

## ***Equity and Inclusion Enforcement Act (EIEA) of 2023***

*Restoring the right of students and parents to hold schools accountable for discrimination in education.*

### **Background**

A decade after the seminal *Brown v. Board of Education* decision ended lawful segregation in education, Congress passed the *Civil Rights Act of 1964*. Title VI of the Act mandates that federal dollars cannot subsidize or support programs or activities that discriminate on the basis of race, color, or national origin.

From 1964 until 2001, students and parents had the right – under Title VI – to take schools to court over education policies that have a disparate impact on their access to a quality education. Importantly, disparate impact claims do not have to establish that a school acted with intentional bias – which is often impossible to prove. These claims only have to establish that a school policy or practice has a disproportionately negative impact on students of a certain race, color, or national origin.

For example, if Black students at a particular school are being disciplined at far greater rates than their white classmates for similar offenses, those students could bring a *disparate impact* claim against the school without proof that the school uses exclusionary discipline on Black students *explicitly because* those students are Black. The evidence of discriminatory effect would be sufficient to file a disparate impact claim.

### **The Impact of *Sandoval***

In 2001, the conservative bloc of the Supreme Court upended the enforcement of Title VI. The 5-4 opinion in *Alexander v. Sandoval* stripped victims of discrimination of their right to bring disparate impact claims under Title VI against schools and all other entities receiving federal funds.

Under *Sandoval*, only the federal government may use disparate impact in administrative enforcement of Title VI. And if an administration is hostile to federal civil rights law, no such enforcement occurs. In the example above, unless the U.S. Departments of Education or Justice decide, on their own, to investigate the school district's policies and practices, the racial disparities in discipline will never be addressed, even if the district is in violation of Title VI.

Since 2001, many parents and students have expressed confusion and frustration that the law cannot address the discriminatory effect of certain policies and practices in their communities.

## **About the *Equity and Inclusion Enforcement Act (EIEA)***

*The Equity and Inclusion Enforcement Act (EIEA)* takes steps to hold federally funded programs, including schools, accountable for their responsibility to provide all students with equal opportunity for a quality education. The bill:

- *Restores the private right of action for students and parents to bring disparate impact claims under Title VI of the Civil Rights Act.*
- Creates Title VI monitors to ensure that every school district and institution of higher education has at least one employee specifically responsible for investigating any complaints of discrimination based on race, color, or national origin. Monitors will also provide education, and other assistance, as necessary, to ensure that students and personnel are aware of their relevant rights and responsibilities.
- Creates a Special Assistant position at the Department of Education to coordinate and promote Title VI enforcement in education.