

Enforcement Priorities at the Office of Civil Rights and at the DOJ Civil Rights Division

A discussion of current priorities at DOJ Civil Rights Division and the Office of Civil Rights at the Department of Education. Officials from each department and advocates will discuss the major areas in need of increased attention and enforcement.

Anurima Bhargava, *Chief*, Educational Opportunities Section, Civil Rights Division at Department of Justice

Randolph Wills, *Enforcement Director*, Office for Civil Rights, Department of Education

Elizabeth Haddis, *Staff Attorney*, UNC Center for Civil Rights

Joshua Civin, *Counsel to the Director of Litigation*, NAACP Legal Defense and Education Fund (moderator)

The current Administration has emphasized the importance of enforcement and compliance with civil rights laws. Given the decisions of the Supreme Court, private actors are limited in their ability to encourage voluntary civil rights enforcement. Hence, the government possesses a great responsibility in implementing its rhetoric of increased attention to civil rights issues.

Randolph Wills spoke first about the progress OCR was making in its compliance reviews, which are OCR-initiated investigations of broad-based, significant civil rights issues in the nation. Wills documented the extraordinarily high number of reviews OCR had engaged in since 2010 and spoke of a shifted focus in the nature of the reviews. In the past, he stated, OCR had focused exclusively on formulaically examining policies and procedures, largely in the context of disability claims. Now, however, OCR compliance reviews are simultaneously deeper in depth and wider in scope. For example, college/career readiness, seldom investigated prior to the current administration, are now being investigated in over fifteen compliance reviews. Other current focus areas in compliance reviews include violence, athletics Title IX, sexual harassment, gender-nonconformity harassment, and for the first time, disability-based harassment.

Anurima Bhargava explained how the Educational Opportunities Section in the Civil Rights Division at DOJ contributed to civil rights enforcement by taking on a number of segregation complaints, largely under Title IV. Right now, there are about two hundred desegregation cases on the EOS docket, but many do not resemble traditional desegregation cases. In addition to segregation on the basis of race and associated characteristics, EOS addresses segregation on the basis of sex, gender stereotyping, disability, language skills, and immigration status.

Elizabeth Haddis raised the issue of what happens to local organizations and community members once OCR or DOJ begins to investigate their complaints. Sometimes, a complaint can trigger a compliance review, at which point the complaint is subsumed, and the individuals are no longer part of the case. However, even when a complaint does not trigger a compliance review, local parties are not always aware of their role in the ongoing process. Haddis inquired how advocates and clients could remain involved and informed in their cases. Wills and Bhargava both insisted that local parties are important to the investigative process, particularly to the extent that they perform information-gathering functions on the ground. Later in the discussion, given audience interest in how communities and civic organizations could participate

in information-sharing, Bhargava stated that DOJ would appreciate input regarding appropriate remedies.

The conversation then shifted to desegregation and the 2011 *Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools*, put forth jointly by the two Departments.¹ The guidance explains that districts can have a compelling interest in diversity in their schools and can have flexibility in the manner in which they support that interest. According to Bhargava and Wills, the Departments are in the midst of providing technical assistance regarding how districts can use the guidance and how the Departments view the state of the law on voluntary efforts to increase diversity in schools. Haddis and audience members requested additional guidance to clear up misunderstandings regarding the scope of districts' affirmative obligations in the absence of affirmative desegregation orders.

At this point, Civin opened the conversation to the audience, who raised a number of concerns. When schools are so worried about reverse discrimination that they're ready to settle for traditional discrimination, is there a way for private actors to get involved? (Yes, through the OCR or DOJ complaint process, but the Departments are short-staffed for their large dockets). Are there ways to make existing desegregation orders regarding African Americans in the South applicable to Hispanics? (In short, no.) Is OCR holding off on making findings of violations against districts in scenarios without an easy remedy? (Absolutely not. Sometimes remedies come after the finding.) What are DOJ and OCR doing to train investigators on disparate impact, given its renewed presence in the conversation? (Extensive training, and often investigators looking into disparate impact will find disparate treatment as well.)

Lastly, the panelists addressed efforts to provide community assurance in monitoring after the completion of the compliance review or complaint agreement. Wills emphasized an aggressive, on-site approach, and Bhargava highlighted the value of community involvement. After the session formally ended, many audience members rushed forward to further discuss their concerns, while others seemed satisfied that the government was working effectively to match its rhetoric with action.

¹ <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf>