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ABSTRACT

A disproportionate number of minority students in U.S. public elementary and secondary schools are in lower-ability classes and special education programs. This has led to Congressional concern about student resegregation resulting from within-school discrimination. The Department of Education's Office for Civil Rights (OCR) is responsible for ensuring that educational institutions that receive federal funds comply with federal civil rights statutes, including Title VI of the Civil Rights Act of 1964. Title VI regulations require that OCR investigate civil rights complaints from parents and other sources, and conduct self-initiated investigations, called compliance reviews, whenever it has information of school districts' possible noncompliance. This testimony before the Senate Committee on Labor and Human Resources presents the following findings: (1) minority students are disproportionately placed in some classes in more than half of the nation's school districts; (2) OCR has not yet met the regulatory requirement for conducting compliance reviews and has insufficiently monitored school districts' corrective actions; (3) no Federal regulatory guidance exists concerning schools' ability grouping and tracking practices; and (4) determinations of discriminatory student assignment practices are inconsistent at the regional level. Recommendations are presented for Title VI regulations on appropriate class assignment and for OCR policy and procedural guidance for within-school discrimination cases. (AF)

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Testimony

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Within-School Discrimination:  
Inadequate Title VI Enforcement  
by Education's Office for Civil Rights

Statement of  
Lawrence H. Thompson  
Assistant Comptroller General  
Human Resources Division

Before the  
Committee on Labor and Human Resources  
United States Senate



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**SUMMARY OF TESTIMONY BY LAWRENCE B. THOMPSON**  
**ON OCR'S TITLE VI ENFORCEMENT REGARDING**  
**WITHIN-SCHOOL DISCRIMINATION**

A disproportionate number of minority students in our nation's public elementary and secondary schools are in lower-ability classes and special education programs. This has led to congressional concern about student resegregation resulting from within-school discrimination. The Department of Education's Office for Civil Rights (OCR) is responsible for ensuring that educational institutions that receive federal funds comply with federal civil rights statutes, including title VI of the Civil Rights Act of 1964.

Title VI regulations require that OCR (1) investigate civil rights complaints from parents and other sources and (2) conduct self-initiated investigations, which are called compliance reviews. Title VI regulations require that OCR conduct compliance reviews whenever it has information of school districts' possible noncompliance.

**EXTENT OF POSSIBLE WITHIN-SCHOOL DISCRIMINATION.** Our analysis of OCR survey data shows a disproportionate number of minority students in some classes in more than half of the nation's school districts. Our analysis of recent research findings indicates that about 10 percent, or about 1,700, of the nation's middle schools ability-group students in a possibly discriminatory manner.

**ADEQUACY OF OCR'S ENFORCEMENT.** OCR has not met the regulatory requirement for conducting compliance reviews when it has information of possible noncompliance with title VI regulations. OCR has conducted only one compliance review related to ability grouping or tracking since 1985. Regarding its complaint investigations, OCR has insufficiently monitored school districts' corrective actions; as a result, OCR has sometimes failed to determine if discriminatory practices it identified have been stopped.

**TITLE VI REGULATIONS NEEDED.** No federal regulatory guidance exists concerning schools' ability grouping and tracking practices. GAO recommends that the Secretary of Education issue title VI regulations identifying procedures schools should use to assign students to classes on the basis of academic ability or achievement level.

**OCR POLICY GUIDANCE NEEDED.** A lack of internal OCR policy guidance contributed to regional offices' inconsistency in determining if school districts' ability grouping and tracking practices are discriminatory. GAO recommends that the Secretary of Education direct the Assistant Secretary for Civil Rights to develop written policy guidance that specifies the appropriate procedures to use in investigating and resolving within-school discrimination cases.

Mr. Chairman and Members of the Committee:

Little is gained from school desegregation if minority and majority students are illegally resegregated within the school building. Currently, a disproportionate number of minority students in our nation's public elementary and secondary schools are placed in lower-ability classes and special education programs. As a result, classrooms are not nearly as well integrated as some school attendance figures might imply.

Because of their concern about student resegregation within schools, the Chairman of the House Education and Labor Committee and the Chairman of its Subcommittee on Select Education asked GAO to review the Office for Civil Rights' (OCR's) title VI enforcement activities regarding within-school discrimination. I am pleased that you have given us the opportunity to discuss the results of our review with you.

I will focus my comments today on (1) the extent of possible within-school discrimination in the nation's elementary and secondary schools; (2) the adequacy of OCR's enforcement activities regarding such discrimination--specifically OCR's ability grouping and tracking<sup>1</sup> investigations; and (3) our

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<sup>1</sup>Ability grouping and tracking are related practices by which students are assigned to groups or classes on the basis of an assessment of academic ability or achievement level. Ability grouping generally takes place in elementary schools, while tracking is found in secondary schools.

recommendations for improving OCR's enforcement activities. This information is described in more detail in our forthcoming report.

Our major points are as follows:

- OCR survey data show that many of the nation's schools have racially disproportionate classrooms, indicating possible title VI noncompliance. In addition, our analysis of research findings from Johns Hopkins University indicates that about 10 percent, or about 1,700, of the nation's middle schools ability-group students in a possibly discriminatory manner.
- OCR has not complied with its own regulations which require that it conduct compliance reviews whenever it has information of possible noncompliance in a school district. Since 1985, OCR has conducted only one compliance review related to ability grouping or tracking.
- State and local education agencies may not know which ability grouping and tracking practices are acceptable and which are not because Education has no regulations governing these practices.
- OCR regional offices' determinations of whether student assignment practices are discriminatory have been inconsistent

because OCR has issued insufficient internal policy guidance. Some ability grouping and tracking investigations we reviewed permitted practices that other OCR investigations found in violation.

- OCR has insufficiently monitored school districts' corrective actions. As a result, OCR has sometimes failed to determine if discriminatory practices it identified have been stopped.

Based on our findings, we recommend that the Secretary of Education

- issue title VI regulations that identify procedures schools should follow for assigning students to classes on the basis of academic ability or achievement level;
- direct the Assistant Secretary for Civil Rights to develop written policy guidance that specifies the appropriate procedures for OCR regional offices to use when investigating and resolving within-school discrimination cases.
- direct the Assistant Secretary for Civil Rights to enforce agency policy requiring OCR regional offices to monitor school districts until they verify that approved corrective actions have been fully implemented and have corrected identified violations.

## BACKGROUND

The Department of Education's Office for Civil Rights is responsible for ensuring that educational institutions that receive federal funds comply with federal civil rights statutes, including title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination on the basis of race, color, and national origin.

Title VI regulations require that OCR (1) investigate civil rights complaints from parents and other sources and (2) conduct self-initiated investigations, which are called compliance reviews. About 350 investigators in OCR's 10 regional offices conduct both kinds of investigations. Title VI regulations require that OCR conduct compliance reviews whenever it has information of school districts' possible noncompliance.

Schools assign students to ability-grouped classes using a variety of practices. If done in a nondiscriminatory manner, ability grouping can be an appropriate way of providing instruction for students with diverse abilities. When OCR investigates whether a school's ability-grouping practice violates title VI, it usually first determines if the number of minority students in lower-ability classes is sufficiently disproportionate to warrant further investigation. If so, OCR then assesses whether the ability-grouping practice is educationally justified according to certain criteria. A

violation is found and corrective action sought if the practice cannot be educationally justified. OCR investigators have frequently used three criteria in examining ability-grouping practices. OCR has generally found an ability-grouping practice to be educationally justified when the grouping is

-- based on nondiscriminatory objective measures that are educationally relevant for the purpose of the grouping,

-- determined by the nondiscriminatory application of the measures, and

-- validated by test scores or other reliable objective evidence indicating the educational benefits of the grouping.

If an investigation finds that an ability-grouping practice does not meet the three criteria, OCR generally finds the school district to be in violation of title VI regulations. When a violation is found, OCR usually enters into an agreement with the district on corrective actions that must be taken. After such an agreement is reached, OCR policy guidance requires regional offices to monitor the school district until OCR verifies that a district's corrective actions have been fully implemented and have corrected the violation(s). If an agreement cannot be reached, Education is authorized to withhold the district's federal financial assistance.



## SCOPE AND METHODOLOGY

At the request of the Chairman of the House Committee on Education and Labor and the Chairman of its Subcommittee on Select Education, we assessed (1) the extent of possible within-school discrimination and (2) the adequacy of OCR's enforcement activities in eliminating such discrimination in elementary and secondary schools. We focused our study on enforcement activities relating to ability grouping and tracking.

In conducting our study, we reviewed and analyzed existing research evidence, analyzed OCR enforcement statistics, reviewed applicable OCR written policy guidance, conducted surveys of OCR investigators and regional directors, and reviewed case files on within-school discrimination investigations. The surveys pertained to OCR enforcement activities during fiscal years 1983-89. The case files we reviewed pertain to investigations closed during the same period.

## STUDY RESULTS

### **Evidence of Possible Within-School Discrimination**

In February 1990, the Acting Assistant Secretary for Civil Rights reported that the OCR survey data indicate school districts' possible noncompliance with title VI regulations. Our analyses of the 1986 survey data--the most recent available--show a

disproportionate number of minority students in some classes in more than half of the nation's school districts.

In addition, our analysis of research conducted at Johns Hopkins University indicates that about 10 percent, or about 1,700, of the nation's middle schools assign students to ability-grouped classes for all academic subjects with no regrouping to reflect students' differential ability in various subjects. As a result, ability-grouped students remain with the same classmates throughout the day. OCR has found that ability grouping in this manner is discriminatory when it results in disproportionate numbers of minority students being assigned to lower-ability classes.

**Number of Within-School  
Discrimination Compliance  
Reviews has Declined**

The number of OCR's self-initiated compliance reviews is not commensurate with the evidence of possible within-school discrimination in the nation's schools. OCR has conducted only one title VI compliance review related to ability grouping and tracking since 1985. Compliance reviews related to all within-school discrimination issues<sup>2</sup> have declined during fiscal years 1983-90. During this period, the total number of such

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<sup>2</sup>These include ability grouping, tracking, counseling and tutoring, discipline, assignment of limited English proficient students, and assignment of students to gifted and talented and special education programs.

compliance reviews ranged from 60 in fiscal year 1987 to 7 in fiscal year 1990. OCR attributes this reduction to a lack of resources and a rising complaint investigation workload.

**Regulations and Policy  
Guidance for Within-School  
Discrimination Lacking**

Title VI regulations contain no provisions concerning the practices schools should use in assigning students to classes on the basis of academic ability or achievement level.

Consequently, state and local education agencies lack specific federal regulatory guidance regarding ability-grouping and tracking practices. Previous education regulations, however, implementing the Emergency School Aid Act of 1976, had specified allowable practices. These regulations were removed in 1981, however, when the Emergency School Aid program was consolidated into a single block grant with other categorical grant programs under the Education Consolidation and Improvement Act. The regulations had required, among other things, that ability-grouping practices meet the three criteria that OCR regional offices frequently use for determining if ability-grouping practices are educationally justified.

Furthermore, OCR has issued little written policy guidance for its regional offices to follow in within-school discrimination investigations. The lack of internal OCR guidance contributed to inconsistencies we found in how regional offices investigated and

resolved ability-grouping and tracking cases. For example, OCR regional offices were inconsistent in how they determined if (1) the number of minority students in lower-ability classes was sufficiently disproportionate to warrant further investigation and (2) ability-grouping practices were educationally justified. Some ability-grouping and tracking investigations we reviewed permitted practices that other OCR investigations found violated title VI regulations.

#### **Monitoring Often Delayed and Sometimes Incomplete**

Even when discriminatory practices were identified and corrective actions were agreed to, OCR may have allowed discriminatory student assignment practices to persist because of insufficient monitoring. OCR's monitoring of school districts' corrective actions was often delayed, sometimes never completed, and frequently considered by regional office staff to be low priority. For example, in 11 of the 15 ability-grouping or tracking complaint investigations requiring monitoring that we reviewed, the regional offices did not complete their reviews of districts' monitoring reports until 3 months or more after they were received by OCR. These delays often ranged between 8 and 16 months. Further, in four cases, we were unable to find evidence that the required monitoring was completed or that discriminatory student assignment practices were stopped. OCR investigators reported that monitoring was not a high priority because of a greater emphasis was given to completion of

complaint investigations. Without timely and complete monitoring, OCR cannot determine if school districts' corrective actions are sufficient to correct identified discriminatory practices.

**OCR's Current Plans to  
Improve Title VI Enforcement**

OCR announced a national enforcement strategy in December 1990 that makes several within-school discrimination issues, including ability grouping, a high priority. This enforcement strategy also includes plans to develop written policy guidance for regional offices to use in investigating title VI issues and improve monitoring practices. OCR has informed us that these planned actions are currently being implemented. We believe that OCR's plans, as presented in their national enforcement strategy, are steps in the right direction.

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This concludes my statement. I will be glad to answer any questions you and the other members of the Committee may have.