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Small Advances and Swift Retreat: Race-Conscious Educational Policy in the Obama and Trump Administrations[1]

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Abstract: The three terms comprising the Obama and Trump presidencies provide an opportunity to understand the evolution of race-conscious education policy in an increasingly multiracial, unequal, and divided society. Through document review and interviews with civil rights lawyers, government officials, congressional staffers, and intermediary organization personnel, we sought to understand how Obama officials envisioned and changed the role of the federal government in fostering K-12 race-conscious educational policies and what mechanisms they used to advance priorities. We also explored changes Trump administration officials made to federal civil rights policies and through which institutional means. Our findings reveal through-lines between past and present political agendas and the methods for enactment. Obama's interagency efforts to reinvigorate civil rights oversight and enforcement in education harkened back to the mid-1960s era of bipartisan cooperation around school desegregation. Yet the decades-long legal and policy retrenchment against civil rights advances made in the 1960s constrained further progress. Trump's administration advocated for the privatization of public education through increased choice and opposed race-consciousness in education law and policy. The reshaping of the federal judiciary under Trump presents challenges for race-consciousness in the law for years to come. Recognizing these consistent through-lines and constraints will be essential for advocates and policymakers going forward.
Keywords: race-conscious law and policy; education politics; civil rights

Pequeños avances y rápida retirada: Política educativa consciente de la raza en las administraciones de Obama y Trump

Resumen: Los tres mandatos que comprenden las presidencias divididas de Obama y Trump brindan una oportunidad para la evolución de una política educativa con conciencia racial en una sociedad cada vez más multirracial, desigual y dividida. A través de la revisión de documentos y entrevistas con abogados de derechos civiles, funcionarios gubernamentales, personal del Congreso y organizaciones intermediarias, buscamos comprender cómo los funcionarios de Obama imaginaron y cambiaron el papel del personal del gobierno federal en el fomento de políticas educativas K-12 conscientes de la raza y qué mecanismos solían adelantar prioridades. También exploramos los cambios institucionales que los funcionarios de la administración Trump hicieron en las políticas federales de derechos civiles y por qué medios. Nuestros hallazgos revelan líneas transversales entre las agendas políticas pasadas y presentes y los métodos para su promulgación. Los esfuerzos interinstitucionales de Obama para revitalizar la supervisión y el cumplimiento de los derechos civiles en la educación se remontan a la era de cooperación bipartidista en torno a la eliminación de la segregación escolar a mediados de la década de 1960. Sin embargo, el repliegue legal y político de décadas contra los avances en derechos civiles logrados en la década de 1960 restringió el progreso. La administración de Trump abogó por la privatización de la educación pública a través de mayores opciones y se opuso a la conciencia racial en las leyes y políticas educativas. La remodelación del poder judicial federal bajo Trump presenta desafíos para la conciencia racial en la ley en los años venideros. Reconocer estas líneas transversales y restricciones consistentes será esencial para los defensores y los formuladores de políticas en el futuro.
Palabras clave: leyes y políticas con conciencia racial; política educativa; derechos civiles

Pequenos avanços e recuo rápido: Política educacional com consciência racial nas administrações Obama e Trump

Resumo: Os três mandatos que compõem as presidências de Obama e Trump oferecem uma oportunidade para entender a evolução da política educacional com consciência racial em

uma sociedade cada vez mais multirracial, desigual e dividida. Por meio de revisão de documentos e entrevistas com advogados de direitos civis, funcionários do governo, funcionários do Congresso e funcionários de organizações intermediárias, buscamos entender como os funcionários de Obama imaginaram e mudaram o papel do governo federal na promoção de políticas educacionais conscientes da raça K-12 e quais mecanismos . eles costumavam avançar prioridades. Também exploramos as mudanças que funcionários do governo Trump fizeram nas políticas federais de direitos civis e por meio de quais meios institucionais. Nossas descobertas revelam linhas de passagem entre as agendas políticas passadas e presentes e os métodos de promulgação. Os esforços interagências de Obama para revigorar a supervisão e aplicação dos direitos civis na educação remontam à era de meados da década de 1960 de cooperação bipartidária em torno da desagregação escolar. No entanto, as décadas de contenção legal e política contra os avanços dos direitos civis feitos na década de 1960 restringiram ainda mais o progresso. A administração de Trump defendeu a privatização da educação pública por meio de maior escolha e oposição à consciência racial nas leis e políticas educacionais. A reformulação do judiciário federal sob Trump apresenta desafios para a consciência racial na lei nos próximos anos. Reconhecer essas linhas e restrições consistentes será essencial para os defensores e formuladores de políticas daqui para frente.
Palavras-chave: lei e política com consciência racial; política educacional; direitos civis

Small Advances and Swift Retreat: Race-Conscious Educational Policy in the Obama and Trump Administrations

In 2007, as students of color approached a majority of the nation's public school enrollment, the Supreme Court issued a decision sharply curtailing the use of race in voluntary school desegregation. Chief Justice John Roberts declared, "the way to stop racial discrimination on the basis of race is to stop racial discrimination on the basis of race" (*Parents Inv. in Comm. Sch. v. Seattle Schools*, 2007, p. 747). His stance encapsulated a race-evasive[2] conservative ideology, formulated in response to 1960s-era civil rights gains, of wiping virtually all consideration of race from the law, even in voluntary efforts to address segregation (Anderson, 2007). The conservative commitment to legal race-evasiveness stands regardless of whether race is considered to oppress or redress.

The three terms comprising the Obama and Trump presidencies provide a crucial opportunity to understand the evolution of race-conscious education policy, or policies aiming to redress racial inequality caused by state-sponsored discrimination and achieve the benefits of diverse educational settings (Frankenberg, Garces, & Hopkins, 2016), in an increasingly multiracial, unequal, and divided society. Through document review and interviews with civil rights lawyers, government officials, congressional staffers and intermediary organization leaders and staff, we sought to understand how Obama officials envisioned and changed the role of the federal government in fostering K-12 race-conscious educational policies and what mechanisms they used to advance

[2] We prefer the term race-evasive rather than race-neutral or colorblind to reject ableism and to recognize that while racism may be at times less overt than in the past, it is not neutral nor is it "blind" to race (Annamma et al., 2016; Kohli et al., 2017). We do not discard "colorblind" or "race-neutral" altogether here because they appear in the historical record. Our study participants also relied on the term race-neutral and it subsequently became part of our qualitative coding scheme.

priorities. We also explored changes Trump administration officials made to federal civil rights policies and through which institutional means.

Our findings reveal through-lines between past and present political agendas and tools. The Obama administration's interagency efforts to reinvigorate civil rights oversight and enforcement in education harkened back to mid-1960s era cooperation around school desegregation (G. Orfield, 1969). But unlike the mid-1960s, when interbranch cooperation on civil rights bolstered interagency work, Obama's efforts were largely limited to the executive branch. Moreover, other aspects of Obama's agenda aligned closely with market-oriented education reforms (Popp Berman, 2022), in ways that may have detracted from the focus on reinvigorating educational civil rights. The decades-long legal and policy retrenchment against civil rights advances made in the 1960s further constrained the Obama administration's ability to push forward. And that retrenchment accelerated in many conservative circles during the Obama administration, curtailing race-conscious education policy even more.

Trump's education agenda was often opposed to Obama's. He extended what had been a bipartisan consensus around charter schools to a more extreme outcome: the privatization of public education (Schneider & Berkshire, 2020). The political framing of school choice as a civil right continued even as the administration's efforts to expand private school vouchers and for-profit charters absent civil rights oversight sidled ever closer to the segregative roots of the movement (Scott, 2011; Rooks, 2017). The privatization push was accompanied by targeted restrictions on race-consciousness in education law and policy, from diversity training to data that included racial/ethnic categories, to use of race in competitive admissions processes, to disparate impact standards. This too represented a throughline for conservative administrations dating back to Reagan, though Trump's messaging carried more overt racial animus (Smith & King, 2020).

Literature Review

We review an interdisciplinary body of literature about three related areas: the federal role in enforcing educational civil rights, the trajectory of race-evasiveness in law and policy, and the framing of school choice as a civil right. Fully understanding the federal role in civil rights enforcement and the arc of race-evasiveness in law and policy requires a look back at the Reconstruction era before moving forward into the present. Race-evasiveness and backlash to the Civil Rights Movement then intersect in a conservative push to frame school choice in civil rights terms from the 1980s-onward.

Education and Federal Civil Rights Enforcement

The origins of the federal government's involvement in education and civil rights traces back to Reconstruction. As a precondition for returning to the Union, the federal government demanded that southern states inscribe into newly drafted state constitutions the right to public education (Black, 2020; Du Bois, 1935). The new state educational guarantees would engender tension between the recently passed 14th amendment, which guaranteed equal protection under the law, and the 10th amendment, which devolved any government duties not explicitly mentioned in the federal Constitution—including public education—to the states. Seventy-odd years after Reconstruction, the southern backlash to *Brown v. Board of Education* cynically capitalized on that 10th versus 14th amendment tension with race-evasive terms like states' rights and local control (Lassiter, 2007).

Confronting southern resistance to *Brown*—which declared that racial segregation in schools violated the 14th Amendment—became a focal point of the federal government's slowly expanding purview over public education. With little to no progress on desegregation in the South 10 years

after *Brown*, the Civil Rights Act (CRA) of 1964, the Voting Rights Act (VRA) of 1965 and the Elementary and Secondary Education Act (ESEA) of 1965 heralded the political power of the Civil Rights Movement. The CRA and ESEA also provided the congressional backbone for executive branch enforcement of desegregation (G. Orfield, 1969). The CRA contained Title VI, a provision prohibiting federal dollars for programs or activities that discriminated on the basis of race, color, or national origin. And with the passage of the ESEA, significantly heightened federal financial assistance to public schools provided incentives to state and local education agencies who were otherwise intent on defying federal desegregation mandates. This approach highlighted numerous policy tools used by different branches of the federal government (McDonnell & Elmore, 1987), embodying the idea that "education is a state responsibility, a local function and a federal priority" (Malen, 2010, p. 38).

School desegregation required the powers of all three branches of the federal government. Congress has the power under Article 1, Section 8 of the Constitution to authorize the spending of federal funds and establish conditions that states and localities must meet in order to receive the funds. The courts have the power to interpret the Constitution and U.S. statutes. The executive branch, in this case, the Department of Health, Education, and Welfare (HEW, which would later become the Department of Education), had the power to write regulations that identified specific actions local districts needed to take toward desegregation. These regulations were later incorporated into judicial decisions about desegregation.

For a brief period, all three branches of government made desegregation a priority. At the same time, intense interbranch/intergovernmental cooperation and conflict characterized federal intervention in school desegregation under the Johnson and early Nixon administrations. For example, there was disagreement between the federal branches of government over how broadly to interpret Title VI. Some officials argued that discrimination included racial intent and impact, such that racial imbalance in schools pointed to a violation even without clear evidence of intent (Frankenberg & Taylor, 2018). This reading of Title VI overrode the distinction between de jure (by law) and de facto (by fact) segregation. It also was backed by the judicial branch in several district court decisions regarding segregation in the North. Congress allowed the understanding of Title VI to shift as society's understanding of discrimination evolved. In comparison, the executive branch interpreted the statute more narrowly as it sought to navigate intergovernmental politics (Frankenberg & Taylor, 2018). For instance, HEW's 1965 school desegregation guidelines became the subject of much wrangling over educational civil rights as states and localities tested the resolve of HEW's oversight and enforcement of Title VI (Cascio et al., 2010; G. Orfield, 1969).

Desegregation enforcement was a cross-agency effort in the executive branch.[3] The Civil Rights Division in the Department of Justice (DOJ), the nation's oldest federal civil rights enforcement agency, received jurisdiction over school desegregation litigation once Congress passed the Civil Rights Act of 1964, as well as final say over federal fund withholding. Relatedly, the Attorney General remained responsible for coordinating all Title VI enforcement across the federal government. Yet the DOJ's civil rights division tended toward a conservative interpretation of administrative power (G. Orfield, 1969). Even after the Supreme Court upheld and expanded HEW's desegregation guidelines in *Green v. New Kent County*, OCR still had to send DOJ's Civil Rights Division detailed, district-by-district records documenting patterns of persistent racial segregation before federal funds could be cut off. As the federal administrative agencies negotiated a complicated interbranch terrain, external political pressure for significant federal action gave way to Richard Nixon's race-evasive "southern strategy," which knit together a coalition of northern and

[3] Thirteen executive agencies have jurisdiction over federal civil rights laws (U.S. Commission on Civil Rights, 2018).

southern Whites particularly resistant to school desegregation (Delmont, 2016). Ronald Reagan adopted similar, racialized political strategies, and Bill Clinton maintained many of them, focusing on "ending welfare as we know it" and the needs of "middle-class people who play by the rules, rather than directly confronting structural racism" (Geisemer, 2022).

As the political backlash gained steam, the federal government's capacity to govern shrank, beginning with the Republican "Gingrich revolution" of the 1990s. Today, members of Congress do not spend as much time on routine legislation and oversight as they once did (Mann & Ornstein, 2012). The two congressional parties have a historically low level of ideological overlap, reflecting and deepening political polarization in the electorate in the decades since pro-civil-rights Republicans and Democrats collaborated on the Civil Rights Act and the Voting Rights Act. Republicans have shifted further right than Democrats have shifted left and are also likelier than Democrats to focus on building a media presence to the exclusion of legislation (Klein, 2020). The increased use of Senate filibusters means that legislation must either meet the narrow requirements for being exempt from the filibuster as part of budget reconciliation or be uncontroversial enough to win 60 votes in the Senate (Jentleson, 2021).

Without legislation to interpret, administrative agencies like the U.S. Department of Education now rely more on guidance, also known as "Dear Colleague" letters. These letters explain how the Department understands existing law, and do not go through the full rulemaking process established in the Administrative Procedure Act, so they are relatively easy to promulgate. Agency heads can also change how the agencies do their work, such as processing of civil rights complaints. However, both guidance and agency procedures are easily rescinded by the next president and cabinet secretary. The federal courts have the final say on when an agency has overstepped its statutory authority. Recently, conservative appointees have been inclined to narrow agencies' ability to act in the absence of a specific grant of power by Congress (for example, *West Virginia v. EPA,* decided in 2022) —which is less likely to happen so long as Congress is polarized and unable to pass major bills unless they are part of budget reconciliation.[4]

Constraints on the federal role in education layered onto ongoing and intense conservative backlash to the brief period of concerted federal school desegregation efforts significantly curtailed the scope of OCR's work. Everything about the agency's early efforts was challenged, from whether racial discrimination could be discussed to whether it could be proven or remedied (Pollock, 2008). By the early 2000s, half of OCR's caseload involved discrimination complaints brought by White students with disabilities, while just one-fifth involved discrimination complaints based on race (Pollock, 2008). The legal push for race-neutrality manifested directly in 2008 guidance issued by the outgoing George W. Bush administration, which advised school districts to abandon voluntary race-conscious student assignment strategies[5] (USED, 2008). Yet contextualizing the modern-day movement toward "race-neutrality" that undergirds conservative efforts to minimize discrimination against historically marginalized groups requires us to go back much further than 2008.

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[4] The civics-class version of U.S. government emphasizes this sort of "checks and balances," but those are how policy ideas get *blocked.* Actually making and implementing policy requires a more nuanced, ongoing relationship, which political legal scholars have labeled as "separated institutions sharing powers" (Neustadt, 1990) or an "ongoing colloquy" (Fisher, 2004). Judicial review is not a focus of this paper, but it is worth noting that the U.S. Supreme Court's increasing use of the "shadow docket" to issue decisions without written opinions threatens interbranch relations. If the other two branches do not know why the Court struck down a law or executive action, they cannot respond.

[5] The Bush Administration's guidance contradicted the controlling opinion in *Parents Involved* permitting some forms of race-conscious assignment.

Race-Evasiveness in Law and Policy

The conservative co-optation of "colorblindness" and "race-neutrality" has been a century and a half in the making. At its heart is the tension between the ideal of a society rid of racial distinctions and hierarchies and the reality of a society still wrestling with them. In the first school desegregation case in Massachusetts circa 1849, advocates for racial equality pressed for a "colorblind" reading of the law to extend equal protection to all (Kull, 1998). After the Civil War, the Reconstruction Congress debated the virtues of race-consciousness in the law. A small group of progressive Radical Republicans argued for "colorblind constitutionalism" against the backdrop of a much larger group of moderate Republicans deliberating about race, citizenship, power and access (Anderson, 2007). The moderate group directed funding toward race-conscious programs like the Freedman's Bureau and considered citizenship rights for Black Americans, as well as American Indians and Chinese Americans (Anderson, 2007). Yet over time, a concerted conservative strategy to warp the more radical colorblind constitutionalism led to arguments against race-conscious remedies for racial discrimination.

Early Application of "Colorblindness"

In 1896, Justice John Marshall Harlan's dissent in *Plessy v. Ferguson* contained early legal examples of race-evasiveness. "In the view of the Constitution," he wrote, "there is in this country no superior, dominant, ruling class of citizens…our Constitution is color-blind and neither knows nor tolerates classes among citizens" (*Plessy v. Ferguson*, 1896, p. 559). He wrote those words in response to the Court's color-conscious "separate but equal" ruling, which drew torturous distinctions between legal and social freedoms when it came to matters of race.[6] *Plessy* came during a period of active, race-conscious judicial retrenchment on civil rights for Black citizens, as White elites sought to rollback Reconstruction-era gains. Though the conservative majority on the Court emphasized that *Plessy* would not dismantle political freedoms won during Reconstruction, sanctioning a segregated social order effectively preserved White supremacy (powell, 2021) as southern states enacted the "Jim Crow" segregation laws.

Six decades later, civil rights lawyers would revisit Harlan's reasoning. In the lead up to *Brown v. Board of Education*, Thurgood Marshall and the NAACP legal team argued that the Constitution was colorblind, in that an anti-discrimination application of colorblindness was required to remedy the denial of equal education to Black students (Peery, 2011). They did so in response to *Plessy*'s overt discrimination requiring separate public schools on the basis of race, emblematic of the law's long-standing rejection of colorblindness for the purposes of maintaining racial subordination (Fair, 1993; Turner, 2015). As one of the NAACP lawyers in *Brown*, Robert L. Carter, noted in retrospect, "All that race was used for at that point was to deny equal opportunity to Black people" (Liptak, 2007). Litigation leading up to the *Brown* case carefully laid out how school segregation upheld a racial caste system and the ruling and subsequent cases focused on dismantling racial caste in education in a race-conscious manner (Brief of the NAACP Legal Defense and Educational Fund, Inc. and the National Association for the Advancement of Colored People in Support of Respondents, *Students for Fair Admissions, Inc. v. Univ. of North Carolina*, 2022).

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[6] Harlan's dissent echoed those distinctions. In the sentences preceding his call for colorblindness in the law, Harlan wrote "The White race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power" (*Plessy,* 1896, p. 559).

Race-Consciousness versus Race-Evasiveness Post-Brown

As we saw above, race-conscious desegregation guidelines and reporting became an important part of the federal compliance strategy in the aftermath of *Brown*. One federal judge overseeing an Alabama school desegregation case, expressing support for HEW's race-conscious guidelines, explained the tension between race-consciousness and race-neutrality in constitutional law this way:

> To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate government purpose (*U.S. v. Jefferson County Board of Education*, 1966, 876).

When conservatives began co-opting colorblindness to protect White interests in the early 1970s (Haney Lopez, 2011), part of intensifying resistance to civil rights gains, the "legitimate government purpose" became a central focus.

The distinction between de jure and de facto discrimination in another school desegregation case, this time outside the South, became an additional focus. *Keyes v. Denver School Board No. 1* came before a newly conservative Supreme Court in 1973. The case dealt with two issues of increasing interest in equal protection litigation: intent to discriminate and the legitimacy of the de jure/de facto distinction (Boddie, 2021). If the Court required plaintiffs to show intent rather than impact to prove discrimination, and if the Court could deem most segregation outside of the South de facto and therefore beyond its jurisdiction, civil rights lawsuits filed under the equal protection doctrine would be seriously blunted. This would undermine an accounting of the past and present effects of racist government policy and come to mean a race-evasive interpretation of many legal matters regarding race brought before the courts.

Using Race-Evasiveness to Make Proving Racial Discrimination More Difficult

In *Keyes*, the Court did indeed move toward an increasingly race-evasive view of litigation. Although finding discrimination in the Denver district, the Court raised the bar to intent for proving discrimination. This move ignored layers of longstanding government policy and practice—like redlining, federal highway construction, subsidization of suburban housing for Whites, how school boards drew attendance boundaries or designed school choice—that added up to state-sponsored segregation in northern metro schools and neighborhoods (M. Orfield, 2015; Rothstein, 2017). Because there were many moving parts and actors, proof of intent became a high hurdle for under-resourced and overstretched civil rights organizations. It also enabled racial discrimination to adapt. Even if there was no clear evidence of intent, race-evasive discrimination could have the same impact.

The intent requirement in *Keyes*[7] mattered greatly one year later in *Milliken v. Bradley*, which was part of a movement to relax standards around racial discrimination. *Milliken* limited school desegregation to Detroit because the Supreme Court majority refused to acknowledge evidence that the surrounding suburban communities and districts had intentionally contributed to segregation in the city. Justice Thurgood Marshall's dissent included a detailed account of how federal, state, and local policies created inter-district segregation (Sugrue, 2008). This race-evasive reading of the law extended further into the 1990s, when the Supreme Court sanctioned release from judicial oversight

[7] Signaling just how quickly the Court shifted, the *Keyes* ruling contradicted the justices' reasoning in *Wright v. Emporia* (1972) that looked at impact, not intent, of a community's actions around district boundary lines.

for school desegregation, even if patterns of segregation persisted, as long as districts showed "good faith" compliance (*Board of Educ. v. Dowell,* 1991). In the 2007 *Parents Involved* decision, cited earlier, Chief Justice John Roberts wrote, "history will be heard…legally separating children based on race…[was] the constitutional violation in that [*Brown*] case" (*Parents Involved v. Community Schools*, 2007). Roberts acknowledged the evidence linking racial segregation to unequal resources and psychological harm—which most view as historical and contextual justifications for addressing segregation—but reiterated that the Court's remedy in *Brown* centered around achieving "a system of determining admission to the public schools on a nonracial basis" (*Brown v. Board of Education, 1955,* 300-301). In doing so, Roberts decoupled context from conclusion.

Politics of Race-Evasiveness Uphold White Supremacy

Conservative support for race-evasiveness also included political strategies. Early seeds could be seen in race-evasive political rhetoric emanating from Prince Edward County, Virginia, in 1959, where White officials defied a desegregation mandate by refusing to operate public schools. Relying on archival research, one study found that White leaders in the county centered racialized resistance to dismantling White supremacy on race-evasive topics like privatization, local control, and taxpayer's rights (Bonastia, 2009).

Casually deployed statements marking the US as colorblind or "post-racial" obscure the connection between racial discrimination past and present, thereby perpetuating White supremacy (Coates, 2017; Lucks, 2021). Haney Lopez (2011, 2021) describes the phenomenon as "reactionary colorblindness," used regularly by racial demagogues to attack race-conscious remedies like affirmative action—and the government that supports those remedies—even as they employ a moral high ground on civil rights while doing so. If we have eradicated legal discrimination by race, the thinking goes, we no longer need to address it in the political or policy arena. According to this view, the fact that educational policies remain linked to disparate outcomes by race does not signal governmental intent to discriminate and therefore cannot be used as remedial justification.

As the Right's co-optation of "colorblindness" gained steam, so did a reframing of educational civil rights. Rather than guaranteeing access to and inclusion in strong, traditional public schools, bipartisan consensus consolidated around the idea of granting individual families the right to choose among a menu of school options—many of them outside the regular public school system. Although conservatives used the language of "colorblindness," they also used racist tropes. A quantitative analysis of political speeches given over the past century showed rising Republican Party usage of race-evasive but pro-segregationist rhetoric like "states' rights" in the early 21st century (Becker, 2021).

Bipartisan Consensus surrounding School Choice as a Civil Right

The successful reframing of school choice and civil rights has helped define the conservative—and to some extent the liberal—political movement from Reagan onward. As with the cooptation of "colorblindness" to justify rolling back civil rights protections, deep irony pervades the idea of school choice as a manifestation of educational civil rights. School choice as a state policy began as a ploy to evade *Brown v. Board of Education*'s call for equal protection under the law (G. Orfield, 2013) and is now perceived to be a 21st century exercise of a civil right (Scott, 2011).

Under the Reagan administration, consensus about the causes of educational inequalities shifted. Instead of viewing disparities in educational outcomes as rooted in racial and economic segregation from opportunity, lawmakers from both parties increasingly converged on market-based diagnoses (Popp Berman, 2022; Wells & Petrovich, 2005). Policy solutions stemming from these diagnoses were targeted almost exclusively at central city systems most isolated by the race-evasive school desegregation rulings since the mid-1970s (Scott, 2011).

Framing school choice as a civil right drew together unlikely allies, from urban Black and Latinx families disaffected by the failures of systematically segregated and under-resourced public education to wealthy donors eager to disrupt what they perceived to be public sector monopolies and teachers' union influences (Scott, 2009, 2015) to conservative policy makers promoting the virtues of school privatization (Hale, 2021). The bipartisan push superseded the ugly history of school choice used to evade desegregation in the form of state-subsidized private school vouchers for White families avoiding public school desegregation (Nevin & Bills, 1976). And while families of color sought alternatives to public schools unresponsive to their needs and mired in the fallout from the failure to implement *Brown* in equitable or systematic ways, they also "generally called for greater inputs into public education…[a] demand that the state redistribute educational resources and opportunities, regulate equitable practices and remedy past injustices" (Scott, 2011, p. 38).

For many conservatives, as well as growing numbers of centrists and progressives, the ultimate goal is school privatization in the form of a universal voucher and choice program (Black, 2020; MacLean, 2018). The race evasive standards and accountability movement aided that goal with a laser focus on educational outputs like test scores, rather than inputs like funding. In recent years, though Americans consistently rate their own public schools highly, ratings for public education more broadly have tanked (PDK, 2021). An increasing sense of disaffection with public education—as public schools now serve a majority of students of color—writ large creates more favorable political conditions for privatization and little to no government role in education.

Race-evasive privatization policies centered on choice include vouchers, tuition tax credit plans, and charter schools. As a remedy for educational inequality, vouchers appealed to some racial equality advocates during the 1990s (Hale, 2021). Over time, though, the expansion of race-evasive framing and rationales for vouchers, alongside mounting support from traditional conservatives, moved the political alliances politically rightward (Hackett & King, 2019). Political support for choice in the form of charter schools has consistently been more bipartisan, from the early days of union support for charters to their embrace by administrations from Clinton onward (Popp Berman, 2022; Schneider & Berkshire, 2020). As Trump entered office, however, cracks in the bipartisan coalition were emerging (Barnum, 2017). Moderate and left-leaning groups were becoming increasingly concerned that conservatives' end goal was total privatization. Research and media coverage pointing to very mixed academic outcomes, mounting corruption, and the segregating impacts of market-based school choice further challenged the rhetoric and consensus (Barnum, 2017; Rotberg & Glazer, 2018).

Understanding the federal role in advancing racially equitable education, the rise of race-evasive law and policy and the framing of school choice as a civil right as distinct but related phenomena lay the groundwork for our study of political agendas, policy mechanisms, and political and policy constraints around race-conscious education policy in the Obama and Trump years.

Data and Methods

Two primary questions motivated our qualitative analysis of race-conscious education policymaking during the Obama and Trump administrations:

1. How did Obama officials change the role of the federal government in fostering race-conscious educational policies? What mechanisms did they use?
2. What changes did the Trump administration made to federal civil rights policies and by what institutional means?

To answer these questions, we drew on 25 interviews with former and current agency officials in the Justice and Education Departments, interest group and think tank leaders (which we define as "intermediary organization leaders and staffers"), and aides to members of Congress. Twelve participants held the same position during both administrations, whereas the other 13 participants changed positions. For example, one participant served as an ED official during the Obama administration and transitioned to a leadership role in an intermediary organization during the Trump administration. Intermediary organization leaders and staffers accounted for 13 of the interviewees. OCR or DOJ staff and attorneys made up the next largest group of participants with 5, followed by 4 non-OCR Department of Education (ED) officials, 3 congressional staffers, and 2 law professors (see Table 1). Interviews were primarily conducted between 2017 and 2019, though data collection was ongoing through 2021 as part of a five-year (2018-2022) project funded by the Spencer Foundation.

Table 1

Participant Positions and Interview Codes

Position	No.	Code Categories	
		Obama Tools, Agenda, & Constraints	Trump Tools & Agenda
Congressional staffer	3	Lack of clarity OCR	Education privatization Race-neutrality
Law professor	2	Inconsistencies	Education privatization
ED official/non-OCR	4	OCR	Deregulation
OCR or DOJ attorneys & staff	5	Cross-sector coordination ED & DOJ Lack of clarity	Deregulation Race-neutrality
Intermediary organization leadership or staff	13	Cross-sector coordination ED & DOJ Guidance Lack of clarity Limitations OCR	Deregulation Education privatization
Total	25*		

**Note*: Numbers do not add up to the total for interviewees because many held multiple positions over the course of the two eras. If interviewees did so, we listed all applicable positions since they spoke from the perspective of those different roles.

We relied on purposive sampling to select initial participants, identified as actors in education civil rights policy inside or outside government during the Obama and/or Trump administration (Merriam, 1998). Those initial contacts provided connections to informants with similar expertise, in line with our additional emphasis on chain-sampling (Roulston, 2010). Access to current Congressional staffers from both parties was more difficult than we anticipated. Multiple Senate and House offices informed us of a blanket policy against participating in research. This reticence to participate in research is itself a form of data about the charged political atmosphere on the Hill at the time. We interviewed one staffer and two former staffers, all from Democratic offices. Though we reached out to staff associated with Republican congressional members seated on education committees, the Trump administration and right-leaning intermediary organizations, we were only able to interview two participants openly aligned with conservative political ideology. One conservative participant vouched for us to potential conservative interviewees, but we got no responses to our inquiries.

We did not ask participants for their party affiliation, nor did we reveal our party affiliations, but given our interest in race-conscious policies, the nature of our political identities may have been assumed. We are a racially diverse team of female scholars at public research universities around the country. As a group, we generally view race-conscious policies as an important means of addressing past and present discrimination based on race, even as we recognize that such policies are not panaceas. We do not believe these views impacted the substance of our interviews, though they motivated the focus of our study and shaped our analysis.

Our in-depth interviews were semi-structured, lasting between 30-75 minutes, and were conducted in person and remotely (Fontana & Frey, 2005). Interview questions focused on how respondents viewed the processes (e.g., congressional action, regulation, litigation) that drive the formation and/or implementation of race-conscious education policies. These policies included Title VI oversight and enforcement, voluntary integration, magnet and charter schools, and federal oversight of current desegregation cases and affirmative action policies. As part of the consent process, we allowed interviewees to determine whether and how we would identify them in our analysis (e.g., by name, role, etc.). All quotations from interviews are cited as "personal communications."

For background and analytical data triangulation, we also relied on government documents, court proceedings, media accounts, and fieldnotes from observations of selected hearings and/or think tank briefings (see Table 1A in appendix).

Documents included transcripts of congressional hearings and/or briefings, as well as copies of agencies' guidance and regulations. To understand agency perspectives, we also reviewed annual publications, such as the ED Office for Civil Rights (OCR) reports released during the Obama administration, or budget requests from the U.S. Department of Justice (DOJ). Additionally, we reviewed filings from DOJ, consent decrees posted online, and other such information because of our limited interviews with DOJ staff.

Analysis

Yin (2009) emphasizes the construction of a logical, written "chain" of evidence to assist fellow researchers in seeing how conclusions were reached. All interviews were transcribed and reviewed separately by members of the research team. We conducted preliminary coding on selected interviews to establish inter-rater reliability (see Table 2).

Table 2

Codebook

Research questions	How did Obama officials envision the role of the federal government in fostering K12 race-conscious educational policies? What policy tools did they use?			What changes has the Trump administration made to federal civil rights policies and by what institutional means?	
Initial codes	Obama policy goals/agenda	Obama policy tools	Obama political constraints	Trump policy goals/agenda	Trump policy tools
Guiding questions	What were the driving forces behind the Obama administration's educational policy decisions? To what extent was race consciousness a force?	How did the Obama administration advance its agenda? How did it use the OCR case processing manual, Title VI, guidance and regulations, and others to do so?	What forces constrained the Obama agenda? Why was it ultimately so precarious?	What were the driving forces behind the Trump administration's educational policy decisions? To what extent was race neutrality a force?	How did the Trump administration advance its agenda? How did it use the OCR case processing manual, Title VI, guidance and regulations, and others to do so?
	What other possible dimensions of civil rights (SES, gender, disability status, immigrant or language status) were part of the administration's goals?			What other dimensions of civil rights (SES, gender, religion, immigrant or language status) were part of the administration's goals?	
Focused codes	Cross-sector coordination ED & DOJ Inconsistencies Lack of clarity OCR			Deregulation Education privatization Race-neutral	

We utilized focused coding of the data to examine a range of central concepts corresponding to our research questions. as well as codes responsive to the research questions themselves (Boyatzis, 1998; Miles et al., 2014). Our final list of codes incorporated the literature and theory on interactions among the branches of the federal government and among federal, state, and local governments. We subsequently developed codes around Obama and Trump's education policy goals and agendas, as well as education policy tools and political constraints. These were informed by the literature and included terms like "race-conscious," "tension between race and SES," "Title VI," "guidance" and "regulations."

Limitations

As noted above, we confronted some limitations regarding access to Congress. Similar barriers emerged with access to DOJ. We sought to address limited access through careful document review, which included legal filings during the period under study, and FOIA requests for DOJ material related to civil rights tools. While we received some material, other FOIA requests are still pending and thus not included in this analysis.

Findings

We discuss our findings in two major sections. We first focus on the agenda, levers used, and constraints defining the eight-year Obama administration's pursuit of expanded race-conscious educational policies. Secondly, we focus on the agenda and tools related to rollbacks over the four-year Trump administration.

Reinvigorating Educational Civil Rights under Obama: Substance and Methods

Several themes emerged from our interviews and review of Obama era documents. A primary theme entailed mixed signals from the Obama administration on "race-neutral" policies and goals. Another theme dealt with the administration's strengthening of educational civil rights–to include race-conscious policies–relying particularly on methods and collaboration employed by the ED's Office for Civil Rights and the DOJ's Civil Rights Division. The Obama administration's pursuit of its civil rights priorities included reinvigorating the use of existing mechanisms that had been largely abandoned. At the same time, the administration also broadened the notion of the federal role. As an example, the Obama administration cautiously expanded the use of OCR enforcement to protect civil rights, especially around racial disparities in discipline.

Another theme was that, even as the administration expanded enforcement, a lack of consensus emerged around the legal, policy, and political approaches to doing so–within the executive branch but also between the executive and legislative branches. A conservative judiciary and the potential political blowback of the first Black president sustaining a legal defeat may have constrained the administration's efforts to further or protect students' civil rights, particularly given how decades of jurisprudence had narrowed the interpretation of remedy in racial discrimination cases (Boddie, 2016).

A final theme, given the lack of consensus, mixed signals, and continued emphasis on market-based education reforms, related to whether the Obama administration's strengthening of educational civil rights would result in a lasting change or a vulnerable, unfinished agenda. The administration primarily relied on executive branch actions as well as intergovernmental efforts—partnering with outside advocates and local stakeholders, often to voluntarily advance civil rights--given that Republicans controlled the House after the 2010 election and the Senate after 2014. Republican Congressional majorities were hostile to the Obama agenda generally and to civil rights specifically. While federal executive branch actions were vulnerable to rollbacks during the Trump administration, state and local efforts may well have sustained change on the ground even in the face of subsequent policy changes.

Lack of Clarity around "Race-Neutral" Policies and Goals

A recurring tension between civil rights advocates and some administration officials, as well as within and between agencies (most notably ED), was whether the goal of school diversity was explicitly about race. The tension occurred in the context of a series of K-12 specific court decisions

like *Parents Involved* limiting the use of race-conscious policies. More broadly, the presidential election of Obama helped to reinforce the notion of a "post-racial politics."

Whether to be explicit about racial diversity in schools manifested itself in several ways contemporaneously, and even in our interviews after 2017, some former Obama administration officials continued to frame their efforts in race-neutral ways. In 2008, the Bush administration published guidance about the *Parents Involved* decision, emphasizing socio-economic strategies, merely the latest shift towards socioeconomic goals and strategies around diversity. While some interviewees in the administration emphasized that it took time to reverse the guidance, advocates outside the government noted extreme frustration that it took nearly three years to replace with guidance endorsing race-conscious goals and strategies. One interviewee (personal communication, January 6, 2020) noted that the guidance that was ultimately issued changed very little from documents drafted early in the administration with input from civil rights and education groups but that it took considerable time to get cross-agency agreements, especially from the White House. Another intermediary organization interviewee noted, however, that the White House controlled the process, ultimately siding with a more cautious interpretation of *Parents Involved*.

Though the 2008 *Parents Involved* guidance was ultimately rescinded and replaced with a more expansive understanding of permissible K-12 voluntary integration policies in December 2011, the delay in removing the 2008 guidance likely affected districts' interpretation as they continued to respond to the Supreme Court's decision, including in their Technical Assistance for Student Assignment Policies (TASAP) proposals, which were a small discretionary federal grant program in 2009 to provide technical assistance to voluntary integration in local districts (Frankenberg et al., 2015). Delay may have lessened the impact of any eventual change, including the weak implementation of TASAP,[8] and the process, including its invisibility, may have made the document more ambiguous for local stakeholders in an already murky legal and political area.

Relatedly, ED offered an interim rule change for the 2010 Magnet School Assistance Program (MSAP) grants responsive to *Parents Involved*. The change amended a prior rule with a binary definition of minority group isolation, referring to schools with 50% or more minority students; a final notice of adopting the interim rule was published on November 13, 2012.[9] While the rule change granted districts more flexibility in reducing minority group isolation (the goal of the magnet school grants), in practice it may have made it easier to desegregate two historically disadvantaged groups of students together (e.g., Black and Latinx students) in order to achieve desegregation goals. The Obama administration announced a new funding cycle at the end of 2012, with a few additional requirements like examining MSAP grant desegregation effects on magnet and feeder schools. It also increased the number of points awarded for plans reducing or eliminating minority group isolation.[10]

It was unclear whether and how the K-12 voluntary integration guidance was informing the Obama Administration's work. In 2013, civil rights advocates questioned whether this was part of the criteria for competitive grants (aside from MSAP, a relatively small federal program; see Williams & McDermott, 2014). For example, the Charter School Program (CSP) had a small number of points for schools promoting diversity or reducing isolation but was smaller than other priorities; in other programs, diversity was not listed as a competitive funding priority (Tegeler et al., 2014). Nevertheless, at the time, ED officials remained hopeful of the "invisible" work of advocating the

[8] Orange Co., FL, tried to give back TASAP funding, for example, because they were not pursuing integration but instead attempted to close schools (see DeBray et al.., 2015).

[9] https://www.govinfo.gov/content/pkg/FR-2012-11-13/pdf/2012-27559.pdf

[10] Federal Register Vol. 77, No 250 Monday December 31 (p. 77580). The MSAP competition announced in 2016 included another similar increase in these points.

inclusion of diversity in ED programs, which did begin to happen most notably during the last year of Obama's term.[11] By the end of the second term, ED had issued guidance about charter schools' civil rights responsibilities and clarified how charter schools under the CSP could use weighted lotteries to achieve diverse schools (see Hilton, 2017, for more such initiatives). In 2016, Secretary John King proposed a supplemental funding priority for discretionary grant programs for socioeconomic integration called Opening Doors, Expanding Opportunities.[12]

A congressional staff member echoed some of the advocates' frustration about how the Obama administration spoke about diversity efforts. This interviewee noted, among other examples:

> We've been doing a lot of work on issues of diversity, issues of meaningful integration, meaningful action in great public schools. We fought with the Obama administration about using the word race. They don't even want to talk about income. If you remember [Opening Doors, Expanding Opportunities grant program] did not say race. It only said income. (congressional staffer, personal communication, July 25, 2018)

Likewise, a cross-agency Dear Colleague letter in 2016 was specifically about "educational socioeconomic opportunity," not about race.

Interviewees noted differences in whether race was emphasized within ED. Those interviewees who had served in OCR under Obama were more likely to emphasize race, while former ED staff outside of OCR primarily spoke about socio-economic integration. One intermediary organization representative (personal communication, October 4, 2018) noted that the difference did not matter as much in the last year when John King made an agency-wide push to address diversity. Others noted that King talked more about education as civil rights work. A civil rights organization staff person, who had previously worked on the Hill, believed that by the middle of Obama's second term there had been a reframing of the federal role in education as being about advancing civil rights, including in Congress (L. King, personal communication, November 5, 2019). Yet there were still minimal ways in which civil rights centered race.

Expanding the Role of the Office for Civil Rights (OCR)

Despite the mixed signals on race-conscious policies, interviewees commonly pointed to the broader mandate of the Office for Civil Rights (OCR) in the U.S. Department of Education as evidence of the Obama administration's focus on protecting student civil rights. OCR is a decades-old office used to enforce desegregation in the 1960s. Using OCR as a path to expand the emphasis on student civil rights may have been especially advantageous given concerns about how a focus on race would have been perceived. Namely, OCR was a place in which the administration could advance a civil rights agenda in a less visible way, which the administration, in turn, thought was less likely to stir up mass political resentment or play into the idea that Obama was more concerned with Black people than with others.[13] But it was also a place that provided existing, if dormant or waning, mechanisms that could protect civil rights compared to different avenues like the judiciary or other levels of government. As a congressional staffer noted, "Civil rights enforcement happens when the

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[11] Tegeler also noted that housing integration efforts as of 2013 were an additional promising avenue to advance school diversity.

[12] https://www.govinfo.gov/content/pkg/FR-2016-06-08/pdf/2016-13456.pdf

[13] Some political science evidence exists that because President Obama is Black, people perceived his policy priorities as racialized (in fact, public opinion on Portuguese water dogs became racially polarized when a survey question identified a dog as belonging to Obama rather than to Ted Kennedy; see Tesler, 2016).

feds are involved. Because when they're not, states do really shitty stuff for kids of color, including blue states, quite honestly" (personal communication, May 24, 2021).

The Office for Civil Rights serves many functions, and interviewees described three key ways to advance civil rights during the Obama era: 1) investigating complaints; 2) collecting and publicizing data via the CRDC; and 3) issuing guidance. A key additional way in which the OCR role changed, as several interviewees noted, was that the OCR Assistant Secretaries got a place at the policy table in the overall department.

OCR Complaints. OCR complaints rose during the Obama administration. In 2011, OCR received 7,841 complaints—an increase from the Bush administration—and in 2016, received 16,720 complaints, according to the U.S. Commission on Civil Rights (USCCR) 2019 report. Education Secretary Arne Duncan's testimony to USCCR in 2019 also noted that more than 66,000 complaints got resolved during the eight years of the Obama administration, more than in any other eight-year period.[14] By these metrics, then, expanding OCR and federal enforcement of civil rights was a success. Yet, the Assistant Secretary for Civil Rights 2015 and 2016 reports also noted the reduction of OCR staff, an overall decline of 8% since the start of the administration; even as complaint volume increased by 170% (Office for Civil Rights, 2016). The lack of capacity was especially important in the aftermath of the *Sandoval* decision in 2001 limiting private right of action to enforce Title VI, making OCR a more critical instrument of civil rights enforcement. Specifically, individual rights to disparate impact claims previously had been gutted by the Supreme Court in *Sandoval*, with the justices arguing that Congress needed to create a separate cause of action for individuals to file discrimination claims under Title VI.

In addition to substantive changes in the way the administration viewed protections for students' civil rights generally and race specifically, OCR's leaders also took several steps to try to increase transparency and trust in the federal government as a way to support students. According to Assistant Secretary for Civil Rights Catherine Lhamon (personal communication, July 17, 2018):

> The Obama administration broadly was, and the Office for Civil Rights specifically was, focused on making sure that the public is aware of what civil rights are, how they apply in schools, and that there is a place for meaningful civil rights enforcement.

CRDC. The Obama administration focused on data gathering and transparency around civil rights, expanding the CRDC first authorized by the 1964 Civil Rights Act (see Table 2a). During the Obama administration, the CRDC expanded considerably, most importantly by surveying all districts and schools, not just a sample of districts serving over 3,000 students. ED also launched a website during the first Obama administration to allow the public to access these data. In testimony to the USCCR, civil rights advocates Janel George, then of the Learning Policy Institute, and Vanita Gupta, then of the Leadership Conference, emphasized the importance of data and its accessibility to the public.

The expanded CRDC helped raise awareness about the persistence of civil rights issues in schools—to counter the myth of a post-racial society—and helped provide the basis for enforcement actions by the executive branch. For example, in 2011-12, new CRDC items included questions about the discipline of preschool children, following the inclusion of more robust discipline data in 2009. In 2012, CRDC data was used to produce a summary showing substantial opportunity gaps in school resources, which may have provided some impetus for a 2014 guidance document on this topic. CRDC also helped establish disparate impact claims and was used in OCR

[14] https://www2.ed.gov/about/reports/annual/ocr/achieving-simple-justice.pdf

investigations and guidance in limited ways during the Obama administration. Further, it helped to support other efforts like increased reporting and oversight in the DOJ desegregation docket (see below; Le, 2010; George, 2019). The expansion of the CRDC in terms of frequency, topics addressed, and schools surveyed helped the government make the case for enforcing and updating existing civil rights mechanisms that had largely lay dormant. Because of how discrimination had shifted, detailed data was especially important to this effort, opposed by those who sought to narrow discrimination to only racist intent.

Guidance. Issuing guidance documents, either by a single or multiple agencies, was a widely used approach during the Obama administration to advance civil rights (Lewis et al., 2019). Guidance documents are the administration/government's interpretation of the law in a given area and a signal as to how OCR would investigate complaints, but they do not involve an actual change in the underlying law. A former OCR official noted that often guidance documents arose from an increase in enforcement activity on a particular topic, such as the case for the discriminatory use of discipline guidance (OCR official, personal communication, July 17, 2018). An American Association of School Superintendents official noted:

> Guidance doesn't have the strength of law, but we have *No Child Left Behind*, where 15 years of guidance, where guidance by the Department of Education and interpreted by the state ed agencies were treated like regulations…. So, guidance oftentimes gets interpreted as regulation, as erring on the side of safety. (AASA official, personal communication, July 23, 2018)

This may have particularly been the case in areas like the discipline guidance where risk-averse districts feared legal trouble if they did not follow the guidance. In such instances, the historical context of guidance and expanded OCR investigations may have made the guidance more consequential than is often the case for non-regulatory guidance.

Cross-Agency Coordination to Voluntarily Advance Civil Rights under Obama

Several interviewees who worked in the administration discussed the prevalence of cross-sector agency coordination within the executive branch to advance and sustain civil rights in education. They generally viewed this as a strength of the Obama administration's efforts, with some acknowledging that getting multiple sign-offs/agreements also slowed down initial progress. Said one OCR official:

> [W]e worked with the Department of Justice, very regularly. Now, of course, they [DOJ] touch so many different areas, so we worked with…the Educational Opportunities section of the civil division. We often put out joint guidance with them. (OCR official, personal communication, September 11, 2018)

One important interagency guidance was the previously mentioned 2011 document on permissibility of race-conscious admissions and student-assignment policies, based on ED's and DOJ's s reading of Supreme Court cases. The 2011 document made it clear that the Obama administration supported race-conscious strategies to improve racial diversity in K-12 and higher education as a *policy* matter. The guidance documents helped to provide their determination of the steps that would be within the Court's parameters.

DOJ and ED also collaborated on technical assistance. As part of this effort, administration officials in several agencies talked about the work they did to conduct training and outreach. In one year, for instance, OCR noted 250 technical assistance sessions (e.g., targeted support around civil rights issues), according to the office's annual report in 2015. Indeed, the OCR report for Obama's first term cited an average of 330 technical assistance activities per year, up from 185 in 2008.

Agencies additionally worked on transparency around civil rights, "posting more than 500 new resolution agreements on our website and publicly releasing lists of institutions under investigation for civil rights violations" (Office for Civil Rights, 2013).

Furthermore, a joint letter and convening by HUD, DOT, and ED in June 2016 provided guidance and information about how communities could work, in cross-sector ways, to voluntarily promote housing and school diversity in their communities. That same year, Secretary of Education John King announced a discretionary funding program, Opening Doors, Expanding Opportunities, to support local diversity efforts. These efforts, either cross-sector or just in ED, were a key Administration strategy for furthering civil rights: supporting, but not requiring, locally led efforts. At the end of the second term, the administration also was beginning to respond more assertively to the plea from a local integration leader who noted the federal voice in support of integration would help the politics in her district (Todd, 2009, as quoted in Frankenberg et al., 2015). These efforts reflect the use of policy tools common for the federal government to advance its interest in civil rights in education (without an explicit enforcement hook): hortatory and inducements used together to try to persuade and fund local change.

Educational Civil Rights Enforcement and the Department of Justice under Obama

Our respondents most commonly pointed to guidance documents from the civil rights division in DOJ and/or ED's Office of Civil Rights as the most substantive change for civil rights during the Obama administration. A former DOJ official (personal communication, September 19, 2018) commented:

> I think when the government speaks it has an impact, and that is why we thought it was so important to continue both the robust enforcement work that we were doing in the civil rights division and to issue policy and regulation that would manifest the government's legal analysis in policy positions.

Prior to the December 2011 release of the Obama Administration's *Parents Involved* guidance, the DOJ was involved in litigation about the appropriate legal standards to apply to race-conscious student assignment policies in K-12 districts. In their brief in the Lower Merion (PA) case earlier in 2011, the DOJ argued that the case did not require strict scrutiny analysis, and the third circuit court agreed to apply a lower standard of review because it considered the racial composition of an area, not the individual race of specific students, in determining student assignment. The court ultimately upheld the district's rezoning effort. A DOJ staff member (personal communication, September 19, 2018) also noted:

> There were other cases [besides Lower Merion] … where we were involved in the litigation and issued or drafted and filed briefs that I think demonstrated both the administration's commitment to defending programs that it thought were lawfully implemented, but also laid out more guidance on the standards that we thought applied.

Such a filing indicated DOJ's commitment to a broader interpretation of *Parents Involved,* one ultimately upheld by the Third Circuit court.

Another tool DOJ used to advance race-conscious education policy was to keep open existing consent decrees in selected school desegregation cases "where there continued to be real problems" (personal communication, September 19, 2018). The administration hired additional attorneys and staff devoted to litigating these cases. This followed years of inactivity as well as an effort in the Bush administration to end such cases. In the last budget request submitted to Congress during the Obama Administration, for example, one of the three points of emphasis for the Civil Rights Division (CRT) was to "expand opportunity for all people by advancing the opportunity to

learn…" (U.S. Department of Justice, 2016, p. 2). The budget request identified working with districts under desegregation consent decrees as an area of focus; the request also noted that they monitored 180 cases and cited the 2015 Huntsville school desegregation consent order as an example of the wide-ranging ways they were addressing the impact of persistent segregation. Additionally, in each of the DOJ's school desegregation cases with resolution agreements during 2016, additional actions were required by districts under court order as part of remedying the vestiges of discrimination, reflecting an updating of existing civil rights enforcement mechanisms.

By contrast, conservative organizations believed ongoing involvement in desegregation cases, through consent orders, was an unnecessary use of resources. During testimony to the U.S. Commission on Civil Rights, Joshua Thompson of the Pacific Legal Foundation said:

> The federal government's involvement in desegregation efforts cannot be overemphasized. But continued enforcement of zombie desegregation orders comes with significant costs. These are resource intensive cases. (Quoted in *Are Rights a Reality?*, 2018, p. 179)

Finally, there was a focus at DOJ on expanding the dimensions of civil rights to be more intersectional and to address the array of civil rights barriers in the 21st century, such as the interplay of race, gender, and disability in school discipline. At a joint conference with the ED entitled "Civil Rights and School Discipline: Addressing Disparities to Ensure Educational Opportunity," Attorney General Holder and Assistant Attorney General Perez talked about trying to incorporate civil rights into all aspects of education, including an increased emphasis on the school-to-prison pipeline emphasis (DOJ, 2010).

Lack of Consensus on Approaches to Reinvigorating Federal Civil Rights under Obama

Despite the renewed attention to reinvigorating and supporting OCR, questions existed within the administration about the utility of OCR's tools, which primarily have been interpreted as ways to prevent districts or colleges from violating students' civil rights rather than as leverage for them to affirmatively take proactive steps to protect them (see also Pollock, 2008). This was consequential in the area of K-12 school diversity where the pre-Obama DOJ had moved for unitary status in some of the cases on its remedial desegregation docket, limiting the number of students enrolled in schools where the federal government had clearer points of leverage (Le, 2010).

Questions about OCR Enforcement Tools

While complaints to OCR were up dramatically during the Obama administration, those within OCR wrestled with how the shift to voluntary integration efforts ultimately limited the role that OCR could play in student assignment. In other areas, like the discriminatory use of discipline, individual students could bring complaints about harm they experienced. In voluntary integration, a civil rights advocate might wish that a race-conscious policy went further, but complaints were likelier from (generally White) students who believed that race-conscious policies had harmed them. A former OCR staffer (personal communication, October 5, 2018) noted:

> You could provide technical assistance, that's an important function, which OCR was greatly strapped in terms of its resources and capacity in doing that. You can promote guidance. But by and large, the enforcement tools were limited in this area. In other areas, we could have, had we enough resources, proactively initiated an investigation into discrimination in a certain area…. in this area, it's extraordinarily difficult to find a legal enforcement hook.

The former OCR staffer continued to outline the substantive limits of the law in terms of litigation or administrative enforcement, reflecting the changing nature of segregation and limits of what would be legally or perhaps politically feasible:

> So, you have desegregation order enforcement, and then you have affirmative strategies, affirmative enforcement. Both of those areas are very challenging for the government. So I think you saw a sense of the limits of what current law can provide in terms of integration efforts… what we tended to enforce better and more directly was, what I sort of call it, the modern day manifestations of segregation, which was discipline disparities, unequal access to resources, curriculum, teachers, by race (OCR official, personal communication, October 5, 2018).

Thus, while OCR released numerous guidance documents about voluntarily adopted integration efforts, staff believed the best approach in the preponderance of districts without voluntary efforts was to look at how segregation manifested in unequal opportunities by race, but not by segregation per se.

We also learned of strategies that stakeholders believed were used during this time to provide for "meaningful civil rights enforcement." For example, OCR staffers worked collaboratively with other agencies to try to bolster the understanding of intersectionality in civil rights of students. There also was some rule making, such as the definition of minority group isolation for MSAP and the special education discipline disparity. Additionally, OCR used the review of desegregation policies for Magnet Schools Assistance Program (MSAP) applicants to further districts' understanding of what court-ordered or voluntary integration required or permitted in light of *Parents Involved*. OCR staff also expanded the use of early complaint resolutions as a way of achieving gains and reducing time and resources on full investigations. They raised visibility by partnering with student groups and civil rights groups. And they expanded investigations beyond individual complaints of violations to be systemic in nature, as they felt facts warranted. However, a former OCR staffer (personal communication, January 6, 2020) cited resource constraints in terms of fewer staff with ballooning caseloads—mentioned by numerous interviewees as well as in regular ED reports—that limited the ability to use other tools like proactive compliance reviews, technical assistance, and other activities. Moreover, there was no capacity to ensure alignment with the technical assistance activities being carried out by the federally funded Equity Assistance Centers.

Another administration strategy was the promotion of civil rights efforts through persuasion and technical assistance at state and local levels. For example, Jessie Brown, a Deputy Assistant Secretary for Policy under Catherine Lhamon in OCR during Obama's second term, explained some of the work she did to raise public attention:

> We also did lots of work around Title VI. We were doing lots of work around race-conscious everything. But one of the projects that I worked specifically on what was the school-to-prison pipeline and the district school discipline…we did a lot of work around trying to get school districts to sort of take a look at their discipline processes. Try to remedy some of these issues and a lot of times, these weren't enforcement actions. (J. Brown, personal communication, September 11, 2018)

Raising awareness through site visits, especially if there was hesitation to make official findings of disparate impact through OCR investigations, allowed officials to engage in educating and supporting families and educators. One staff member (personal communication, November 7, 2018) noted frequent trips around the country that described, for example the *Parents Involved* guidance, and also offered federal support and political cover to local officials that had been requesting it (e.g., Joffe-Walt, 2015). While one official could only recall a few such events specifically regarding the *Parents Involved* guidance during Catherine Lhamon's tenure at OCR (2013-2017), there was more

activity regarding higher education diversity efforts given repeated challenges before the U.S. Supreme Court during this time period. An outside observer believed that OCR's guidance and efforts to support follow-through helped to change practice in districts that might make it less vulnerable to potential rollbacks—a hope echoed by a former Obama official we interviewed. She said, "Hope that we did enough in 8 years for colleges to continue to do diversity work no matter what the [next] administration said" (personal communication, November 7, 2018).

Questions about DOJ Oversight and Enforcement

Because of the Administration's effort to pursue civil rights in ways that were under-the-radar and often less explicitly race-conscious, it is somewhat challenging to fully understand what efforts were taken within the Department of Justice. As mentioned, DOJ ended some existing desegregation cases but began using consent decrees in which they agreed to expand into requiring remediation of discipline disparities. A different example is a 2014 letter from the Education Opportunity Section of DOJ to a Virginia district scrutinizing their attendance zone boundary changes and boundary-change process after construction of a new school. DOJ noted that the proposed new boundaries creating non-contiguous zones and concentrating students of color in some schools possibly violated the Equal Educational Opportunities Act of 1974, which prohibited student assignment that was more segregated than would result from attending the closest school. Ultimately, after negotiations with the DOJ, the district approved an alternative boundary adjustment plan (Shaw, 2014).

DOJ also attempted to use existing desegregation decrees such that the expansion of school choice did not exacerbate segregation. At the same time, charter schools (whose growth was incentivized through the Administration's Race to the Top), district secession, and vouchers flourished. DOJ expanded some consent decrees, for example, to ensure existing charter schools did not interfere with districts' efforts to eliminate vestiges of segregation. When Gardendale, Alabama tried to secede from a county still under court desegregation order, in filings beginning in November 2015 through January 2017, DOJ opposed the motion to secede because it would impede desegregation in the county. In terms of vouchers, in 2013 DOJ used an existing statewide desegregation case[15] to try to prevent the segregation of thousands of Black children enrolling in private schools in Louisiana using the state's expanded voucher system. The DOJ filing in August 2013 sought to have the federal courts review whether the voucher program was worsening existing segregation and asked for the collection and reporting of enrollment data, including for private schools, to be able to assess compliance with existing desegregation orders. Notably, they did not object to the expansion of school choice, just asked to monitor how it affected ongoing desegregation efforts. This action was consistent with other DOJ efforts during this time.

Louisiana's governor objected to the DOJ effort, with a large advertisement campaign, and U.S. House Speaker John Boehner wrote to Attorney General Eric Holder to ask DOJ to reconsider. Likewise, 30 Republican senators voiced their opposition to DOJ's efforts, all characterizing DOJ's filing as an attempt to thwart students and parents who are overwhelmingly Black and low-income from exercising choice to attend schools that are not failing (Welner, 2013; see also Emma, 2013). While federal courts ruled in 2014 that the state did have to provide data on voucher students to the DOJ, it was overturned on appeal in 2015, with the Fifth Circuit deciding that the claim overstated the applicability of the original desegregation case to the current voucher program (*Brumfield v. Louisiana State Board of Ed.*, 2015). This legal loss and the partisan political

[15] The existing case was a prohibition in the 1970s against state resources going to private schools, which were impeding the desegregation of public schools. The DOJ was also party to 24 districts' desegregation cases, and several others existed brought by private plaintiffs.

controversy that preceded it, with Republicans using the voucher case to challenge Obama's agenda more broadly and criticism from school choice groups who claimed that more school choice for students of color was a civil rights issue, may help explain caution and hesitancy from some members of the Obama administration. When such actions were pursued, they were pursued in ways to minimize attention.

Mixed Signals on Civil Rights Flowed from Obama's ED School Choice-Related Actions

The focus on civil rights was especially mixed during the first four years of the Obama administration. Some interviewees commented on key changes made during the beginning of the administration which they lauded Arne Duncan for—especially reinvigorating and moving OCR into the main ED building in DC. Yet others felt ED actions did not center equity and civil rights and may even have advanced inequality. In response to questioning related to school integration and Race to the Top (RTTT), which was successful in getting most states to change policies to those aligned with the federal agenda, including expanding charter schools,[16] Secretary Duncan said that he thought including preferences about school diversity would have endangered the passage of the entire rescue bill (Joffe-Walt, 2015). By contrast, within a few weeks of being appointed as Secretary of Education, one ED official said John King sent an agency-wide letter about efforts to advance diversity.

Intermediary organizations outside the Administration felt it exhibited an inherent caution and were especially critical of RTTT, which may have subsequently set the stage for the bipartisan passage of ESSA, shrinking the federal role in education, while also expanding school choice instead of strategies that might further integration. The reduction of the federal role, which historically has prioritized civil rights in education, would potentially inhibit future efforts at widescale change. Several advocates noted it was hard to get movement on advancing race-conscious education policies "even under so-called friendly administrations" (IO staff, personal communication, May 23, 2019). For example, we note below the modest steps taken on school choice at the end of the Obama administration.

Lasting Change or Jeopardized Educational Civil Rights?

Congressional Republications limited coordinated interbranch efforts to advance civil rights from 2010-2016, and during the first two years, when coordinated efforts were more possible, the Obama administration was cautious and committed to other legislative efforts like recovering from the economic crisis and health care. Said former Secretary of Education John King (personal communication, February 21, 2019):

> You had congressional majorities that were, in their mind, zealous defenders of local control and resistant to the idea of the federal government promoting the value of school diversity. I think the congressional majorities that we dealt with subscribed to a belief that these questions should be left to states and districts, which, I think, is almost a fundamental difference in how the administration viewed the role of the department.

It may have been impossible to get a consensus on these questions at the core of the federal role in civil rights in education for decades, but the ambivalence in the Obama administration to race-

[16] The Obama ED was focused during this time on the policy priorities of Race to the Top: teacher evaluation, Common Core, and takeover of low-performing schools often by charter school adoption. We note that they also frequently framed justification for these policies in the language of civil rights.

conscious tools or framing, along with unresolved questions about how to address less overt civil rights violations, likely reduced what it achieved in race-conscious civil rights policy.

Interviewees outside the administration agreed that Obama largely faced a Congress that was resistant to his legislative efforts. For example, Mike Petrilli of the conservative Fordham Foundation talked about how resistance to Obamacare from Tea Party activists (and those in Congress) then morphed into resistance to Common Core and unraveled what he saw as bipartisan consensus for education reform (personal communication, July 25, 2018). An earlier article cited another civil rights advocate who shared a similar perception albeit for different reasons. Phil Tegeler of the Poverty and Race Research Action Council believed because of Republican control of the House at the beginning of Obama's second term, working with Congress was "somewhat a waste of time" while "you can get things done inside the administration in a Democratic administration that's sympathetic . . . you can move an agenda forward if you work at it" (cited in Williams & McDermott, 2014, p. 341).

A leader in ED (personal communication, July 17, 2018) saw Obama-administration efforts as having shifted politics: "our national expectations and understanding about what civil rights are and how they apply changed a lot in that time. Partly responsive to that federal lead that we described, and partly responsive to increased civil rights community activism and student activism which was nice to be working in tandem with." The joint ED/DOJ guidance on reducing exclusionary discipline and racial disparities in discipline is the most complete example of how the Obama administration amplified and reinforced shifts in the national education civil rights agenda. The Black Lives Matter (BLM) movement launched after a Florida court acquitted George Zimmerman of killing of Trayvon Martin, an unarmed Black teenager. BLM demanded an end to such shootings, particularly those perpetrated by police. A larger movement within education pushed to reduce suspensions, expulsions, and school arrests and to eliminate racial disparities in which students experienced these exclusionary forms of discipline. The Obama discipline guidance built on this activism outside of government. Although conservatives claim that the guidance overstepped appropriate federal authority and forced districts to change their policies and practices (Max Eden, personal communication, February 7, 2019), the national superintendents' association conducted a survey of members and concluded that many districts were already moving in the same direction as the guidance (McDermott et al., 2022). Essentially, the guidance was a capstone rather than a crowbar. Because the Obama intergovernmental efforts built on work that support advocates and communities were already doing, it endured and expanded after the Trump administration rescinded the guidance in 2018. Jessie Brown, senior counsel in OCR under Obama, explained:

> One of the things that I think is great about this type of thing is that, instead of having a top-down approach where the government is just putting out guidance and telling you what to do, you have folks that are saying we want to voluntarily do more [regarding discipline], we want to go beyond what the law simply requires, and we want to really create the most support possible community that we can for all of our young people. So, for me, the use of the events and announcements and it gets people thinking about things and much more thoughtful ways than simply putting out regulations does. (J. Brown, personal communication, September 11, 2018)

Finally, several respondents, perhaps trying to find a silver lining during the rollbacks under the Trump administration, reasoned that the Obama administration's effort, especially in OCR, to encourage voluntary changes to protect and advance students' civil rights instead of using traditional enforcement mechanisms to require change might mean that these changes and knowledge about the rationale for such, might mean they would outlive the Trump administration's rollbacks.

Limiting Race-Conscious Education Policy under the Trump Administration

In the years directly preceding Trump's election, to be Republican was to be against President Obama in particular, and opposed to the federal government in general (Skocpol & Williamson, 2012)—even if one happened to be an elected official within the federal government. Trump rode this Tea-Party-style anger to the Republican nomination for president in 2016. His campaign engaged a mass of White voters, including those with economic grievances, while also appealing to White racial grievances more directly than Richard Nixon or Ronald Reagan (Alberta, 2019; Lucks, 2021). Consistent with the campaign, the Trump presidency aimed at undoing as much of Obama's legacy as possible while advancing the perennial Republican causes of tax cuts and regulatory rollbacks. As in the campaign, the Trump administration attacked educational civil-rights laws for allegedly discriminating against Whites (and in some cases Asian-Americans).

The Trump administration and Republicans in Congress did not pursue a legislative agenda around ending race-conscious policy. Instead, they collaborated on reshaping the federal judiciary. Senate Majority Leader Mitch McConnell had delayed confirmation votes on many of Obama's judiciary appointees, most famously the nomination of Merrick Garland to replace Antonin Scalia on the Supreme Court. Once Trump became president, McConnell prioritized judicial confirmations, which unlike most legislation, were no longer subject to filibuster. As a result, Trump successfully appointed 54 federal judges in 4 years, compared with Obama's 55 in 8 years. Trump's one term reshaped the judiciary as much or more than his predecessors had in two terms. Trump's appointees also flipped several appeals courts from a majority of Democratic-appointed judges to a Republican-appointed majority (Gramlich 2021). The full impact of those judicial appointments on race-consciousness in education law and policy is not yet known. However, the outlook is not promising. In 27 federal judge confirmation hearings, nominees were reluctant to affirm the *Brown* decision, either as precedent or in substance (Meckler & Barnes, 2019). Trump appointees to the U.S. Supreme Court built a conservative supermajority that has already disregarded and overruled precedents (*Dobbs v. Jackson Women's Health Organization*, 2022; *NY State Rifle & Pistol Association v. Bruen*, 2022).

According to our interviewees and document review, Trump's education agenda emphasized school privatization and federal deregulation while weaponizing race-neutrality to dismantle civil-rights in policy and law. These three themes–discussed in turn below–comprised both the administration's education agenda and its tools for enacting the agenda. Significant legislation passed during the Trump era, including tax cuts and two rounds of COVID relief, offered openings to advance the administration's education priorities, notably around choice and the privatization of public education. Despite its use of legislation, Trump officials—like their Obama-administration predecessors—largely relied on executive actions.

Pushing for Choice and the Privatization of Public Education

U.S. Secretary of Education Betsy DeVos overtly pushed for the full privatization of public education, ultimately centering her message on "educational freedom" rather than choice itself (Blad, 2019). DeVos, a longtime school voucher advocate, believed deeply that "educational freedom" was fundamentally about expanding school choice, including subsidies to exit secular public schools for private ones, religious or otherwise (Schneider & Berkshire, 2020). Her affirmative belief in the power of choice through "educational freedom" was paired with disregard for public education—and public education's civil rights statutes.

The Trump administration's push to discredit and defund public education through privatization occurred as Black, Latinx, Asian, and Indigenous students began to account, for the first time, for a majority of the public school enrollment (NCES, 2021), and as skyrocketing

economic inequality drove the share of students qualifying for free and reduced lunch increasingly higher (NCES, 2021). One congressional staffer (personal communication, July 25, 2018) noted that the Trump administration's constant questioning of the value of public education "became a matter of this very real, clear and present danger...like is it a good and valid thing to have a public system of education that provides services for poor people?"

The Trump administration continued to assert that privatization and choice were civil rights strategies. The administration positioned itself as an ally to communities of color, especially Black communities. In 2020, Trump reoriented the conversation toward school choice at a conference on police reform. He said,

> We're fighting for school choice, which really is the civil rights of all time in this country. Frankly, school choice is the civil rights statement of the year, of the decade, and probably beyond, because all children have to have access to quality education. (Whistle, 2020)

This position was not aligned with research finding that privatization is linked to greater segregation, worse academic outcomes, and fiscal inequities in impacted public schools, and that within so-called "no excuses" charter school networks, Black students and alumni began speaking publicly about the mistreatment they experienced there (see, e.g., Mills & Wolf, 2019; Rooks, 2017; SA Survivors Anonymous, n.d.). Advocacy groups juggled the need to educate the public about substantive retreats from civil rights in education, and the abuses within choice systems, with their sense that they also urgently needed to defend the fundamental importance of public schools. Though many of DeVos' efforts to discredit the public education system and strengthen private school choice did not manifest into federal policy, the consistent attacks on the public system had civil rights and public education interest groups on the defensive.

Advocacy groups watched closely as the Trump Administration sought to advance vouchers through various means. An education interest group's spokesperson (personal communication, July 23, 2018) stated:

> It is a marathon issue…they will try education savings account; they will try weighted student funding formula. They will try portability. They will try scholarships. They will try vouchers. They will do tuition tax credits. A voucher is a voucher is a voucher. We just have to remain vigilant.

The Trump administration pressed for many choice policies, making the case for a fundamental shift in how public education is funded by allowing the federal portion of per-pupil dollars to follow a student to a school of their choosing, including to the private sector (Black, 2020, p. 227).

Secretary DeVos helped promote state-level choice and privatization bills. She traveled to Tennessee in 2019, for instance, to promote voucher legislation. Federal advocacy in state legislation is unusual unless the legislation is in direct conflict with federal law or policy (Black, 2020). The Tennessee voucher bill passed, however, and when it did, Secretary DeVos earned part of the credit. As a prominent law professor noted:

> [DeVos] doesn't have that formal authority to create any uniformity of approach around education, but she's tried her darnedest to use the ... more so than, I think, Arne Duncan ever did, to be quite honest, use a bully pulpit and the power of the White House itself. (personal communication, December 4, 2018)

Effective use of the executive branch's bully pulpit to undermine the public education system was a defining characteristic of DeVos' tenure.

Meanwhile, congressional politics placed limits on substantive attempts to shift funding toward the private sector. The Trump administration did not get its privatization agenda through

Congress in the second half of the term, during which Republicans controlled the Senate and Democrats controlled the House. After an unsuccessful legislative attempt to codify a "money follows the student" scheme in the form of the $1 billion dollar Education Freedom Scholarships Act, in 2020, ED issued guidelines asking states to distribute COVID relief money from the CARES legislation across public and private schools under a formula that would have sent far more dollars to the private sector than normal. Traditional efforts dispersed Title I dollars to private schools based on the (low) number of low-income students served in them but the Trump guidelines suggested the money must be allocated by the much greater number of *total* private school students (Black, 2020). Ultimately, a federal judge, appointed by Trump, blocked the rule from taking effect, calling it "remarkably callous, and blind to the realities of this extraordinary pandemic and the very purpose of the CARES Act: to provide emergency relief where it is most needed" (*Washington v. DeVos*, 2020, p. 1196) And despite President Trump's use of the bully pulpit to tout vouchers in the summer of 2020, vouchers were not included in the second round of COVID legislation. Trump dealt with that setback by issuing an executive order in late December of 2020 that would have provided states block grant flexibility to offer financial support for families interested in funding private school tuition, homeschooling, or learning pod expenses (Stratford, 2020). Though that order was reversed by the incoming Biden administration, private schools still received about $2.75 billion in COVID relief funds after Trump left office, with the caveat that the funds could not be used for vouchers or scholarships (Office of Elementary & Secondary Education, 2021).

Deregulation as Ideology and Mechanism for Dismantling the Federal Civil Rights and Education Apparatus

In contrast to its attempts to use the requirements of federal spending programs to advance privatization, the Trump Administration generally linked its reversals of Obama-administration education civil rights policies to the more tried-and-true Republican cause of deregulation. For every regulation the administration put in place, officials were required to eliminate two (Exec. Order No. 13771, 2017). Reducing federal education regulations through the Trump Administration's executive power amounted to a "firehose strategy," aiming at so many different areas it was difficult for civil-rights advocates to track and resist the shifts. Study participants suggested the Administration was "repealing guidance left and right" and "attacking regulations because they are Obama regulations" (D. Losen, personal communication, September 30, 2019). Although the Trump deregulation quota publicly adhered to conservative principles, it also gave political cover to a less explicit prong of the Trump agenda: unraveling traditional conceptualizations of students' civil rights, especially around race. Deregulation became one of the primary executive mechanisms used to advance the Trump administration's anti-civil rights priorities.

Since *Brown v. Board*, oversight and enforcement of student civil rights have traditionally been the purview of the federal government (Reed, 2014). When the Trump Administration pursued deregulation, it also began minimizing the federal government's power to monitor and intervene in state or local civil rights violations in education. As Dan Losen, director of the Center for Civil Rights Remedies, stated, "I definitely see [deregulation] as part of the bigger assault on civil rights protections generally and also any kind of regulatory structure that involves looking at individual districts closely" (personal communication, September 30, 2019). Use of deregulation to reverse civil-rights policies culminated in a 2019 executive order seeking to abolish executive agencies' ability to issue binding rules through guidance documents (Exec. Order No. 13891, 2019).[17]

[17] That order was revoked on the first day of the Biden administration.

Changes in OCR Capacity and Function. With the deregulation agenda came fundamental changes to the way OCR staffed its office, collected data, and handled civil rights cases. Trump officials proposed major cuts to OCR staff, including the closure of 8 of the 12 regional offices around the country (Green, 2018). Despite being under Republican control at that point, Congress refused to make the cuts. Had they been enacted, Trump's proposed cuts would have seriously impacted OCR's capacity to handle civil rights oversight and enforcement around the country. Absent capacity, trust in the federal government's ability to protect students' civil rights would have eroded, buttressing the conservative case to dismantle the federal role in education.

Two separate 2018 revisions to the OCR case processing manual affected who could file claims, which claims the agency opened and closed, and how long open claims could stay open. Changes included removal of the appeals process for complainants (restored later that year), adding 21 new reasons why OCR would automatically dismiss a complaint (declining slightly to 18 later that year), requiring OCR to have more than statistical data alone to open a complaint and undertaking systematic investigations "only where it [was] appropriate to do so" among other shifts. Though the second round of 2018 revisions backtracked slightly on changes proposed in the first round, civil rights advocates noted that these policy shifts had outsized impact. Several interviewees viewed the case processing manual changes as the most consequential setback of the Trump era—though difficult to communicate as threats. In the words of one advocate, "This is terribly arcane, you say revisions to the case processing manual and people are already asleep" (personal communication, November 5, 2018).

Trump's OCR and Attacks on Disparate Impact. Disparate impact refers to practices, rules, or policies that appear neutral (e.g., student discipline systems) but have a disproportionate impact on a group protected by the Civil Rights Act (i.e., race, ethnicity, national origin). The changes at OCR fit into a larger attack on disparate impact analysis, which in turn fit into a broader attack on how the government defines racial discrimination. Trump ED officials rescinded a host of Obama-era guidance packages that sought to identify more clearly systematic racial inequities in discipline and Special Education. They rescinded the Obama administration's joint ED and DOJ guidance that called on school districts to reduce suspensions, expulsions, and school-based arrests, and to ensure that these forms of discipline were not applied disproportionally to students of different races. Interviewees viewed rescinding the discipline guidance as a first step in rolling back disparate impact standards across all agencies, including DOJ and HUD.

The requirement of more than just statistics to open an OCR investigation—part of the case processing manual changes outlined above—was an attack on disparate impact. Administration allies claimed that disparate impact required racial quotas in discipline and thus undermined school safety. For instance, the Final Report of the Federal Commission on School Safety, issued on December 18, 2018, attacked disparate impact "because it led discipline decisions to be about statistics rather than safety" (see document in Table 1A).

Coordinated executive branch efforts to fundamentally alter whether or how Title VI was enforced across the federal government worried civil rights advocates throughout Trump's tenure, particularly as the courts shifted further rightward. According to Liz King, senior program director of education at the Leadership Conference on Civil and Human Rights, on "… the disparate impact thing, our intel had been that their [the Trump Administration's] first, biggest priority was going to be to reopen the Title VI ed reg. So, this is something we've been tracking and worried about for a very long time" (L. King, personal communication, November 5, 2019). In 2019, an internal memo directing officials at DOJ and ED, among other agencies, to consider how to undermine disparate impact was leaked to *The Washington Post* (Meckler & Barrett, 2019). And a flurry of last-minute activity suggested that rolling back disparate impact standards remained a focus of the Trump

administration until the end, with officials going through irregular administrative processes to publish last-minute regulations (Meckler & Barrett, 2021).

While the Trump Administration's executive branch efforts to gut disparate impact were ultimately unsuccessful, they concretely manifested in a mounting refusal to consider or measure race at all in government policy. At the same time, Trump administration officials *were* willing to attribute racial disparities in civil rights outcomes to racial differences in culture or behavior. Seth Galanter, an attorney at the National Center for Youth Law, explained the phenomenon as a

> …kind of dual thinking around race that we should never use race for anything…that even measuring by race may create incentives for racial quotas… [and a] conflicting idea that a lot of the racial disparities that are reflected in things like discipline or attendance or whatever are reflections of real differences between Black and White kids. (S. Galanter, personal communication, July 25, 2018)

A career staffer at OCR during the Trump era underscored the increasing reluctance to consider race at all, even in routine calculations around racial disproportionality in discipline, saying that political appointees in ED had "raised concerns…that risk ratios…are racial classifications." In other words, calculations designed to help OCR understand racial disparities in discipline were questionable because they were race-conscious. The interviewee also went on to say that career staff did not help shape those concerns around existing race-consciousness in education policy and law (OCR staffer, personal communication, July 16, 2018).

Trump's OCR, Deregulation and Race-Evasiveness. Trump officials again relied on deregulation to enact some of their agenda around race-evasiveness, especially when it came to attempts to reduce key data categories for the biannual Civil Rights Data Collection (CRDC). For the 2017-2018 CRDC, the administration ended collection on students absent 15 or more days, students engaged in the high school equivalency credential studies, and students receiving a qualifying score (or not) on AP exams. Yet, they also added some optional questions on access to computer science coursework and the internet (see Table 2A). In 2019, additional CRDC items proposed for elimination included crucial elements surrounding school finance inequities, inexperienced teachers, and access to advanced coursework. The administration also proposed eliminating questions regarding preschool enrollment and discipline (Education Trust, 2019). One interviewee noted:

> It's probably no coincidence that the things that are being proposed for cutting are the things that are most often used by equity advocates… like data on disproportionate suspensions and expulsions of 3-year old Black children. (anonymous, personal communication, November 6, 2019)

Some interbranch pushback occurred in response to various proposed OCR changes, however, as bipartisan congressional votes during the Trump administration's duration consistently maintained the OCR budget, thus forcing it to accept more money and hire more staff (see Table 3). Congress also prohibited Trump officials from closing regional offices affiliated with OCR. Oversight of the executive branch ticked up in 2018 after Democrats gained control of the House. Moreover, a congressional "Sandoval fix" renewing a private right of legal action in school discrimination cases, in the form of a bill called the Equity and Inclusion Enforcement Act (EIEA), was continually introduced in the House during Trump's tenure.

Table 3

OCR Budget History, Dollars in Millions

Year	Budget estimate to Congress	Appropriation	Difference
2012	107.772	102.624	5.148
2013	102.624	98.356	4.268
2014	98.356	98.356	0
2015	102	100	2
2016	130.691	107	23.691
2017	137.708	108.5	29.208
2018	106.797	117	-10.203
2019	107.438	125	-17.562
2020	125	130	-5
2021	130		

Note: This information is provided by the OCR fiscal year 2021 budget request (Office for Civil Rights, 2021).

Several interviewees argued that intergovernmental politics might blunt the impact of the executive branch retreat from civil rights enforcement under Trump. The Obama administration's emphasis on technical assistance and building relationships with advocates on the ground also may have supported the continuation of educational civil rights efforts once Trump took office. More broadly, civil rights advocates asserted that the overt racism of the Trump era made it easier to highlight the ongoing challenge of racism, even if the political will to address those challenges systematically was tenuous.

"Race-Neutrality" in Policy and Law

Trump officials strengthened a conservative agenda centered on "race-neutrality" in law and policy, an orientation that some in the Obama administration tacitly accepted through an emphasis on socioeconomic integration. Under Trump, though, "race-neutrality" met racial grievance politics and was often used to justify protecting White and Asian interests in preserving elite access to high schools and university admissions.

Respondents characterized the Trump Administration as "not a place to seek justice on civil rights" (S. Galanter, personal communication, July 25, 2018). Some of this positioning, as noted above, was accomplished through deregulation and highly technical shifts in the way OCR handled—and purportedly reduced—complaints. And some of it came through which complaints OCR decided to investigate under the Trump administration. For instance, under Trump, OCR opened a complaint related to Montgomery County, Maryland's efforts to promote access and equity in local magnet schools, on the grounds that the new policies discriminated against Asian American students (see Table 1A in Appendix).

Questions about OCR's mandatory review of magnet school desegregation plans under Trump also surfaced in several interviews. Because the assistant secretary for civil rights has the power to refuse to certify OCR's review of a magnet school's desegregation plan, one former OCR official wondered if magnets proposing to use race in a generalized way—permissible according to *Parents Involved* and the Obama-era guidance that followed the decision—might not have survived Trump administration oversight. It is difficult to track the results of the certification process or to understand how magnet desegregation plans may have been altered because these processes are not public.

The Trump administration's 2018 decisions to rescind the Obama-era guidance on the voluntary use of race in K-12 and in postsecondary admissions and on school discipline represented further concrete moves toward "race-neutrality" in the law. According to one of our interviewees, career officials at ED were not informed of the decision to rescind the guidance on the use of race, suggesting unprecedented marginalization of civil servants with relevant expertise. Further, because Obama's ED and DOJ had jointly issued both rescinded guidance documents, rescinding them aligned with the Trump administration's efforts to reorient the civil rights division at DOJ. Catherine Lhamon, Assistant Secretary for Civil Rights under Obama, indicated that decision-making around education seemed to come from Trump's DOJ more than ED, which differed from her tenure. And Trump officials at the DOJ were intent on pursuing race-evasiveness in the law.

Under Trump, the DOJ's Civil Rights Division argued against Harvard University's use of race in college admissions. These actions distorted how race-conscious admissions works, highlighting race in ways that further harmed historically disadvantaged racial groups and, conversely, protected the interests of groups with relatively more racial privilege. One interviewee (personal communication, September 11, 2019) indicated that the Trump administration "really believes that there should be no consideration of race at all, and that's a big shift." Though a proposed unit within DOJ's Civil Rights Division focused on dismantling affirmative action did not materialize, the need for it suggested that existing staffers in the educational opportunities section were reluctant to take on dismantling affirmative action, according to one interviewee. This, in turn, may indicate that political appointees within ED were more effective in silencing career staffers than appointees with DOJ.

More potently for the post-Trump future of the politics of racial justice, in September 2020, after a summer of protests against the murder of George Floyd, President Trump issued an executive order on Diversity Training Enforcement. The order followed the summer of protest over the police murder of George Floyd and other police shootings. In response to the protests, some organizations—including federal agencies—attempted to deepen their staff members' understanding of individual and structural racism. Trump cited training materials from various federal entities like the Smithsonian as "teaching that men or members of certain races, as well as our most venerable institutions are inherently sexist and racist." It warned that "such teachings could directly threaten the cohesion and effectiveness of our Uniformed Services" and "promote division and inefficiency." The order went on to ban trainings centered on "divisive topics" that promoted race or sex scapegoating. Copycat orders slamming "critical race theory" quickly emanated from many Republican-controlled statehouses. One interviewee saw the order as politically astute, saying:

> I mean, this cuts very deep into -- they know that the average White person, including the average White wealthy person in the suburbs, especially, who doesn't want to be told that they need to operate differently -- they don't want to be uncomfortable. And that's, when you talk about what critical race theory is, and acknowledge systemic racism, and think about how do you fix it, it requires all of us to behave a little bit differently. And, yeah, I mean, I think it's really smart. Sadly, I think it's really smart. (anonymous, personal communication, May 24, 2021)

Beyond the political potency of attacks on what conservatives claimed was "critical race theory," the actual impact of Trump's executive branch maneuvers around "race-neutrality" remains unclear. Advocates pointed out that the underlying law had not changed. Liz King of the Leadership Conference spoke to that reality, as well as to the weaponization of race-neutrality in the administration:

> Well, you can't rescind the Supreme Court cases, so all you've really done is rescind the sentence that says diversity is really important, which was exactly what they wanted to do, right. I mean, in the context of White supremacy.... I mean, it's no surprise to anyone that there's an effort to say that diversity is unimportant, right. I mean, we have a president who thinks not only is diversity unimportant but there should be a racial purge and there should not be people of color in this country. (L. King, personal communication, November 5, 2019)

At the same time, Trump and McConnell's focus on appointing and confirming conservatives to the federal judiciary, including the three new Supreme Court Justices, will likely reinforce the use of "race-neutrality" as a tool for dismantling race-conscious policies and laws. It may not be literally possible to "rescind" Supreme Court cases, but the conservative supermajority on the Supreme Court actually did ignore or overturn established precedents in its 2021-22 session, with more such actions expected. Civil rights lawyers (personal communication, May 5, 2021) remain "particularly concerned about the future of disparate impact-type claims." So even if the immediate impact of Trump's executive branch push for total "race neutrality" in law and policy was unclear, its impacts may still accumulate as a federal judiciary altered by Trump's 226 appointments shifts ever closer to it.

Discussion

The 12 years encompassing the Obama and Trump administrations were a time of continual changes in race-conscious federal educational policies. Our analysis shows how deeply contested the role of the federal government was during this period—specifically, the federal role in remedying ongoing racial inequality amid a diversifying and unequal society. This article offers the first substantive look at federal civil rights policy in education across the two administrations. At the time of writing, most developments have been within executive agencies. However, the Trump administration's reshaping of the federal judiciary means that consequential judicial decisions loom in the near future.

Our findings underscore tenuous advances under the Obama administration and sweeping, though not always effective, efforts to reverse them under the Trump one. Both administrations operated under political and interbranch constraints, more marked for Obama than for Trump.

Obama confronted a difficult political context. The Obama administration moved carefully on civil-rights policies such as the 2011 guidance on using race in student assignment, likely because Obama wanted to make it clear that he was advancing the interests of all Americans and feared that his opponents would claim otherwise if he seemed to be too assertively helping Black Americans. Despite Obama's efforts, public opinion on his policies was often influenced by racial animus (Tesler, 2016). For most of his two terms, he also faced a Congress controlled by a Republican party who officially opposed his preferred policies. Because Obama administration officials were reluctant to draw attention to the civil rights work in an unforgiving political context, many of the strategies outlined above were deliberately low-key. The administration largely sought to advance race-conscious education policies through the executive branch by issuing guidance and expanding the

role and function of OCR. The Obama administration also understood the history of federal enforcement around Title VI in education and worked to encourage disparate-impact analysis. Increased data collection and use of data and guidance documents to educate the public represented other Obama Administration avenues for pursuing race-conscious policies, as did pressure school districts to reduce racial disparities in discipline, and generally making it clear that OCR was "open for business."

The Obama administration revived and strengthened traditional executive branch tools for civil rights. Beyond the federal government, the administration worked to expand its impact–and staying power–by nurturing partnerships with outside advocacy organizations around race-conscious education policies. These partnerships created the conditions for state and local civil rights advances alongside more traditional oversight and enforcement activities. The Obama administration's interagency and intergovernmental focus on civil rights in education and school diversity, particularly toward the end of the second term, was reminiscent of earlier, late '60s-era cooperation in the federal executive branch around school desegregation (G. Orfield, 1969).

At times, the Obama administration was not only limited by, but also a participant in, the decades-long shift toward race-evasiveness in law and policy. The administration left it ambiguous as to whether integration efforts should focus on race or socioeconomic status, and was too hesitant to make a strong case for race-consciousness or disparate impact enforcement. In retrospect, the regulations for the Race to the Top grant competition could have included incentives for states to maintain and increase racial integration in their schools. Instead, Race to the Top led to expansion of charter schools without regard for their propensity to increase racial segregation. It also produced intense backlash against federal overreach on standards and accountability, which led Congress to reduce federal requirements on states and districts (McDermott et al., 2021).

The administration, by allowing ambiguities in law and policy to persist, inadvertently enabled the Trump administration to double-down on race-evasiveness and choice/privatization. Trump's race-evasive education agenda was multipronged, and the tools used to advance it often fed into other administration priorities. Secretary DeVos pushed first and foremost to delegitimize public education and, by extension, to privatize it. Privatization and race-evasiveness in law and policy go together because privatization enables exit from an increasingly diverse public educational sphere. That exit damages citizenship preparation by segmenting students into racially separate and unequal sectors–in a White supremacist context that increasingly refuses to recognize those race-based inequalities (Rooks, 2017). The Trump administration's privatization agenda further damaged race-conscious education law and policy because it set civil rights groups on their heels, forcing them to make the general case for public education before focusing on numerous, specific rollbacks.

Deregulation became both agenda and tool under the Trump administration, used to curtail OCR activities. Trump officials ushered in major changes to the way OCR handled civil rights complaints with revisions to the case processing manual and rescissions of Obama-era guidance. Proposed cuts to the federal civil rights survey and OCR regional offices also characterized the deregulation push, though interbranch pressure and administrative stasis effectively stayed some of the changes. The Trump administration further sought to limit the use of traditional civil rights tools, like the issuance of guidance, through executive order.

Drawing on civil rights statutes like Title VI, the administration argued that any consideration of race constituted discrimination. That emphasis surfaced in decisions about which OCR complaints to investigate and the administration's posture in affirmative action cases. Supported by deregulation, Trump officials worked to use race-evasiveness to protect the interests of Whites. Its opposition to race-conscious admissions to higher education and to selective K-12 schools drove a wedge between Asian communities and other communities of color. Despite a persistent interest in undoing disparate impact altogether, the Trump administration failed to deliver.

Still, the administration's hostility to disparate-impact analysis continued a long-term conservative legal project and may have laid the groundwork for state and federal efforts to do so in the future. In our race-evasive context, attacks on disparate impact build on a longstanding conservative priority to center difficult-to-prove intent, rather than impact, in racial discrimination litigation (Boddie, 2016).

In the summer of 2020, as the country wrestled with racial injustice and Covid-19, the political atmosphere for the Trump administration's work briefly shifted. In hindsight, the summer represented a narrow but crucial opening for advancing race-conscious educational policy. Trump responded by drawing on the facially race-neutral idea of school choice as a civil right (Scott, 2011). He pushed school choice and privatization at an event meant to reflect on the racial brutality of George Floyd's murder. He also revived a race-evasive (if not implicitly racist) Republican response to civil rights era protests. Trump rejected the idea that the US had a problem with racism, pivoted to claims that the protests were mostly violent and threatened "law and order" (Haney Lopez, 2021).

As with Obama, interbranch maneuvering constrained the success of Trump's agenda on education and civil rights. Similarly, because many of Trump's actions were limited to the executive branch, the Biden administration immediately set to work overturning them (e.g., Exec. Order 13985, 2020). Still, the broader impacts of the Trump administration–particularly the dramatic reshaping of the federal judiciary–will have chilling implications for race-consciousness in the law. Recognizing these consistent through-lines in the federal role and race-conscious education policy and law will be essential for civil rights advocates and policymakers, particularly at the federal level, going forward.

Our findings indicate that to be effective in a society still structured by racism, civil rights defenders must communicate the history and importance of race-conscious education policy and carefully monitor retrenchment to create a record to draw on if and when the courts again become receptive to race-conscious policy. Policymakers should reinvigorate mechanisms supporting an affirmative federal role in monitoring and enforcing race-conscious education policy under Title VI's disparate impact provision, including OCR-initiated systematic investigations of state or district-level disparate impact violations and/or OCR opening comprehensive complaints alleging systemic disparate impact violations (Nunberg & Petty, 2021). Civil rights lawyers also will need to create and test new legal strategies at the state and federal level to thwart racial inequality and discrimination (see, e.g., Boddie, 2016; Wilson, 2021).

Political administrations' priorities around race-conscious education policies shift, as the history of the Obama and Trump administrations clearly demonstrate. But the need for these policies remains in our increasingly multiracial society and struggling democracy.

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APPENDIX

Table 1A

Documents Used for Context Development and Analysis

Date	Event/Document	Content	Code
04/19/2011	DOJ Brief - *Doe v. Lower Merion Sch. Dist.* - 665 F.3d 524 (3d Cir. 2011) (*Doe v. Lower Merion School District,* 2011)	Case on race-conscious student assignment policies. The District Court concluded that the redistricting plan required strict scrutiny, but it was constitutional because the plan did not use race impermissibly.	Obama tools and agenda: Cross-sector coordination
2011-12	Civil Rights Data Collection Q&A Sheets (Office for Civil Rights, 2011)	Added new data items, including preschool suspensions and expulsions.	Obama tools and agenda: OCR
06/2012	The National Commission on School Diversity Issue Brief #4: Federal Support for School Integration: A Status Report (Tegeler et al., 2014)	USED issued Joint Guidance on Voluntary School Integration and has included a preference for school integration in its permissible funding preferences, but there was no school integration requirement reflected in competitive grant programs.	Obama tools and agenda: Inconsistencies
11/13/2012	Federal Register Vol. 77, No. 219: Rule change for the 2010 MSAP grants (Magnet Schools Assistance Program, 2012b)	Eliminated the prior rule that had a binary definition of minority group isolation	Obama tools and agenda: Lack of clarity
12/31/2012	Federal Register Vol. 77, No. 250: Additional rule changes for MSAP grants (Magnet Schools Assistance Program, 2012a)	Requires examination of MSAP grant desegregation effects on magnet and feeder schools and increased the number of points awarded for plans reducing or eliminating minority group isolation.	Obama tools and agenda: Lack of clarity

Date	Event/Document	Content	Code
01/08/2014	Guidance on the Nondiscriminatory Administration of School Discipline (U.S. Department of Justice & U.S. Department of Education, 2014)	The letter explains what disparate impact is and the steps the OCR will take if a discipline policy results in a disparate impact on students of color.	Obama tools and agenda: ED & DOJ
04/2015	OCR Report to the President and Secretary of Education: Protecting Civil Rights, Advancing Equity, FY 13-14(Office for Civil Rights, 2015b)	Summarizes the compliance and enforcement activities of the OCR and identifies civil rights or compliance issues, seeking support.	Obama tools and agenda: OCR
02/06/2016	Civil Rights Division, Department of Justice FY 2017 Performance Budget Congressional Submission (U.S. Department of Justice, 2016)	The budget request emphasized, in part, the need to expand opportunities through desegregation support.	Obama tools and agenda: ED & DOJ
06/03/2016	HUD, DOT, & ED Joint Dear Colleagues Letter on the Affirmatively Furthering Fair Housing rule (U.S. Department of Housing and Urban Development et al., 2016)	Provides guidance and public education about ways communities could work to voluntarily promote diversity.	Obama tools and agenda: Cross-sector coordination
12/2016	OCR Report to the President and Secretary of Education: Securing Equal Educational Opportunity (Office for Civil Rights, 2016)	Summarizes the compliance and enforcement activities of the OCR and identifies civil rights or compliance issues, seeking support.	Obama tools and agenda: OCR
01/30/2017	Executive Order No. 13771 Reducing Regulation and Controlling Regulatory Costs (Exec. Order No. 13771, 2017)	Outlines approach to governing, for every one regulation enacted, two must be removed.	Trump tools and agenda: Deregulation

Date	Event/Document	Content	Code
10/09/2017	Executive Order No. 13891 Promoting the Rule of Law Through Improved Agency Guidance Documents (Exec. Order No. 13891, 2017)	Modifies procedural requirements to prohibit federal administrative agencies from issuing binding rules through guidance documents.	Trump tools and agenda: Deregulation
11/02/2018	USCCR Testimony: Panel Three: Advocates and Community Experts in Civil Rights Enforcement (Advocates and Community Experts in Civil Rights Enforcement, 2018)	Janel George and Vanita Gupta call for transparency in CRDC data.	Obama tools: OCR
12/18/2018	Final Report of the Federal Commission on School Safety (Federal Commission on School Safety, 2018)	Report attacks the principle of disparate impact because it led to discipline decisions to be about statistics rather than safety.	Trump tools and agenda: Deregulation
12/21/2018	Updates to Department of Education and Department of Justice Guidance on Title VI (school discipline) (U.S. Department of Justice & U.S. Department of Education, 2018)	The Dear Colleague letter rescinds Obama school discipline guidance and associated documents to remove the use of disparate impact analysis in education. *Currently under review and has the potential to be removed.	Trump tools and agenda: Race neutral
03/13/2019	OCR Discrimination Complaint to Montgomery County Public Schools (MD) (Office for Civil Rights, 2019)	The complainants allege that the district discriminated on the basis of race by using race as a factor for admission to two of its magnet middle schools. Specifically, they opened an investigation into the intentional exclusion of Asian and Asian American students.	Trump tools and agenda: Race neutral
05/08/2019	Equity and Inclusion Enforcement Act (introduced by Scott and Nadler) (Equity and Inclusion Enforcement Act, 2019)	Would allow families to sue over policies with a disparate impact, which would supersede *Alexander v. Sandoval*. (passed by House on 9/16/20 but not by Senate)	Trump tools and agenda: Deregulation

Date	Event/Document	Content	Code
11/13/2019	USCCR: Performance and Accountability Report for Fiscal Year 2019 (U.S. Commission on Civil Rights, 2019)	Outlines the OCR's programmatic output, including the number of discrimination complaints received and resolved.	Obama tools and agenda: OCR
06/16/2020	Trump press conference on police reform (Trump, 2020)	Trump signs executive order on policing, but during his speech, he lists his administration's achievements for Black, Hispanic, and Asian communities, including expanding school choice.	Trump tools and agenda: Education privatization
01/08/2021	Fact sheet: Governor's Emergency Education Relief Fund II: Coronavirus Response and Relief Supplemental Appropriations Act 2021 (Office of Elementary & Secondary Education, 2021)	Outlines that private schools received about $2.75 billion in COVID relief funds after Trump left office. However, they could not be used for vouchers or scholarships.	Trump tools and agenda: Education privatization

Table 2A

Summary of CRDC Data Changes

Years	New Data Items (Required & Optional)	Data Items No Longer Collected
2009-10	**Required:** students' participation in algebra and other college-prep subjects, retention, teacher experience/absenteeism, school counselors, school funding, harassment, restraint/seclusion, SAT/ACT participation, desegregation plans, access to K and pre-K programs, and discipline *Most of the data will be disaggregated by race, sex, disability, and limited English proficient status.	
2011-12	**Required:** preschool suspensions and expulsions	Disaggregated data on the number of students served under the IDEA by disability category or educational environment nor the high school completer (instead, they collected the data reported to the SEA)

Years	New Data Items (Required & Optional)	Data Items No Longer Collected
2013-14	**Required:** students absent 15 or more school days (disaggregated), students enrolled in distance education, students enrolled in dual enrollment or credit recovery programs, if sworn law enforcement officer (including school resource officer) is assigned to a school, if the LEA's preschool or kindergarten programs are offered at a cost to parents or guardians, if the school's preschool program serves non-IDEA students (by age), if the LEA has civil rights coordinators (with contact information), and justice facility questions regarding facility type, school year length, and educational program duration	Students awaiting special education evaluation (LEA), if students are ability grouped for English/Math, students enrolled in AP foreign language (disaggregated), separate count of students who took AP exams for all AP courses enrolled in (disaggregated), and separate count of students who passed AP exams for all AP courses enrolled in (disaggregated)
2015-16	**Required:** child count for 2-year-olds served in LEA preschool, incidents of violent and serious crimes, school days missed by students who received out-of-school suspensions, students transferred for disciplinary reasons to alternative schools, instances of corporal punishment, preschool students who received corporal punishment, allegations of harassment or bullying on the basis of sexual orientation or religion, students who participated in justice facility educational program (by specific length), students enrolled in any distance education courses or dual enrollment/dual credit programs, students who participate in a credit recovery program, science classes in grades 9-12 taught by teachers with a science certification (Biology, Chemistry, Physics), FTEs for psychologists, social workers, nurses, security guards, and sworn law enforcement officers, school-level expenditures for teachers and total personnel (funded with federal and state/local funds), school-level expenditures and number of FTEs for instructional aides, support services staff, and school administration staff (funded with federal and state/local funds; funded with state/local funds), as well as amount of non-personnel	Students transferred to a regular school for disciplinary reasons, Algebra I classes in grades 7-12, students enrolled in Algebra I in grades 7-8, students who passed Algebra I in grades 7-8, Geometry classes in grades 7-12, students enrolled in Geometry in grades 7-12, and total amount of instructional staff (teachers & instructional aides) salaries

Years	New Data Items (Required & Optional)	Data Items No Longer Collected
	expenditures (funded with federal and state/local funds), preschool students served by the LEA in preschool programs in LEA and non-LEA facilities, students enrolled in LEA and served in non-LEA facilities only, current teachers employed at the school, teachers also employed at the school in prior year, students ages 16-19 who participated in LEA-operated high school equivalency exam preparation program (disaggregated by race, sex, disability-IDEA, LEP), and students ages 16-19 who participated in LEA-operated high school equivalency exam preparation program, succeeded on test, and received high school equivalency credential (disaggregated)	
2017-18	**Optional**: computer science classes in grades 9-12, computer science classes in grades 9-12 taught by teachers with a computer science certification, students enrolled in computer science classes in grades 9-12 (disaggregated), students enrolled in AP computer science in grades 9-12 (disaggregated), if the school is connected to the Internet through fiber-optic connection, if the school has Wi-Fi access in every classroom, if the school allows students to take home school-issued devices that can be used to access the Internet for student learning, if the school allows students to bring to school student-owned devices that can be used to access the Internet for student learning, and the number of Wi-Fi enabled devices provided by the school to students for student learning use	Students ages 16-19 who participated in LEA-operated high school equivalency exam preparation program, succeeded on test, and received high school equivalency credential (disaggregated), students enrolled in one or more AP courses who received a qualifying score on one or more AP exams, students enrolled in one or more AP courses who did not receive a qualifying score on any AP exams, and students absent 15 or more school days (disaggregated)
2019	No information provided	No information provided
2020-21	**Required**: number of preschool students receiving one or more OSS (disaggregated) **Optional**: incidents of rape, attempted rape, and sexual assault committed by students that occurred at the school and school staff member that occurred at the school,	Number of EL students enrolled in EL programs (disaggregated by disability-IDEA), number of preschool students who received one out-of-school suspension (disaggregated by race, sex, disability-IDEA, EL), number of

Years	New Data Items (Required & Optional)	Data Items No Longer Collected
	allegations made against a school staff member of offenses that occurred at the school, which were followed by a resignation or retirement prior to final discipline or termination, determination that the school staff member was responsible for the offense, determination that the school staff member was not responsible for the offense, determination that remained pending, or followed by a duty reassignment prior to final discipline or termination, and incidents of harassment and bullying based on perceived religion or shared ancestry	preschool students who received more than one out-of-school suspension (disaggregated by race, sex, disability-IDEA, EL), preschool and kindergarten length offered and cost, number of students enrolled in and/or took an AP course/exams (disaggregated), school-level salaries, teacher experience, and teacher absenteeism, among others

Note: All data was collected from the CRDC Q&A forms (Office for Civil Rights, 2009; 2011; 2013; 2015b; 2017; 2020), but for a more comprehensive and detailed list, review the Data Elements list. Additionally, it was not until 2015-16 that the Office of Management and Budget (OMB) approved the OCR to require all public schools and districts to respond to the 2013-14 CRDC and all LEAs (i.e., charter schools, juvenile justice facilities, alternative schools, and schools serving students with disabilities) to the 2020-21 CRDC.

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