UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ACTING ASSISTANT SECRETARY

July 29, 2025

Brian Yearwood, Ed.D.
Superintendent of Schools
Jefferson County Public Schools
VanHoose Education Center
3332 Newburg Road,
Louisville, KY 40218

Dear Superintendent Yearwood:

This letter is to notify you that the U.S. Department of Education's (Department) Office for Civil Rights (OCR) has identified civil rights compliance issues with Jefferson County Public Schools (Jefferson County or the district). I am deeply concerned that the district may be discriminating based on race in violation of Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. Section 2000d *et seq*., and its implementing regulation at 34 C.F.R. Part 100, by unlawfully considering race and engaging in racial balancing, either to ensure equality of outcomes, to avoid legal liability under a disparate impact theory, or both. Additionally, I am especially alarmed to discover that, as discussed in Jefferson County's application for a grant under the Magnet Schools Assistance Program (MSAP), the district utilizes a funding formula that explicitly discriminates based on the racial make-up of its schools, which is a clear violation of Title VI.

As you are aware, MSAP provides discretionary grants to local educational agencies (LEAs) or consortia of LEAs to operate magnet schools that promote desegregation to "increase interaction among students of different social, economic, ethnic, and racial backgrounds."[1] To be eligible to receive MSAP grants, OCR's Assistant Secretary for Civil Rights must determine whether to sign an assurance that an applicant will "not engage in discrimination based on race, religion, color, national origin, sex, or disability."[2]

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[1] 20 U.S.C. § 7231d(b)(1)(A).
[2] 20 U.S.C. § 7231d(b)(2)(C), stating that an applicant "will not engage in discrimination based on race, religion, color, national origin, sex, or disability in--
(i) the hiring, promotion, or assignment of employees of the applicant or other personnel for whom the applicant
has any administrative responsibility;

As to my concerns, OCR submitted questions to district staff to learn more about these apparently discriminatory practices. I am not satisfied with the responses that we received, and my concerns have only been exacerbated by them.

The District Is Engaging in Unlawful Racial Balancing.

First, regarding Board Policy 09.131, we understand from the information the district provided that it uses a "Racial Equity Analysis Protocol" to screen every policy and practice that impacts students. But according to the district counsel's own examples, it appears that every policy, practice, or decision, regardless of whether implemented in a way that treats every student equally and as an individual, is likely to be deemed invalid under this racialized protocol if it results in statistical disparities among students of different races. Worse still, the required Racial Equity Analysis Protocol form includes questions and bulleted items that explicitly encourage use of race-based decision-making in curricular design, teaching, school discipline, hiring, and contracting. It strains credulity to assume that such a comprehensive race-focused policy mandated by the school board and implemented by district officials is not resulting in discriminatory practices against students, staff, job applicants, and prospective contractors.

The district's misguided reliance upon statistical disparities appears to cause it to engage in prohibited racial balancing. As a threshold matter, even before the Supreme Court's watershed decision in *Students for Fair Admissions v. Harvard*, the High Court made clear that "outright racial balancing is patently unconstitutional."[3] Congress, moreover, enacted Title VI "to prohibit intentional racial discrimination—not to restrict neutral policies untainted by racial intent that happen to lead to racially disproportionate outcomes."[4] Indeed, taken to its logical conclusion, "everything or nearly everything has a disparate impact."[5] Justice Scalia observed that "disparate-impact provisions place a racial thumb on the scales, often requiring [parties] to evaluate the racial outcomes of their policies, and to make decisions based on (because

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(ii) the assignment of students to schools, or to courses of instruction within the schools, of such applicant, except

to carry out the approved plan; and

(iii) designing or operating extracurricular activities for students[.]=

[3] 600 U.S. 181, 223 (2023) (quoting *Fisher v. University of Tex. at Austin*, 570 U.S. 297, 311 (2013)) (cleaned up).

[4] *Rollerson v. Brazos River Harbor Navigation Dist.*, 6 F.4th 633, 648 (5th Cir. 2021) (Ho, J., concurring in part and concurring in judgement) (internal citations omitted).

[5] *See* Gail L. Heriot, *Title VII Disparate Impact Liability Makes Almost Everything Presumptively Illegal*, 14 N.Y.U. J.L. & LIBERTY 1, 39 (2020).

of) those racial outcomes," but "[t]hat type of racial decisonmaking is . . . discriminatory."[6] For these reasons, President Trump made clear in Executive Order 14281, "Restoring Equality of Opportunity and Meritocracy,"—which directed federal agencies to amend their Title VI regulations to eliminate the theory of disparate impact liability as a means of adjudicating civil rights claims—that the purely speculative statistical disparity approach, absent a showing of discriminatory animus, "not only undermines our national values, but also runs contrary to equal protection under the law and, therefore, violates our Constitution."[7] I will not certify Jefferson County's MSAP grant until these glaring legal and constitutional infirmities are rectified.

The District's Is Making Students Less Safe While It Pursues Unlawful Racialized Ends.

Second, putting aside the apparent illegality of the district protocols, when Jefferson County's disciplinary decisions are tainted by racial considerations, its students and schools are less safe. This is a non-starter. We appreciate that the district is currently subject to reporting requirements as part of a resolution agreement that it reached with OCR under the Biden Administration. That agreement was predicated, in part, on a disparate-impact theory of liability. In response, however, Board Policy 09.131 has created an incentive structure to discipline black and non-black students at different rates to avoid statistical disparities in outcomes, allegedly to satisfy the concerns of the Biden OCR. But the Trump OCR will not tolerate a disease as cure.[8]

The safety of the district's students is paramount. Indeed, a 2018 report from the Federal Commission on School Safety highlighted findings that, in response to 2014 Obama Administration-issued guidance that was also predicated on disparate impact theory, "schools ignored or covered up — rather than disciplined — student misconduct in order to avoid any purported racial disparity in discipline numbers that might catch the eye of the federal government."[9] The predictable consequence of this guidance was that students who should have been disciplined or removed from the classroom were

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[6] *Ricci v. DeStefano*, 557 U.S. 557, 594 (2009) (Scalia, J., concurring).
[7] Restoring Equality of Opportunity and Meritocracy, 90 Fed. Reg. 17537 (Apr. 23, 2025).
[8] *See Richmond v. J.A. Croson Co.*, 488 U.S. 469, 520-21 (1989) (Scalia, J., concurring) ("The difficulty of overcoming the effects of past discrimination is as nothing compared with the difficulty of eradicating from our society the source of those effects, which is the tendency—fatal to a Nation such as ours—to classify and judge men and women on the basis of their country of origin or the color of their skin. *A solution to the first problem that aggravates the second is no solution at all.*) (emphasis added).
[9] U.S. DEP'T OF EDUC., U.S. DEP'T OF JUST., U.S. DEP'T OF HEALTH & HUM. SERV. & U.S. DEP'T OF HOMELAND SEC., FINAL REPORT OF THE FEDERAL COMMISSION ON SCHOOL SAFETY 68 (2018).

not, resulting in classrooms that were less safe and less conducive to learning. Writing for the Seventh Circuit, then-Chief Judge Richard Posner, in striking down an unconstitutional rule that would lead to racial quotas in discipline, observed what is at stake here: "Racial disciplinary quotas violate equity in its root sense. They entail either systematically overpunishing the innocent or systematically underpunishing the guilty. They place race at war with justice. They teach schoolchildren an unedifying lesson of racial entitlements."[10] That "highly counterintuitive result" cannot be right.[11]

The District's Racialized Funding Formula Is Illegal.

Third, the district's MSAP application states, and district counsel confirmed, that Jefferson County uses a funding formula that assigns a monetary value to a school's non-white students. For instance, the district's MSAP application states that "[f]lexible funding was calculated using a weighted factor of $1,500 times the Needs Index and the percentage of Students of Color. For example, a school with a JCPS Needs Index of 50 and 80% Students of Color would receive 50*$1,500 + 80*$1,500 = $195,000 in additional equity funds, equivalent to three additional teachers." This is patently illegal. By distributing financial resources to schools based on the race of their students, the district is engaging in precisely the kind of discrimination that Title VI was enacted to remedy and prevent. The inexorable command of *Students for Fair Admissions v. Harvard* applies here: "Eliminating racial discrimination means eliminate all of it."[12] Put differently, "[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[13] Jefferson County has failed to do so.

Pursuant to the statute authorizing the MSAP program, no award can be made under the program without my certification.[14] Under these circumstances, I cannot in good faith certify that Jefferson County will meet its assurances that it will not discriminate based on race. And I will not do so until these legal and constitutional defects are adequately remediated.

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[10] *People Who Care v. Rockford Bd. of Educ.*, 111 F.3d 528, 535–538 (7th Cir. 1997).
[11] *Yellen v. Confederated Tribes of Chehalis Rsrv.*, 594 U.S. 338, 360 (2021).
[12] 600 U.S. at 206.
[13] *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No.* 1, 551 U.S. 701, 748 (2007).
[14] 20 U.S.C. § 7231d(c) states that "No grant shall be awarded under this part unless the Assistant Secretary of Education for Civil Rights determines that the assurances described in subsection (b)(2)(C) will be met."

The District Must Come into Compliance with Title VI.

To resolve these concerns, OCR requests that the Board comply with Title VI and take the following steps:

1. Revise Board Policy 09.131 and Racial Equity Analysis Protocol materials and procedures to make clear that discrimination based on race violates Title VI and that all Jefferson County policies and procedures must comply with Title VI.
2. Issue a public statement to parents, students, and staff notifying them of revisions to Board Policy 09.131 and Racial Equity Analysis Protocol materials and procedures.
3. Rescind any guidance which violates Title VI, remove or revise any internal and public-facing statements or documents that are inconsistent with Title VI, and notify all parents, students, and staff of such rescissions and revisions.
4. Revise Jefferson County's school funding formula to no longer discriminate based on race and distribute any available but as-yet-to-be-allocated funds to schools in a race-neutral manner that is not tied to the racial make-up of any school.
5. Issue a public statement to parents, students, and staff notifying them of changes to Jefferson County's school funding formula and apologizing for discriminating based on race in the allocation of school funds in violation of Title VI.

Thank you for your attention to this matter. Please notify OCR as to whether your district will agree to take these remedial steps to ensure it is in compliance with Title VI.

Sincerely,

Craig W. Trainor
Acting Assistant Secretary for Civil Rights

CC: Kevin C. Brown, General Counsel
Amanda Averette-Bush, Executive Administrator of School Choice