Avoiding the Discriminatory Use of Artificial

this complaint. Based on the facts as alleged, the students who are ELs may not be able to participate equally and meaningfully in the standard instructional program of the school.

Example 2: An elementary school's supplemental English language development program for students who are ELs relies almost exclusively on a computer-based program that markets itself as a personalized learning program. This program will supplement instruction for students who are ELs in listening, speaking, reading, and writing. Twice a week, students who are ELs use the computer program for thirty minutes while non-EL students receive direct literacy intervention instruction from a classroom teacher. While the teachers are trained to assist if a student who is an EL has technical difficulty (e.g., login issues), they are not trained in providing English language development instruction and are unprepared to do so. A teacher files a complaint with OCR alleging that none of the students who are ELs are improving in their English language skills after two years in the EL program. OCR would likely have reason to open an investigation based on this complaint. Based on the facts as alleged, the students who are ELs may not be able to participate equally and meaningfully in the standard instructional program of the school.

Title VI requires that elementary and secondary schools ensure meaningful communication with parents and guardians who have LEP in a language they can understand. Elementary and secondary schools may take steps to provide effective language atot2 (r)11.1 i3 (e)4.2.8 (n)5.2 (g)5.6 (u)O45ee922t

November 2024

Harassment creates a hostile environment under Title VI if school staff, a student, or another person engages in unwelcome conduct based on race, color, or national origin that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity. OCR could find a Title VI violation if: (1) a hostile environment based on race, color, or national origin existed; (2) the school had actual or constructive notice (in other words, the school knew or should have known) of the hostile environment; and (3) the school failed to take prompt and effective steps reasonably calculated to (i) end the harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Example 4 below, which involves harassment under Title VI:

> Example 4: A school district purchases facial recognition technology from a third-party vendor that markets its product as essential for school safety. The school district is unaware that the facial recognition technology it purchased has difficulty accurately recognizing the faces of students of color and consistently misidentifies Black individuals. A school in the district compiles a persons of interest list that includes individuals arrested for drug usage in the area and individuals who have been issued trespass warnings, including previously expelled students. If the facial recognition system detects that a person of interest is on campus, it sends an alert to specified school personnel. The system mistakenly flags several Black students multiple times throughout the school year, causing each student to be stopped and questioned by the school's resource officer and administrators. The students complain to the principal that they are being falsely flagged and questioned. The students flagged are also pulled out of class on multiple occasions to verify that they are not on the persons of interest list. The school does not take any actions in response.2 (o)5.3Tw 3.141 0 Td [(i)2.5 Tdlt5.9 (u(r)3.2 (TJ 0 Tc 0 (ts)1.7 (f.2 (TJ)2.7 (a)2.7 (g

Under Title VI, discrimination can occur when a school implements or enforces a policy or practice in a manner that treats students differently based on race, color, or national origin. OCR frequently uses the following threestep test to determine whether a school treated students differently based on race, color, or national origin in violation of Title VI:

1. Did the school treat a student or group of students of a particular race, color, or national origin differently from a similarly situated student or group of students of another race, color, or national origin? If no, then OCR would not find sufficient evidence to determine that the school has engaged in different treatment under this framework. If yes, then move to step two:
2. Can the school articulate a legitimate, nondiscriminatory reason for the different treatment? If no, OCR could find that the school has discriminated on the basis of race, color, or national origin. If yes, then move to step three:
3. Is the articulated reason for the different treatment a pretext for discrimination (i.e., not the true reason for the school's actions)? If yes, OCR could find that the school has engaged in discrimination based on race, color, or national origin.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Examples 5 and 6 below which involve discrimination in student discipline.

Example 5: A school implements new risk assessment, AI-enabled software to determine appropriate discipline measures for students. The software gives students a risk score that estimates the likelihood of them committing a future severe infraction based on historic school discipline data. Significant disparities by race have persisted in the school's application of student discipline, and Black students are disciplined more frequently and more harshly than other similarly situated students of another race. As a result, the historic school discipline data that the software relies on reflects the school's discriminatory disciplinary practices. Whenever a student receives a disciplinary referral, the school uses the software to calculate the student's chance of reoffending and heavily relies on the risk score in determining the severity of punishment (for example, high scores lead to more significant discipline). The AI software does not directly use the student's race as an input calculating the risk score. Parents complain to the school after they notice that the software tends to give high scores to Black students and low scores to White students. The principal tells the parents they should trust the software because it does not have access to information about the student's race, so it is less biased to let a machine generate the risk score for discipline decisions than to let a school official do it. OCR would likely have reason to open an investigation based on this complaint. Based on the facts as alleged, the school may be treating Black students differently than similarly situated students of another race.

Example 6: A high school purchases AI-enabled software that uses predictive analytics to identify students with a higher likelihood of dropping out of school in order to monitor their progress. The software uses a number of inputs to make its determination including whether the student has a two-parent household, whether the student has a low attendance record, whether the student has a disciplinary record, and if the student is a member of a racial or ethnic minority group. As a result, the software flags a large portion of the school's Black and Hispanic/Latino student population. The software places red flags next to the identified students' names on classroom rosters. In preparation for college visitation week, the school's

assistant principal uses the outputs from the program to exclude red-flagged students based on his belief that they are unlikely to attend college and that it would be a waste of time. A Latino parent files a complaint against the school after their child is automatically excluded from college visitation events. OCR would likely have reason to open an investigation based on this complaint. Based on the facts as alleged, the school may be treating Black and Hispanic/Latino students differently than similarly situated students of other races.

Sex Discrimination:

November 2024

Example 0: A public college utilizes an AI-enabled software that uses predictive analytics to identify students who will be most successful in its engineering program, and then assigns each applicant a score. The score is weighted heavily in deciding whether to admit students to the program, with lower weights being given to a student essay and answers provided on an application, which, among other things, includes the students' demographic information. The software uses data from past engineering applicants' acceptances and their demographics as an input for its analysis. Nearly 90% of past students are men. Though approximately equal numbers of male 0.7 (u)-0.7 (a)-e t

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November 2024

Disability Discrimination:

Section 504 of the Rehabilitation Act of 1973 (Section 504) states that no otherwise qualified individual with a disability shall, solely by reason of their disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Plans provisions look almost identical and, in some cases, do not match the specific needs of their children. The school district states that they defer to the school's decision on how to utilize AI tools and does not investigate further. OCR would have reason to open this complaint for investigation. Based on the facts as alleged, students may not have been provided with FAPE because their 504 plans may not have been designed to meet their individual educational needs

Section 504 requires schools to provide the services, supports, interventions, strategies, and modifications to school or district policies for students with disabilities to address any disability-based behavior, including behavior that could lead to discipline, and failure to do so may constitute a denial of FAPE. OCR's continued enforcement experience reflects that many students with disabilities also face discipline because they are not receiving the supports to which they are entitled.

Harassment creates a hostile environment under Section 504 if school staff, a student, or another person engages in unwelcome conduct based on disability that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity. OCR could find a Section 504 violation in its enforcement work if: (1) a hostile environment based on disability existed; (2) the school had actual or constructive notice (in other words, the school knew or should have known) of the hostile environment; and (3) the school failed to take prompt and effective steps reasonably calculated to (i) end the harassment; (ii) eliminate any hostile environment and its effects; and (ii) prevent the harassment from recurring.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Example 8 below, which involves harassment under Section 504.

> Example 8: An elementary school teacher uses an AI-enabled application, which monitors noise and provides feedback to assist her in managing classroom noise. The application uses the class computer's built-in microphone to detect when students' voices are raised, and it displays a color meter ranging from green (quiet classroom) to red (loud classroom). The application tracks patterns for class noise and predicts the times of day that the teacher is likely to have more difficulty managing classroom noise. During the times of day that the application predicts will be the loudest, the teacher keeps the color meter projected for all the students to see and offers a pizza party if they only have a few instances where the meter reaches red. A student who is hard

Schools' use of AI and AI-driven technologies may also raise concerns pertaining to the Family Educational Rights and Privacy Act (FERPA), a statute not enforced by OCR. For more information on FERPA, please see the Department's [FERPA website](#).

Anyone who believes that they or someone else has been discriminated against by a school or other recipient based on race, color, national origin, sex, disability, or age can file a complaint of discrimination with OCR using OCR's [Electronic Complaint Assessment System](#). Complaint forms and other resources, available in languages other than English, are available on [OCR's Resources Available in Other Languages website](#).

All of the federal civil rights laws enforced by OCR prohibit retaliation. In general, retaliation occurs when a school intimidates, threatens, coerces, or discriminates against an individual for one of two reasons: (1) Because the individual has made a complaint, testified, assisted, or participated in any

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