



The Equity and Inclusion Enforcement Act (EIEA): Restoring Private Right of Action to Disparate Impact Claims Brought Under Title VI of the Civil Rights Act of 1964

In response to a May 2016 Government Accountability Office (GAO) report showing that our nation's schools are re-segregating at an alarming rate, Ranking Members Scott (Education and Workforce) and Conyers (Judiciary) are reintroducing the *Equity and Inclusion Enforcement Act* to amend Title VI of the Civil Rights Act of 1964 to restore the right to individual civil actions in cases involving disparate impact. Committee Democrats, in partnership with Democrats on the Judiciary committee, introduced this legislation to empower parents and communities to address – through robust enforcement – racial inequities in public education.

A decade after the seminal *Brown v. Board of Education* decision ending lawful segregation in education Congress passed the Civil Rights Act. 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. National origin includes ethnicity, limited English proficiency, and sometimes spoken accent.

THE EQUITY AND INCLUSION ENFORCEMENT ACT (EIEA):

- Restores a private right of action to file disparate impact claims under Title VI of the Civil Rights Act. Without a private right of action, students of color face countless forms of irreparable harm including missing countless hours of instruction and educational opportunities. These cannot be recouped. Disparate impact relies on the policies and practices that yield statistically high and disproportionate adverse or negative effect;
 - The long-held disparate impact analysis under Title VI of the Civil Rights Act of 1964 was upended by the 2001 Supreme Court decision in *Alexander v. Sandoval*. Justice Antonin Scalia authored the opinion that stripped victims of discrimination of the right to bring disparate impact claims under Title VI. Since then, many parents and students have expressed confusion and frustration that the law cannot address the disparate impact of certain policies and practices on marginalized communities.
- Creates Title VI monitors to ensure that every school has at least one employee to specifically carry out the responsibilities of the law. The Title VI Monitor will be responsible for investigating any complaints of discrimination based on race, color, or national origin; and
- Creates an Assistant Secretary in the Department of Education to coordinate and promote Title VI enforcement of equity and inclusion in education. The Secretary of Education will appoint the Assistant Secretary, who will be responsible for promoting, coordinating, and evaluating equity and inclusion programs, including the dissemination of information, technical assistance, and coordination of research activities.

THINGS TO KNOW ABOUT TITLE VI

- Title VI authorized all federal agencies to adopt regulations to implement its ban on discrimination by recipients of federal dollars.
- Title VI rests on Congress' power, pursuant to the Spending Clause, to determine the terms on which federal funds are made.
- The types of discrimination prohibited under Title VI include, segregation; denial or exclusion of services; decreased, poor, or low quality services; unsafe services; and the denial of the opportunity to participate as a member of a planning or advisory body.
- Since the enactment of the Civil Rights Act of 1964, Title VI barred both intentional and disparate impact practices and policies.
 - Intentional discrimination includes a rule or practice that is discriminatory on its face and in plain language.
 - Disparate impact relies on the policies and practices that yield statistically high and disproportionate adverse or negative effect.
- In 2001, the Supreme Court decided in *Alexander v. Sandoval* to overturn four decades of statutory protections against discrimination by stripping victims of discrimination of the right to bring disparate impact claims under Title VI.
- By depriving victims of disparate impact discrimination redress by the courts, the public has been locked out of arguing for equal protection and opportunity under the law in the areas of education, transportation, and environmental justice.
- A private right of action to file disparate impact claims is necessary to provide students with adequate remedies for civil rights violations.