P. alone because I was so concerned about self-harm. This affected my employment.

20. D.P. now attends a magnet school outside of the district because of the ongoing discrimination they experienced there. I felt this move was necessary to protect D.P.'s mental and emotional health and their access to education. But if the district would correct the discrimination, I would send them back. I want D.P. to be able to attend their local public school.

21. It only took us around fifteen minutes to get to D.P.'s regular school, but it takes anywhere from twenty-five to forty minutes to get to the magnet school. If D.P. wants to stay at school for an extracurricular activity or tutoring, I have to pick them up during rush hour, and the commute is difficult.

22. At the magnet school, D.P. also lacks the same access to extracurricular and social opportunities that they used to have. The magnet school only has five or six clubs – but D.P.'s regular public school has over fifty. D.P. would like to be in a theater club, but their magnet school does not have one. D.P.'s social opportunities are also much more limited because of the commute. Their friends do not live in our community, so even something as simple as going to a friend's house requires a lot of coordination and time. Even going to a school football game is a huge commitment.

23. Although things are better at the magnet school, D.P. still struggles with their mental health. The learning loss that they experienced because of the discrimination and harassment in the district also continues to impact them. D.P. has a lot of academic stress, which led to one self-harm incident in high school. D.P. also has an Individualized Education Program ("IEP") now, because of the learning loss in the district and their mental health issues. Their experiences still affect them socially, too. D.P. has a lot of anxiety around adults and has a hard time participating in social events with other students from the district because of the

trauma they experienced there. They take medication and have attended therapy throughout and since middle school.

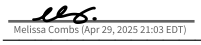
24. If my OCR complaint is never resolved, D.P. will continue to lack access to their regular public school, because the district is still engaging in the same discriminatory conduct. They will lack access to meaningful extracurricular activities, social opportunities, and a sense of belonging in their local community. And D.P. will suffer additional emotional harm if the district is never held accountable. It is important for them to hear from an official authority that what happened to them was unjust. D.P. is also concerned about the other LGTBQ+ students that still attend school in the district. One of the student-complainants from my complaint still goes to school there, and without relief from OCR, they will continue to suffer harassment and discrimination.

25. If my OCR complaint was resolved favorably, D.P. would be able to safely return to their regular public school in the district. They would have a chance to participate in the theater club, would have more social opportunities, and would have a greater sense of belonging in their community. I really want them to be able to go to their local school.

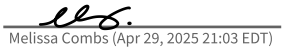
26. Without access to OCR's complaint processing system, my family and I have no other option to try and have our discrimination and harassment complaint addressed. We do not have the resources for litigation. And we do not want money – we just want the district to be better. I can no longer bring my complaint with CHRO, because complainants only have 180 days from the discrimination to file with CHRO, and that deadline has passed. I have emailed CHRO to seek a waiver of the deadline for students with pending OCR complaints, but I have not heard back. Without OCR, we will be left without relief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 29, 2025.

Signature:



Melissa Combs

Signature: 

Email: mc@outaccountabilityproject.org

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:25-cv-744-PLF
UNITED STATES DEPARTMENT OF EDUCATION, et. al,	)	
Defendants.	)	

DECLARATION OF AMY CUPP

I, Amy Cupp, declare as follows:

Background Information

1. I am over the age of eighteen, have personal knowledge of the facts and matters below, and am competent to testify about these facts.
2. I am the parent of G.C., who is 12 years old. We live in Indiana.
3. My child, G.C., and I are Plaintiffs in this case.
4. My child is in the sixth grade.
5. I am a member of the Council of Parent Attorneys and Advocates, Inc.
6. My child has several identified disabilities. My child receives services at school pursuant to an Individualized Education Program (IEP).

7. I filed a complaint with the U.S. Department of Education Office for Civil Rights (OCR) on behalf of my child on December 6, 2024, alleging discrimination on the basis of disability.

My OCR Complaint

8. Since starting sixth grade at Norwell Middle School, my daughter has been subjected to multiple incidents of restraint and seclusion.
9. Most of these incidents were poorly documented. Some of the emails and incident reports I received show that staff members often restrained and secluded my daughter for behaviors such as attempting to leave the room, verbally refusing to follow school staff's commands, throwing things, or having a tantrum and lying on the floor.
10. I also noticed that, on several occasions, the school would change my daughter's IEP after our case conference. I reached out to Indiana Disability Rights (IDR) to have them join my case conference in October 2024 to help implement my daughter's IEP and update her behavior plan. The school called me to ask who was coming to the case conference, and I told them the IDR attorney's name. Two hours after the school found out that IDR would be joining the case conference, I received several messages from the superintendent. The superintendent told me that my daughter was not allowed to take an alternative route on the school bus or ride with the elementary students, even in the case of an emergency. I was confused by the messages because it seemed to come out of nowhere. The superintendent also canceled the breakfast that he wanted to have with my husband and me the following week.

11. On November 11, 2024, my daughter was restrained by four staff, one of whom was a wrestling coach and another who was a football coach. My daughter sustained bruising on her upper arm as a result of the restraint.
12. My daughter's therapist found the bruising and reported it to the Department of Child Services (DCS). The DCS worker reported it to the state police.
13. The state police did a brief investigation, and the officer told me that he did not find criminal intent.
14. I contacted my advocate at IN*SOURCE, an Indiana non-profit, IDR, and Ability Allies, and they all could not help me with the issue of restraint and seclusion. I asked my advocate at IN*SOURCE, who sits on the state's restraint and seclusion committee, what I could do to resolve this issue at the state level, and she told me that there was nothing I could do. She told me that even if I made a complaint to the Indiana Department of Education (IDOE), they would just send it along to OCR.
15. I could not stand by and let school staff continue to hurt my daughter.
16. On December 6, 2024, I called the OCR Chicago regional office and left a message asking if they could help me. That same night, an OCR staff called me back, told me that I had called the right place, and she encouraged me to submit a complaint via the online portal.
17. After the call with the OCR staff, I filled out the online complaint form.
18. In filing the complaint, I hoped that OCR would require the school district to provide training on the appropriate use of restraint and seclusion and monitor the school district for compliance.

19. In this school year alone, I estimate that my daughter has been restrained 15 times and secluded 14 times, for a total of 23 hours and 6 minutes.
20. On December 17, 2024, I had a phone call with the special education director where we had a verbal agreement that she would remove the "good-faith" clause from my daughter's IEP. The good faith clause would allow the school to remove my daughter from school if behavioral interventions were unsuccessful after 90 minutes without counting it as a suspension.
21. On December 19, 2024, I found out the school did not remove the good faith clause in my daughter's IEP but instead filed a complaint against me with IDOE for refusing to sign an IEP with the clause in it. The complaint against me also stated that I called DCS on the school.
22. In January 2025, I went to mediation with the school district for the complaint they filed against me. At mediation, the school district agreed to remove the "good faith" clause from my daughter's IEP.

OCR's Response to My Complaint

23. My complaint was assigned to the Chicago regional office.
24. On December 10, 2024, an OCR attorney reached out to me to schedule a teleconference to get more information from me.
25. After my call with the OCR attorney, I continued to provide her with more information on my daughter's restraint and seclusion and told her that the school district filed a complaint against me, and I had to go to mediation.

26. On January 14, 2025, I received an email from the OCR attorney stating that she met with her supervisor, and they were going to open my case. In the email, the OCR attorney also told me that I should receive an official notification letter soon.
27. I waited and checked my mail every day for the letter, but it did not come.
28. On February 28, I sent an email to the OCR attorney asking if she was able to talk to families again after the pause on investigations.
29. On March 10, 2025, the OCR attorney responded to my email asking to schedule a time to talk about my case.
30. On March 11, 2025, I had a call with the OCR attorney where she told me that she had drafted the opening letter for my case and that it was ready to go. However, it needed to be approved by headquarters before it could be sent out. The OCR attorney told me that it would be another week before I received the case opening letter.
31. After this call, I learned about OCR's mass layoffs and office closures.
32. On March 12, I emailed the OCR attorney asking if she was still working. That evening, I got a call from the OCR attorney stating that she and her whole office were laid off and she could not respond to my email, so she had to dig to find my number to contact me. The OCR attorney told me that my case was in the system, but that she didn't know what was going to happen to my case.
33. A news article about my OCR complaint and this lawsuit was published on National Public Radio (NPR) on April 16, 2025.
34. A news article about my OCR complaint and this lawsuit was published on USA Today on April 23, 2025.

35. On the afternoon of April 23, 2025, I finally received an email from an investigator in the Denver regional office. The email had my opening letter for my OCR complaint attached.

36. The letter states that OCR will investigate my complaint.

Impact on My Family

37. The fact that my OCR complaint has not been resolved has had a big impact on my family.

38. I was scared to send my daughter to school because I didn't know what was going to happen to my daughter, wondering if the staff was going to hurt or harass my daughter that day.

39. I was afraid that school staff would continue to restrain and seclude my daughter, so I shortened her school day to protect her and limit her exposure to more restraint and seclusion.

40. Since February 24, 2025, my daughter has been going to ABA therapy in the morning and only attending her school for two hours each day in the afternoon.

41. My daughter used to love school but now tells me that she doesn't like to go very much because she is afraid of being put in the "blue room," which is the padded room used for seclusion.

42. My daughter tells me she would like to go back to school more and to be with her friends, but only if she is not kept in the blue room.

43. I feel sad and upset that my daughter is missing out on a lot of the school day and education time, but I have to protect my daughter from the harm caused by her school.

44. OCR gave me hope when I had nowhere else to turn in my state. That sense of hope diminished when I heard about the OCR investigation pause and subsequent mass termination and office closures.
45. I do not know how much longer it will take to resolve my complaint because I understand many of the investigators have many cases to handle due to recent layoffs.
46. I hope that OCR will investigate and resolve my complaint so I can send my daughter back to school full-time in a safer environment.
47. Without access to OCR's complaint processing system, my family and I have no other option to try and have our discrimination complaint addressed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 30, 2025.

Signature:

A.C.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF EDUCATION, et. al, *Defendants*.	)	Case No. 1:25-cv-744-PLF

DECLARATION OF A.M.[1]

I, A.M., declare as follows:

Background Information

1. I am over the age of eighteen, have personal knowledge of the facts and matters below, and am competent to testify about these facts.
2. I have a sixteen-year-old daughter.
3. My daughter and I live in Michigan.
4. I am a Plaintiff in this case.
5. In January 2023, I filed a Title IX complaint on behalf of my daughter with the U.S. Department of Education Office for Civil Rights (OCR).

Circumstances Underlying OCR Complaint

[1] The motion for A.M. to proceed under pseudonym is pending. *See* ECF Nos. 20 & 24.

1. In June 2022, when my child was in the seventh grade, she was sexually assaulted by a classmate in the high school bathroom.
2. She was thirteen years old at the time.
3. My daughter's assaulter also sexually harassed my daughter for multiple weeks.
4. During school, my daughter's assaulter would often make inappropriate gestures to her in class and would frequently grope her, in public, without her consent.
5. After my daughter's assault, her assaulter spread rumors and shared personal details about my daughter.
6. My daughter was bullied, victim-shamed, and harassed as a result.
7. Because of these rumors, no one believed my daughter was assaulted. Everyone thought she was lying.
8. My daughter's friends and classmates stopped talking to her.
9. My daughter's mental health began to suffer. She developed significant trauma from the assault and sexual harassment, and the subsequent bullying and victim-shaming.
10. In July 2022, I filed a Title IX complaint with the district on behalf of my daughter.
11. In August 2022, the district sent formal notice of the Title IX investigation and appointed an attorney to serve as the Title IX investigator.
12. In the Summer of 2022, I decided to pull my daughter out of the school district because it was unsafe for her to continuing going there until the school and district addressed my concern.
13. In October 2022, the Title IX investigator sent me a memorandum summarizing all of the evidence collected as part of the district's Title IX investigation. I noticed several inconsistencies and omissions.

14. On October 31, 2022, the Title IX investigator sent her findings to the district.
15. On November 30, 2022, the District formally completed its investigation. The district concluded that the incident that happened in the high school bathroom—when my daughter was sexually assaulted—did not meet the definition of sexual harassment under Title IX or the school board's policy.
16. The district further concluded that the assault was consensual.
17. My daughter was devastated.
18. The district refused to impose any disciplinary consequences on my daughter's perpetrator.
19. I later found out that the district adopted the Title IX investigator's conclusions and findings without doing any independent investigation of its own.
20. Further, the Title IX investigator was part of the same law firm that developed the district's Title IX policies, and that served and continues to serve as the district's legal counsel.
21. As a result of the district's finding, my daughter's mental health deteriorated even more.

OCR Complaint

22. On January 27, 2023, I filed a Title IX complaint with OCR alleging that the district had discriminated against my daughter on the basis of sex for its failure to adequately respond to my Title IX complaint, and for failing to ensure that district personnel received proper Title IX training.
23. I made the decision to file an OCR complaint because I wanted justice for my daughter.
24. My daughter and I live in a small town. Many people in our town are affiliated with the school in some way.

25. After my daughter's assault, no attorney in my county was willing to come forward to help me bring a case against the district.
26. To find some form of recourse for my daughter, I even wrote to my mayor, state representatives, and the state governor.
27. No one responded to my pleas.
28. I was distraught.
29. I decided to file an OCR complaint because I had nowhere else to turn.
30. I needed to get justice for my daughter. And I needed to make sure this did not happen to any other child in the district again.
31. In my OCR complaint, I asked for an audit of the school district's Title IX policies, processes, procedures, as well as oversight mechanisms to make sure they are compliant with district, state and federal requirements. I requested appropriate Title IX training and ongoing OCR oversight of the district's Title IX complaint resolution process. I also asked for compensation for costs my family incurred because of the district's actions, including costs for my daughter's mental health treatment.

OCR's Response to My Complaint

32. My complaint was assigned to the Cleveland Office.
33. In March 2023, OCR conducted a mediation for me and the school district, but it was unsuccessful.
34. On May 12, 2023, OCR formally opened an investigation into my complaint.
35. OCR stated that they would investigate two issues.

36. The first issue was whether the district had actual knowledge of my daughter's sexual harassment, and whether they responded promptly in a manner that was not deliberately indifferent as required by Title IX.
37. The second issue was whether the district had ensured that the Title IX Coordinator, investigators, decision-makers, and other persons involved received training on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and grievance process, and how to serve impartially as required by Title IX.
38. On March 17, 2025, I was notified that my case was being transferred to the Denver office following the closure of the Cleveland office.
39. On April 14, 2024, I received an email from an attorney from the Denver office notifying me that they were taking over the handling of my complaint.
40. But my understanding is that since the closure of the Cleveland office and the subsequent reductions in OCR's workforce, there has not been any forward progress on investigating or resolving my OCR complaint.

Impact on My Family

41. When we filed the OCR complaint, my daughter was hopeful that she would finally have a real, fair shot at justice.
42. But now, with the administration's gutting of OCR's workforce and the closure of the Cleveland and other regional offices, I am concerned that will no longer be possible.
43. My daughter suffered immensely as a result of the sexual assault and harassment.

44. Further, because of the district's failure to appropriately investigate and address her sexual assault and harassment, my daughter continues to be painted as a liar by her former friends and classmates.
45. My daughter has had to change districts multiple times, and now attends a high school over thirty minutes away, despite the high school in our district being located less than two blocks from our house. Even enrolling my daughter in a new school has been difficult because the new district keeps giving us a hard time since it's not our home district.
46. Because of the assault and subsequent trauma, my daughter has been hospitalized multiple times for self-harm.
47. My daughter is still experiencing mental health trauma from the assault. To this day, she continues to go to therapy and take medication.
48. If we obtain our requested relief from OCR, my daughter and I would finally be able to hold the district accountable.
49. We would finally be able to ensure that the district adopts appropriate Title IX policies and procedures.
50. We would finally be able to ensure that no other children in the district who are subject to sexual assault or harassment are treated the way my daughter was.
51. And we would finally receive compensation for the cost of years of mental health treatment and therapy we have had to incur and we continue to incur as a result of my daughter's trauma.
52. If we were to obtain our requested relief, my daughter would finally be able to move on and find peace from the trauma she has suffered for so long.

53. But without access to OCR's complaint processing system, my daughter and I have no other option to have our Title IX complaint addressed.
54. Without access to OCR's complaint processing system, we have no other means of obtaining recourse or justice.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 29, 2025.

Signature: 

A.M.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:25-cv-744-PLF
UNITED STATES DEPARTMENT OF EDUCATION, et. al,	)	
Defendants.	)	

DECLARATION OF NIKKI S. CARTER

I, Nikki Carter, declare as follows:

Background Information

1. I am over the age of eighteen, have personal knowledge of the facts and matters below, and am competent to testify about these facts.
2. I am a Plaintiff in this case.
3. I live in Demopolis, Alabama.
4. I have three children. My two daughters currently attend Demopolis High School in Demopolis City School District.
5. I am a Black community activist and advocate.
6. I am a member of the Council of Parent Attorneys and Advocates, Inc.

Community Advocacy

7. Through my company—Champion Initiative, LLC—I provide non-legal navigational and educational resources and services for victims of crime, injustice, and discrimination, including disability discrimination.
8. As an advocate, I have helped parents identify, expose, and address a consistent pattern of discriminatory practices by Demopolis City School District. I have referred numerous parents to my state's Protection & Advocacy organization (the Alabama Disability Advocacy Program) and other legal organizations in Alabama, and have helped bring media attention to the district's discriminatory practices.
9. I have also hosted numerous events and workshops focused on providing resources and education to parents of children facing race and disability discrimination in the public education system.
10. On May 12, 2022, I hosted a free public event called "Right to Resources" to inform parents about the resources available to them to overcome various barriers in Alabama's public education system.
11. The event featured panelists from the Southern Poverty Law Center (SPLC), Legal Services Alabama, and Alabama Disability Advocacy Program.
12. The Superintendent and Special Education Coordinator of Demopolis City School District attended the event.
13. Local news reporters from Al.com and the Demopolis Times were also in attendance.
14. Following the event, I connected many of the parent attendees to one of the reporters to allow them to share their concerns with Demopolis City School District with the media.

15. On August 4, 2022, I jointly hosted a workshop with SPLC titled "Children First Community Workshop: Navigating Educational Rights and School Services." The purpose of the workshop was to determine and address the needs of parents with children experiencing barriers to educational success.
16. The workshop primarily targeted minorities, low-income families, families with children with mental or physical disabilities, and families with limited educational history.
17. After the August 4th workshop, I learned from a former teacher and others in the community that administrators at Demopolis City School District were upset about my activism and advocacy. They did not like that I was educating the community and bringing in attorneys to disrupt the status quo.
18. In September 2022, I faced retaliation from Demopolis City School District for my advocacy on behalf of children of color and children with disabilities.

Circumstances Underlying OCR Complaint

19. On September 16, 2022, I attended an away high school football game to support my daughter who, at the time, was captain of Demopolis High School's dance-line.
20. The dance-line is part of Demopolis High School's Marching Band Auxiliary.
21. During the game, a white parent of another student on the high school's Marching Band Auxiliary wanted to talk to the team's assistant sponsor, sponsor, and Band Director to discuss her daughter being unfairly treated on the team, in violation of the team's policies and procedures. I accompanied the parent to support her.
22. We approached the sponsor, assistant sponsor, and Band Director.
23. During the conversation, I told the sponsor and Band Director that if team policies and procedures continued to be violated, I would contact the district superintendent.

24. As I stepped away to talk to the assistant sponsor separately, the assistant sponsor began chastising me because she was upset that I had voiced my concerns.
25. I told her that I was not interested in continuing the conversation and that I wanted to be left alone. But as I turned to leave the conversation, the assistant sponsor began following me.
26. Despite my numerous efforts to extricate myself from the conversation, the assistant sponsor continued to follow me to antagonize and provoke me.
27. Other staff members who were present did nothing to intervene.
28. I was distressed. Though the white parent and I approached the sponsor, assistant sponsor, and Band Director together, I was the only one subject to antagonism.
29. On September 23, 2022, I went to the Demopolis Police Department to meet the Chief of Police for work I was doing as part of my advocacy in a surrounding county.
30. During that visit, the Chief notified me that the Principal of Demopolis High School had issued a trespass order against me as a result of the incident that happened on September 16, 2022. The trespass order banned me from the high school and all high school-sponsored events.
31. I was shocked.
32. Five days later, on September 28, 2022, the Superintendent of Demopolis City School District had a second trespass order issued against me, this time banning me from the Demopolis Board of Education and all Demopolis City School District property.
33. I believe I was subjected to differential treatment because of my race and as retaliation for my advocacy on behalf of children of color and children with disabilities.

34. Through an Open Records Act request filed by a reporter at Al.com, I found out that most of the individuals who were subjected to trespass orders issued by Demopolis City School District in the previous five years were Black.

35. I was also the only one to receive a trespass order banning access to all Demopolis Board of Education and Demopolis City School District events and premises.

36. Additionally, I learned that a white parent of a band student got into an altercation with the Band Director and threatened to put the Band Director in a "f***ing wheelchair." This parent also had to be escorted out of several school football games by the Demopolis Police Department. But this parent was never issued any trespass orders.

37. As a result of the two trespass orders, I was not allowed to drop off or pick up my children at school, deliver them medications, sign them out of school when sick, go to any school-related events, participate in any in-person school meetings, or even attend any public-school board meetings.

38. The trespass orders not only interfered with my ability to be fully engaged with my children's education, but they also obstructed my ability to do advocacy work on behalf of children and families within Demopolis City School District.

39. Because of the trespass orders, I was prohibited from participating in-person as an advocate in any IEP meetings, parent-teacher meetings, or meetings with school administrators.

OCR Complaint

40. On September 23, 2022, I filed a complaint with the U.S. Department of Education Office for Civil Rights (OCR) against Demopolis City School District on behalf of

myself, alleging race-based discrimination in violation of Title VI, and retaliation in violation of Section 504.

41. I filed an OCR complaint because I wanted to bring attention to Demopolis City School District's discriminatory and retaliatory practices.
42. I live in a state where getting legal representation is an uphill battle. No attorney I contacted was willing to take on the district.
43. By filing an OCR complaint, I thought I would be able to get justice not only for myself, but also for all the other families who were victims of the district's discriminatory practices, and who could not find or afford legal representation.
44. As part of the relief I requested, I wanted OCR to do a full investigation into Demopolis City School District and its discriminatory practices—including its disproportionate issuance of trespass orders to Black individuals.
45. I further requested that the Demopolis City School Board and Superintendent be required to create policies and procedures that would address and rectify these discriminatory practices.
46. Finally, I wanted the district to lift my trespass orders so that I could participate in my children's education and school life, and continue my advocacy for children in Demopolis.
47. At the time, I believed OCR would be my best shot at advocating for myself and others who had been discriminated against by the district.

OCR's Response to My Complaint

48. My complaint was assigned to the Atlanta office.

49. On December 5, 2022, less than three months after I filed my complaint, OCR notified me that my case was being opened for investigation.
50. OCR specifically stated that it would investigate the following issues: (1) whether Demopolis City School District subjected me and other Black parents to differential treatment based on race, in violation of Title VI; and (2) whether Demopolis City School District retaliated against me, in violation of Section 504.
51. In February 2023, the OCR investigative attorney assigned to my case notified me that OCR was conducting interviews with district staff and preparing a findings report.
52. In April 2023, the OCR investigative attorney notified me that they were working with the district to draft a voluntary resolution agreement.
53. In May 2023, as a result of OCR's intervention, the district granted me a one-day exception to the trespass orders to allow me to attend my son's high school graduation.
54. On August 8, 2024, the Interim Superintendent of Demopolis City School District sent a letter to the Chief of Police at the Demopolis Police Department, indicating that my trespass orders had expired, and that I was now allowed back on district property.
55. Unfortunately, since Inauguration Day, there has been no progress on my investigation.
56. My understanding is that since OCR's mass termination, the investigation into my OCR complaint has been put on pause.

Impact of OCR's Decimation

57. I believe the decimation of OCR's workforce makes it less likely that my complaint will be processed promptly or equitably.
58. I am scared that if OCR stops investigating my complaint, I will be subject to further trespass orders and retaliation.

59. Though the district lifted my two trespass orders, without OCR, there is nothing stopping Demopolis City School District from issuing additional trespass orders in response to my advocacy and activism.

60. Because of the trespass orders, I almost missed my son's high school graduation.

61. Additionally, I was forced to sit out on many important school events for my children, including award ceremonies, my youngest daughter's eighth-grade graduation, and my older daughter's dance-line performances.

62. I want to be present in my children's education and school life.

63. My two daughters are still students in Demopolis City School District.

64. If I am subject to additional trespass orders, I may be unable to participate in their education and school life.

65. The fear of additional trespass orders and retaliation has also chilled my advocacy and activism on behalf of other students and families in my district.

66. Demopolis City School District made me a target for fighting and advocating on behalf of children with disabilities.

67. I should not be put in a position where my job as an advocate threatens my ability to participate as a parent in my children's education.

68. But without OCR's continued investigation of my case, I am scared that my advocacy will prevent me from being able to fully engage in my daughters' education and will leave me subject to further discrimination and retaliation.

69. Further, the harm caused by OCR's failure to promptly and equitably process my investigation not only affects me and my children, but also all the other children I would otherwise advocate for. This means, for example, that other students will likely be denied

the accommodations they need to fully participate in a school's programs and activities under Section 504.

70. Without OCR's continued investigation of my case, I am left without meaningful recourse if I am again subject to retaliation or discrimination by the district.

71. It is critically important that OCR's complaint processing and investigation capacity be restored immediately so that I can again advocate for the many children with disabilities in Demopolis who are unable to access an equal public education.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 29, 2025.

Signature:

Nikki S. Carter

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al.,	)	
Plaintiffs,	)	Case No. 1:25-cv-744-PLF
v.	)	
UNITED STATES DEPARTMENT OF EDUCATION, et. al,	)	
Defendants.	)	

DECLARATION OF DENISE MARSHALL IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I, DENISE MARSHALL, declare as follows:

1. This declaration is based on my personal knowledge. If called to testify in this case, I would testify competently about these facts.

2. I am the Chief Executive Officer (CEO) of the Council of Parent Attorneys and Advocates, Inc. (COPAA), a national not-for-profit organization of parents of children with disabilities, their attorneys, and their advocates. I have been the CEO of COPAA for 20 years.

3. I am familiar with our training programs, including how our programs train and advise members around accessing protections of students' rights through the United States Department of Education (Department). I am familiar with many of the concerns of our membership. I am familiar with COPAA's activities and operations and am authorized to speak on its behalf.

COPAA's mission and activities

4. COPAA's mission is to protect and enforce the legal and civil rights of students with disabilities and their families. COPAA's primary goal is to secure appropriate educational services for children with disabilities in accordance with federal laws. As part of this mission, COPAA seeks to protect the rights of children with disabilities to be free from discrimination based on their disability, race, sex, sexual orientation, and gender identity, and to receive a free appropriate public education.

5. COPAA has more than 3,600 members located across the United States. Membership is open to all persons who are interested in furthering COPAA's purposes, and members pay annual dues as required by COPAA. Persons who work for, or contract with, state, regional, or local education agencies (e.g., state Departments of Education or school districts), however, are presumptively not permitted to join COPAA, but a super–majority of the Board of Directors may

permit such persons to join as members after an interview and other varied requirements. The Board of Directors is composed exclusively of COPAA members.

6. In its daily operations, COPAA accomplishes our mission by, among other activities, providing resources, training, and information to members to assist them in obtaining a free appropriate public education and equal educational opportunity for children with disabilities; helping parents and advocates file administrative complaints; helping parents and advocates find attorneys and legal resources as they advocate for their children's legal rights; educating the public and policymakers, including federal agencies, about the experiences of children with disabilities and their families; and educating COPAA members about developments in the federal civil rights laws and policies affecting the education of children with disabilities. COPAA frequently advises, trains, and assists parents, attorneys, and advocates filing complaints with the Department's Office for Civil Rights (OCR).

7. In conducting these activities to fulfill our mission, including our public education activities, COPAA relies on public information and research we collect about what school districts are under OCR investigation for systemic violations or individual violations with regard to disability, disability and race, and disability and sex or gender, including how school districts respond to the OCR investigations including revising policies, practices, and procedures and spending their IDEA funds on comprehensive coordinated early intervention services.

8. COPAA has active members nationwide. As parents, advocates, and attorneys for students with disabilities, COPAA's members rely on the Department to enforce the rights of students with disabilities to receive an education free from discrimination. COPAA's members have filed pending OCR complaints concerning discrimination on the basis of disability,

including complaints alleging both disability-based and race- and/or sex-based discrimination in schools.

9. COPAA educates our members about developments in federal law and policies affecting children with disabilities by maintaining an extensive resource library that includes webinars, an annual conference, and other information available to members and non-members.

10. One of COPAA's practices and on-going functions is to speak with and advise our members on how to enforce the rights of students with disabilities. Historically, filing a complaint with OCR was an important option for many parents, advocates and attorneys. To support members in filing these complaints, COPAA has developed training and educational materials over the years related to how to file a complaint, how the administrative complaint process works, and more. For our well-attended annual conferences, we have invited speakers from OCR and the Department, and others from the United States Department of Justice, who have spoken in past years to COPAA and hundreds of our members about federal administrative complaint and dispute resolution practices and procedures. They have participated on panels on just these issues, explaining the complaint process to our members and conference attendees.

Impact of OCR office closures on COPAA and its members

11. Now that the Department has closed offices and decimated the OCR workforce, COPAA must rewrite many of our manuals, update our trainings, and retrain many of our members. We have to alter our recommendations and prior training and advice on the availability and efficacy of using these complaints. This will take a great deal of time, money, and effort – time, money, and effort that could instead be spent working to ensure access to education for children with disabilities. It will alter our objectives in training and topics for our annual conference. Already, our staff is spending time educating members on the new process.

12. In addition, our staff will need to update materials and provide additional advice to members on non-OCR paths for enforcing student rights. These trainings and materials will necessarily involve litigation if the OCR complaint process is foreclosed. Unfortunately, removing OCR complaint processes from the range of effective advocacy tools, or restricting them, significantly burdens this process of training, responses and protections.

13. The impact of this change is to severely limit, if not entirely eliminate, OCR complaints as a viable means to resolve violations of established federal law alleged by COPAA members. This means that parents without the means to hire and pay attorneys will not pursue *bona fide* administrative complaints to restore federally protected rights to children. For others who bear the costs and length of litigation, they will have much more limited remedies. Already, this is happening where parents contacting COPAA are foregoing the federal OCR complaint process.

14. In addition, in the absence of OCR accepting and reviewing the merits of complaints and offering meaningful remedies, an important protective provision that has historically altered the behavior of school districts is removed with the potential consequences of limiting children's protections. The absence of OCR complaint and investigation procedures will also increase the need to use administrative due process complaints, for students eligible to do so, to secure contested remedies for students, but that option may not be available for many students and families because of the nature of their complaints that do not involve due process claims.

15. The Department's actions have made achieving COPAA's mission to ensure equal access to education more difficult, time- consuming, and resource-intensive. Because of Defendants' obstruction of OCR's complaint investigation and processing functions, COPAA has expended time and resources we would have devoted to advocating on behalf of students with disabilities

to responding to calls and emails from members about Defendants' actions, as well as addressing inquiries about, tracking, and analyzing the impact of Defendants' actions on our members' pending complaints.

16. As a result of the dismantling of the OCR offices around the United States, COPAA has also been forced to expend resources updating our training materials, retraining our members on alternative and state complaint processes, and altering our recommendations and advice on the likely efficacy of an OCR complaint, which has required additional expenditures from COPAA staff and diverted our resources from direct assistance to members.

17. COPAA has expended time and resources that we otherwise could have dedicated to our efforts to secure equal access to education.

18. Additionally, COPAA periodically submits comments on federal agencies' proposed rules and regulations to inform agencies about the impact of such proposals on the lives and rights of children with disabilities and their families. However, the Department failed to issue public notices for any proposed actions, rules, or regulations related to the office closures and reductions so we were unable to notify the Department or OCR of our reliance interests at stake.

19. COPAA has active members with pending OCR complaints. COPAA's membership includes parents, attorneys, and advocates who have stalled pending OCR complaints.

20. As a result of first the freeze in investigations and now the decimation of OCR's workforce, COPAA's mission to provide resources and training and to assist our members in obtaining a free appropriate public education and equal educational opportunity for children with disabilities has been significantly frustrated. To address our frustrated mission, COPAA has been forced to divert our resources and time to addressing concerns from our members about Defendants' actions and tracking the impact of those actions on COPAA members.

21. COPAA has had to update our training materials for our twelve-week online training course for new attorneys, our materials for our two-day in-person skills training for new attorneys, and our member webinars on Section 504. COPAA also had to add information regarding closed OCR offices and information on filing state complaints in lieu of OCR complaints to our Special Education Advocacy Training (SEAT) curriculum.

22. The closing of the OCR offices hampers COPAA's mission by reducing the amount of information available to COPAA and our members for these and other tasks.

23. The closing of the OCR offices has already impaired and will continue to impair COPAA's ability to bring potential Section 504 violations to the attention of the Department and to continue to educate the public about disability-based discrimination and possible remedies.

24. As a result of the Department's actions delaying or freezing investigations, COPAA is now required to expend resources to support our members in obtaining information about pending investigations and complaints, and alternative remedies, through research, and public records requests. But for the Department's actions, COPAA would not need to undertake such extensive efforts.

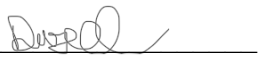
25. COPAA does not have the staff resources currently to conduct this work and would have to reallocate 10 hours a week of the Legal Director time ($39,000 a year); 5% of Executive Director time per month ($9,993 a year); and other direct and indirect costs for website updates, changes to curriculum and other staff time ($7,640 a year). That is a total of $56, 633 that is not currently budgeted.

26. COPAA has active parent members who have pending OCR complaints on behalf of their children with disabilities and active advocate and attorney members who work with families with pending OCR complaints, including Nikki Carter, Melissa Combs and Amy Cupp.

27. Those parents, and I believe other COPAA members, have lost important practical services that would have flowed from an investigation into their allegations of discrimination.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 30, 2025.

Respectfully submitted,



Denise S. Marshall

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF EDUCATION, et. al, *Defendants*.	)	Case No. 1:25-cv-744-PLF

DECLARATION OF DOE DECLARANT 1

Pursuant to 28 U.S.C. § 1746, I, Doe Declarant 1, declare as follows:

1. I am a resident of California. I am over the age of 18 and have personal knowledge of all the facts stated herein. If called as a witness, I could and would testify competently to the matters set forth below.

2. This declaration is submitted in support of the Plaintiffs' Request for a Preliminary Injunction.

3. I am a Senior Civil Rights Attorney with the San Francisco Regional Office of the Office for Civil Rights ("OCR"). I have worked for OCR since July of 2005, or for approximately 20 years. I have worked under several administrations, both Democratic and Republican.

4. Through my personal knowledge and experience, as well as through documents and information I have reviewed, I have knowledge about OCR in general and the San Francisco Regional Office in particular.

5. OCR is charged with enforcing and investigating alleged violations of various federal civil rights laws that protect students and other individuals against discrimination, including Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975 (Age Act), Title II of the Americans with Disabilities Act of 1990 (Title II), and the Boy Scouts of American Equal Access Act of 2002. OCR has a responsibility to act in a reasonably prompt manner in response to alleged violations of these laws.

6. OCR also initiates compliance reviews to determine whether recipients' practices comply with civil rights laws and regulations. And OCR initiates directed investigations to address possible discrimination that is not currently being addressed through OCR's complaint resolution, compliance review, or technical assistance activities. These investigations are generally more expansive and complex and tend to involve systemic issues of noncompliance that affect many students or individuals.

7. In addition to its enforcement and investigative work, OCR also provides trainings and technical assistance on civil rights laws to state and local educational agencies. And it gives educational presentations to advocacy groups and parents.

8. The Assistant Secretary for Civil Rights leads OCR. OCR's headquarters are in Washington, D.C. It previously had 12 regional offices in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, Seattle, and Metro Washington D.C. Investigative staff in the regional offices carry out OCR's mission by enforcing the civil rights statutes and regulations. Staff use a variety of approaches to resolve complaint investigations and compliance reviews in order to ensure equal access to education

and promote educational excellence.

9. Pursuant to the Government Performance and Results Act (GPRA), OCR's policy is to resolve complaints within 180 days. However, an unprecedented number of complaints have been filed with OCR since the beginning of the Covid-19 pandemic and the number of complaints has recently hit an all-time high. As a result, regional offices sometimes struggle to investigate and resolve cases in a timely manner.

10. Prior to March 21, 2025, The Deputy Assistant Secretary for Enforcement oversaw four Enforcement Divisions, each consisting of three regional locations. Each Enforcement Division was managed by an Enforcement Director, who was responsible for coordinating the program operations and resource management of three regional offices. However, on March 21, 2025, the San Francisco office was closed, along offices in Boston, Chicago, Cleveland, Dallas, New York, and Philadelphia.

11. Prior to its closure, the San Francisco office was managed by a Regional Director, who was supported by a Chief Attorney and a Program Manager. The San Francisco office handled complaints for the entire state of California. We received complaints alleging civil rights violations, mostly from parents or advocates. In addition, the San Francisco office performed proactive compliance reviews and directed investigations.

12. As a Civil Rights Attorney in the San Francisco office, I reviewed complaints to determine whether they had merit and warranted a full investigation. I investigated complaints, negotiated resolutions, and monitored compliance with these resolutions. All of the complaints that I worked on alleged violations of federal law, including Title VI, Title IX, Section 504, the Age Act, and Title II.

13. As of March 11, 2025, I had approximately 20 open investigations ranging from

the initial stage of investigation to the completed stage in which negotiations of a resolution agreement were ongoing or where I was monitoring compliance with the terms of a resolution agreement. I also had somewhere between 35 and 40 cases in the evaluation stage that still needed to be reviewed to determine whether an investigation was warranted.

14. On March 11, 2025, at approximately 3:00 p.m. PST, my government-issued laptop, which I use to perform all of my work for OCR, suddenly restarted without any warning. I was informed and believe that the same unexpected restart happened to all other employee computers at the San Francisco office. After the computer restarted, I was not able to access all of the various systems, programs, and apps that were necessary for me to perform my job.

15. At 4:37 p.m. PT on March 11, 2025, I received from Jacqueline Clay, Chief Human Capital Officer (CHCO), an email with the subject line “CHCO - Notice to Employees Impacted by Reduction in Force (RIF)." The email stated: “I am writing to share some difficult news. This email serves as notice that your organizational unit is being abolished along with all positions within the unit - including yours.” Annexed hereto as Exhibit 1 to this declaration is a true and correct copy of the email that I received and its attachments, dated March 11, 2025. The email then stated that I was being placed on administrative leave starting March 21, 2025, and it prohibited me from doing a number of things during the "transition" period between March 11 and March 21, like accessing Department of Education accounts and systems, or accessing Department of Education facilities without prior approval. The prohibition was clearly designed to prevent me from having access to anything related to my work, including my own attorney work product.

16. Because I received no advance notice, I was unable to perform the simple

courtesy of informing any complainant, administrator at an educational entity, or anyone else involved in any of the complaints for which I was responsible, that I would no longer be working on the matter and that OCR San Francisco was being closed. However, even if I had been given the opportunity to provide them with such a courtesy notice, I would not have been able to give them any additional information about the future of their respective complaints. I have never been told what OCR regional office will now be responsible for my matters, who will be responsible for them, when they will be responsible for them, or when they will contact the complainants and the educational entities to notify them of the significant changes in the handling of the matter.

17. I discovered later, in early April 2025, that an automated message had been set up for my OCR email account, after I sent an email to that address. The automated message stated that I was "currently engaged in closing out [my] work activities and responsibilities as part of a planned transition." Not only did I not author that message, it was and is completely untrue.

18. Many of the matters for which I was responsible involve systemic issues of discrimination and require an understanding of a large amount of information to be properly resolved. It will be incredibly challenging for someone with no prior knowledge of the matters to get up to speed and fully understand the specifics of the allegations being made and the information and documentation that either support or do not support the allegations. It will take someone weeks, if not months, to obtain a sufficiently complete understanding of these matters.

19. On March 11, 2025, I had several matters that had reached critical stages in the investigation and resolution process. In one matter, the investigation was completed, and a

determination was made that a school district created a hostile, adverse, and discriminatory environment for a parent of a student with a disability and the student's advocate at the student's individualized education program (IEP) team meetings. This resulted in the student not receiving required services and accommodations in his classroom, which impacted his education. A resolution agreement to address and remedy the discrimination, including measures to prevent future meetings from becoming adversarial and discriminatory and provisions to provide the student with compensatory education and services, was being negotiated. The deadline to have the agreement signed and implemented was March 25, 2025. Without the assistance and advocacy from the OCR San Francisco office, the execution of the agreement is in jeopardy and the child will likely not receive the benefits and remedies included in the agreement within a couple of weeks of March 25, 2025, as was initially anticipated.

20. Another matter involved a post-secondary institution's failure to provide necessary academic adjustments, accommodations, and modifications to one of its students who has a disability. The investigation was recently completed and a resolution agreement was being prepared that would ensure that the student receives reasonable adjustments and accommodations in her classes so that she has an equal opportunity to successfully receive a beneficial education. The student had requested that her matter be resolved expeditiously since the lack of timely accommodations made it extremely hard for her to attend class, do coursework, and complete her courses. She will now, unfortunately, face significant delay in the resolution of her matter.

21. The actions on and aftermath of March 11, 2025, have also adversely affected matters that involve monitoring an educational entity's implementation and completion of the terms of a resolution agreement, and will continue to adversely affect those matters.

Specifically, in two matters that involved systemic issues of discrimination against students with disabilities, both entities, a school district and a county office of education, have been implementing the required actions for close to two years and are near completion of the terms. However, the remaining terms are the most onerous of the agreements, but are also the most beneficial to the impacted students. Both of the entities were having difficulties with properly implementing the terms as required by the language of the agreements and I was collaborating with both to determine viable ways for them to best implement the terms to ensure compliance with federal civil rights laws. I have not been able to inform either entity that I will no longer be working on their matters, and it is unlikely that either of them has any knowledge of what is happening with the complaints filed against them.

22. In fact, on the afternoon of March 19, 2025, I received an email from the representative of the school district in which he asked for additional clarity about the actions that need to be completed and he requested that I contact him to discuss the matter. Because I have been prevented from sending email outside of the ed.gov email domain and cannot make outgoing calls from my work phone number, I have been unable to either acknowledge or respond to his email. Closing the San Francisco regional office has caused and will continue to cause significant delay in each entity's ability to complete the terms of the agreement. The longer the delay, the greater the likelihood of harm to the students, who were the intended beneficiaries of the agreements' remedial provisions.

23. In addition to the above-mentioned specific matters, nearly all of the matters for which I am responsible allege discrimination based on disability. The majority allege discrimination because of a school district's failure or refusal to provide necessary services or accommodations to a student with a disability in the primary or secondary educational setting.

When a student with a disability in primary or secondary school does not receive the services and accommodations that are required to receive a free appropriate public education (FAPE), the resulting harm can be serious both to the student's educational experience and to the student's mental health and well-being. Thus, addressing, resolving, and remedying any failures are time sensitive tasks. These matters were previously subject to a directive from OCR administration to "pause" for several weeks all work that required any contact or communication with individuals outside of OCR. It is not clear when or whether these complaints will be resolved given the complete lack of information or guidance on how the matters will be reassigned. Moreover, even if my matters were reassigned to another individual in a different OCR office, the reassignment will still be detrimental to the timely and successful conclusion of the matters.

24. Closing the San Francisco OCR office also hinders OCR's ability to ensure that educational institutions in California are physically accessible to students and others with disabilities who seek to benefit from the services, programs, or activities of the institutions. Both Section 504 and Title II mandate that the programs and activities of educational institutions be accessible to people with disabilities. Physical accessibility is highly technical and is governed by a very specific set of standards that have at their core precise measurements for various objects and potential barriers to access. As an example, OCR San Francisco has received numerous complaints about high school football stadiums and other performance venues across the State of California that lack accessibility. For OCR to investigate the complaints properly and thoroughly, it must perform an in-person physical inspection of the stadiums and venues along with their features to obtain precise measurements (termed an accessibility survey). This can involve numerous OCR staff and several days on site at the

stadium or other facility. The inspections can be difficult to coordinate and expensive to perform, particularly if they must now be done by OCR staff traveling from out of state. This may result in surveys not being performed in a timely manner or not being performed at all.

25. Also, educational institutions that have come to rely on OCR San Francisco to provide them with technical assistance and proactive training presentations have been and will continue to be harmed by the office's closing. I am a member of OCR San Francisco's "customer service team" (CST). The CST is responsible for responding to questions and requests for advice or assistance regarding compliance with civil rights laws that come through emails and phone messages. The requests often come from administrators of school districts and post-secondary institutions and elementary/secondary and post-secondary teachers, counselors, and other staff. Those school officials will no longer have the ability to have their issues and questions addressed in a timely manner, or maybe at all.

26. Based on my knowledge and experience, I do not believe that the Department of Education can meet its statutory obligations to investigate and ensure compliance with federal civil rights law if the entire San Francisco regional office of OCR is closed. The San Francisco regional office has always been one of the busiest and most productive of the OCR regional offices. For the last several years before its closure, the San Francisco office has struggled to meet GRPA deadlines because of understaffing. The reassignments of its cases to fewer staff in other offices will undoubtedly prohibit OCR from promptly resolving most complaints. I am informed and believe that many of the other offices being marked for closure also receive a larger number of complaints and resolve a higher number of them, particularly the New York office. Thus, the closure of the top performing offices in OCR makes little sense. Closing them and transferring their large number of cases to the remaining offices will

overburden the remaining offices and severely diminish the overall efficiency and productivity of OCR. This diminishment will ultimately be detrimental to the rights and interests of all who have been subjected to discrimination by an educational institution and who file a complaint of discrimination with OCR. These individuals will no longer receive a timely response to vindicate their civil rights or be able to obtain a proper remedy. The timely investigation and resolution of discrimination complaints serves another important purpose- it identifies discriminatory actions, policies, or individuals and attempts to correct them before they further discriminate and harm others. Without timely corrective action, the likelihood of additional discrimination occurring only increases.

27. Every student, regardless of sex, disability, race, color, or national origin is entitled to an equal opportunity to obtain a meaningful education that will serve them well in life. For many students and parents, OCR is the safeguard for that opportunity and, at times, a last resort. Closing seven of OCR's regional offices and creating additional backlog and work for the remaining five offices will undoubtedly delay the investigation and resolution of all OCR complaints and further harm those seeking to have discrimination addressed and remedied.

I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, the foregoing is true and correct. Executed on April 29, 2025.

Signature:

Doe Declarant 1

Doe Declarant 1

EXHIBIT 1

[redacted]

Subject: FW: FW: CHCO - Notice to Employees Impacted by Reduction in Force (RIF)
Attachments: image001.png; Instructions for ED Employees Impacted by RIF, 3-11-25.docx; ED RIF Information and Resources, 3-11-25.docx; Office Hours – Retirement Paperwork and Process _ Questions and An....eml (8.44 MB); Office Hours - Retirement Paperwork and Process_Questions and Answers FINAL.pdf; FERS Retirement Forms.zip; CSRS Retirement Forms.zip

From: Clay, Jacqueline <Jacqueline.Clay@ed.gov>
Sent: Tuesday, March 11, 2025 4:36 PM
To: CHCO <CHCO@ed.gov>
Subject: CHCO - Notice to Employees Impacted by Reduction in Force (RIF)

Dear Colleagues,

I am writing to share some difficult news. This email serves as notice that your organizational unit is being abolished along with all positions within the unit – including yours. Please note, if you elected to separate under another program e.g., Deferred Resignation Program, Voluntary Early Retirement Authority (Early-Out), or Voluntary Separation Incentive Payment (Buy-Out), you are NOT impacted by the Reduction in Force (RIF).

To provide you with the maximum opportunity to focus on your transition, you will be placed on paid administrative leave starting **Friday, March 21, 2025**.

- ***Please take immediate action to review and comply with the Instructions for Employees Impacted by the RIF (attached). This document contains important information regarding access to ED facilities, transitioning your work, and preparing for administrative leave.***

- ***Ensure* your Principal Operating Component (POC) has your current mailing address, and a good personal phone number and email address to contact you.**

- During the transition period, you will retain limited equipment and systems access to enable official communications regarding your RIF standing. Please note:

- You are only authorized to back-up your data to a network device or approved backup device.

- You are prohibited from storing sensitive or mission-critical data on your systems' hard drive or handheld device.
- All Department of Education system resources, including hardware, software programs, files, paper reports, and data are the sole property of the Department of Education, and there should be no expectation of privacy.
- You are prohibited from transmitting electronic copies of Department of Education materials to your home or other personal accounts.
- Personnel using remote access shall not download or store Government information on private equipment, optical or digital media.

- Unauthorized or improper use of this system may result in disciplinary action, as well as civil and criminal penalties.

- No earlier than 30 days from the date of this email you will receive your official RIF notice, which will begin an additional 60 days of paid administrative leave prior to your separation from the agency.

- This will give you a total of 90 days on paid leave to help facilitate your transition.

- Your official RIF notice will provide more detailed information on your specific benefits and standing and be delivered to your mailing address on file.

- You will only retain your Ed.gov email to facilitate communications with the agency through March 21, 2025.

ED has made the determination to initiate RIF procedures as part of the agency's restructuring process. These actions support Executive Order (EO) 14158, Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative, dated February 11, 2025 and Office of Personnel Management Guidance on Agency RIF and Reorganization Plans, dated February 26, 2025. This decision is in no way a reflection of your performance or contributions, which we deeply appreciate.

I recognize that this is a challenging moment, and my team is committed to supporting you through this transition.

➢ For additional information about Reductions in Force, visit the Office of Personnel Management RIF site.

➢ For general questions regarding next steps, please email workforcereshaping@ed.gov.

➢ For specific retirement or benefits questions, please contact benefits@ed.gov.

➢ Use the Employee Assistance Program, if needed. The Employee Assisstance Program (EAP) and WorkLife4You Program, provided by Federal Occupational Health (FOH), are available 24

hours a day, 7 days a week at 1-800-222-0364 (TTY: 1-888-262-7848) or at www.FOH4you.com or www.worklife4you.com.

- Should you lose access or need IT support, please contact the Help Desk at ocioenterprisehelpdesk@ed.gov; or call 202-708-HELP (202-708-4357) and select Option 2.

With regard,

Jacqueline Clay

Chief Human Capital Officer

Attachments:

Instructions for ED Employees Impacted by RIF

ED RIF Information and Resources

Benefits and Work/Life Email: Office Hours – Retirement Paperwork and Process

INSTRUCTIONS
FOR
EMPLOYEES IMPACTED BY REDUCTION IN FORCE (RIF)
3/11/25

PHYSICAL ACCESS TO ED FACILITY:
Effective 9:00 pm on March 11, 2025, your PIV card access to ED facilities will be removed. You are no longer permitted to use it to access federal buildings or property, including your former ED office space, without prior ED approval.

- The agency will schedule a period of time for those employees who may need to pick-up personal belongings.

TRANSITION OF WORK:
March 12, 2025 - March 21, 2025: During this period, you will have limited IT access to complete work transition activities – you will have access to ed.gov email, Quicktime, FedTalent and Login.gov.

NOTE 1: **Please ensure your Principal Operating Component (POC) has your current mailing address, and a good phone number and email address to contact you.**
NOTE 2: Please follow the instruction on Login.gov to change your account settings (i.e., phone number, email, etc.) and authentication method. This will help you retain access to Employee Express (Leave and Earnings Statements, W-2 tax prep forms).
NOTE 3: See item 5 in the attached Information and Resources document for important instructions on downloading eOPF records.

TIME AND ATTENDANCE:
During your transition period make sure you:

- Cancel all leave requests in Quicktime.
- Code your timecards for Pay Periods 7 through 13 as follows:
  PP 7: 3/10/25-3/21/25: Code your timecard as you normally would
  PP 8: Use Code 065 for week 1 and week 2
  PP 9: Use Code 065 for week 1 and week 2
  PP 10: Use Code 065 for week 1 and week 2
  PP 11: Use Code 065 for week 1 and week 2
  PP 12: Use Code 065 for week 1 and week 2
  PP 13: Use Code 065 for 6/2/25 and 6/9/25. Leave the remainder blank.

Once these timekeeping tasks are complete, do NOT continue to report your time and do NOT make any other changes to past timesheets. The payroll team will confirm that your timecard is coded properly for the duration of your administrative leave.

ADMINISTRATIVE LEAVE AND LIMITED TECHNOLOGY ACCESS:
Effective 5:00 pm on March 21, 2025, you will be placed on administrative leave and no longer have access to ED accounts or systems.

- Once your IT account is disabled, you will be mailed a shipping box and label to return government property (IT equipment, phone, PIV Card, Travel Card, etc.). You are required to return all government property within 7 days of receipt.
- **Returning Government Property: It is very important that your POC has your current mailing address and a good phone number and email address to contact you**.

OFFICIAL SPECIFIC EMPLOYEE RIF NOTICE:
On or about April 9, 2025, you will receive your employee specific RIF notice. It will include information regarding severance pay and retirement benefits.

SEPARATION FROM THE DEPARTMENT OF EDUCATION:
On or about June 9, 2025, your employment with the Department of Education will end.

For additional information about Reductions in Force, visit the Office of Personnel Management RIF site.

For questions, please email WorkforceRestructuring@ed.gov.

Reduction in Force (RIF)
Information and Resources
3/11/25

To help you navigate during this transition period, please use the information below in conjunction with the information provided in the ***Instructions for ED Employees Impacted by RIF***.

1. REDUCTION IN FORCE INTENT

ED has made the determination to initiate RIF procedures as part of the agency's restructuring process. These actions support Executive Order (EO) 14158, Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative, dated February 11, 2025 and Office of Personnel Management Guidance on Agency RIF and Reorganization Plans, dated February 26, 2025.

2. ADMINISTRATIVE LEAVE

Once you receive written notice that you have been impacted by the RIF, you will be afforded a brief period to transition work activities; after which, you will be placed on paid administrative leave effective **Friday, March 21, 2025.**

You will remain on paid administrative leave for the duration of the "notice period" as specified in your written notice.

Once on administrative leave, you will no longer be permitted to conduct the duties of your position and your accounts will be disabled.

NOTE 1: **Please ensure your Principal Operating Component (POC) has your current mailing address, and a good phone number and email address to contact you.**
NOTE 2: Please follow the instruction on Login.gov to change your account settings (i.e., phone number, email, etc.) and authentication method. This will help you retain access to Employee Express (Leave and Earnings Statements, W-2 tax prep forms).
NOTE 3: See item 5 below for important instructions on downloading eOPF records.
NOTE 4: Once your IT account is disabled, you will be mailed a shipping box and label to return government property (IT equipment, phone, PIV Card, Travel Card, etc.). You are required to return all government property within 7 days of receipt.

3. PAY AND BENEFITS

Pay During Administrative Leave
While on paid administrative leave:

- You will continue to be paid at the same rate and frequency as you did before you were placed on administrative leave.
- You will continue to accrue annual and sick leave.
- You will receive any scheduled Within Grade (Step) Increases.
- You will maintain the same benefits as you did before you were placed on administrative leave.

Pay After Separating from the Agency

Once you separate from the agency:

- You will receive your RIF severance payout, if eligible.
- OPM's Severance Pay Estimation Worksheet is intended to allow those eligible for severance pay to calculate the approximate amount of severance pay he or she may receive.
- The actual calculation formula is somewhat more complicated and technical therefore the actual payout will be provided by Office of Human Resources, Benefits and Retirement Branch.

Federal Employee Health Benefits

While on paid administrative leave, your health benefits will not change. Upon separation from the agency:

- Federal Employee Health Benefits (FEHB) will continue for 31 days and may continue, with the employee paying 100%, plus a 2% administrative fee of the premium (with no contribution from the agency) for up to 18 months.
- Federal Dental and Vision Insurance Program (FEDVIP) coverage ends upon separation.
- Flexible spending accounts are closed on separation. Unspent money in a health care FSA is not refunded, although claims for purchases up to the date of separation will still be paid. Unspent money in a childcare FSA will remain available for use through the plan year.
- For more information, visit OPM's RIF Benefits Summary page.

4. VOLUNTARY SEPARATION INCENTIVES

Voluntary Early Retirement Authority (VERA): ED is currently offering Voluntary Early Retirement (Early Out), **through March 25, 2025**. VERA is a strictly voluntary option that allows eligible employees to retire early. This authority encourages more voluntary separations and helps agencies to complete needed organizational changes with minimal disruption to the workforce.

- There is no reduction in annuity if you are under the age of 62 as a FERS employee, unlike retiring under the normal Minimum Retirement Age (MRA) +10 rules. However, you must be at your MRA to become eligible for the FERS supplement.

As a reminder, employees who meet age and service requirements for Voluntary Retirement do not need the VERA authority to retire and may apply to retire at any time.

Who is eligible for VERA?

If you are covered by the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), then you are eligible for VERA if you meet the following requirements:

- At least 20 years of creditable service and at least 50 years old OR completed at least 25 years of creditable service regardless of age.
- Continuously employed by ED since at least January 12, 2025.
- Be in good standing with the agency (i.e., not in receipt of a final removal decision based upon misconduct, or unacceptable performance).
- **Agree to separate from the Department by March 31, 2025**

Application Procedures

- **To request a VERA, you must submit a complete retirement package by March 25, 2025. For your convenience, the attached Benefits and Work/Life email provides important information and forms required to apply for retirement.**
- **All VERA applications must be received by 5:00 pm ET on March 25, 2025.**
- **Incomplete packages will not be considered.**

- **SUBMIT APPLICATION VIA EMAIL to** BenefitsandWork/Life@ed.gov

5. SEPARATION

Retaining Personnel Records - Electronic Official Personnel Folder (eOPF)
To download and save your entire eOPF, please follow the instructions below using **your ED account**:

- Go into the eOPF portal at OPM
- Click "My eOPF Print Folder" tab at the top
- Check "Select All"
- Click one of the two print buttons
- Click "My eOPF Print Status" tab at the top
  - Wait for the print request to process (this can take several minutes or longer depending on volume)
  - While waiting, read the instructions describing what the password will be for your document password
  - Password will be your last name plus the print number, which you will see in a box as the request is processing. Example: John Doe requested the print job and the system assigned 1234 as the job number. The password would be Doe1234
- When "View" appears in the "Action" box, click on it.
- Save as a PDF
- Open the PDF in Adobe and enter password

Outside Employment and Unemployment Benefits
While on administrative leave:

- You are not eligible to receive state unemployment benefits.
- You are free to accept other employment subject to the ethics rules for outside employment and applicable federal law; however, you may not accept employment with another federal agency.

Once you are separated:

- You are eligible to receive state unemployment benefits.
- You are free to accept federal or non-federal employment, subject to the post-government employment ethics rules and applicable federal law.
- You are entitled to reinstatement rights afforded all federal "displaced employees" for a period of three years.

Retention Standing
Your retention standing will be provided in your individual official RIF notice. Retention standing is an employee's relative standing on a retention register based on tenure, veterans' preference, and length of service augmented by performance credit.

6. CAREER TRANSITION

Available Employee Support

- The Employee Assisstance Program (EAP) and WorkLife4You Program, provided by Federal Occupational Health (FOH), are available 24 hours a day, 7 days a week at 1-800-222-0364 (TTY: 1-888-262-7848) or at www.FOH4you.com or www.worklife4you.com (new user registration code: ED) at no cost to you! You can also contact the benefits team at: BenefitsandWork/Life@ed.gov for additional information.

Career Transition Assistance Plan (CTAP)
The Career Transition Assistance Plan (CTAP) is an intra-agency program that helps surplus or displaced federal employees improve their chances of finding a new job in their agency, by giving them selection priority over other applicants, as long as they're qualified for the job.

You're eligible for CTAP if:

1. You're a current federal employee who meets the definition of a surplus or displaced employee—you've received official notice that your job is no longer needed or that you will lose your job by a Reduction in Force.
2. Your agency is accepting applications from within or outside of the permanent workforce.
3. You meet the qualifications and other requirements of the job you're applying for.

Interagency Career Transition Assistance Plan (ICTAP)
The Interagency Career Transition Assistance Plan (ICTAP) is an interagency program that helps surplus or displaced federal employees improve their chances of finding a new job at another agency (not their current or former agency), by giving them selection priority over other applicants from outside the agency.

You're eligible for ICTAP if:

1. You're a current federal employee who meets the definition of a surplus or displaced employee—you've received official notice that your job is no longer needed or that you will lose your job by a Reduction in Force.
2. The agency you're applying to is accepting applications from outside of their workforce.
3. The job you're applying to is in the local commuting area.
4. You meet the qualifications and other requirements of the job you're applying for. For more information on Career Transition, please visit the Employee's Guide to Career Transition

7. CONTACTS

- For additional information about Reductions in Force, visit the Office of Personnel Management RIF site.
- For general questions regarding next steps, please email workforcereshaping@ed.gov.
- For specific retirement or benefits questions, please contact benefits@ed.gov
- Use the Employee Assistance Program, if needed. The Employee Assisstance Program (EAP) and WorkLife4You Program, provided by Federal Occupational Health (FOH), are available 24 hours a day, 7 days a week at 1-800-222-0364 (TTY: 1-888-262-7848) or at www.FOH4you.com or www.worklife4you.com.
- Should you lose access or need IT support, please contact the Help Desk at ocioenterprisehelpdesk@ed.gov; or call 202-708-HELP (202-708-4357) and select Option 2.
-

From:	Benefits and Work/Life
Cc:	Benefits and Work/Life
Subject:	Office Hours – Retirement Paperwork and Process | Questions and Answers
Date:	Friday, February 21, 2025 8:31:05 AM
Attachments:	image001.png Office Hours - Retirement Paperwork and Process_Questions and Answers FINAL.pdf FERS Retirement Forms.zip CSRS Retirement Forms.zip

Distribution List: Employees who attended the *"Office Hours – Retirement Paperwork and Process"* meeting on Tuesday, February 18, 2025, 12:00 PM-1:00 PM Eastern

Colleagues,

Thank you for joining me to discuss paperwork and process regarding retirement. As promised, attached are the questions from the Teams Chat along with answers.

Thank you,

Mary Tittle
Branch Chief (Division of Benefits and Work/Life)
Office of Finance and Operations
U.S. Department of Education

Email: mary.tittle@ed.gov
Phone Number: (202) 987-1033

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:25-cv-744-PLF
UNITED STATES DEPARTMENT OF EDUCATION, et. al,	)	
Defendants.	)	

DECLARATION OF DOE DECLARANT 2

Pursuant to 28 U.S.C. § 1746, I, Doe Declarant 2, declare as follows:

1. I am a resident of New Jersey. I am over the age of 18 and have personal knowledge of all the facts stated herein. If called as a witness, I could and would testify competently to the matters set forth below.

2. I am a Senior Attorney with the U.S. Department of Education (the "Department"), Office for Civil Rights ("OCR") in New York (the "New York office"). I have worked for the New York office since September of 2015. I have worked under multiple administrations, both Democratic and Republican.

3. Through my personal knowledge and experience, as well as through documents and information I have reviewed, I have knowledge about OCR in general and the New York office in particular.

4. OCR is charged with enforcing and investigating alleged violations of various federal civil rights laws that protect students against discrimination, including Title VI of the

Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972, Section 504of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, and the Boy Scouts of American Equal Access Act of 2002. OCR has a responsibility to act in a reasonably prompt manner in response to alleged violations of these laws.

5. In addition to its enforcement and investigative work, OCR also provides trainings and technical assistance such as educational presentations on civil rights laws to state and local educational agencies and other stakeholders such as advocacy groups and parents.

6. The Assistant Secretary for Civil Rights leads OCR. OCR's headquarters are in Washington, D.C. It previously had 12 regional offices in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, Seattle, and Metro Washington D.C. Investigative staff in the regional offices carry out OCR's mission by enforcing civil rights statutes and regulations. Staff use a variety of approaches to resolve complaint investigations and compliance reviews in order to ensure equal access to education for all students.

7. On March 21, 2025, the New York office was closed, along with offices in Boston, Chicago, Cleveland, Dallas, Philadelphia, and San Francisco.

8. Prior to its closure, the New York office was led by a regional director with 23 years of experience with OCR and was supported by a chief civil rights attorney and program manager. The New York office was divided into 5 investigative teams. Each team was led by a manager and made up of 5-7 staff members who were primarily attorneys but also included four equal opportunity specialists. The office also had two administrative staff members who provide administrative support, and one paralegal who provided both investigative and

administrative support.

9. The New York office handled complaints against education institutions and libraries in New York, New Jersey, Puerto Rico, and the U.S. Virgin Islands. The New York office received complaints alleging civil rights violations, mostly from parents, advocates, and students, but also from any member of the public who believed that discrimination occurred or was occurring. Investigative staff evaluated those complaints and determined whether they met the case processing guidelines warranting a full investigation. While investigating a complaint, staff interviewed witnesses, requested and reviewed documents, conducted on-site visits if necessary, and communicated with the complainant to understand the extent of the alleged discrimination. Staff also conducted outreach to educational institutions to provide guidance on how to comply with antidiscrimination laws.

10. As a senior attorney, I led investigations alleging violations of federal law, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, and the Boy Scouts of American Equal Access Act of 2002.

11. I assisted team leaders and New York office managers by providing expert legal and policy advice relating to all stages of the case resolution process for extremely complex, difficult and/or novel cases, as well as for non-complex cases. This included evaluation, legal theory development, investigative strategy, collection and analysis of evidence, findings of fact, analysis and conclusions of law, resolution, negotiation, and monitoring. I also provided expert legal advice to team leaders and senior managers on recent legislative and judicial developments in civil rights and conducted the evaluation and investigation of cases.

Additionally, I prepared and presented training to regional staff on legal issues and statutory and regulatory standards, changes in case law, new policy decisions, investigatory techniques, negotiation skills, and other case development issues. I further assisted in the formulation of responses to inquiries from the Secretary, members of Congress, and other individuals or organizations; led and coordinated special projects groups, and collaborated with senior members from other regional offices and with Headquarters staff to discuss program objectives and to exchange information on all relevant matters. My work also involved serving as a mediator and mentoring junior attorneys.

12. Following the October 7, 2023, attacks on Israel, when the New York office received a tremendous increase in shared ancestry discrimination cases, I served as a national leader in OCR's response to antisemitic and other shared ancestry harassment in schools. I provided trainings on how to respond to shared ancestry harassment in compliance with Title VI to national stakeholders, including community organizations and colleges and universities. I advised staff in other regional offices regarding conducting these trainings and provided similar trainings to elementary and secondary school districts within our region.

13. I was put on administrative leave on January 31, 2025, pursuant to the President's Executive Orders on "DEI." I believe that I was put on leave because I was a member of OCR's DEIA subcommittee of its Employee Engagement, Diversity, Inclusion, and Accessibility Council created under the first Trump administration. Everyone on that DEIA subcommittee was put on administrative leave on January 31. Since I was put on administrative leave, I have not had access to the Department's network, including case and document management systems, email, or my personnel records. I managed dozens of cases on my own and have not been able to communicate with complainants, recipients, or their

counsel, regarding their complaints, or conduct any work since January 31, 2025.

14. On March 12, 2025, I received an email informing me that my unit and my position within the unit was being abolished. My colleagues in the New York office received a similar notice. Around the same time, all of my colleagues in the New York office lost access to OCR's case and document management systems and were only able to send emails internally. They were then completely cut off from the network after March 21, 2025. Since March 11, 2025 (the day they received this notice), my colleagues received emails from parties asking for updates on their cases or providing information. But without access to the network, they could not respond to the parties or save any of this information internally, and were therefore unable to meaningfully transfer their cases. Because I have also been without access to any of these systems since January 31, 2025, I have also been denied the opportunity to ensure a proper transition of my cases.

15. On April 10, 2025, I received an email notifying me that my position had been abolished and I would be subject to a "reduction in force" effective June 10, 2025.

16. Around that time, I noticed that an automated message had been set up for my OCR email account. It said that I was actively working to transition my cases. But this was not and is not true – I have never had any opportunity to transition my cases.

17. Based on my knowledge and experience, I do not think that the Department can meet its statutory obligations to investigate and ensure compliance with federal civil rights law now that the entire New York office of OCR is abolished, particularly given that 6 other regional offices were also closed.

18. I understand that the Metro D.C. office will be handling all complaints formerly handled by the Boston and New York offices. The Seattle office will be handling all complaints

formerly handled by the San Francisco office. The Atlanta office will be handling all complaints formerly handled by the Philadelphia office. The Kansas City office will be handling complaints formerly handled by the Dallas office. And the Denver office will be handling all complaints formerly handled by the Chicago and Cleveland offices.

19. Prior to the closures, the New York office was operating without full staff for some time and we still could not manage cases as well as we would have liked to. It will be impossible for the D.C. Metro office to absorb all of the complaints from the New York and Boston offices and effectively address them.

20. A lot of complaints require a significant amount of work and constant undivided attention. They may require many interviews, multiple document requests, on-site inspections, and ongoing work with the complainant to fully understand the alleged violation. There are also many complaints that can be dismissed as not having merit under the new guidelines. However, even these more administrative tasks require manpower to complete. People whose complaint may not have merit still deserve acknowledgment and a response from OCR, which they will no longer be able to receive.

21. The immediate impact of closing 7 of the 12 regional OCR offices has been and will continue to be significant, particularly for students with disabilities. Prior to the closure of the New York office, we had many cases where a student had been out of school because of a disability related behavior or a dispute between the family and the school about the proper placement for the student. These cases will no longer be resolved promptly, and students will continue to suffer and fall behind. We also had cases where OCR had been trying to work with a school district to secure the accommodations that a student needs, but all of that work has now been put on pause. Finally, there are students who have been out of school because of

harassment or a hostile environment at school, and their complaints will no longer be addressed in a timely manner.

22. Prior to the transition in administration, the New York office was working on a complaint involving a student who wanted to attend their senior school trip, but because of their disability, needed an aide to accompany them, which the school would not provide. Because of the transition in administration, this administration deprioritizing disability cases, and the mass termination that closed 7 of the 12 regional offices, our office was not able to ensure that the school provides the student with the required accommodation. The student was not able to attend the senior trip unless a parent attended at the family's expense, effectively imposing a surcharge for the student's disability. The New York office was also trying to resolve a complaint about systemic discriminatory discipline within a school district where there was evidence showing a pattern of treating African American students differently than White and Latino students. Resolution of this important complaint has also been put on pause.

23. While New York has strong anti-discrimination laws, the New York office regularly investigates complaints filed against the New York City Department of Education, including compliance concerns impacting students with disabilities and allegations that resources are allocated more favorably to schools where White and Asian students are overrepresented compared to schools where African American and Latino students are overrepresented. Even in my own child's former New York City public school, a kindergarten teacher separated students by race and limited the activities of one group to teach a lesson on Ruby Bridges. This resulted in at least one OCR complaint when parents felt that the principal had not responded promptly or effectively to their complaints about this lesson and how it created a hostile environment based on race for their children. Without OCR's oversight,

concerns like these will go unresolved.

24. Even in states with strong anti-discrimination laws, OCR plays an important role in vindicating students' rights and ensuring compliance with federal civil rights laws. For example, impartial hearing officers who handle "due process" petitions often do not fully understand schools' obligations under Section 504 compared to those under the Individuals with Disabilities Education Act of 1975 and its amendments. This lack of understanding leads to a tremendous disparity in how the Section 504 regulations are interpreted and applied within and across the states and territories the New York office serves. OCR is needed to fill in the gaps in knowledge and ensure that Section 504 is being applied uniformly and accurately throughout the country. In states with less robust anti-discrimination laws, this is even more important. OCR offices that serve these states are still addressing complaints related to desegregation, but will be far less equipped to do so now.

25. The long-term impact of significantly downsizing OCR will be that students will not have access to education free from discrimination and harassment. This will lead to worse educational outcomes and more students leaving school, which leads to increased societal ills, including increased crime. Access to education improves conditions for everyone and for society as a whole.

26. I was a high school teacher before going to law school and left teaching specifically to do this work. I taught in a town that was the subject of court-ordered integration. I saw firsthand the effects of segregation on my students and their confidence in themselves to achieve in life when the systems that served them treated them unequally. I saw students with disabilities not having mandated accommodations implemented faithfully. And I saw a system that had limited resources and was bending over backwards to comply with the No Child Left

Behind mandates in ways that violated students' individualized education programs (IEPs) and Section 504 plans. I knew that there were laws in place to protect these students and open more opportunities for them, and I felt that I needed to do more to help them. This is just a snapshot of what any dedicated teacher can tell you about the necessity of protecting students' civil rights. Ultimately, students will be the most detrimentally impacted by the incapacitation of OCR.

I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, the foregoing is true and correct. Executed on April 29, 2025.

Signature:

Doe Declarant 2

Doe Declarant 2

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, *et al.*, Plaintiffs, v. U.S. Department of Education, *et al.*, Defendants.	Case No. 1:25-cv-744-PLF **DECLARATION OF DOE DECLARANT 3**

DECLARATION OF DOE DECLARANT 3

I, Doe Declarant 3, declare pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am providing this declaration pursuant to 5 U.S.C. § 2302(b)(8) and (b)(9).

2. I am a senior attorney at the Office for Civil Rights ("OCR"), of the United States Department of Education ("Department"), Cleveland field office. I have been in this position for over 18 years. Before this position, I worked at a non-profit, and was an attorney at the U.S. Department of Justice, Antitrust Division. I have a J.D. and a bachelor's degree.

3. In 2021, I took a 10-month data science training program with the Department of Education's Office of the Chief Data Officer and as part of the Department of Education's implementation of the Foundation for Evidence-based Policymaking Act of 2018.

4. As a senior attorney, I was the lead attorney on 36 active investigations into complaints regarding civil rights violations at K-12 and institutions of higher education in Ohio and Michigan. During active investigations, my tasks included reviewing complaints, making determinations regarding whether the complaints were appropriate for investigation, drafting data and document requests, reviewing documents, preparing for and conducting witness interviews, analyzing and synthesizing facts, drafting internal memos and external correspondence, and negotiating resolution agreements.

5. I was responsible for monitoring 12 resolution agreements and their implementation.

I provided technical assistance to public entities, parents and guardians, students, and the public on civil rights issues.

6. In addition to my legal work as senior attorney, as part of my regular day-to-day duties, I was also responsible for creating, maintaining, obtaining data for, analyzing, and internally publishing nationwide OCR data dashboards.

7. I regularly obtained data for and published the following data categories on the dashboards, including:

a) the total number of investigators at each field office;

b) the total number of active cases (disaggregated by type of claim);

c) the number of active cases per investigator;

d) the number of monitoring cases per field office;

e) average number of active cases per investigator at each field office;

f) the number of cases closed at each field office; and

g) the percentage of cases that were closed by day 180 in a field office.

8. I last refreshed the dashboards on March 11, 2025.

9. Additionally, I and others throughout OCR were provided with a report generated by headquarters containing various metrics on a monthly and fiscal year basis. This report is known as the CMS Report. The CMS Report include metrics around investigative staff, complaints, resolutions, and Government Performance and Results Act ("GPRA") standards, both in total for OCR and by regional office. I received the FY 2024 CMS Report. A true copy is attached to this Declaration as Exhibit A.

10. I am providing this declaration in connection with the announcement by the Department of Education on March 11, 2025 that it would be reducing its staff by 50% and that this was a "significant step" towards the Department's "final mission." *U.S. Department of Education Initiates Reduction in Force*, Press Release, Department of Education (Mar. 11, 2025), https://www.ed.gov/about/news/press-release/us-department-of-education-initiates-reduction-force ("March 11 Press Release"). The Department initiated these mass terminations

and office closures, which it referred to as a "reduction in force," impacting nearly 50% of the Department's workforce. Those workers were placed on administrative leave beginning Friday, March 21, 2025 and told that their employment would end on June 9, 2025.

11. On March 11, 2025, I received an email stating that my position was eliminated and that I had until March 21, 2025 to close out my job. I will be employed by the Department through June 9, 2025.

12. I am providing this declaration to explain certain immediate and irreparable harms resulting from the arbitrary mass terminations and office closures.

13. I have received emails from colleagues informing me that the Department closed the Boston, Chicago, Cleveland, Dallas, New York, Philadelphia, and San Francisco OCR regional offices (collectively, the "Closed Offices"), and left open the Atlanta, Denver, Kansas City, DC Metro, and Seattle OCR regional offices (collectively, the "Open Offices").

14. I have heard that the Trump Administration explained that the administration chose to close the lowest performing offices, and that the Open Offices can and will absorb the additional work. This is blatantly false.

15. First, I know that my hardworking colleagues in all the regional offices did their very best with the resources that OCR gave them. But caseloads were too high even prior to March 11, 2025, and for fiscal year ("FY") 2024, ten of the twelve regional offices failed to meet the GRPA goal of resolving 80% of cases within 180 days. 74% of cases were closed within 180 days at the Chicago regional office (Closed Office); 73% of cases were closed within 180 days at the Cleveland regional office (Closed Office); 71% of cases were closed within 180 days at the Dallas regional office (Closed Office); 66% of cases were closed within 180 days at the New York regional office (Closed Office); 55% of the cases at the Atlanta field office (Open Office) were closed within 180 days; 70% of cases were closed within 180 days at the Boston regional office (Closed Office); 71% of cases were closed within 180 days at the Metro regional office (Open Office); 81% of cases were closed within 180 days at the Kansas City regional office (Open Office); 83% of cases were closed within 180 days at the Denver

regional office (Open Office); 63% of cases were closed within 180 days at the Philadelphia regional office (Closed Office); 65% of cases were closed within 180 days at the San Francisco regional office (Closed Office); and 64% of cases were closed within 180 days at the Seattle regional office (Open Office).

16. The CMS Report also details the number of cases resolved and number of investigators in each office. Chicago resolved 1,176 cases with 33 investigative staff; Cleveland resolved 1,104 with 25 investigative staff; Dallas resolved 1,526 with 40 investigative staff; New York resolved 916 complaints with 32 investigative staff; Atlanta resolved 880 complaints with 42 investigative staff; Boston resolved 868 with 20 investigative staff; Metro resolved 1,167 with 29.5 investigative staff; Kansas City resolved 815 cases with 26 investigative staff; Denver resolved 1,154 cases with 22.5 FT investigative staff; Philadelphia resolved 713 cases with 24.5 FT investigative staff; San Francisco resolved 1,419 with 35 investigative staff; and Seattle resolved 626 with 24 investigative staff.[1]

17. By some metrics, some of the most effective, efficient offices were closed. For instance, Cleveland (Closed Office) and Chicago (Closed Office) resolved approximately forty-four and thirty-six cases per investigator, respectively during FY 2024, while Kansas City (Open Office) resolved only 31.35 cases per investigator during that time period. Similarly, Dallas (Closed Office) resolved 38.15 cases per investigator, while Atlanta (Open Office) resolved only 20.95 cases per investigator. And San Francisco (Closed Office) resolved 40.54 cases per investigator, while Seattle (Open Office) resolved only 26.08 cases per investigator.

18. Second, it is impossible for the remaining investigative staff to absorb the additional cases in a way that will continue to meaningfully enforce civil rights laws in the education systems of this country. In January 2025, there were an estimated 375.5 total investigators at OCR across the country. However, this number does not reflect the many investigators that I

[1] Several of the regional offices have part-time investigative staff during FY 2024: Chicago had 2, Metro had 1, Denver had 1, and Philadelphia had 1. For purposes of this Declaration, I have considered each part-time investigator to be the equivalent of half (.5) of a full-time investigator.

personally know who have left OCR since January as a result of the Trump Administration's various efforts to reduce the size of the Department. As of March 11, 2025, the investigators at the Closed Offices were investigating a total of 9,181 active cases, 57% of the total number of active OCR cases (16,022). At least 7,037 of the active cases that were being investigated by staff at a Closed Office as of March 11, 2025 included an allegation or claim of noncompliance with Section 504 of the Rehabilitation Act of 1973 or Title II of the Americans with Disabilities Act of 1990.

19. The Closed Offices had an aggregate of 224.5 investigators, approximately 60% of the total number of OCR investigators (375.5).

20. After the mass terminations and office closures, OCR will have no more than 151 investigators assigned to 16,022 cases, an approximate average of 106 cases per investigator. However, the true estimate is likely higher, given the number of OCR investigators that I personally knew who had left the office since January.

21. This is a completely untenable caseload and will likely decrease the efficiency and quality of OCR investigations. The data supports this conclusion. According to the FY 2024 CMS Report, Denver, the office with the highest percentage of cases resolved within 180 days (83%), also had one of the lowest caseloads per investigator (30 cases per investigator). Atlanta, the office with the highest caseload per investigator (47 cases per investigator), also had the lowest number of cases resolved within 180 days (55%).

22. The 16,022 cases does not even include the number of cases in monitoring. Cases in monitoring are cases where OCR found a violation or had a cause for concern, and the school signed a resolution agreement requiring it to take action to come back into compliance with the civil rights laws. As of March 11, 2025, there were 2,765 cases in monitoring.

23. As a senior attorney with 18 years of experience at OCR, if I were assigned 106 active cases, I would either be forced to conduct cursory investigations that are investigations in name only in order to resolve the cases in a timely fashion or allow cases to languish for an

unreasonably long time. And it would be impossible for me to do comprehensive monitoring on additional cases.

24. The more time passes, the more difficult it is to investigate a complaint. Witness memories fade. Documents are lost or destroyed. Complaining victims move on with their lives and do not want to be retraumatized. As a result, meritorious complaints may be denied justice due to the prolonged delay caused by the mass terminations and office closures.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed April 29, 2025, at Cleveland, Ohio.

Doe Declarant 3

Doe Declarant 3

EXHIBIT A

FY2024 Management Report for CMS as of 9/30/2024

[Total Cases Resolved 14,366 YTD vs. 16,574 PTD]

Snapshot On: 10/16/2024 05:46:16

COMPLAINT	CHI	CLE	DAL	NY	ATL	BOS	DCM	KC	DEN	PHI	SF	SEA	DAT	ED	TOTAL	YTD	PTD
Total Staff (Full Time/Part Time)	43/2	35/0	58/0	44/0	54/0	30/0	40/1	34/0	33/1	34/1	47/0	35/0			487/5		
Investigative Staff (Full Time/Part Time)	32/2	25/0	40/0	32/0	42/0	20/0	29/1	26/0	22/1	24/1	35/0	24/0			351/5		
Receipts - (September)	132	102	179	94	123	85	122	88	133	60	141	65	11	0	1,335		
Receipts Year to Date (YTD)	1,552	1,261	1,946	1,241	1,219	1,187	1,519	983	1,302	998	1,588	863	277	1,734	17,670	-8%	19,223
Receipts Year to Date without Multi (YTD) [1732]	1,552	1,261	1,946	1,241	1,219	1,187	1,519	983	1,302	998	1,588	863	277	2	15,938	17%	13,633
Receipts Prev Year to Date (PTD)	1,281	1,165	1,601	935	1,100	927	1,273	832	1,086	819	1,549	846	179	5,630	19,223	-	-
Receipts Prev Year to Date without Multi (PTD) [5590]	1,281	1,165	1,601	935	1,100	927	1,273	832	1,086	819	1,549	846	179	40	13,633	-	-
Completed Evaluation Stage (Count)	1,293	1,230	1,698	960	1,032	940	1,348	893	1,187	779	1,497	729	211	1,752	15,549	-	-
Completed Evaluation (Average Age)	*99*	*81*	*128*	*124*	*182*	*88*	*91*	*159*	*72*	*106*	*106*	*119*	*27*	*146*	*114*	-	-
Mediation 201 (b) Approved [formerly ECR/FRBP]	16	12	9	39	17	21	6	12	25	1	14	6				178	111
RRP Initiated	74	129	122	128	57	46	92	84	58	33	34	32				889	667
Non-Compliance LOF Issued	1	0	0	0	0	0	0	1	1	0	0	0				3	-
Letter of Impending Enforcement Action	0	1	0	0	0	1	0	0	0	0	1	0				3	-
Resolved - (September)	112	107	166	96	105	114	101	93	87	75	139	93	10	0	1,298	14,339	16,464
Dismissals 108	626	498	859	379	459	503	577	424	521	302	713	308	8	1,736		7,913	7,191
Dismissals 110	287	255	404	307	208	229	290	189	257	206	426	203	17	16		3,294	6,799
Closure 110	0	0	0	0	0	0	0	0	0	0	0	0	0	0		0	0
No Violation/Insufficient Evidence	76	89	57	50	85	21	88	42	57	74	65	22	0	4		730	667
Mediation 201 (a)	31	116	51	28	53	27	70	31	136	34	36	32	2	0		647	434
Mediation 201 (b) [formerly ECR/FRBP]	15	18	5	13	14	8	7	5	19	4	8	7	0	0		123	121
Resulted in Change (without Agreement/Monitoring)	113	60	123	107	38	61	84	106	94	52	136	25	3	0		1,002	788
Resulted in Change (with Agreement)	28	68	27	32	23	19	51	18	70	41	35	29	189	0		630	464
Violation with Enforcement	0	0	0	0	0	0	0	0	0	0	0	0	0	0		0	0
Resolved Year to Date	1,176	1,104	1,526	916	880	868	1,167	815	1,154	713	1,419	626	219	1,756	14,339	-12.9%	16,464
Resolved Year to Date without Multi (YTD) [1732]	1,176	1,104	1,526	916	880	868	1,167	815	1,154	713	1,419	626	219	24	12,607	16%	10,874
Resolved Prev Year to Date (PTD)	1,049	930	1,243	823	660	833	1,001	684	983	636	1,215	646	116	5,645	16,464	-	-
Resolved Prev Year to Date without Multi (PTD) [5590]	1,049	930	1,243	823	660	833	1,001	684	983	636	1,215	646	116	55	10,874	-	-
Cases Resolved over 730 days old and older	22	66	101	93	81	28	46	72	41	36	55	23	0	8		672	304
Cases Open at least 1,460 days (4 Years)	56	135	123	102	395	79	200	108	15	38	17	50	1	5		1,324	1,192
Cases Resolved that were 1,460 days old or older	10	29	30	33	45	11	32	45	4	9	13	10	0	0		271	115

GPRA	CHI	CLE	DAL	NY	ATL	BOS	DCM	KC	DEN	PHI	SF	SEA	DAT	ED	TOTAL	YTD	PTD
Cases Due by Day 180	1,522	1,243	1,748	1,236	1,134	1,001	1,461	944	1,251	932	1,608	911	246	0		15,237	12,384
Cases Resolved by Day 180	1,121	904	1,236	815	619	698	1,043	764	1,036	583	1,044	582	228	0		10,673	10,566
% of Cases Resolved by Day 180 (≥80%)	*74%*	*73%*	*71%*	*66%*	*55%*	*70%*	*71%*	*81%*	*83%*	*63%*	*65%*	*64%*	*93%*			*70%*	*85%*
Pending	1,091	1,019	1,632	1,098	1,972	887	1,346	849	665	888	1,061	761	127	0		13,396	10,189
Calendar Average Age	431	709	558	570	961	548	691	653	347	466	361	502	115			602	592
# of Cases Over 180	636	737	1,055	708	1,477	535	889	482	326	555	614	500	16	0		8,530	6,106
% of # Cases Over 180 (≤25%)	58%	72%	65%	64%	75%	60%	66%	57%	49%	62%	58%	66%	13%			64%	60%
# of Cases Over 365	396	577	794	446	1,280	378	692	395	234	369	453	330	3	123		6,470	4,536
# of Cases Over 730	218	340	447	240	867	209	429	260	96	179	152	151	2	103		3,693	2,359
Cases in Monitoring	85	198	125	124	181	110	185	220	153	76	80	175	746	1		2,459	2,333
Monitoring Reports Complete (Count)	28	39	53	31	33	29	17	76	53	35	37	6	68	0		505	503
Monitoring Reports Complete (Average Age)	*824*	*1,406*	*1,553*	*2,354*	*1,622*	*1,489*	*832*	*2,207*	*1,369*	*1,029*	*995*	*1,377*	*836*	*0*		*1,430*	*1,657*

COMPLIANCE REVIEW	CHI	CLE	DAL	NY	ATL	BOS	DCM	KC	DEN	PHI	SF	SEA	DAT	ED	TOTAL	YTD	PTD
Started	*1*	*1*	*1*	*1*	*0*	*1*	*1*	*1*	*1*	*0*	*1*	*2*				*11*	*[17]*
Resolved	1	0	2	0	1	3	0	1	2	2	3	0	3	0		18	67
Pending	9	5	3	7	12	5	8	11	5	3	3	16	38	0		125	132
# of Cases Over 365	8	4	2	6	12	4	7	10	4	3	2	14	38	0		114	116
Cases in Monitoring	11	7	12	15	8	16	8	17	11	8	8	9	53	0		183	193

DIRECTED INVESTIGATION	CHI	CLE	DAL	NY	ATL	BOS	DCM	KC	DEN	PHI	SF	SEA	DAT	ED	TOTAL	YTD	PTD
FY2024 Initiated	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*		*0*	*0*
Resolved	0	1	0	0	0	0	1	1	1	0	0	1	4			9	43
Pending	4	0	2	2	2	0	0	4	0	2	0	1	6			23	

TECHNICAL ASSISTANCE	CHI	CLE	DAL	NY	ATL	BOS	DCM	KC	DEN	PHI	SF	SEA	DAT	ED	TOTAL	YTD	PTD
Proactive TA Completed (including carryover proactive)	11	0	1	4	4	8	1	1	48	8	3	0	13	0		102	90
Reactive TA Completed (including carryover reactive)	0	1	10	18	0	0	5	0	0	1	10	4	17	0		66	53
Case-related TA Completed (including carryover case-relate)	0	3	0	1	0	0	5	0	7	0	10	0	18	0		44	43

Unless noted otherwise by "without multi", numbers include multiple complaints filed by: Mr. Mark Rossmiller.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:25-cv-744-PLF
UNITED STATES DEPARTMENT OF EDUCATION, et. al,	)	
Defendants.	)	

DECLARATION OF DOE DECLARANT 4

Pursuant to 28 U.S.C. § 1746, I, Doe Declarant 4, declare as follows:

1. I am providing this declaration pursuant to 5 U.S.C. § 2302(b)(8) and (b)(9).

2. This declaration is submitted in support of the Plaintiffs' Request for a Preliminary Injunction.

3. I am a member of the investigative staff in one of the now-closed regional offices for the U.S. Department of Education's Office for Civil Rights ("OCR").

4. Through my personal knowledge and experience, as well as through documents and information I have reviewed, I have knowledge about OCR in general and the now-closed regional office where I worked in particular.

5. OCR is charged with enforcing and investigating alleged violations of various federal civil rights laws that protect students and other individuals against discrimination, including Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975 (Age Act), Title II of the Americans with Disabilities Act

of 1990 (Title II), and the Boy Scouts of American Equal Access Act of 2002. OCR has a responsibility to act in a reasonably prompt manner in response to alleged violations of these laws.

6. In addition to its enforcement and investigative work, OCR also provides trainings and technical assistance on civil rights laws to state and local educational agencies. And it gives educational presentations to advocacy groups and parents.

7. The Assistant Secretary for Civil Rights leads OCR. OCR's headquarters are in Washington, D.C. Prior to March 11, 2025, OCR had 12 regional offices in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, Seattle, and Metro Washington D.C. The Deputy Assistant Secretary for Enforcement oversaw four Enforcement Divisions, each consisting of three regional locations. Each Enforcement Division was managed by an Enforcement Director, who was responsible for coordinating the program operations and resource management of three regional offices.

8. Investigative staff in the regional offices carry out OCR's mission by enforcing civil rights statutes and regulations. Staff use a variety of approaches to resolve complaint investigations and compliance reviews in order to ensure equal access to education for all students.

9. Like other regional offices, my regional office received complaints alleging civil rights violations, from parents, students, advocates, or any other community member who believed that discrimination occurred or was occurring. Investigative staff evaluated those complaints and determined whether they met the case processing guidelines warranting a full investigation. While investigating a complaint, staff interviewed witnesses, requested and reviewed documents, conducted on-site visits if necessary, and communicated with the

complainant to understand the extent of the alleged discrimination. Staff also conducted technical assistance activities for state and local educational agencies to provide guidance on how to comply with antidiscrimination laws, and provided guidance and information to members of the public on OCR's processes and laws it enforces.

10. As a member of OCR's investigative staff, I reviewed complaints to determine if they had merit and warranted a full investigation. I investigated the complaints, negotiated resolutions, and monitored compliance with resolutions. I worked on complaints involving violations of federal law, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990. I also initiated compliance reviews to determine whether or not the recipient was in compliance with the federal laws that OCR enforces, which usually led to monitoring.

11. Shortly after President Trump's inauguration in January 2025, all OCR investigations were paused. During the pause, we could not engage in any external communications. We could not even let external parties know that we had received documents or communications. During the pause, I worked to get letters of findings and other external communications ready to be sent out as soon as the pause was lifted. In late February, the pause was lifted as to some complaints regarding disability discrimination only, so I was finally able to send out communications for my investigations where the only claims were related to certain types of disability discrimination. On or around March 6, 2025, the pause was lifted as to other types of cases. I worked to send out as many communications as I could to get everything back on track.

12. On March 11, 2025, I was still working to catch up, when my OCR laptop

rebooted around 6 p.m. When it came back on, I no longer had the ability to communicate externally via email. I also could no longer update cases or edit documents in OCR's case management systems. On the same day, about two hours later, I received notice that I would be subject to mass terminations and placed on administrative leave beginning on March 21, 2025, and that my office would be closed.

13. Although I technically had ten days between receiving notice and going on leave, between March 11 and March 21, 2025, I was not able to meaningfully advance my ongoing cases or take steps to make sure they were transitioned appropriately. During that time, I could not make changes or updates in OCR's case or document management systems, make outgoing phone calls, or send any external emails. I was also instructed not to work on anything after March 11, 2025. I was asked to provide a list of cases that needed immediate attention, so I did that. But I was never given any further instruction for transitioning my cases or told what would happen to them.

14. As of March 11, 2025, I had several matters that had reached critical stages in the investigation process. I had between 40 and 50 active cases on my docket in total. I also had a handful new cases in the evaluation stage. This was less than my usual caseload, because I had been able to close a number of cases immediately prior to the pause. Most of my cases were in the investigation stage. Around 8-10 were in the monitoring stage. One was very close to resolution – the parties had agreed to mediate, I was just waiting for approval to set a date for mediation. And I had at least six letters of findings that were ready to go out or almost ready to go out. Because I was unable to meaningfully transition these cases, their resolution will be unnecessarily delayed – if they are resolved at all.

15. On the day that I received notice of the mass terminations, I was actively

working on a case involving a recipient that had been found in violation of Title VI based on a complaint alleging antisemitism. That case was in monitoring. I had reviewed some information provided by the recipient regarding their resolution activities and was ready to provide a substantive response noting some areas of noncompliance, but I was not able to send that. Without continued monitoring, the recipient might cut corners when it comes to implementing the resolution agreement. Even if OCR eventually resumes monitoring in this case, whenever there is a lull in monitoring, there is a risk that documents will not be appropriately retained, and the recipient will not be able to tell OCR how they complied with the resolution agreement.

16. As of March 11, 2025, I was also monitoring a second case after finding that students with disabilities lacked meaningful access to the same types of courses in their school district as their nondisabled peers. The district was complying with the resolution agreement, but it needed continued guidance on how to substantively comply with the law. Because of the disruption in my monitoring activities, the district will go without that guidance.

17. I was also investigating a complaint alleging that nonverbal students with disabilities had been severely physically abused at school. I had recently received information from the school district related to the complaint, and I was reviewing it. But that stopped when my office was closed and I was placed on administrative leave. On top of that, I was investigating the state educational agency for allegedly failing to respond adequately to reports of the abuse. That investigation was paused, too.

18. In another of my cases, I was in the process of responding to a complaint alleging that a school district failed to address bullying on the basis of race and disability for nearly two years. The bullying had escalated after the parent's initial complaint to the district,

and it was severely impacting the student's mental health. A delay in that investigation could seriously impact the student's access to a safe school environment.

19. I had also drafted several letters of findings when I received notice of the mass terminations. Two of the letters involved Title IX sexual harassment cases where we had completed the investigation and found violations. These letters were drafted and waiting for internal review, but nobody was able to meaningfully move them forward because they were instructed not to during the pause. And then after the pause, nobody had time to review them before the terminations. I was also working on a letter of findings in a third case involving disability and sex discrimination. In that case, I was also waiting for a final review of the letter. But that was also stalled.

20. Between the mass terminations and our inability to meaningfully transition our cases, all of these matters and more have been or will be adversely affected. And the complainants, along with other students at the recipients schools, will be left without timely relief, because their complaints will not get resolved or the resolution will be unreasonably delayed. The longer the delay, the greater the likelihood that they will suffer harm that cannot be resolved.

21. In addition to the adverse effects on my casework, I also had a backlog of technical assistance calls when I received notice of the mass terminations, because I had not been able to respond to any calls during the pause. Those will likely go unanswered, now.

22. Based on my knowledge and experience, I do not think that the Department of Education can meet its statutory obligations to investigate and ensure compliance with federal civil rights given the downsizing.

I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, the foregoing is true and correct. Executed on April 30, 2025.

Signature:

Doe Declarant 4

Doe Declarant 4

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:25-cv-744-PLF
UNITED STATES DEPARTMENT OF EDUCATION, et. al,	)	
Defendants.	)	

DECLARATION OF DOE DECLARANT 5

Pursuant to 28 U.S.C. § 1746, I, Doe Declarant 5, declare as follows:

1. I am providing this declaration pursuant to 5 U.S.C. § 2302(b)(8) and (b)(9).

2. This declaration is submitted in support of the Plaintiffs' Request for a Preliminary Injunction.

3. I am a member of the investigative staff in one of the now-closed regional offices for the U.S. Department of Education's Office for Civil Rights ("OCR"). I have worked for OCR for around nine years.

4. Through my personal knowledge and experience, as well as through documents and information I have reviewed, I have knowledge about OCR in general and the now-closed regional office where I worked in particular.

5. OCR is charged with enforcing and investigating alleged violations of various federal civil rights laws that protect students and other individuals against discrimination, including Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504),

the Age Discrimination Act of 1975 (Age Act), Title II of the Americans with Disabilities Act of 1990 (Title II), and the Boy Scouts of American Equal Access Act of 2002. OCR has a responsibility to act in a reasonably prompt manner in response to alleged violations of these laws.

6. In addition to its enforcement and investigative work, OCR also provides trainings and technical assistance on civil rights laws to state and local educational agencies. And it gives educational presentations to advocacy groups, parents, and students.

7. The Assistant Secretary for Civil Rights leads OCR. OCR's headquarters are in Washington, D.C. Prior to March 11, 2025, OCR had 12 regional offices in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, Seattle, and Metro Washington D.C. The Deputy Assistant Secretary for Enforcement oversaw four Enforcement Divisions, each consisting of three regional locations. Each Enforcement Division was managed by an Enforcement Director, who was responsible for coordinating the program operations and resource management of three regional offices.

8. Investigative staff in the regional offices carry out OCR's mission by enforcing civil rights statutes and regulations. Staff uses a variety of approaches to resolve complaint investigations and compliance reviews in order to ensure equal access to education for all students.

9. Like other regional offices, my regional office received complaints alleging civil rights violations from parents, students, advocates, or any other community member who believed that discrimination occurred or was occurring. Investigative staff evaluated those complaints to determine whether they were appropriate for a full investigation. While investigating a complaint, staff interviewed witnesses, requested and reviewed documents,

conducted on-site visits if necessary, and communicated with complainants and recipients to understand the extent of the alleged discrimination. Staff also conducted technical assistance activities for state and local educational agencies to provide guidance on how to comply with antidiscrimination laws.

10. As a member of OCR's investigative staff, I reviewed complaints to determine whether they were appropriate for a full investigation under the laws that OCR enforces. I investigated the complaints, negotiated resolutions, and monitored compliance with those resolutions. I worked on complaints involving violations of federal law, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, and Title II of the Americans with Disabilities Act of 1990.

11. Shortly after President Trump's inauguration in January 2025, all OCR investigations were paused. During the pause, we could not engage in any external communications. In late February, the pause was lifted as to certain types of complaints some time later.

12. However, on March 11, 2025 – just a few days after the pause was lifted as to non-disability cases – I received notice that I would be placed on administrative leave starting on March 21, 2025, that my position would be terminated, and that my office would be closed. By the following day, I no longer had access to OCR's document or case management systems, and although I was still receiving emails, I no longer had the ability to respond to them. I could not respond to phone calls, either.

13. Because I could not update my cases in OCR's document or case management systems, send emails, or make calls, I was not able to do any work after receiving the notice

on March 11, 2025. As a result, I was not able to take steps to meaningfully advance or transition my cases before being put on leave. On March 21, 2025, I lost all access to my OCR email, laptop, and phone entirely.

14. As of March 11, 2025, I had around 65 cases on my docket, which were in various different stages ranging from evaluation to monitoring. These cases involved disability discrimination claims, race/disability-based harassment and sexual harassment claims, as well as shared ancestry claims.

15. I had a meeting scheduled in one of my cases to talk about resolution – the meeting was to take place shortly after March 11, 2025. But I could not attend. On the day of the meeting, I was receiving emails from the parties involved letting me know that they were on the Zoom and asking where I was. I could not even respond to let them know that I would not be able to join the meeting.

16. Between March 11 and March 21, 2025, I also received emails and other communications from recipients and complainants, including an email from a complainant about a pending language access investigation. I could not respond to any of them.

17. In another example, as of March 11, 2025, I had case that was very close to resolution. In that case, students with disabilities and English Language Learner students had been denied meaningful access to school. At least half of the students involved are refugees, and the facts were egregious. The case was in monitoring, meaning that we had identified compliance issues, and the recipient had already taken steps to resolve the violations. But because of the mass terminations and office closures, the students and the district were left without final resolution. I do not know what will happen to that case. Even if it is picked up by another office, resolution will be unreasonably delayed.

18. I also had several cases in monitoring, involving school districts that failed to adequately respond to sexual harassment claims. In two of those cases, I had calls scheduled with the involved school districts to talk about the expectations for compliance and review the districts' progress. I had to cancel those calls with no follow up. Prior to the notice of terminations, I was in frequent contact with these districts – they needed guidance to comply with Title IX. Without continued, consistent guidance, I worry that the district will struggle to comply, and students in those districts will face continued harm. In another monitoring case, the school district was not complying with the entered resolution agreement, and pervasive sexual harassment was occurring. Because the district was reluctant to come into compliance, I do not believe that it will comply without continued OCR oversight and students may continue to be subject to sexual harassment without an appropriate Title IX compliance response from the district.

19. Monitoring is where some of OCR's most important and labor-intensive work happens. It presents an opportunity for OCR to meaningfully engage with recipients to build out systemic, sustainable change for students and school districts. Unfortunately, with the downsizing of OCR, I do not believe that cases in monitoring can or will be a priority for the remaining OCR offices. And many school districts will not comply with resolution agreements without pressure from OCR – so students in those districts will likely go without relief. Even school districts that want to comply often need ongoing guidance and support from OCR, but that will likely not be available to them. The point of federal oversight is to ensure compliance, but without consistent monitoring activities, ensuring compliance will no longer be possible. And without monitoring, the work that OCR has done to bring those cases to resolution will not be nearly as impactful. Also, once cases are in monitoring, relationships have been built

between OCR investigators and the recipients with whom we are working. I struggle to see how another office could meaningfully pick up those cases without the benefit of those previous relationships.

20. It is not at all tenable that any other regional office could absorb all of my office's cases – not only because caseloads will be unmanageable, but also because other offices lack the local relationships that we have spent years building within our jurisdiction. For every major case that OCR resolves, there are many other cases that are resolved very quickly and without fanfare because there is a past relationship with the involved recipients. Other offices will not be able to replicate these quick resolutions for cases outside of their traditional jurisdictions. As a result, I believe that many, many cases will not be resolved, and the parties involved in those cases will be left without relief. This will cause immediate harm to the students and families involved. And those students and families who are left without relief will be less likely to come forward again in the future. It takes a lot of courage for parents and students to come forward with a complaint, and when those complaints are left unresolved, it chills their continued ability to speak up to protect and advance their rights.

21. On top of the negative impact on OCR's casework, the downsizing will impact our other work, too. My office has historically engaged in technical assistance activities, which included responding to communications from students and parents to give them information or help them file a complaint or to assist recipients with understanding their legal obligations. This work will not be sustainable, now.

22. People come to OCR because our complaint process is accessible to families even if they do not have an attorney, and we are experts in our field and have relationships with state and local educational agencies in our jurisdictions. OCR's downsizing will severely

impair its ability to provide this unique service for communities, and students and families will be left with far fewer avenues for relief – they already are. As a result, English Language Learner students will be left without meaningful access to their education. Students being harassed on the basis of race or shared ancestry will be left without a remedy. And school districts and universities will not receive clear guidance about their responsibilities under federal law.

23. Based on my knowledge and experience, I do not think that the Department of Education can meet its statutory obligations to investigate and ensure compliance with federal civil rights laws given the downsizing.

I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, the foregoing is true and correct. Executed on April 30, 2025.

Signature:

Doe Declarant 5

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:25-cv-744-PLF
UNITED STATES DEPARTMENT OF EDUCATION, et. al,	)	
Defendants.	)	

DECLARATION OF DOE DECLARANT 6

Pursuant to 28 U.S.C. § 1746, I, Doe Declarant 6, declare as follows:

1. I am providing this declaration pursuant to 5 U.S.C. § 2302(b)(8) and (b)(9).

2. This declaration is submitted in support of the Plaintiffs' Request for a Preliminary Injunction.

3. I am a member of the investigative staff in one of the now-closed regional offices for the U.S. Department of Education's Office for Civil Rights ("OCR"). I have worked for OCR for nearly three years.

4. Through my personal knowledge and experience, as well as through documents and information I have reviewed, I have knowledge about OCR in general and the now-closed regional office where I worked in particular.

5. OCR is charged with enforcing and investigating alleged violations of various federal civil rights laws that protect students and other individuals against discrimination, including Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504),

the Age Discrimination Act of 1975 (Age Act), Title II of the Americans with Disabilities Act of 1990 (Title II), and the Boy Scouts of American Equal Access Act of 2002. OCR has a responsibility to act in a reasonably prompt manner in response to alleged violations of these laws.

6. In addition to its enforcement and investigative work, OCR also provides trainings and technical assistance on civil rights laws to state and local educational agencies. And it gives educational presentations to advocacy groups and parents.

7. The Assistant Secretary for Civil Rights leads OCR. OCR's headquarters are in Washington, D.C. Prior to March 11, 2025, OCR had 12 regional offices in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, Seattle, and Metro Washington D.C. The Deputy Assistant Secretary for Enforcement oversaw four Enforcement Divisions, each consisting of three regional locations. Each Enforcement Division was managed by an Enforcement Director, who was responsible for coordinating the program operations and resource management of three regional offices.

8. Investigative staff in the regional offices carry out OCR's mission by enforcing civil rights statutes and regulations. Staff use a variety of approaches to resolve complaint investigations and compliance reviews in order to ensure equal access to education for all students.

9. Like other regional offices, my regional office received complaints alleging civil rights violations from parents, students, advocates, or any other community member who believed that discrimination occurred or was occurring. Investigative staff evaluated those complaints and determined whether they met the case processing guidelines warranting a full investigation. While investigating a complaint, staff interviewed witnesses, requested and

reviewed documents, conducted on-site visits if necessary, and communicated with the complainant to understand the extent of the alleged discrimination. Staff also conducted technical assistance activities for state and local educational agencies and other community members to provide guidance on how to comply with antidiscrimination laws.

10. As a member of OCR's investigative staff, I reviewed complaints to determine if they had merit and warranted a full investigation. I investigated the complaints, negotiated resolutions, and monitored compliance with resolutions. All of the complaints I worked on involved violations of federal law, including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990.

11. Shortly after President Trump's 2025 inauguration, all OCR investigations were paused for about a month. During the period of the pause, we could not engage in any external communications related to our investigations. We could not request documents, conduct interviews, participate in meetings, facilitate mediations, negotiate resolutions, issue letters of findings, or take other necessary steps to review and resolve complaints. We could not even send out consent requests. I did as much as I could to prepare for when the pause was lifted, but my work was stalled.

12. On February 20, 2025, the pause was lifted as to complaints alleging disability discrimination, and nothing else. A few weeks later, it was lifted for other cases. Because our work had been paused for so long, I was eager to resume reviewing complaints, conducting investigations, and engaging in resolution activities. I immediately sent out a number of external communications to try to get my cases back on track.

13. On March 11, 2025, I (along with the rest of my office) received notice that I would be subject to what the notice referred to as a reduction in force ("RIF") and placed on administrative leave starting on March 21, 2025. On March 21, 2025, my office was effectively closed.

14. As of March 11, 2025, I had several matters that had reached critical stages in the investigation process. I had close to 90 cases on my docket in total. About 65 of those were in the evaluation or investigation stages. About 5 of them were in active mediation. I was also monitoring resolution for about 10 or 15 cases.

15. Although I technically had ten days between receiving notice and going on leave, between March 11 and March 21, 2025, I was not allowed to access our case and document management systems. I also could not make outgoing phone calls or send any external emails. As a result, I could not do any work on my ongoing cases or take any steps to make sure that they were transitioned appropriately. I could not inform anyone involved with the complaints for which I was responsible that I would no longer be working on their cases. I was not even informed as to whether a remaining office would be taking my cases, or which office it would be. Although I eventually learned that another regional office would be inheriting our cases, it was too late for me to meaningfully transition them. And I was not given any guidance on how to do so.

16. Between March 11 and March 21, 2025, I was getting lots of phone calls and messages from complainants and educational agencies with whom I had been working, but I could not respond to any of them. And at that time, there was no automated message set up for my accounts, so anyone who was calling or messaging would have had no way of knowing that I was not able to respond to their emails. On March 21, 2025, I lost access to my email

and voicemail completely.

17. On April 4, 2025, I noticed that an automated message was set up for my email account, and for the email accounts of others in my office who were placed on leave. The message was in first person and stated that I was working to transition my cases. But that was not true. By that time, I had completely lost access to my email and the office network and was not able to take any steps to transition my cases. Now, the automated message connected to my email says that my employment status has changed, and people should reach out to a "transitions" email address.

18. Immediately after receiving notice about the RIF, I received a response to a proposed resolution agreement from a school district, which had been participating in negotiations with me. The case was related to a physical accessibility complaint. The district had extremely minor edits to the agreement. Had I had an opportunity to seek approval, the agreement would have been approved immediately, and the district would have begun to implement it. But I could not respond, so I was not able to finalize that resolution. Even if someone eventually follows up on that agreement, its implementation will be unreasonably and unnecessarily delayed.

19. I do not know what happened to that case. I suspect that it will never be resolved, because for us to close resolution monitoring, we often have to make an in-person site visit to the school district engaged in the resolution. Even if the case was assigned to another regional office, someone would have to travel from that office to close the monitoring. That is not likely going to happen, especially considering the current caseload of the open offices. And I do not think that the school district will make the school accessible for the complainant student absent OCR enforcement, so that student will likely go without any relief.

20. Shortly after receiving the notice on March 11, 2025, I also received an email from a school district stating that the district was interested in moving forward with mediation of a complaint involving disability discrimination. Again, I could not respond.

21. When I received the notice on March 11, 2025, I had also been in conversations with parents about mediating a complaint involving a student who was excluded from school on the basis of disability. The parents had recently expressed via email that they wanted to mediate. I forwarded the email internally, but I do not know if that led to any follow up.

22. I also had a case in resolution monitoring – the resolution addressed a school district's practice of segregating students with disabilities in a remote school. Monitoring reports were due shortly after I received notice of the RIF. The school district would have sent the monitoring reports to my email, but I could not and cannot check. And as far as I know, my email was not set up with automated messages at the time that the reports were due, so I do not know how the district would know where to send the reports.

23. In another case that I was monitoring as of March 11, 2025, I found that a school district was not complying with the resolution agreement – which sought to address the district's unlawful practice of secluding and restraining students with disabilities. The investigation had resulted in violations and causes for concerns. There were many components to the resolution agreement, and the district had a number of outstanding reports due to OCR, but with my office closed, the district would not have known where to send those. I was working with the district to completely rebuild trainings and policies and procedures around tracking and monitoring of restraint and seclusion in the district. The ongoing back and forth with OCR was critical to this process – the district needs guidance on how to comply. Now though, I do not know what will happen with the monitoring of that case. Without active

monitoring, I worry that students in that district will continue to suffer harm.

24. Before the terminations, I had requested data from two school districts in connection with disability discrimination complaints that the districts were working to provide me. I do not know if they sent it to me, but if they did, no one would have seen it. I do not know if they would have been informed about where to send the data, instead.

25. Just hours before receiving the notice, on the morning of March 11, 2025, I had an intake interview with a parent alleging that her child's school refused to respond to students using racial slurs against her child. I had a letter drafted to send to the school the next morning, but it never went out.

26. Also on March 11, 2025, I drafted letters notifying a complainant and a university that her case would be opened for investigation. The complainant was alleging that she had been terminated after requesting accommodations for her disability. Those letters never went out, either.

27. On March 12, 2025, I had an intake interview scheduled with a complainant alleging discrimination based on sex and parental status. But I never got to speak with her or even let her know that I would miss the interview. After the notice of terminations, I continued to get calls and emails from her asking about the status of her complaint, but I could not respond.

28. Also on March 12, 2025, I was scheduled to begin negotiations in a case involving a school district that had excluded and segregated an individual who used a service animal. I had already drafted a resolution agreement, which had been approved, but I was not able to present it to the district.

29. I had also drafted three monitoring audits for physical accessibility complaints

to be sent out that week. But now they are probably just sitting in the system. I doubt that anyone will get to them.

30. Between the terminations at OCR and our inability to meaningfully transition our cases, all of these matters and more have been or will be adversely affected. And the above-mentioned students and complainants will suffer immediate harm, as their complaints – all which had merit – will not be resolved, or their resolution will be unreasonably delayed. Many of the cases that I was working on also would have allowed for more systemic change within school districts – for example, complaints involving physical access issues or the segregation of students with disabilities. The longer the delay, the greater the likelihood that they will suffer harm that cannot be resolved.

31. Our other work will suffer, too. When the terminations and closures happened, there was a backlog of hundreds of technical assistance requests that we had been trying to work through since the pause lifted. Now, it is not likely that anyone will provide technical assistance to those individuals.

32. Based on my knowledge and experience, I do not think that the Department of Education can meet its statutory obligations to investigate and ensure compliance with federal civil rights given the downsizing.

33. The long-term impact of significantly downsizing OCR will be that students will not have access to education free from discrimination and harassment. This will lead to worse educational outcomes and more students leaving school. For those students, this will cause irreparable harm. And no one will benefit.

I declare under penalty of perjury under the laws of the United States that, to the best of my knowledge, the foregoing is true and correct. Executed on April 29, 2025.

Signature:

Doe Declarant 6

Doe Declarant 6 (Apr 29, 2025 19:59 EDT)

Doe Declarant 6

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF EDUCATION, et. al, *Defendants*.	)	Case No. 1:25-cv-744-PLF **DECLARATION OF DOE DECLARANT 7**

DECLARATION OF DOE DECLARANT 7

Pursuant to 28 U.S.C. § 1746, I, Doe Declarant 7, declare as follows:

1. I am providing this declaration pursuant to 5 U.S.C. § 2302(b)(8) and (b)(9).

2. This declaration is submitted in support of Plaintiffs' Request for a Preliminary Injunction.

3. I am a member of the investigative staff in one of the currently open OCR regional offices. I have worked at OCR over four presidential administrations, both Democratic and Republican.

4. Through my personal knowledge and experience, as well as through documents and information I have reviewed, I have knowledge about OCR in general and the enforcement in the still-open regional office where I work in particular.

5. OCR is charged with enforcing and investigating alleged violations of various federal civil rights laws that protect students and other individuals against discrimination, including Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), the Age Discrimination Act of 1975 (Age Act), Title II of the Americans with Disabilities Act of 1990 (Title II), and the Boy Scouts of America Equal Access Act of 2002. OCR has a responsibility to act in a reasonably prompt manner in response to alleged violations of these laws.

6. In addition to its enforcement and investigative work, OCR also provides trainings and technical assistance on civil rights laws to state and local educational agencies and other stakeholders.

7. The Assistant Secretary for Civil Rights leads OCR. OCR's headquarters are in Washington, D.C. It previously had 12 regional offices in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, Seattle, and Metro Washington, D.C. Previously, the Deputy Assistant Secretary for Enforcement oversaw four Enforcement Directors, who typically each had three regional offices for which they were responsible for coordinating program operations and resource management.

8. My regional office receives complaints alleging civil rights violations, mostly from parents, students, and advocates across several states. Investigative staff review those complaints

and decide if they have merit and should be fully investigated, mediated, or otherwise resolved. While investigating a complaint, staff interview witnesses, request and review documents, and work with the complainant to understand the alleged discrimination. In addition to investigating complaints received from members of the public, OCR also initiates proactive cases. There are two types of proactive cases: directed investigations and compliance reviews.

9. OCR has developed performance targets for obtaining results through efficient case management, in response to the Government Performance and Results Act (GPRA). To satisfy its GRPA targets, OCR must resolve 80% of complaints received within 180 days.

10. Shortly after President Trump's inauguration in January 2025, OCR investigations were frozen completely. We were instructed that although we could review documents that we already had, we could not engage in any external communications related to our investigations. We could not request documents, conduct interviews, participate in meetings, facilitate mediations, negotiate resolutions, issue letters of findings, or take other necessary steps to review and resolve complaints, or issue monitoring audits for existing agreements.

11. As a result of the freeze, our backlogs continued to grow.

12. On February 20, 2025, the freeze on investigations of some types of disability discrimination claims was officially lifted. The freeze on other investigations, including complaints based on race, national origin, and sex, continued for two weeks until March 6, 2025, when Craig Trainor sent an email attaching a memo from Secretary McMahon lifting the pause.

13. Prior to March 11, 2025, my caseload was about 45-50. Many others in the office had a lower caseload, around 25-35 cases.

14. Under that prior caseload, we were generally able to meet GRPA targets, but we sometimes struggled. Even then, some cases would get stuck in the administrative bottleneck and would not be resolved in 180 days. Some other cases were just more complicated and systemic in nature and took a long time to resolve.

15. On March 11, 2025, there were mass firings and office closures at OCR. The Boston, Chicago, Cleveland, Dallas, New York, Philadelphia, and San Francisco offices were eliminated. My office inherited the caseloads from closed regional offices. We now cover more than twice as many states as we used to.

16. Between the mass terminations, voluntary early retirement, Voluntary Separation Incentive Payment, administrative leave for employees alleged to have engaged DEI, and an increasingly hostile work environment, our workforce has been gutted. Some of the people we lost had specialized positions that will not be backfilled. Because there was no plan for those employees to transition out, their departure has resulted in the loss of career expertise that cannot be replaced.

17. As of today, we now have only one Enforcement Director for all of OCR, whereas we used to have four.

18. As of last week, OCR has over 24,000 cases, with a fraction of the staff that we had at the start of the year.

19. Since March 11, 2025, the caseloads for me and the other investigative staff in my office has increased significantly and become untenable. Most staff in my office now have caseloads ranging from 200 to over 300 cases. The staff that are not up to 200 cases yet likely will

be soon. Even now, it is difficult to know exactly what final caseloads will look like because the regional offices shut down so quickly. We anticipate more staff departures in the near future because of the hostile work environment, which is created by a variety of factors, including overwhelming caseloads, job instability and the threats of further mass terminations, limitations on the types and scope of work that we do, and other working conditions such as draconian return to office policies.

20. My caseload is completely unmanageable at this point. I cannot thoroughly investigate all of my cases within a reasonable timeframe. We cannot meet our GRPA targets under these circumstances.

21. On top of attempting to manage increasingly high caseloads, we have been forced to spend a significant amount of time trying to get a grasp on the cases that we inherited from other offices. Because other offices were closed so suddenly, most of the staff that was terminated or placed on leave could not transfer their cases or prepare for an orderly transition. There were no transition plans in place. For weeks, we were not able to access all the necessary information and other files within closed offices' case and document management systems. As I understand it, staff at some remaining offices still cannot access or make changes to all the necessary information and records in these systems, including for the cases that have allegedly been transferred to them.

22. On top of this, the Department has lost almost all OCR information technology staff responsible for maintaining and updating those systems. We effectively have no one to help us troubleshoot these issues.

23. Even if we had reliable access to all the necessary information and records in the case and document management systems, not everything is stored there. OCR employees often maintained work product on their Government-furnished drives and networks. However, because staff had no opportunity to upload these documents to the system or otherwise transition them, many of those notes and documents were lost. As a result, we have not been able to access necessary information to efficiently transition cases from the closed offices and continue reviewing and investigating them. In some cases, we have not had access to the work product we would need to efficiently and timely resolve cases.

24. We still cannot access investigative staffs' email and voicemail inboxes at other offices, and as far as I know, there is no plan in place for giving us access to those. Not only can we not see new complaints in those inboxes, we also cannot see any correspondence related to existing complaints and investigations. We have had to ask educational institutions and complainants to resend information that they already sent so that we could try to continue investigations. For cases that were in mediation or other resolution stages, no progress is being made to continue the resolution for many or most cases. Even near-final resolution agreements have been stalled since we cannot see the email communications related to those cases.

25. On top of this, we do not have established relationships with students, parents, and recipients in the new regions we now cover. These relationships are essential to our ability to resolve cases, and we are having to start at square one for the new regions for which we are responsible. Geographic distance makes trying to build these relationships even more challenging.

26. All funding for travel has also been cut off. Sometimes travel is essential for an investigation – for example, to meet witnesses in person, interview people with interpretation needs, or assess physical accessibility barriers. Being restricted from engaging in these activities impedes our ability to conduct effective investigations. We have been told that we can travel for "mission critical work," but nobody has told us what that is.

27. Due to unreasonable demands on senior regional leadership and the fact that there is only one Enforcement Director, cases are also getting stalled during the approval process. For "cases of interest"—many if not most Title VI and Title IX cases, and disability harassment, restraint, and seclusion cases – we need approval from headquarters at almost every stage of the case. That includes opening the investigation, dismissing the complaint, and resolving the complaint, among other potential actions. Enforcement Directors are critical to the approval process, but we do not have enough to manage the case approval process and get cases approved in a timely manner. For instances, in cases of interest, findings of insufficient evidence or findings of non-compliance need to be approved by the Enforcement Director. To my knowledge, no such findings in cases of interest from a regional office have been approved.

28. This has resulted in an effective freeze of those cases, even if there is no official freeze. Especially in light of our unmanageable caseloads, the fact that cases of interest will not be approved or otherwise moved towards resolution has created a deterrent among staff from working on them, even though those cases are legitimate complaints under the laws we are required to enforce. Instead, my colleagues and I are choosing to focus on cases that do not require approval from headquarters. For example, my colleagues and I are choosing to work on disability

accommodations cases, which are not cases of interest and do not need to be approved, rather than racial harassment cases, which are cases of interest.

29. While most Title VI and Title IX cases and disability harassment, restraint, and seclusion cases that we receive from the public are effectively frozen, headquarters has continued to direct us to engage in targeted investigations under Title VI and Title IX that are aligned with the administration's political priorities. These investigations have not followed typical procedures or protocols. In some cases, headquarters demands that we initiate certain investigations. In others, we learn that headquarters intends to or already has opened an investigation from other sources – press releases, for example – and then we learn later that we may be involved.

30. This is very different from how previous administrations, including the first Trump administration, exercised their discretionary powers to focus on certain types of discrimination. For instance, under the first Trump administration, in September 2019, headquarters told regional leaders that it were interested in compliance review nominations relating to sexual harassment. Unlike now, headquarters sought our input. And in previous administrations, headquarters never ordered us to open or investigate cases that were contrary to established precedent or injunctions. Now, headquarters is issuing letters and press releases regarding cases that have been initiated without our input or involvement. And we are left having to investigate cases opened under questionable legal bases, such as cases investigating diversity and equity training for educators.

31. We are also unable to do non-investigation work that we are supposed to do, like technical assistance. Technical assistance involves activities like community education and training for students, parents, and recipients. And historically, we try to return every call and email

we get to provide the caller or emailer with guidance or information, but it's not feasible for us to do that anymore. This harms existing relationships we have with students, parents, and recipients, and makes it more challenging for us to build such relationships in the new geographic areas we now cover.

32. My substantive work has been minimized and limited to certain types of disability cases at this point, given my caseload, the mechanics of trying to recover from the sudden office closures, and the other impediments to our work. The messaging we've received in my office is to just try to survive each day.

33. OCR is not and cannot fulfill its statutorily and regulatorily mandated duties to investigate complaints and enforce civil rights laws in schools under these circumstances.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 29, 2025.

Signature:

Doe Declarant 7

Doe Declarant 7

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al., *Plaintiffs*, v. UNITED STATES DEPARTMENT OF EDUCATION, et. al, *Defendants*.	)	Case No. 1:25-cv-744-PLF

DECLARATION OF DOE DECLARANT 8

Pursuant to 28 U.S.C. § 1746, I, Doe Declarant 8, declare as follows:

1. This declaration is submitted in support of Plaintiffs' Request for a Preliminary Injunction.

2. Until recently, I was a civil rights attorney with a still-open regional office of the Department of Education's Office for Civil Rights ("OCR"). I was with that regional office for nearly ten years and have worked under several administrations, both Democratic and Republican.

3. Through my personal knowledge and experience, as well as through documents and information I have reviewed, I have knowledge about OCR in general and my still-open regional office in particular.

4. OCR is charged with enforcing and investigating alleged violations of various federal civil rights laws that protect students and other individuals against discrimination, including Title VI of the Civil Rights Act of 1964 (Title VI), Title IX of the Education Amendments of 1972 (Title IX), Section 504 of the Rehabilitation Act of 1973 (Section 504), the

Age Discrimination Act of 1975 (Age Act), Title II of the Americans with Disabilities Act of 1990 (Title II), and the Boy Scouts of American Equal Access Act of 2002. OCR has a responsibility to act in a reasonably prompt manner in response to alleged violations of these laws.

5. In addition to its enforcement and investigative work, OCR also provides trainings and technical assistance on civil rights laws to state and local educational agencies. And it gives educational presentations to advocacy groups and parents.

6. The Assistant Secretary for Civil Rights leads OCR. OCR's headquarters are in Washington, D.C. Prior to March 11, 2025, it had 12 regional offices in Atlanta, Boston, Chicago, Cleveland, Dallas, Denver, Kansas City, New York, Philadelphia, San Francisco, Seattle, and Metro Washington D.C. The Deputy Assistant Secretary for Enforcement oversaw four Enforcement Divisions, each consisting of three regional locations. Each Enforcement Division was managed by an Enforcement Director, who was responsible for coordinating the program operations and resource management of three regional offices.

7. Investigative staff in the regional offices carry out OCR's mission by enforcing civil rights statutes and regulations. Staff use a variety of approaches to resolve complaint investigations and compliance reviews in order to ensure equal access to education for all students.

8. Like the other regional offices, my regional office receives complaints alleging civil rights violations, mostly from parents and advocates. Investigative staff review those complaints and decide if they have merit and should be fully investigated. While investigating a complaint, staff interview witnesses, request and review documents, and work with the complainant to understand the alleged discrimination.

9. As a civil rights attorney with OCR, I handled complaints from start to finish. I reviewed complaints to determine if they warranted a full investigation, investigated complaints,

negotiated resolutions, and monitored compliance with the resolutions. I worked on cases that alleged violations of federal law, including Title VI, Title IX, Section 504, the Age Act, and Title II. The majority of my caseload involved disability discrimination claims.

10. OCR has developed performance targets for obtaining results through efficient case management, in response to the Government Performance and Results Act (GPRA). To satisfy its GRPA targets, OCR must resolve 80% of complaints received within 180 days.

11. Shortly after President Trump's inauguration in January 2025, OCR investigations were paused completely. Although pauses are not completely abnormal during an administration change, this pause was unusual. We were instructed that we could not engage in any external communications related to our complaints or investigations. We could not request documents, conduct interviews, participate in meetings, facilitate mediations, negotiate resolutions, issue letters of findings, or take other necessary steps to review and resolve complaints. We could not even send out consent reminders – which is one of the first steps for initiating individual investigations. We did what we could to work our cases with whatever information we already had, but we could not progress anything. I had many cases in active investigation and resolution stages during this time, and complainants and school districts were reaching out to me for updates. But I could not respond to them.

12. Around this time, we also began losing staff pursuant to the administration's offers of voluntary separation for OCR and other government staff.

13. On February 20, 2025, the pause on investigations of disability discrimination claims was lifted. The pause on other investigations was lifted a few weeks later.

14. However, on March 11, 2025, there were mass terminations and office closures at OCR. The Boston, Chicago, Cleveland, Dallas, New York, Philadelphia, and San Francisco regional offices were eliminated.

15. My office inherited the docket from the one of the closed regional offices. As I understand it, staff in the closed regional office were cut off from the office network and their case and document management systems almost immediately. Any notes or documents on their desktops would have been lost. Although I was able to see documents related to the cases that we inherited in our case management system, I could not edit them. No one in my regional office could. We were informed that there was no plan in place to grant us actual access to the documents. And with the other regional office closed and staff without access to the network, we had no one to contact for more information. Without access to necessary information, inherited investigations have been unreasonably delayed. Some were likely near resolution, but that may not be possible now. Even several weeks after the closures, inherited cases still had not been reassigned within my office.

16. Prior to March 11, 2025, my caseload was over 50. My cases ranged from the initial stages of investigation to cases in the resolution monitoring phase. Others in my office also had caseloads of 50 or more.

17. Under that caseload, we did not consistently meet our performance targets under the Government Performance and Results Act ("GRPA") due to the complex number of complaints and significant number of cases. In my regional office, attorneys generally handle complaints completely from start to finish, without support from other staff. This takes time. Managing a docket of 50 cases is already difficult.

18. Now that my regional office is absorbing another regional office's docket because of the mass terminations and office closures, caseloads will be crushing and completely unmanageable. It will be impossible for the office to meet its performance targets under GPRA. And it will be impossible for my regional office to effectively address the cases that we absorbed from the now-closed regional office.

19. On top of the significantly increased docket in my regional office, other changes have also made the work unmanageable. For example, funding for travel has been cut off. Sometimes travel is essential for an investigation – for example, to meet witnesses in person, interview people with interpretation needs, or assess accessibility barriers. Being restricted from engaging in these activities impedes our ability to conduct effective investigations.

20. OCR's entire web team and translation interpretation team was also laid off. Additionally, OCR only has one Enforcement Director now, instead of the four that we used to have.

21. We are also unable to do the non-investigation work that we are supposed to do, like technical assistance. Technical assistance involves activities like community education and training for school districts. And historically, we try to return every call we get to provide the caller with guidance or information, but it would be very difficult for the office to keep doing that. As of the time that I left, we had not been provided with a plan for handling phone calls from the closed office that we inherited cases from.

22. Eliminating seven out of twelve regional offices effectively hamstrings OCR's ability to enforce federal civil rights law. The eliminated offices each served several different states and regions. And even before the offices were eliminated, we had already lost staff due to voluntary

resignations. Now, it will be nearly impossible for remaining staff to do meaningful work on their cases.

23. OCR cannot fulfill its statutorily mandated duties to investigate complaints and enforce civil rights laws in schools under these circumstances.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 29, 2025.

Signature:

Doe Declarant 8

Doe Declarant 8

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NIKKI S. CARTER, et. al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:25-cv-744-PLF
UNITED STATES DEPARTMENT OF EDUCATION, et. al,	)	
Defendants.	)	

DECLARATION OF ANDREW R. HAIRSTON

I, ANDREW R. HAIRSTON, declare as follows:

Background Information

1. I am over the age of eighteen, have personal knowledge of the facts and matters below, and am competent to testify.
2. I submit this declaration in support of the Plaintiffs' Motion for a Preliminary Injunction in the above-referenced matter.
3. I am the Education Justice Project Director at Texas Appleseed in Austin Texas. I am licensed to practice law in Texas and Louisiana. In this role, I use various tools, including administrative complaints, to advance efforts to dismantle the school-to-prison pipeline.
4. Across my career as a civil rights lawyer, I have consistently used the data and procedural tools from the U.S. Department of Education's Office for Civil Rights in my mission to

secure equal educational opportunities for historically disenfranchised groups within the United States.

5. My office provides pro bono legal services to families who are navigating the various harms of the school-to-prison pipeline, especially racially discriminatory discipline and interactions with school police officers. In my practice, I have supported families in filing administrative complaints; in my opinion, these procedural tools can be helpful for providing helpful relief for families during times of immense stress in their lives.

OCR Complaint

6. Along with my colleague, Princess Jefferson, I filed a complaint with the Dallas Office of the U.S. Department of Education's Office for Civil Rights in October 2024 on behalf of a Black teenager in Beaumont, Texas. We filed this complaint in response to a Beaumont ISD police officer beating up my client on the campus of Beaumont United High School on April 30, 2024. She filed this complaint on behalf of herself and other students.

7. We alleged that the Beaumont ISD Police Department engages in illegal racial discrimination against Black students, in violation of Titles IV and VI of the Civil Rights Act of 1964. We highlighted data from the Civil Rights Data Collection of the U.S. Department of Education's Office for Civil Rights in our complaint; during the 2020-21 academic year, all of the students who were referred to law enforcement in Beaumont ISD were Black.

8. An attorney within the Dallas Office acknowledged receipt soon after we submitted the complaint. Our client, her mother, and my colleague joined me and the OCR attorney on a call at the end of November to discuss the allegations within our complaint.

9. The OCR attorney asked helpful clarifying questions about the race of students who had been subjected to the harms of school policing within Beaumont ISD during that call. She inquired as to if any white students had - to our knowledge - experienced similar interactions with police officers. She subsequently emailed a set of questions to our office and our clients to get a better understanding of the race of the students who have been harmed by the Beaumont ISD Police Department.

10. Our office submitted a public information request to Beaumont ISD in December 2024, posing the questions articulated by the OCR attorney. The district quoted our office over $66,000 to release this information. In my opinion, this exorbitant cost estimate emphasized the need for the Office for Civil Rights to open an investigation and receive the requested information from Beaumont ISD.

11. On February 25, 2025, the OCR attorney reached out via electronic correspondence to confirm that she received our supplemental information and let me know that the complaint was still pending. On April 11, 2025, our office subsequently replied and received an automated message that the OCR attorney's employment status had changed - and all inquiries should be directed to OCR-transition@ed.gov. Our office has not received any update on the status of our complaint since February 25, 2025.

12. In my opinion, the closure of the Dallas Office of the Office for Civil Rights, and the resulting uncertain fate of our complaint, shuts off a critical avenue for relief for our

client and other Black children who have faced racial discrimination at the hands of the Beaumont ISD Police Department.

13. We intended to use this complaint, in part, to get a change in policies and procedures of the Beaumont ISD Police Department, with a focus on eliminating racial disparities in arrests and law enforcement referrals. With the uncertain nature of the complaint as of the date of the execution of this declaration, I am doubtful that the U.S. Department of Education will meaningfully address the harmful practices of the Beaumont ISD Police Department through its resolution of the complaint.

14. I spoke with our client and her mother on April 23, 2025. Our client spoke passionately about how the detrimental effects of the assault by the school police officer still linger in her life, one year later. Our client reminded me during this conversation that two Black male students, in October 2024, had a similar experience with Beaumont ISD police officers. She shared that she is still anxious that the same police department is patrolling the halls of her current campus. As she nears her graduation on May 31, 2025, she expressed frustration that the avenue of relief through the U.S. Department of Education appears to be stalled indefinitely. She is fearful that she could be subjected to such abuse again, especially without a resolution, and she is nervous about how other Black students will experience the Beaumont ISD Police Department in the years to come.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 29, 2025.

Signature:

ANDREW R. HAIRSTON