

# CENTER FOR LAW AND EDUCATION

[www.cleweb.org](http://www.cleweb.org)

105 Chauncy Street, 6<sup>th</sup> floor, Suite 3  
Boston, MA 02111  
(617) 451-0855  
[kboundy@cleweb.org](mailto:kboundy@cleweb.org)

7011 8<sup>th</sup> Street, NW  
Washington, DC 20012  
(202) 986-3000  
[pweckstein@cleweb.org](mailto:pweckstein@cleweb.org)

## Outgoing Trump Administration Moves to Eliminate Core Civil Rights Provision

The outgoing Trump administration is rushing to issue a final rule, revising the regulations under Title VI of the 1964 Civil Rights Act, that would end the long-standing capacity of the federal government to ensure that recipients of federal funds eliminate unnecessary policies and practices that have the *effect* of discriminating on the basis of race, color, or national origin. Instead, recipients would no longer have that responsibility, and the federal government would be limited to enforcing Title VI only if the recipient *purposely intended* to discriminate.

Under the “disparate impact” analysis available to the federal government currently, policies and practices that have disproportionate impact on the basis of race, color, or national origin are not illegal *per se*, but they place a burden on the recipient to demonstrate that the policy or practice is necessary to accomplish an important, legitimate purpose. Further, if the recipient can demonstrate that necessity, there is a second requirement: if there is an alternative way of accomplishing that purpose with less discriminatory impact, it must be used instead.

Terminating the responsibility and affirmative obligation of school systems and educational institutions to avoid or change unnecessary policies or practices that have disproportionate impact and perpetuate inequality is a major, nationwide step backward in the struggle to ensure equal educational opportunity for all. The rule also will end this non-discrimination responsibility for other recipients of federal funding, outside of education (though it does not affect disparate impact claims of discrimination in employment under Title VII of the 1964 Civil Rights Act).

The Department of Justice sent the revision to the Office for Management and Budget (OMB) for its approval. The rush to lock in the regulation before Inauguration Day has led the administration to cut corners.

- First, rather than the normal route of publishing a proposed regulation for public comment, after which the agency summarizes and addresses the public comments, it is issuing a final rule – a legally dubious move, and all the more so with a regulation of such serious impact.
- Second, when a rule goes to OMB for approval, there is an opportunity to meet with and present views to OMB staff. Many organizations, including the Center for Law and Education, requested such meetings. But on Friday, January 8<sup>th</sup>, after meeting with just a handful of organizations, OMB told the others – including some whose appointments had been scheduled – that further meetings were cancelled because OMB had finished its review.

You can expect the final rule to be published before January 20<sup>th</sup>, followed by legal action challenging it and, if not struck down by courts, efforts to reverse it under the new administration.

On Tuesday, January 12<sup>th</sup>, the Democratic Chairs of three House Committees (Judiciary, Education and Labor, and Oversight and Reform) sent a letter to OMB and the Acting Attorney General condemning the move. <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=3491>.