

**Written Testimony of Michael N. Turnage Young,
Senior Counsel and Co-Manager of the Equal Protection Initiative,
NAACP Legal Defense and Educational Fund, Inc.**

**Submitted to the
U.S. House of Representatives Committee on Education and Workforce's
Subcommittee on Early Childhood, Elementary, and Secondary Education
in connection with the April 28, 2026 Hearing Entitled "Leveling Down:
How Equity Policies Undermine Excellence and Harm Students."**

Good morning Chairman Kiley, Ranking Member Bonamici, and other distinguished members of the Subcommittee on Early Childhood, Elementary, and Secondary Education. Thank you for the opportunity to testify. My name is Michael N. Turnage Young. I serve as Senior Counsel and Co-Manager of the Equal Protection Initiative of the NAACP Legal Defense and Educational Fund, Inc. ("LDF"). Founded by our nation's first Black U.S. Supreme Court Justice, Thurgood Marshall, LDF is America's premier law organization fighting for racial justice. Since 1940, LDF has been working to help the nation achieve its loftiest goals by advancing equal opportunity in all areas of society, including in education.

I. Schools Must Develop the Talents of All of America's Children.

As a nation, we cannot afford to forgo the benefits of the talents of any of our children, including our Black, Latinx, Indigenous, Asian American, and Pacific Islander students, students with disabilities, LGBTQIA+ students, immigrant students, and other historically underserved populations. Our national security, our ability to compete in a global economy with scientific and technological innovation, and the health of our multi-racial democracy depend on producing leaders, workers and a well-educated, civically-engaged citizenry capable of navigating and thriving in our increasingly racially diverse society. To protect our nation's future, our children must have the opportunity to fulfill their potential through equal access to a quality public education.

In the historic U.S. Supreme Court decision *Brown v. Board of Education*, which LDF litigated and won, Chief Justice Earl Warren wrote on behalf of a unanimous Court that an equal public education was "perhaps the most important function of state and local governments" and "the very foundation of good citizenship."¹ Good citizenship requires a quality educational experience that respects the intelligence, dignity, and humanity of *all* students.² In *Brown*, Chief Justice Warren further described education as "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."³ "Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."⁴

¹ *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

² *Id.*

³ *Id.*

⁴ *Id.*

Every child should have equal access to a quality public education, regardless of their income, where they are growing up, or their racial and ethnic background. Indeed, our constitutional principle of equal protection under the law mandates that school districts, states and the federal government provide equal educational opportunities for all students. Yet, in a startling abdication of that responsibility, this administration has attacked policies and practices that are both legal and necessary to ensure that all students are afforded equal educational opportunities. Efforts to remedy the vestiges of *de jure* segregation or remove obstacles that unfairly deny Black students a fair chance to compete for admission to selective programs; instruction about systemic racism; programming, training, and affinity groups that support students of color have long been recognized as legal. Moreover, these efforts ultimately benefit all students and advance academic excellence for all. Rather than attacking lawful efforts to advance equal educational opportunity, LDF urges Congress to carry out its constitutional mandate and actively work to ensure equity and academic excellence in our public education system by preventing the dismantling of the Department of Education, ensuring adequate funding for critical programs that help ensure that students enjoy equal educational opportunities, and preventing the privatization of public education.

II. Many Students Are Unfairly Denied an Equal Opportunity to Get a Quality K-12 Education.

Talent is everywhere, but opportunity is not. The experience of many Black students is instructive. For centuries, Black students have faced barriers that have unfairly denied them equal access to educational resources and opportunities. Indeed, Black students are over 2.8 times more likely to attend school in a chronically underfunded district than white and Asian American students.⁵ “Black students are more likely to attend schools that have high percentages of novice teachers in almost every state across the country.”⁶ In addition, 58% of Black students attend majority minority schools, or schools in which the combined enrollment of minority students is at least 75% of total enrollment.⁷ Such schools, particularly those where the majority of students are Black and Latinx, often lack high quality resources and facilities and report significant disparities in academic outcomes.⁸ In addition, Black students are less likely

⁵ Bruce D. Baker et al., *The Adequacy and Fairness of State School Finance Systems*, Sch. Fin. Data Database 18 (6th ed. 2024), <https://www.schoolfinancedata.org/the-adequacy-and-fairness-of-state-school-finance-systems-2024/>.

⁶ Press Release, EdTrust, *As Districts Face Teacher Shortages, Black and Latino Students Are More Likely to Have Novice Teachers Than Their White Peers* (Dec. 15, 2021), <https://edtrust.org/press-room/as-districts-face-teacher-shortages-black-and-latino-students-are-more-likely-to-have-novice-teachers-than-their-white-peers/>.

⁷ *Racial/Ethnic Enrollment in Public Schools*, in *The Condition of Education 2020* 32, 34, (Inst. Educ. Scis. 2020), https://nces.ed.gov/programs/coe/pdf/coe_cge.pdf.

⁸ See Ed Trust, *supra* note 6; Roslyn Arlin Mickelson, *School Integration and K-12 Outcomes: An Updated Quick Synthesis of the Social Science Evidence*, Nat’l Coal. on Sch. Diversity (Oct. 2016) <https://eric.ed.gov/?id=ED571629>; Chris Hacker et al., *Majority-Black School Districts Have Far Less Money to Invest in Buildings — and Students Are Feeling the Impact*, CBS News (Sept. 14, 2023), <https://www.cbsnews.com/news/black-school-districts-funding-statebudgets-students-impact/>; Roby Chatterji et al., *Closing Advanced Coursework Equity Gaps for All Students*, Ctr. for Am. Progress (Jun. 30, 2021), <https://www.americanprogress.org/article/closing-advanced-coursework-equity-gaps-students/>.

to have access to Advanced Placement and International Baccalaureate coursework as well as dual enrollment or dual credit programs.⁹ Moreover, only “50 percent of all high schools offer calculus, [and] only 38 percent of high schools with predominantly Black or Latinx enrollment offer calculus.”¹⁰ It is perhaps unsurprising that given this uneven access to the course, only 6% of Black high school students and 9% of Latinx high school students take Calculus, while 18% of white high school students and 46% of Asian American high schoolers do.¹¹ “[A]ccording to a 2021 study, 29 percent of high schools in the country don’t offer the courses required for admission to STEM disciplines at their state’s public flagship universities.”¹² Even Black students who attend integrated, well-resourced schools are taught by teachers who are less likely to call on them in class, or to encourage and recommend them for college preparatory courses.¹³ And though Black students do not misbehave more than other students,¹⁴ Black students are disciplined at disproportionately higher rates.¹⁵ This disparity has been linked to a wider achievement gap between Black and white students.¹⁶ In light of these and other well-documented disparities in educational opportunity that adversely affect many students, including Black students, lawful efforts to advance equal educational opportunity must be supported.

III. The Trump Administration’s Attacks on Lawful Efforts to Advance Equal Educational Opportunity Are Preventing Students from Achieving Excellence.

Misguided attacks on lawful efforts to remedy racial discrimination and advance equal opportunity are an abdication of the government’s responsibility to uphold and enforce anti-discrimination laws. For example, the Equal Protection principles

⁹ Nat’l Ctr. for Educ. Stat., *Instit. of Educ. Sci., U.S. Dep’t of Educ., NCES 2019-430, Advanced Placement, International Baccalaureate, and Dual-Enrollment Courses: Availability, Participation, and Related Outcomes for 2009 Ninth-Graders: 2013* (2019), <https://nces.ed.gov/pubs2019/2019430.pdf>; Chatterji et al., *supra* note 8.

¹⁰ Veronica Anderson & Pamela Burdman, *A New Calculus for College Admissions: How Policy, Practice, and Perceptions of High School Math Education Limit Equitable Access to College*, Just Equations & NACAC, January 2022, 644aec77a5f4e9c3f54efc28_New-Calc-College-Admissions-FINAL-update-4-23.pdf

¹¹ Pamela Burdman, Rafael Heller, and Melodie Baker, *The Limits Of Calculus: Revisiting The Role Of Math Education In College Admissions* 6, Just Equations & Nat’l Ass’n of College Admissions Counseling (Dec. 2024), https://cdn.prod.website-files.com/61afa2b5ded66610900a0b97/674e10d56c6d7066cfaf20cd_JE_DEC%202024_THE%20LIMIT%20OF%20CALCULUS.pdf

¹² Anderson et al., *supra* note 10.

¹³ Amanda E. Lewis & John B. Diamond, *Despite the Best Intentions: How Racial Inequality Thrives in Good Schools* 95–96 (Oxford Univ. Press 2015); Chatterji, *supra* note 8.

¹⁴ Russell J. Skiba & Natasha T. Williams, *Are Black Kids Worse? Myths and Facts About Racial Differences in Behavior: A Summary of the Literature* 4, The Equity Project at Ind. Univ. (Mar. 2014), https://indrc.indiana.edu/tools-resources/pdf-disciplineseries/african_american_differential_behavior_031214.pdf; Off. for C.R., U.S. Dep’t of Educ., 2013–2014 Civil Rights Data Collection: A First Look 1, 3 (2016), <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

¹⁵ Jayanti Owens and Sara S. McLanahan, *Unpacking the Drivers of Racial Disparities in School Suspension and Expulsion*, 98 SOC. FORCES 1548 (May 19, 2021), <https://doi.org/10.1093/sf/soz095>.

¹⁶ Francis A. Pearman et al., *Are Achievement Gaps Related to Discipline Gaps? Evidence From National Data*, 5 AM. EDUC. RSCH. ASS’N OPEN (Oct. 2019), <https://doi.org/10.1177/2332858419875440>.

embedded in the Fifth and Fourteenth Amendments to the United States Constitution guarantee all equal protection of the law.¹⁷ Title VI of the Civil Rights Act of 1964 (“Title VI”) prohibits discrimination on the basis of race, color, or national origin.¹⁸ Despite recent legal and political challenges, civil rights protections remain intact and critical in the lives of everyday people. These laws do not, of course, categorically prohibit efforts to remedy discrimination. These laws also do not prohibit efforts to advance equal opportunity. Attempts by the federal government or others to malign such efforts are wrong.

There is no basis for the federal government’s narrative that “equity policies” or “diversity, equity, and inclusion” are somehow categorically discriminatory. Rooted in decades of efforts to achieve equality for all, diversity, equity, inclusion, and accessibility efforts have helped open doors for millions of Americans by addressing discrimination and expanding opportunity. Well-designed diversity, equity, inclusion, and accessibility programs are not only legal, but help employers, schools, and others prevent discrimination and ensure that everyone, regardless of race, gender, sexual identity, religion, creed, disability status, national origin, and more, has equal access to opportunity.

“Diversity, equity, inclusion, and accessibility” policies do, in fact, help everyone. For example, some students—including many white students attending rural schools and many Asian American students—have relatively few educational opportunities compared to peers who attend more well-resourced schools. These students benefit from the many of the same “diversity, equity, and inclusion” policies that help ensure that Black, Latinx, and Native American students are afforded equal educational opportunities (e.g., outreach programs, mentorship programs, funding for school mental health supports, admissions policy changes that abolish application fees, nix teacher recommendations, and consider an applicant’s opportunity to learn).¹⁹

In practice, educational institutions, workplaces, health care systems, the military, and more have used diversity, equity, inclusion, and accessibility to develop programs and policies that are rooted in fairness and responsive to everyone’s needs. Diversity, equity, inclusion, and accessibility initiatives help ensure that all of us, regardless of where one lives, who one is, or what social or environmental barriers one

¹⁷ U.S. CONST. AMEND. XIV. *See also* *Bolling v. Sharpe*, 347 U.S. 497 (1954).

¹⁸ *See* 42 U.S.C. § 2000d et seq.

¹⁹ *See, e.g.,* Anna Chiang et al., *(Mis)Labeled: The Challenge of Academic Capital Formation for Hmong American High School Students in an Urban Setting*, J. Se. Asian Am. Educ. & Advancement, 2015, at 1, 10 (“Some researchers have found that Hmong American students have been tracked into lower level courses and were held to low expectations by their teachers”); David M. Lee et al., *Academic Needs and Family Factors in the Education of Southeast Asian American Students: Dismantling the Model Minority Myth*, J. Se. Asian Am. Educ. & Advancement, 2017, at 1, 8, <https://docs.lib.purdue.edu/jsaaea/vol12/iss2/2> (noting that many Southeast Asian students do not have access to after-school activities); Cory Turner, *Education Department stops \$1 billion in funding for school mental health*, NPR (May 1, 2025) (noting that a rural school district was harmed when funding for school mental health was cut), <https://www.npr.org/2025/05/01/nx-s1-5382582/trump-school-mental-health>.

faces, can receive fair treatment and fair access to the resources necessary to actually have equal access to opportunities.

Indeed, such efforts have long been understood, including by the first Trump administration, to help institutions comply with the Constitution and federal anti-discrimination laws. For example, in agreeing to resolve investigations by the U.S. Department of Education’s (“ED”) Office for Civil Rights (“OCR”) related to intentional discrimination, including hostile environments based on race, schools have often implemented diversity, equity, and inclusion practices to remedy discrimination and foster a more positive and inclusive school climate.²⁰ These include resolution agreements drafted by OCR during the first Trump Administration.²¹

A. *Courts have enjoined Trump Administration attacks on lawful efforts to advance equal educational opportunity.*

Federal courts have blocked ill-advised attempts by the federal government to chill lawful efforts to advance equal educational opportunity. This includes in cases in which LDF secured preliminary injunctions against ED.²²

1. *Multiple federal courts declared ED’s attempt to prohibit “equity policies” unlawful.*

First, in a sharp break from previous federal government guidance,²³ ED’s OCR issued policy documents in February and April 2025 to advance an interpretation of Title VI unsupported by statute or case law. In a February 14, 2025 Dear Colleague Letter,²⁴ February 28, 2025 Frequently Asked Questions Document,²⁵ and an April 3,

²⁰ See Off. for C.R., U.S. Dep’t of Educ., Fact Sheet: Diversity & Inclusion Activities Under Title VI (Jan. 2023), https://www.saveyourvi.org/_files/ugd/fed74f_f83be2e4e31141adaffb41d1c15307c7.pdf (removed from ED OCR website).

²¹ See Off. for C.R., U.S. Dep’t of Educ., Resolution Agreement for Maple Run Unified School District (July 2018), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/investigations/more/01171319-b.pdf> (requiring remedies for a racially hostile environment, including racial bias training for staff, consultation with an equity coordinator, and changes to school grievance processes).

²² See *Mid-Atl. Equity Consortium v. U.S. Dep’t of Educ.*, 793 F. Supp. 3d 166, 198 (D.D.C. 2025); *Nat’l Ass’n for Advancement of Colored People v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 53 (D.D.C. 2025); *Am. Fed’n of Tchrs. v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 584 (D. Md. April 24, 2025); *Nat’l Educ. Ass’n v. Dep’t of Educ.*, 779 F. Supp. 3d 149 (D.N.H. 2025).

²³ See Off. for C.R., U.S. Dep’t of Educ., Fact Sheet: Diversity & Inclusion Activities Under Title VI (Jan. 2023), https://www.saveyourvi.org/_files/ugd/fed74f_f83be2e4e31141adaffb41d1c15307c7.pdf (removed from ED OCR website) and Off. for C.R., U.S. Dep’t of Educ., Race and School Programming Dear Colleague Letter (Aug. 2023), <https://www.naacpldf.org/wp-content/uploads/Race-and-School-Programming-Dear-Colleague-Letter-2023.pdf> (removed from ED OCR website).

²⁴ Off. for C.R., U.S. Dep’t of Educ., Dear Colleague Letter (Feb. 14, 2025), <https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf>.

²⁵ Off. for C.R., U.S. Dep’t of Educ., Frequently Asked Questions About Racial Preferences and Stereotypes Under Title VI of the Civil Rights Act (Feb. 28, 2025), <https://www.ed.gov/media/document/frequently-asked-questions-about-racial-preferences-and-stereotypes-under-title-vi-of-civil-rights-act-109530.pdf>.

2025 Certification Request²⁶ (collectively, “2025 ED Guidance”), ED claimed to prohibit instruction about systemic racism; programming, training, and affinity groups that support Black students; and efforts to remove obstacles that unfairly deny Black students a fair chance to compete for admission to selective programs. In the 2025 ED Guidance, OCR threatened institutions with a withholding of all federal funding if they violated the terms of the 2025 ED Guidance, even though the 2025 ED Guidance did not include sufficient guidance and definitions to enable institutions to assess compliance.

The 2025 ED Guidance misconstrued decades of Title VI and constitutional case law and, as multiple federal courts found, these documents themselves violated the law. LDF, on behalf of the NAACP, filed a lawsuit challenging the promulgation of the 2025 ED Guidance.²⁷ The American Federation of Teachers and the National Education Association, represented by their legal counsel at the ACLU and Democracy Forward, filed parallel lawsuits.²⁸ On April 24, 2025, federal judges in three district courts issued preliminary injunctions prohibiting ED from enforcing its 2025 ED Guidance.²⁹ On August 14, 2025, one of those courts struck down and vacated the Letter and Certification requirement as unconstitutional.³⁰

These courts found legal infirmities at the heart of each of these documents. Among other shortfalls, the 2025 ED Guidance was found to be unconstitutionally vague, overly restrictive of protected speech, and inconsistent with existing case law interpreting the bounds of Title VI.³¹ In LDF’s lawsuit, *NAACP v. U.S. Department of Education*, Judge Friedrich stated in her oral ruling, “here, the certification requirement threatens serious consequences for schools’ failure to comply with vaguely-defined prohibitions on DEI initiatives ... The Court finds that threatening penalties under those legal provisions, without sufficiently defining the conduct that might trigger liability, violates the Fifth Amendment’s prohibition on vagueness.”³² On February 6, 2026, NAACP settled its lawsuit with ED after the agency agreed not to rely on or enforce the substance of the 2025 ED Guidance in investigations or enforcement procedures, and

²⁶ Off. for C.R., U.S. Dep’t of Educ., Reminder of Legal Obligations Undertaken in Exchange for Receiving Federal Financial Assistance and Request for Certification under Title VI and SFFA v. Harvard (Apr. 3, 2025), <https://www.ed.gov/media/document/reminder-of-legal-obligations-undertaken-exchange-receiving-federal-financial-assistance-and-request-certification-under-title-vi-and-sffa-v-harvard-april-3.pdf>.

²⁷ See *Nat’l Ass’n for the Advancement of Colored People v. U.S. Dep’t of Educ.*, No. 25-cv-1120 (D.D.C. 2025).

²⁸ See *Am. Fed’n of Tchrs. v. U.S. Dep’t of Educ.*, No. 1:25-cv-00628 (D. Md. 2025) and *Nat’l Educ. Ass’n v. U.S. Dep’t of Educ.*, No. 1:25-cv-00091 (D.N.H. 2025).

²⁹ *Nat’l Ass’n for Advancement of Colored People v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 53 (D.D.C. 2025); *Am. Fed’n of Tchrs. v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 584 (D. Md. April 24, 2025); *Nat’l Educ. Ass’n v. Dep’t of Educ.*, 779 F. Supp. 3d 149 (D.N.H. 2025).

³⁰ *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 796 F. Supp. 3d 66 (D. Md. 2025).

³¹ See generally *Nat’l Ass’n for Advancement of Colored People v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 53 (D.D.C. 2025); *Am. Fed’n of Tchrs. v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 584 (D. Md. 2025); *Nat’l Educ. Ass’n v. Dep’t of Educ.*, 779 F. Supp. 3d 149 (D.N.H. 2025); *Am. Fed’n of Tchrs. v. Dep’t of Educ.*, 796 F. Supp. 3d 66 (D. Md. 2025).

³² *Nat’l Ass’n for Advancement of Colored People v. U.S. Dep’t of Educ.*, 779 F. Supp. 3d 53, 66 (D.D.C. 2025).

not to reinstate the certification demand in substance or under a different name.³³ This settlement was approved by the court.³⁴

2. A court has blocked ED’s attempt to defund equity assistance centers.

In another case, LDF sued the Administration on behalf of the NAACP and the Mid-Atlantic Equity Consortium, Inc. (“MAEC”). This case challenges ED’s unlawful elimination of the federal equity assistance center program (“EAC program”) and related grants. Since 1964, Congress has appropriated critical funding to equity assistance centers, like MAEC, to support the efforts of state education agencies, school districts, and students to comply with the Constitution and federal civil rights laws.

Title IV directs ED to provide technical assistance to facilitate public school desegregation initiatives,³⁵ and to “arrange, through grants or contracts, ... institutes for special training designed to improve the ability of [school personnel] to deal effectively with special educational problems occasioned by desegregation.”³⁶ Pursuant to Title IV, ED established the EAC Program, through which ED “operates a competitive grant process for organizations to seek funding to provide desegregation assistance to school districts and local educational agencies.”³⁷ EAC Program grantees are called “Equity Assistance Centers” or “EACs,” and these EACs help schools “develop[] effective strategies to ensure all students have a full opportunity to participate in educational programs.”³⁸ The “desegregation assistance” that EACs provide “may include, among other activities, (1) dissemination of information regarding effective methods of coping with special educational problems occasioned by desegregation; (2) assistance and advice in coping with these problems; and (3) training designed to improve the ability of teachers, supervisors, counselors, parents, community members, community organizations, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation.”³⁹

LDF’s lawsuit challenged ED’s decision on February 13, 2025 to abruptly and arbitrarily terminate funding to MAEC and other EAC grantees, robbing EACs of the resources needed to continue helping schools prevent and remedy ongoing discrimination on the basis of race, national origin, gender, and religion. On July 30, 2025, a federal district court granted a preliminary injunction to block ED’s abrupt and

³³ Press statement, *Black Students and Parents Reach Victory in Challenge to Education Department’s Anti-Opportunity “Dear Colleague Letter”* (Feb. 9, 2026), <https://naacpldf.org/press-release/black-students-and-parents-reach-victory-in-challenge-to-education-departments-anti-opportunity-dear-colleague-letter/>.

³⁴ *Id.*

³⁵ See 42 U.S.C. § 2000c-2.

³⁶ 42 U.S.C. § 2000c-3.

³⁷ 34 C.F.R. §§ 270.1-270.5, 270.7.

³⁸ Applications for New Awards: Equity Assistance Centers, 87 Fed. Reg. 8564, 8564 (Feb. 15, 2022).

³⁹ 34 C.F.R. § 270.4(c) (2025).

unlawful termination of the EAC grants.⁴⁰ This decision and an earlier related ruling⁴¹ restored critical funding to the EAC programs, which often help and provide critical resources to school districts that are implementing OCR or court-ordered plans designed to remedy past unlawful racial discrimination.

3. ED’s attacks on research on educational inequity are the subject of an ongoing legal challenge.

In addition, LDF sued the U.S. Secretary of Education Linda McMahon on behalf of the National Academy of Education and the National Council on Measurement in Education, seeking relief from ED’s cancellation of approximately \$900 million in contracts related to work done by the Institute for Education Sciences—which is responsible for collecting and making public a range of education-related data. The lawsuit also challenges the reduction of the Institute for Education Sciences by 90% and ED’s announcement that it would refuse to process licenses for researchers to access restricted-use data. LDF has since defeated a motion to dismiss the lawsuit.⁴² The Court held that plaintiffs plausibly alleged that ED acted arbitrarily and capriciously by cancelling studies, acting contrary to the law, and failing to meet statutory obligations to gather and share data.⁴³

The data at issue in this lawsuit is critical to Plaintiffs’ and their members’ research on educational inequality in access to resources, opportunities, support, and outcomes. Without this data, Plaintiffs and their members cannot continue their study of the practices, programs, and policies that work to improve opportunities and outcomes for all students, including students with disabilities; English language learners/multilingual learners; Black, Latinx, and Native American students; and socioeconomically disadvantaged students.

B. The Trump Administration has abandoned its constitutionally required mandate to end segregation.

In *Brown v. Board of Education*, a unanimous Supreme Court held that “Separate educational facilities are inherently unequal.”⁴⁴ Yet, more than seventy years after the Supreme Court’s landmark ruling in *Brown*, the imperative of eliminating all vestiges of *de jure* segregation (segregation mandated by law) in our schools has yet to be fulfilled.

LDF represents thousands of Black schoolchildren and their parents in school desegregation cases across the country. For decades, such families have taken the lead in advancing solutions that will improve conditions for all. Indeed, LDF is proud to stand

⁴⁰ *Mid-Atl. Equity Consortium v. U.S. Dep’t of Educ.*, 793 F. Supp. 3d 166, 198 (D.D.C. 2025).

⁴¹ *S. Educ. Found. v. U.S. Dep’t of Educ.*, 784 F. Supp. 3d 50 (D.D.C. 2025), *appeal dismissed*, No. 25-5262, 2025 WL 2793138 (D.C. Cir. Sept. 30, 2025).

⁴² *Ass’n for Educ. Fin. & Pol’y, Inc. v. McMahon*, No. 1:25-CV-00999 (TNM), 2026 WL 523023 (D.D.C. Feb. 25, 2026).

⁴³ *Id.*

⁴⁴ *Brown v. Board of Education*, 347 U.S. 483, 495 (1954).

with these brave families in working to ensure that the vestiges of *de jure* segregation are remedied as soon as possible so that all children can enjoy an equal opportunity to get an education.

As Dr. Erica Frankenberg, a preeminent expert on school desegregation, has explained, “[s]even decades of social science evidence demonstrates the harms of school segregation for minoritized students and the benefits of school integration for students of all races.”⁴⁵ Research demonstrates that school desegregation is associated with enhanced school quality that improves educational and occupational attainment as well as college quality and adult earnings, reduces the chances of incarceration, and improves adult health for Black students.⁴⁶ Meanwhile, “[w]hite students gain better critical thinking and problem solving skills, a diminished likelihood of harboring racial prejudices, and higher levels of cultural competencies.”⁴⁷ “Research finds these benefits are often long-lasting beyond high school graduation.”⁴⁸ Accordingly, eliminating the vestiges of *de jure* segregation remains an urgent, unfinished mandate required to fulfill the promise of equal educational opportunity guaranteed to all children by the Constitution and federal civil rights laws.

It is critical that this administration stop abdicating its responsibility to ensure that school districts found liable for *de jure* segregation cure their longstanding non-compliance with the Constitution. As the Supreme Court confirmed, “remediating specific, identified instances of past discrimination that violated the Constitution or a statute” remains a compelling government interest that justifies the use of race-based state action.⁴⁹ Despite this interest, and despite the United States’s duty to enforce our Constitution and anti-discrimination laws, the United States is instead attempting to end⁵⁰ or abandon longstanding school desegregation cases. For example, the United States terminated its participation in a school desegregation case involving the schools in St. Martin Parish, Louisiana after the Court found that the school district’s persistent disparities in discipline of Black and white students were the result of ongoing

⁴⁵ Frankenberg Rep., *Boudreaux v. Sch. Bd. of St. Mary Par.*, No. 6:65-cv-11351-RRS-CBW (W.D. La. June 21, 2024), ECF No. 189-8, at 1.

⁴⁶ Rucker C. Johnson, *Long-run Impacts of School Desegregation & School Quality on Adult Attainments*, Nat’l Bureau of Econ. Rsch. Working Paper 16664, NAT’L BUREAU OF ECON. RSCH. (2011), <https://www.nber.org/papers/w16664>.

⁴⁷ Erika K. Wilson, *The New School Segregation*, 102 CORNELL L. REV. 139, 154 (2016) (citing Genevieve Siegel-Hawley, *How Non-Minority Students Also Benefit from Racially Diverse Schools*, NAT’L COAL. ON SCH. DIVERSITY RESCH. BRIEF No. 8, Oct. 2012, at 2), <https://scholarship.law.cornell.edu/clr/vol102/iss1/3>.

⁴⁸ Frankenberg Rep., *Boudreaux v. Sch. Bd. of St. Mary Par.*, No. 6:65-cv-11351-RRS-CBW (W.D. La. June 21, 2024), ECF No. 189-8, at 2.

⁴⁹ *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.* (“SFFA”), 600 U.S. 181, 207 (2023) (citing *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720, (2007). See also *Shaw v. Hunt*, 517 U.S. 899, 909-10 (1996); and *SFFA*, 143 S. Ct. at 2186-87, 2192-93 (Thomas, J., concurring)). *Accord Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007) (“[O]ur prior cases, in evaluating the use of racial classifications in the school context, have recognized two interests that qualify as compelling. The first is the compelling interest of remedying the effects of past intentional discrimination.” (citation omitted)).

⁵⁰ See, e.g., *United States v. Plaquemines Par. Sch. Bd.*, No 2:66-cv-00071-BSL (E.D. La. April 29, 2025), ECF No. 196.

intentional racial discrimination.⁵¹ Among other things, the Court based this finding on expert testimony, a statistical regression analysis, teacher testimony, and the District child welfare officer's statements about Black children.⁵² The United States similarly terminated its participation in a school desegregation case involving the schools in St. James Parish, Louisiana after the Court there noted the school board's "fecklessness" in failing to show good faith compliance with the Court's orders where the school board allowed students to transfer between schools in a way that exacerbated segregation.⁵³ Rather than abandoning some school desegregation cases and ending others, the United States should fulfill its obligation to ensure that school districts that previously engaged in *de jure* racial segregation cure their longstanding constitutional violations by eliminating the vestiges of *de jure* segregation to the extent possible so the students can enjoy an equal opportunity in obtaining an education.

C. *Rigorous, truthful, and inclusive curricula are essential to providing equal education opportunity and advancing academic excellence.*

It is important that students have an opportunity to learn about America—both the joyful and more challenging aspects. With regard to the latter, it is only by allowing students an unflinching look at the country's past and present that we can ensure America does not repeat the more harrowing parts of our history. It is lawful to acknowledge the existence, and attempt to prevent the recurrence of systemic and structural racism. As one federal court explained, Title VI has never "been interpreted to preclude teaching about concepts relating to race."⁵⁴ There is incontrovertible evidence of racial oppression and white supremacy in the United States. Enslaved Black people were forced to provide free labor to white people for hundreds of years. For generations, Black people were deemed to only count as three-fifths of a person in the United States Constitution. And the Supreme Court declared in *Dred Scott v. Sanford* that Black people were inferior to white people and "had no rights which the white man was bound to respect."⁵⁵ Despite the Emancipation Proclamation and constitutional amendments that recognized the freedom of Black Americans and their rights to constitutional protections as full citizens, Jim Crow laws allowed racial segregation to flourish—segregation that was officially endorsed by the Supreme Court in *Plessy v. Ferguson*⁵⁶. Indeed, Black people have had the legal protections established in *Brown v. Board of Education* and federal civil rights statutes for only about 60 to 70 years (about one-fourth) of America's 250-year history.

Since the Civil War, this country's textbooks and classrooms have largely omitted those parts of the country's history related to Black people and the systemic anti-Black racism that persists to this day. Indeed, "[o]ne survey of 500 U.S. schools found over

⁵¹ See *Thomas v. Sch. Bd. St. Martin Par.*, No. CV 65-11314, 2023 WL 3686624, at *2 (W.D. La. May 25, 2023).

⁵² *Id.*

⁵³ *Banks v. St. James Par. Sch. Bd.*, No. CV 65-16173, 2026 WL 579395, at *17 (E.D. La. Feb. 27, 2026).

⁵⁴ *Am. Fed'n of Teachers v. Dep't of Educ.*, 779 F. Supp. 3d 584, 610 (D. Md. 2025).

⁵⁵ 60 U.S. 393, 407 (1857).

⁵⁶ 163 U.S. 537 (1896).

90% used Eurocentric textbooks as their core instructional materials, featuring predominately White narratives, histories, and perspectives.”⁵⁷ Likewise, a 2015 study found that “generally only 1 to 2 lessons or 8–9 percent of total class time is devoted to Black history in U.S. history classrooms.”⁵⁸ These circumstances have prevented generations of Black students from seeing “their own communities and ancestral contributions validated through the lens of mainstream academic validation and legitimacy.”⁵⁹

Yet, developing a proper understanding of systemic racism is an integral part of the “normative developmental process of [Black] adolescents.”⁶⁰ A “number of important psychological and behavioral outcomes are dependent upon the way in which the adolescent copes with society’s racism and other adolescent developmental tasks.”⁶¹ And “[o]ne set of positive coping responses . . . is the adoption of healthy racial identity beliefs[,]” “includ[ing] a positive view of one’s racial group and an understanding of the role that racism plays in society.”⁶²

The omission of instruction about the histories of Black people has significant adverse effects, including harming the self-esteem, motivation, sense of belonging, academic performance, and graduation rates of Black students.⁶³ “High school students of color in a large-scale study of 1001 students in four states reported feeling erased, disconnected, and doubting their intelligence[] when the content of their courses did not include or appreciate their race and cultural selves.”⁶⁴ And Black students who attended schools that used textbooks that failed to explain the histories and achievements of people of color were more likely to drop out of school as compared to peers that used texts that incorporated the histories of people of color.⁶⁵

It is critical that school curricula are rigorous, inclusive, and truthful. Research shows that instruction about race “promot[es] perspective-taking and empathy,” facilitates higher levels of thinking, reduces the likelihood that students will engage in racial harassment, reduces the likelihood that students of color will experience school-based discrimination, boosts academic performance, reduces dropout rates, and improves student attendance.⁶⁶

⁵⁷ Blessing Ngozi Iweuno et al., *Impact of Racial Representation in Curriculum Content on Student Identity and Performance*, 23 WORLD J. ADVANCED RSCH. AND REVS. 2913, 2915 (2024), <https://doi.org/10.30574/wjarr.2024.23.1.2280>.

⁵⁸ Lagarrett King, *Status of Black History in U.S. Schools and Society*, 81 Soc. Educ. 14, 15 (2017), https://www.socialstudies.org/system/files/publications/articles/se_810117014.pdf.

⁵⁹ Iweuno, *supra* note 57, at 2914.

⁶⁰ Robert M. Sellers et al., *Racial Identity Matters: The Relationship between Racial Discrimination and Psychological Functioning in African American Adolescents*, 16 J. RSCH. ON ADOLESCENCE 187, 189 (June 2006), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1532-7795.2006.00128.x>.

⁶¹ *Id.*

⁶² *Id.*

⁶³ Iweuno, *supra* note 57, at 2914–15.

⁶⁴ Iweuno, *supra* note 57, at 2914.

⁶⁵ *Id.*

⁶⁶ Iweuno, *supra* note 57, at 2915; Christine E. Sleeter, *The Academic and Social Value of Ethnic Studies: A Research Review* 17, Nat’l Educ. Ass’n (2011), <https://files.eric.ed.gov/fulltext/ED521869.pdf>; Christy Byrd, *Does Culturally Relevant Teaching Work? An Examination from Student Perspectives*, 6 SAGE Open 1, 4–5 (2016), <https://journals.sagepub.com/doi/pdf/10.1177/2158244016660744>; see also Tabbye

D. Schools can and should lawfully provide programming, training, and affinity groups that support students.

At no fault of their own, Black youth are at greater risk of experiencing racial discrimination than their peers and must expend cognitive energy processing discrimination, rather than spending that energy on learning and development.⁶⁷ Educational psychology research has established that othering experiences (experiences in which an individual is made to feel fundamentally distinct from their peers) likely shape Black students' sense of belonging.⁶⁸ Thus, racially discriminatory acts that discourage Black students from embracing their racial identities are "detrimental to students' motivation, engagement, development, learning, performance, and psychological well-being."⁶⁹

"Social belonging—a sense of having positive relationships with others—is a fundamental human need."⁷⁰ A lack of a sense of belonging "harm[s] not only subjective well-being but also intellectual achievement and immune function and health."⁷¹ "Members of socially stigmatized groups, such as African Americans, may be relatively more uncertain about their social belonging in mainstream institutions like school and work."⁷² "Because their ethnic group is often negatively stereotyped and marginalized, they may be unsure of whether they will be fully included in positive social relationships in these settings."⁷³ In the absence of programs and policies that affirm Black students'

M. Chavous et al., *Racial Identity and Academic Attainment Among African American Adolescents*, 74 CHILD DEV. 1076 (2003); Oseela Thomas et al., *Promoting Academic Achievement: The Role of Racial Identity in Buffering Perceptions of Teacher Discrimination on Academic Achievement among African American and Caribbean Black Adolescents*, 101 J. EDUC. PSYCH. 420 (2009); Thomas S. Dee & Emily K. Penner, *The Causal Effects of Cultural Relevance: Evidence from an Ethnic Studies Curriculum* (Nat'l Bureau of Econ. Rsch., Working Paper No. 21865, 2016), <https://www.nber.org/papers/w21865>; Ellen Kisker et al., *The Potential of a Culturally Based Supplemental Mathematics Curriculum to Improve the Mathematics Performance of Alaska Native and Other Students*, 43 J. RSCH. IN MATHEMATICS EDUC. 78, 100 (2012); Nolan L. Cabrera et al., *Missing the (Student Achievement) Forest for All the (Political) Trees: Empiricism and the Mexican American Studies Controversy in Tucson*, 51 AM. EDUC. RSCH. J. 1084, 1102 (2014); Tyrone Howard & Clarence L. Terry, *Culturally Responsive Pedagogy for African American Students: Promising Programs and Practices for Enhanced Academic Performance*, 22 TEACHING EDUC. 345 (2011).

⁶⁷ Sellers et al., *supra* note 60, at 188 (2006); <https://doi.org/10.1111/j.1532-7795.2006.00128.x>; Dr. Gillian Scott-Ward, *Moving Past Racist Grooming Standards Terrorizing our Children*, Medium (Jan. 10, 2019), <https://medium.com/@gillianscottward/moving-past-racist-grooming-standards-terrorizing-our-children-40df73b9ecb3>.

⁶⁸ DeLeon L. Gray et al., *Black and Belonging at School: A Case for Interpersonal, Instructional, and Institutional Opportunity Structures*, 53 EDUC. PSYCH. 97, 101 (2018), <https://doi.org/10.1080/00461520.2017.1421466>.

⁶⁹ *Id.* at 102; Gregory M. Walton & Geoffrey L. Cohen, *A Brief Social-Belonging Intervention Improves Academic and Health Outcomes of Minority Students*, 331 SCI. 1447, 1447 (Mar. 18, 2011), <https://doi.org/10.1126/science.1198364> ("Uncertainty about belonging, especially when chronic, can undermine minorities' performance and health").

⁷⁰ Walton & Cohen, *supra* note 69, at 1447.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

identities and acknowledge their experiences and culture, “[u]ncertainty about belonging, especially when chronic, can undermine [their] performance and health.”⁷⁴

In fact, during Fiscal Year 2024 alone, 19% (4,307) of the nearly 23,000 complaints that OCR received alleged discrimination on the basis of race, color, or national origin.⁷⁵ In addition, ED has recognized the well-documented pattern of students of color, particularly Black students, being subject to harsher and more frequent school discipline.⁷⁶ Studies show that the racially discriminatory administration of discipline has adverse effects on a students’ academic performance, attendance, and behavior; may contribute to lower enrollment in higher education; and may push students into the criminal justice system.⁷⁷

Schools often fail to appropriately respond to the racial discrimination, isolation, and exclusion experienced by Black students. But certain policies and programs can help overcome barriers to educational access for Black students, including diversity, equity, and inclusion programs; voluntary affinity groups and their programming; school-wide cultural and heritage programs; a diverse faculty; affinity graduations and award ceremonies; and efforts to reduce racial disparities in discipline.

These programs benefit all students and affirm Black students’ identities, experiences, and culture. They have been shown to mitigate “[u]ncertainty about belonging [that], especially when chronic, can undermine [their] performance and health.”⁷⁸ For example, voluntary affinity groups and dedicated cultural programming, though open to all, generally attract students who choose to seek a safe, supportive

⁷⁴ *Id.*

⁷⁵ Off. for C.R., U.S. Dep’t of Educ., *2024 Fiscal Year Annual Report* 8 (2024), <https://www.ed.gov/media/document/ocr-report-president-and-secretary-of-education-2024-109012.pdf>.

⁷⁶ Nora Gordon, *Disproportionality in Student Discipline: Connecting Policy to Research*, Brookings Inst. (Jan. 18, 2018), <https://www.brookings.edu/articles/disproportionality-in-student-discipline-connecting-policy-to-research/>. See, e.g., Kirsten Weir, *Inequality at School: What’s Behind the Racial Disparity in Our Education System?*, 47 AM. PSYCH. ASS’N 42 (2016), <https://www.apa.org/monitor/2016/11/cover-inequality-school>; Erin Hinrichs, *Minnesota Educators Weigh in on Student Discipline Debate Unfolding in D.C.*, MinnPost (Dec. 5, 2017), <https://www.minnpost.com/education/2017/12/minnesota-educators-weigh-student-discipline-debate-unfolding-dc/> [<https://perma.cc/S25S-SM54>]; Joint “Dear Colleague” Letter from the U.S. Dep’t of Educ. & U.S. Dep’t of Just. (Jan. 8, 2014), available at <https://web.archive.org/web/20250409163856/https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf>.

⁷⁷ Alicia R. Jackson, *Inherently Unequal: The Effect of Structural Racism and Bias on K-12 School Discipline*, 88 BROOK. L. REV. 459, 495 (2023); Am. Psych. Ass’n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools?*, 63 AM. PSYCH. 852, 852 (2008), <https://www.apa.org/pubs/reports/zero-tolerance.pdf> [<https://perma.cc/6SSP-7RCT>]; Amity L. Noltemeyer et al., *Relationship Between School Suspension and Student Outcomes: A Meta-Analysis*, 44 SCH. PSYCH. REV. 224–40 (2015), https://edsource.org/wp-content/uploads/2018/09/Noltemeyer_Ward_2015_Meta-Analysis.pdf; Emily Peterson, *Racial Inequality in Public School Discipline for Black Students in the United States*, Ballard Brief (Sept. 2021), <https://ballardbrief.byu.edu/issue-briefs/racial-inequality-in-public-school-discipline-for-black-students-in-the-united-states>; Wis. Coal. Against Sexual Assault, Inc., *School to Prison Pipeline*, <https://www.wcasa.org/resources/areas-of-interest/topics/school-to-prison-pipeline/> (last visited Apr. 13, 2025).

⁷⁸ Walton & Cohen, *supra* note 69, at 1447.

space to discuss strategies for navigating the particular challenges associated with a certain shared identity, and celebrate that community's joys, customs, and heritage. "The commonality of the in-group context and shared challenges foster an atmosphere where participants speak more freely or receive validation, without fear or defensiveness related to outgroup members contesting their perspectives."⁷⁹ Voluntary affinity groups "foster[] a sense of community and social support among participants," improve participants' "social/emotional well-being," and result in increased trust, empathy, cultural competency, retention, and improved academic performance.⁸⁰

Race-neutral changes to school discipline policies and programs that analyze racial disparities in discipline equalize education for all students and mitigate harms to Black students. For example, Black students are less likely to be excluded and more likely to benefit from their educational environment when their schools adopt restorative justice practices, teams that analyze and respond to racial disparities in discipline, and other measures intended to reduce racial disparities and discrimination in school discipline. Schools that have implemented these practices into their disciplinary models have seen success, including drops in suspension rates.⁸¹

Programs that help increase diversity, equity, inclusion, and accessibility can help improve outcomes for all students through, among other things, equalizing opportunities for students who are unfairly disadvantaged. Numerous studies have found that students who learn in an inclusive educational community are more apt to develop a positive identity and succeed academically.⁸² These programs can include pathway programs that expose students to science, technology, engineering and math careers; direct admissions programs for selective magnet schools and higher education institutions; and broad outreach and recruitment measures to expand the college applicant pool. Ultimately, lawful diversity, equity, and inclusion programs benefit all, as diverse environments—including racially diverse environments—help build critical thinking, problem-solving ability, and intellectual self-confidence, and prepare students to thrive in a global economy.⁸³

⁷⁹ Jesse J. Tauriac et al., *Utilizing Affinity Groups to Enhance Intergroup Dialogue Workshops for Racially and Ethnically Diverse Students*, 38 J. SPECIALISTS GRP. WORK, 241, 245 (2013), <https://doi.org/10.1080/01933922.2013.800176>.

⁸⁰ Jordon J. Beasley et al., *Reimagining Groups: A Phenomenological Investigation of Affinity Groups in Schools*, 28 PRO. SCH. COUNSELING 1, 2 (2024), <https://doi.org/10.1177/2156759X241234919>; Jessica T. DeCuir-Gunby et al., *Using Critical Race Mixed Methodology to Explore African American College Students' Experiences with Racial Microaggressions*, 49 INNOVATIVE HIGHER EDUC. 1077, 1094 (2024), <https://doi.org/10.1007/s10755-024-09732-6>.

⁸¹ Anne Gregory & Katherine Evans, *The Starts and Stumbles of Restorative Justice in Education: Where Do We Go from Here?*, Nat'l Educ. Pol'y Ctr. 3 (2020), https://nepc.colorado.edu/sites/default/files/publications/Revised%20PB%20Gregory_o.pdf [<https://perma.cc/C6LE-QBS6>].

⁸² See, e.g., Derrick R. Brooms & Arthur R. Davis, *Staying Focused On The Goal: Peer Bonding And Faculty Mentors Supporting Black Males' Persistence In College*, 48 J. Black Studies 305 (2017), <https://doi.org/10.1177/0021934717692520>; Terrell L. Strayhorn, *The Role Of Supportive Relationships In Facilitating African American Males' Success In College*, 45 NASAP J. 26 (2008); Sharon L. Holmes, et al., *Validating African American Students At Predominantly White Institutions*, 4 J. Coll. Student Retention: Rsch., Theory & Prac. 41 (2000), <https://doi.org/10.2190/xpof-krqw-f547-y2xm>.

⁸³ See Katherine W. Phillips, *How Diversity Makes Us Smarter*, SCI. AM. (Oct. 1, 2014), <https://www.scientificamerican.com/article/how-diversity-makes-us-smarter/>. See also Samuel R.

E. Many students are denied a fair chance to compete for admission to public, taxpayer-funded selective programs.

Highly sought-after educational opportunities should remain within reach for all students, regardless of background or socio-economic status. No racial group has a monopoly on talent, and the systematic exclusion of Black and Latinx students from many of this country's selective academic programs and schools does not reflect a lack of aptitude to excel in those settings. Rather, some students, simply by virtue of where they live, how much money their parents make, or due to discrimination, have far less opportunity to develop their latent talents as they lack access to challenging courses, extracurricular activities, or other enrichment activities.⁸⁴ This lack of access can detrimentally affect test scores and other indicia of merit—giving the false impression that these students are less promising than their more fortunate peers and making it critically important that test scores and other indicia of merit be interpreted in context. Absent context, the use of traditional indicia of merit may under-identify many talented students of color who could thrive in advanced academic programs.

Nationwide, public schools fail to identify 63-74% of gifted Black students for inclusion in gifted and talented programs for known, correctable reasons.⁸⁵ Likewise, disabled students are under-identified for gifted and talented programs.⁸⁶ And too many of this nation's other public, taxpayer-funded selective educational programs have unfairly denied many students, including Black students, an equal opportunity to compete for admission. For example, in recent years, the Fifth Circuit and lower courts have sided with LDF in requiring school districts—including in Fayette County, Tennessee and in St. Martin and St. James Parishes in Louisiana—to remedy persistent racial inequalities in access to advanced academic opportunities, such as gifted and talented programs and college preparatory courses.⁸⁷

Research shows that admissions tests underpredict the potential of Black and

Sommers, *On Racial Diversity and Group Decision Making: Identifying Multiple Effects of Racial Composition on Jury Deliberations*, 90 J. PERSONALITY & SOC. PSYCH. 507, 606 (2006); Bedoor K. AlShebli et al., *The Preeminence of Ethnic Diversity in Scientific Collaboration*, NATURE COMM'NS, 1, 9 (2018), <https://doi.org/10.1038/s41467-018-07634-8>.

⁸⁴ See, e.g., Scott J. Peters & Kenneth G. Engerrand, *Equity and Excellence: Proactive Efforts in Identification of Underrepresented Students for Gifted and Talented Services*, 60(3) GIFTED CHILD Q. 159, 165 (2016); Rashea Hamilton et al., *Disentangling the Roles of Institutional and Individual Poverty in the Identification of Gifted Students*, 62 GIFTED CHILD Q. 6, 21 (2018).

⁸⁵ Marcia Gentry et al., *Systemic Inequities in Identification and Representation of Black Youth with Gifts and Talents: Access, Equity, and Missingness in Urban and Other School Locales*, 59 URB. EDUC. 1730, 1762, <https://doi.org/10.1177/00420859221095000>.

⁸⁶ Jo Napolitano, *Students with Disabilities Often Overlooked in Gifted Programming*, The 74 (Aug. 5, 2022), <https://www.the74million.org/article/students-with-disabilities-often-overlooked-in-gifted-programming/>.

⁸⁷ See, e.g., *Borel on behalf of AL v. Sch. Bd. St. Martin Parish*, 44 F.4th 307, 315 (5th Cir. 2022) (finding that a school board failed to provide Black students with equal access to the “more academically challenging” courses); *Banks v. St. James Par. Sch. Bd.*, No. CV 65-16173, 2026 WL 579395, at *19 (E.D. La. Feb. 27, 2026) (requiring further relief to address persistent racial disparities in school and classroom assignments, including the gifted and talented programs); see also Consent Order, *McFerren v. Cnty. Bd. of Educ. of Fayette Cnty.*, No. 2:65-cv-00136-STA-jay (W.D. Tenn. Oct. 11, 2023), ECF No. 198, at 5-8.

Latinx students,⁸⁸ application fees dissuade economically disadvantaged students from applying,⁸⁹ and teacher recommendation letters are often infected with racial bias.⁹⁰ For example, a 2010 study showed that “the SAT ‘favors one ethnic group over another,’ calling into ‘question the validity of SAT verbal scores for [Black] examinees.’”⁹¹ Notably, there is “evidence for this bias pattern across a wide span of tests,” including Advanced Placement exams, the GRE, and high school vocabulary exams.⁹²

Such tests often pose questions using language with varying colloquial meanings, with the exam crediting answers that reflect the meaning most frequently used in white, middle-class homes like those of the test creators.⁹³ Such culturally biased questions artificially depress the test scores of Black and Latinx examinees.⁹⁴ Adding insult to injury, test makers’ reliability checks reproduce that cultural bias over time, only deeming new test questions reliable enough to be added to the test if “high ability” examinees (those who understood the semantics used in white, middle-class homes)

⁸⁸ See Amici Curiae Brief of Harvard-Radcliffe Black Students Association, et al. In Support Of Defendants’ Motion For Summary Judgment at 8–15, *Students for Fair Admission, Inc. v. President & Fellows of Harvard Coll. Harvard Corp.*, No. 1:14-cv-14176-ADB (D. Mass. Aug. 3, 2018), ECF No. 471 (collecting research showing that, rather than measuring what they claim to measure, standardized tests such as the ACT assess cultural literacy; that is, how familiar the examinee is with the colloquial language commonly used in white middle class homes like those of the test creators, artificially depressing the test scores of Black and Latinx examinees). Indeed, research on the biased nature of the SAT led at least one Sixth Circuit Judge to recognize that standardized test scores are not objective measures of merit, stating that “the record indicates that LSAT scores are neither race-neutral or gender-neutral criteria for admissions decisions.” *Grutter v. Bollinger*, 288 F.3d 732, 771 (6th Cir. 2002) (Clay, J., concurring), *aff’d*, 539 U.S. 306 (2003).

⁸⁹ See, e.g., C. S. Mott Child’s Hospital, *Mott Poll Report: Pay-to-Participate: Impact on School Activities*, 33 Nat’l Poll on Child’s Health 1, 1–2 (2019), https://mottpoll.org/sites/default/files/documents/031819_PayToParticipate.pdf (pay-to-participate fees disproportionately disadvantaged low-income children).

⁹⁰ See, e.g., Jason A. Grissom & Christopher Redding, *Discretion and Disproportionality: Explaining the Underrepresentation of High-Achieving Students of Color in Gifted Programs*, 2 AERA Open 1 (2016) (Black students are less likely to be identified for gifted and talented programs when teachers exercise discretion over which students are screened); Hala Elhoweris et al., *Effect of Children’s Ethnicity on Teachers’ Referral and Recommendation Decisions in Gifted and Talented Programs*, 26 REMEDIAL & SPECIAL EDUC. 25–31 (2005) (white students receive higher referral rates than their minority counterparts, despite similar student descriptions).

⁹¹ Amici Curiae Brief, *supra* note 88, at *12 (citing Maria Veronica Santelices & Mark Wilson, *Unfair Treatment? The Case of Freedle, the SAT, and the Standardization Approach to Differential Item Functioning*, 80 HARV. EDUC. REV. 106, 126, 128 (2010)).

⁹² Roy O. Freedle, *Correcting the SAT’s Ethnic and Social-Class Bias: A Method for Reestimating SAT Scores*, 73 HARV. EDUC. REV. 1, 28–29 (2003).

⁹³ See generally Roy O. Freedle, *Correcting the SAT’s Ethnic and Social-Class Bias: A Method for Reestimating SAT Scores*, 73 HARV. EDUC. REV. 1, 28–29 (2003) (also noting that there is “evidence for this bias pattern across a wide span of tests” and mentioning evidence of cultural bias on Advanced Placement exams, the GRE, and high school vocabulary exams); Maria Veronica Santelices & Mark Wilson, *Unfair Treatment? The Case of Freedle, the SAT, and the Standardization Approach to Differential Item Functioning*, 80 HARV. EDUC. REV. 106, 126, 128 (2010) (replicating Freedle’s findings, showing that one standardized test - the SAT - “favors one ethnic group over another” and calling into “question the validity of SAT verbal scores for [Black] examinees.”)

⁹⁴ See *supra* note 93.

perform well on them.⁹⁵ Given the foregoing, and uneven access to test preparation courses, such tests may have poor predictive validity.⁹⁶

Of course, the Equal Protection Clause promises equal opportunity for all. Public schools further that foundational promise of our Constitution when they adopt race-neutral, research-backed reforms—such as universal screening, local norming, and lotteries—to allocate taxpayer-funded educational opportunities more fairly. Universal screening—which means that all students are automatically screened for eligibility and invited to participate if they satisfy a set of defined criteria—and local norming (which better accounts for each student’s opportunities to foster their natural talents) equalize opportunity for all students, including Black, Latinx, and underserved Asian American students, many of whom are English-language learners and low-income.⁹⁷

Some educational institutions have recently revised admissions processes to ensure their selection criteria objectively identify qualified applicants. LDF has been proud to represent multi-racial coalitions of organizations serving students—like the NAACP; the Coalition for Asian American Children and Families; Desis Rising Up and Moving; Hamkae Center; Asian American Leadership, Empowerment, and Development; CASA, Inc.; Hispanic Federation; and Teens Take Charge—in defending the legality of policy changes that were designed to remedy unfair aspects of admissions processes that unfairly disadvantaged many students of color.

For example, the Fairfax County School Board revised its admissions process for the Thomas Jefferson High School for Science and Technology (“TJ”) in 2020 to eliminate the application fee, admission test, and teacher recommendations and admit the top 1.5% of students from each middle school.⁹⁸ By removing known obstacles that denied students an equal chance to compete for admission, the changes expanded the

⁹⁵ Jay Rosner, *The SAT: Quantifying the Unfairness Behind the Bubbles*, in SAT WARS: THE CASE FOR TEST-OPTIONAL COLLEGE ADMISSIONS 134 (Joseph A. Soares 2015) (internal citation omitted) (This process is “used by psychometricians to construct admissions tests such as the SAT, ACT, GRE, LSAT, GMAT, MCAT, and many other bubble tests.”).

⁹⁶ Admissions are “valid” when they assess “what they claim to measure (i.e., content validity) and correlate strongly with performance in [the academic institution they are used to assess suitability for] (predictive validity)” *Consultation on the Validity of Testing in Education and Employment Before the U.S. Comm’n on Civil Rights* (June 16, 1989) (statement of James W. Loewen) in THE VALIDITY OF TESTING IN EDUCATION AND EMPLOYMENT, 42 (Eileen Rudert ed., 1993).

⁹⁷ See, e.g., David Card & Laura Giuliano, *Universal screening increases the representation of low-income and minority students in gifted education*, 113(48) PNAS 13678, 13683 (2016), <https://www.pnas.org/content/pnas/113/48/13678.full.pdf> (discussing a study finding 174% increase in classification disadvantaged students as gifted); Seminole County Public Schools, SCPS Gifted Population Increases Across the District, <https://www.scps.k12.fl.us/news/scpsgifted-population-increases-across-the-district.shtml> (last visited Feb. 28, 2022) (noting universal screening boosted participation rates for economically disadvantaged and Black students in gifted programs by more than 100%); Scott J. Peters, et al., *Effect of Local Norms on Racial and Ethnic Representation in Gifted Education*, 5(2) AERA Open 1, 4 (Apr.-June 2019), <https://journals.sagepub.com/doi/pdf/10.1177/2332858419848446> (noting that the American Educational Research Association, American Psychological Association, and National Council for Measurement in Education call for the use of local norming when test scores are considered in gifted placement decisions).

⁹⁸ *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 874–75 (4th Cir. 2023).

applicant pool, increased the average GPA of admittees, and led to an increase in the number of Black, Hispanic, low-income, English language learner, and female students admitted.⁹⁹ In addition, “Asian American students attending middle schools historically underrepresented at TJ saw a sixfold increase in offers, and the number of low-income Asian American admittees to TJ increased to 51—from a mere one in 2020.”¹⁰⁰

Likewise, in the past, the admissions process for Philadelphia’s criteria-based high schools relied heavily on the discretion of principals. That policy resulted in the criteria-based high schools denying admission to more than a fourth of the Black and Latinx students who satisfied the minimum standardized test score requirement, while at the same time, students of other races who did not meet the minimum standardized test score requirement were admitted. By changing the admissions policy to better give each application a fair chance to compete for admission, the school board was upholding the promise of equal opportunity.

As multiple courts have recognized, an educational institution’s desire to eliminate unfair barriers to entry by adopting fairer, race-neutral selection criteria is consistent with Title VI and constitutes the opposite of discrimination.¹⁰¹ All have a role to play in working to ensure that schools adopt admissions policies that objectively identify all students who could thrive in selective admissions programs.

IV. Policy Recommendations

Although not an exhaustive list, LDF recommends the following immediate Congressional actions to advance educational equity and safeguard equal and fair treatment for all students. By investing in public schools and students, Congress has the opportunity to advance academic excellence for all.

1. Congress must use its authority to immediately halt all efforts by the current administration to unlawfully dismantle the U.S. Department of Education. Congress must also ensure ED is adequately funded and staffed. Current unlawful efforts to abolish or reassign, and therefore destabilize, the role of ED will result in less protection from discrimination, decreased financial support needed to help ensure equality and fewer overall resources for millions of students. For decades, ED, foremost a civil rights agency, has enforced federal civil rights laws, provided meaningful guidance and technical assistance to state and local education agencies, and administered federal grant funding to help ensure that all students had equal access to education. If ED continues to abdicate its duty to enforce federal anti-discrimination laws, there will be no guarantee that states will adequately

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 876.

¹⁰¹ See, e.g., *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864 (2023), *cert. denied*, 218 L. Ed. 2d 71 (Feb. 20, 2024); *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 61 (1st Cir. 2023), *cert. denied*, 145 S. Ct. 15, 2024 WL 5036302 (U.S. Dec. 9, 2024) (“[W]e find no reason to conclude that Students for Fair Admissions changed the law governing the constitutionality of facially neutral, valid . . . admissions policies under equal protection principles.”).

comply with federal education and civil rights laws such as the Elementary and Secondary Education Act, Higher Education Act, 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, and Title II of the Americans with Disabilities Act of 1990. During Fiscal Year 2024 alone, OCR received nearly 23,000 complaints overall—a new record high.¹⁰² Of those complaints, 37% (8,457) alleged disability discrimination and 19% (4,307) contained allegations of discrimination on the basis of race, color, or national origin.¹⁰³ ED’s work as an agency is critical to ensuring all students, especially Black students, have equal access to educational opportunities.

2. Congress should expand grant programs that advance school desegregation and equitable school funding, and support federal policies that incentivize state and local educational agencies to implement evidence-based strategies that increase support for academic success among all races and ethnicities and socioeconomic backgrounds in schools. Most importantly, Congress should protect and increase funding for Title I of the Elementary and Secondary Education Act (“Title I”), which supports “low-income students and nearly two in three public schools” and addresses critical “opportunity gaps” between these students and their more affluent peers.¹⁰⁴ Congress should also increase investment in the Equity Assistance Center program.
3. Congress should help create the conditions necessary to welcoming professionals from all walks of life into the ranks of the nation’s cadre of teachers. Increasing the number of educators who reflect the diversity of students’ own communities can lead to higher test scores, improved reading and math skills, increased attendance rates and school engagement, and lower absenteeism and suspension rates for Black and Latinx students.¹⁰⁵ The National Bureau of Economic Research recently found that Black students with at least one Black teacher by third grade are 19 percent more likely to enroll in college.¹⁰⁶ Congress can incentivize school districts to institute reforms to attract Black applicants and members of other underrepresented communities to careers in teaching, such as through student loan repayment assistance and anti-discrimination policies for all teachers. Congress must

¹⁰² Off. for C.R., U.S. Dep’t of Educ., 2024 Fiscal Year Annual Report 8 (2024), <https://www.ed.gov/media/document/ocr-report-president-and-secretary-of-education-2024>.

¹⁰³ *Id.*

¹⁰⁴ Weadé James & Will Ragland, *Project 2025’s Elimination of Title I Funding Would Hurt Students and Decimate Teaching Positions in Local Schools*, Ctr. for Am. Progress (July 25, 2024), <https://www.americanprogress.org/article/project-2025s-elimination-of-title-i-funding-would-hurt-students-and-decimate-teaching-positions-in-local-schools/>.

¹⁰⁵ Travis J. Bristol et al., *Facing the Rising Sun: Black Teachers’ Positive Impact Post-Brown*, 7-8 (May 2024), https://learningpolicyinstitute.org/media/4320/download?inline&file=Spencer_Brown_Rising_Sun_PA_PER.pdf; Egalite, *What We Know About Teacher Race and Student Outcomes: A review of the evidence to date*. 24:1 EDUC. NEXT 42-49. (2024), <https://www.educationnext.org/what-we-know-about-teacher-race-and-student-outcomes/>.

¹⁰⁶ Seth Gershenson et al., *The Long-Run Impacts of Same-Race Teachers*, 14:4 Am. Econ. Journal: Econ. Policy 300-42 (2022), <https://www.aeaweb.org/articles?id=10.1257/pol.20190573>.

also ensure adequate funding for programs that support high-quality teacher training and development, such as the Teacher Quality Partnership Program and the Augustus F. Hawkins Centers of Excellence (“Hawkins”) Program.

4. Congress should repeal the federal private school voucher program and re-invest in public education that serves all students. Private school voucher programs exacerbate segregation, are rife with fraud and abuse, and do not improve academic outcomes for many students.¹⁰⁷ Congress must not abandon the project and promise of equal access to free, quality public education in the U.S. by siphoning funding to private entities and furthering harmful racial disparities among future generations of American students.

V. Conclusion

Public schools in America must deliver quality education for all regardless of race, ethnicity, sexual orientation, gender identity, immigration status, disability, religion, or any other identifying characteristic. Decades of resistance to *Brown*’s mandate of desegregation, coupled with poor education policy, have resulted in critically underfunded school systems and under-achieving schools. Congress must fulfill the promise of *Brown* by supporting a public education system that welcomes, includes, and is safe for all and provides equitable high quality academic instruction. Likewise, Congress must guard against attacks on public education like the privatization of public education, the rolling back of civil rights protections in the classroom, and the erosion of ED’s funding and responsibilities. Education is a civil right and a public good for all.

Students have the ability to forge their own paths to building successful and fulfilling lives. America’s primary and secondary education systems are tasked with caring for students along this journey as they navigate life’s obstacles and opportunities. Given this, many school districts across the country have established policies to work towards equal access in admissions; adopted curricula and other instructional materials that reflect the experiences of Black people and discuss race, systemic racism, and efforts to combat systemic racism; and developed, supported, and expanded cultural programming, student organizations, trainings, and other policies and programming to ensure Black students have equal access to a learning environment free from discrimination.¹⁰⁸ Likewise, many brave families continue to work to ensure that school

¹⁰⁷ Statement for the Record, *Empowering Families Through Educational Choice in America*, U.S. Senate Committee on Health, Educ., Labor, and Pensions Hearing (Jan. 28, 2026), <https://www.naacpldf.org/wp-content/uploads/LDF-Statement-for-1.28.26-Senate-HELP-Committee-Hearing-FINAL.pdf>

¹⁰⁸ For example, in 2020, the Indianapolis School District adopted a Racial Equity Policy that established a partnership with the Racial Equity Institute, increased the recruitment and retention of Black staff, promoted and ensured equitable enrollment across schools, confronted the impact of housing segregation on school choice, and established school-based equity teams tasked with analyzing data. Huriya Jabbar et al., *A Year That Forced Change: Examining How Schools and School Systems Adapted to the Challenges of the COVID-19 Pandemic and Calls for Racial Justice in 2020* 5, Nat’l Ctr. for Rsch. on Educ. Access & Choice, <https://files.eric.ed.gov/fulltext/ED629490.pdf>; Britney L. Jones, *Reducing Racism in Schools: The Promise of Anti-Racist Policies*, UConn Ctr. for Educ. Pol’y Analysis (Sept. 22, 2020),

districts cure the vestiges of *de jure* segregation. While additional steps are necessary to establish inclusive and supporting learning environments for Black students, these efforts represent modest, important progress toward fulfilling the promise of equal education for all.