

The Feds Are Watching: Equitable Allocations In School Budgets

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It is indisputable that education forms the cornerstone of a productive society. What is frequently disputed, however, is what that cornerstone should cost, and just as every year swallows return to San Juan Capistrano, so too do gadflies swarm in school districts across Connecticut during the annual budget season. This year, however, while some constituents focus on *what* their respective school boards propose to spend, the United States Department of Education's Office for Civil Rights, or "OCR," may be scrutinizing *how* they spend it.

OCR is charged with enforcing federal, school-based civil rights laws, and has jurisdiction over any public or private educational institution that receives any form of federal funds. OCR has the power to investigate, order remediation and even strip funding from schools that fail to comply with the anti-discrimination laws for which it has oversight. In conjunction with its enforcement mandate, OCR occasionally issues what it terms a "Dear Colleague" letter, in which it spells out what it considers to be the scope and application of these civil rights laws.

On October 1, 2014, OCR issued a 37-page Dear Colleague letter, addressing what it perceives to be racial disparities in the nation's public schools, particularly at the high-school level. The October 1 letter is predicated upon the results of its Civil Rights Data Collection ["CRDC"] for the 2011-2012 school year, which OCR released on March 21, 2014. The CRDC gathers information regarding educational programs and services, broken down by student race, ethnicity, gender, English-language proficiency and disability. The information in the 2011-2012 CRDC was obtained from *every* public school and *every* public school district in the country, and OCR is already crafting the 2013-2014 and 2015-2016 surveys.

The October 1 Dear Colleague letter focuses on the CRDC results pertaining to educational disparities between white and minority students, including:

1. Only 4% of white students were retained in 9th grade, compared to 12% of African American students.
2. Eighty-one percent (81%) of Asian-American high school students and 71% of white high school students attended high schools that offered the full range of math and science courses. Only 47% of American Indian/Alaska Native and 57% of black high school students were afforded the same opportunity.

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3. On average, teachers in high schools serving the highest percentage of minority students earned \$1,913 less per year than their colleagues in the same district who served the lowest percentage. In fact, nearly 25% of districts with two or more high schools reported a teacher salary gap of at least \$5,000 between high schools with the highest and lowest percentage of black and Latino students in their districts.

4. Black students were more than *four times* as likely as white students to attend schools where 20% or more of their teachers had not yet satisfied all state certification and licensing requirements.

Citing these, as well as many other, dichotomies in resources, instructional staff, and facilities, OCR warned in its October 1 letter that both state and local funding must be allocated so as to “ensure the availability of equal educational opportunities for students, which may require more *or less* funding depending upon the needs at a particular school.” As such, the Dear Colleague letter calls to mind OCR’s approach to Title IX, which requires that all students enjoy equitable athletic opportunities and benefits, regardless of gender.

Under Title IX, schools are obligated to provide comparable sports with equitable funding; thus, if a booster club expends funds solely for the benefit of the baseball team, a school board can be required to reallocate an equivalent amount from baseball to softball. OCR’s October 1 letter sets forth a similar obligation upon both states and school districts to allocate their respective educational budgets to ensure that schools primarily comprised of minority students are given equitable opportunities in terms of classes, extracurricular opportunities, and technological resources.

Perhaps of greater import is the requirement that schools serving a higher percentage of minority students be provided with equal access to skilled instructional and highly effective administrative staff. OCR does not hesitate to subject school districts to sweeping investigations and impose sometimes onerous consequences. It is, therefore, conceivable that OCR investigators could review staffing decisions, perhaps even including intra-district transfers, review teacher and building administrator evaluations, and require decision makers to justify their staffing decisions and personnel assessments. Of particular interest will be seeing whether such measures ultimately affect collective bargaining considerations.

In any event, in the wake of OCR’s October 1 Dear Colleague letter, when administrators and school boards craft their districts’ annual budgets, they may be called to answer not only to their constituents regarding the amounts allocated, but also to the federal government as to the equity of those line items.

Attorney McKeon is a Member of the law firm of Pullman & Comley LLC, which represents a number of Connecticut school districts. More articles about issues pertaining to school districts and other educational institutions can be found on the firm’s blog Education Law Notes at <http://schoollaw.pullcomblog.com>. Reprinted with permission from the November 2014 issue of the Fairfield County Business Journal.

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