GAPS IN THE ARMOR:
PREDICTORS OF CIVIL RIGHTS COMPLAINTS
IN PENNSYLVANIA’S ELEMENTARY & SECONDARY SCHOOLS

By
Stephen S. Worthington
JD/MA Candidate
Law and Educational Theory & Policy
The Pennsylvania State University
stephen.s.worthington@gmail.com

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The night is far spent, the day is at hand: let us therefore cast off the works of darkness, and let us put on the armour of light.

— Romans 13:12

I. INTRODUCTION

Despite the victories of mid-twentieth century civil rights activists, today’s youth of color experience civil rights violations more often than their White peers.¹ Youth of color are especially likely to experience discrimination at the hands of school personnel.² Federal law protects students from discrimination on the basis of race, sex, and disability,³ but research suggests that the legal machinery for enforcing these rights may be underutilized. One study of eighteen schools from three states found that Black students were more likely than White students to say that they would take formal legal action in response to hypothetical civil rights violations, but were no more likely to actually take such action.⁴ Latino students were less likely than White students to respond to civil rights violations with formal action.⁵ Because students and parents cannot benefit from civil rights law without engaging the corresponding enforcement

* Stephen S. Worthington is a joint JD/MA candidate in Law and Educational Theory & Policy at the Pennsylvania State University. During law school, he served as a legal intern with the U.S. Department of Education’s Office for Civil Rights (“OCR”). The views expressed here are his own.

¹ Calvin Morrill, Lauren B. Edelman, Karolyn Tyson, & Richard Arum, Legal Mobilization in Schools: The Paradox of Rights and Race Among Youth, 44 L. & SOC’Y REV. 651, 670-74 (2010) (finding that Black and Latino students are more likely to experience rights violations than White and Asian students); Susan Rakosi Rosenbloom & Niobe Way, Experiences of Discrimination among African American, Asian American, and Latino Adolescents in an Urban High School, 35 YOUTH & SOC’Y 420 (2004) (finding that Asian American students were more likely to experience peer harassment while Black and Latino students were more likely to experience discrimination by teachers, shopkeepers, and police).

² Morrill et al., supra note 1, at 671; Rosenbloom & Way, supra note 1, at 434-38.


⁴ Id.

⁵ Id.
mechanisms, underuse of these mechanisms acts as a functional flaw, or gap in the armor, of civil rights protections.

To shed light on why many violations of student rights go un-remedied, this study examines a principal enforcement mechanism: the administrative complaint process of the U.S. Department of Education’s Office for Civil Rights (“OCR”). Although OCR has been the focus of vigorous scholarly discourse, the literature features little empirical examination of its enforcement process, especially at the K-12 level. This study aims to enrich discourse on OCR by offering a close examination of how the OCR complaint process operates in the K-12 context. To do so, this study uses legal and quantitative analysis to explore the relationship between the characteristics of K-12 schools in Pennsylvania, and the characteristics of OCR complaints filed against those schools.

Part II of this study explains the OCR-administered statutes, regulations, and policy governing discrimination in the K-12 context. Part III describes the data examined in this study, and the statistical techniques used to analyze the data. Part IV provides a summary of the findings from the statistical analysis, and Part V offers an interpretation of those findings. Part VI concludes with recommendations for policymakers, educators, researchers, and advocates.

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II. LEGAL FRAMEWORK

Elementary and secondary students in Pennsylvania are protected from discrimination under both state and federal law. OCR enforces six federal civil rights statutes which protect students and other beneficiaries from discrimination in five domains: race, sex, disability status, age, and affiliation with patriotic societies. These statutes apply to charter schools as well as traditional public schools. The lion’s share of OCR’s enforcement effort is claimed by a combination of Title VI of the Civil Rights Act (“Title VI”), which prohibits racial discrimination; Title IX of the Education Amendments of 1972 (“Title IX”), which prohibits discrimination based on sex; and Section 504 of the Rehabilitation Act (“Section 504”), which prohibits discrimination based on disability. This Part surveys the regulatory requirements implementing those statutes, and describes the process OCR follows to enforce the requirements.

A. Federal Regulations

Like many congressional directives, the antidiscrimination provisions of Title VI, Title IX, and Section 504 are vague. Although the statutes prohibit excluding, denying benefits, or

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8 Pennsylvania law prohibits any provider of public accommodation from discriminating on the basis of “race, color, familial status, religious creed, ancestry, handicap or disability, age, sex, national origin [or] the use of a guide or support animal . . .” 43 P.S. § 953 (2016). These protections apply in elementary and secondary schools. 43 P.S. § 954(l); 22 Pa. Code § 12.4 (2016). Because OCR only enforces federal law, this study focuses on the federal protections.


11 Title VI and its implementing regulations prohibit discrimination on the basis of “race, color, or national origin.” 42 U.S.C. § 2000d; 34 C.F.R. pt. 100 (2015). For brevity, this study uses “race” and “racial” as shorthand for all forms of discrimination prohibited by Title VI.


13 29 U.S.C. § 794. Because local educational agencies both receive federal funding and provide local government services, a violation of Section 504 by such an agency generally also constitutes a violation of the Americans with Disabilities Act. OFFICE FOR CIVIL RIGHTS, QUESTIONS AND ANSWERS ON THE ADA AMENDMENTS ACT OF 2008 FOR STUDENTS WITH DISABILITIES ATTENDING PUBLIC ELEMENTARY AND SECONDARY SCHOOLS 2 n.2 (2011), https://www2.ed.gov/about/offices/list/ocr/docs/dcl-504faq-201109.pdf. For brevity, this paper uses “Section 504” as shorthand for the joint legal requirements of both Section 504 and the Americans with Disabilities Act.

14 OCR, supra note 3, at 8. Of the 536 complaints in this study, 490 (91%) alleged discrimination on the basis of race, sex, disability, or some combination. Ten complaints (2%) alleged pure age discrimination, and 36 complaints (7%) did not allege discrimination in any domain within OCR’s jurisdiction. None of the complaints under study alleged violation of the Boy Scouts of America Equal Act.
discriminating on the basis of race, sex, or disability, they provide no standards for determining whether a policy or practice violates those prohibitions. Instead, Congress directed federal agencies to issue regulations to give content to each statute and to effectuate its objectives. Accordingly, the Department of Health, Education, and Welfare, the predecessor of the Department of Education, issued regulations to implement Title VI, Title IX, and Section 504 after the passage of each statute through the notice-and-comment rulemaking process.

Over the course of each round of rulemaking for the three statutes, the process grew more delayed and the final regulations more complex. The regulations governing racial discrimination were finalized five months after the enactment of Title VI. The regulations governing sex discrimination, in contrast, were finalized three years after the enactment of Title IX, and those governing disability discrimination were finalized nearly four years after the enactment of Section 504. The Title IX and Section 504 regulations are far more detailed than the Title VI regulations.

15 The section of Title VI which prohibits discrimination reads in its entirety: “No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” 42 U.S.C. § 2000d. Title IX and Section 504 use very similar wording. See 20 U.S.C. § 1681(a); 29 U.S.C. § 794(a). In the words of one former OCR investigator, “actually determining which policies, actions, and situations in schools and districts ‘denied benefits’ or ‘excluded’ participants ‘on the ground of race,’ or ‘discriminated’ against students of color in any other way, sparked fierce debate between local communities, local educators, OCR employees, and OCR administrators.” Mica Pollock, Because of Race 1-2 (2008).


22 Where the Title VI regulations occupied six pages of the federal register, the Title IX regulations occupied eight pages and the Section 504 regulations occupied nine pages. Compare nondiscrimination in
All three sets of regulations are currently codified in Title 34 of the *Code of Federal Regulations*, Chapter 1. This section will first provide an overview of the requirements common to all three sets of regulations, then examine the regulations particular to racial, sex, and disability discrimination in turn. Certain procedural requirements which apply to sex and disability discrimination, but not racial discrimination, will then be examined.

1. **Overview**

The regulations implementing Title VI, Title IX, and Section 504 restate the relevant statutory language, and identify common particular actions which constitute prohibited discrimination. Specifically, a local educational agency (“LEA”) may not deny an individual any service or benefit on the basis of protected characteristics, or impose different restrictions on privileges based on protected characteristics. An LEA’s failure to respond appropriately to racial, sexual, or disability-based harassment which creates a hostile environment can constitute a violation of these requirements. All LEAs may take affirmative steps to overcome the effects of conditions which resulted in limited participation by members of a particular protected class.

The regulations also prohibit discrimination on the basis of protected classes in employment, and

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24 34 C.F.R. §§ 100.3(b), 104.4(b), 106.31(b).

25 34 C.F.R. §§ 100.3(b)(1)(i), 104.4(b)(1)(i), 106.31(b)(3).

26 34 C.F.R. §§ 100.3(b)(1)(iv), 104.4(b)(1)(vii), 106.31(b)(7).

27 OCR will find that an LEA has failed to respond appropriately to harassment when it knew or should have known about the harassment and failed to take “prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.” RUSSLYNN ALI, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: HARASSMENT AND BULLYING 2-3 (Oct. 26, 2010), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf [hereinafter ALI, DCL: HARASSMENT & BULLYING]. See also Sexual Harassment Guidance, 62 Fed. Reg. 12,034, 12,041-42 (Mar. 13, 1997); Racial Incidents and Harassment Against Students at Educational Institutions; 59 Fed. Reg. 11,448, 11,449-50 (Mar. 10, 1994); RUSSLYNN ALI, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: SEXUAL VIOLENCE 3 (Apr. 4, 2011), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf (noting that a single instance of sexual violence may constitute prohibited sexual harassment); NORMA V. CANTU & JUDITH HEUMANN, U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER: PROHIBITED DISABILITY HARASSMENT 3 (July 25, 2000), http://www2.ed.gov/policy/speed/guid/idea/letters/2000-3/dearcollege72500harasssec.pdf.

28 34 C.F.R. §§ 100.3(b)(6)(ii), 104.6(b), 106.3(b). LEAs which have previously engaged in prohibited discrimination must take such steps. 34 C.F.R. §§100.3(b)(6)(i), 104.6(a), 106.3(a).
provide similarly detailed rules governing this prohibition. Additionally, LEAs must submit assurances that they will comply with all relevant regulatory requirements, and keep records of and report their compliance.

2. Racial Discrimination

LEAs may not provide different services or benefits based on the beneficiary’s race, segregate on the basis of race, or use different standards for different races when determining whether an individual satisfies the requirements for a service or benefit. Because LEAs may not discriminate on the basis of national origin, they may require proof of residency to admit or serve a student, but may not inquire into citizenship or immigration status. Additionally, LEAs may not use “criteria or methods of administration,” directly or indirectly, which have the effect of discriminating on the basis of race, or substantially impairing the objectives of a program for a particular race. As a consequence, an LEA must take affirmative steps to overcome language barriers so students with limited English proficiency can meaningfully participate in the LEA’s offerings. When deciding the location for facilities, LEAs may not make selections with the purpose or effect of discriminating on the basis of race.

In the school discipline context, OCR has issued guidance explaining two forms of prohibited racial discrimination. The first form, termed “different treatment” discrimination, occurs when an LEA disciplines students differently based on their race, such as when an LEA selectively enforces or designs a facially neutral discipline policy to target students of a

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29 34 C.F.R. §§ 100.3(c), 104.11-104.14, 106.51-106.61.
30 34 C.F.R. §§ 100.4, 104.5, 106.4.
31 34 C.F.R. §§100.6, 104.61 (incorporating § 100.6), 106.71 (same).
32 34 C.F.R. § 100.3(b)(1)(ii)–(iii), (v).
34 34 C.F.R. § 100.3(b)(2). For instance, OCR has issued guidance clarifying that facially neutral policies or practices which create racial disparities in the distribution of educational resources may violate Title VI. CATHERINE E. LHAMON, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: RESOURCE COMPARABILITY (Oct. 1, 2014), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf.
36 34 C.F.R. § 100.3(b)(3).
particular race. The second form, “disparate impact” discrimination, occurs when evenhanded implementation of a facially neutral policy or practice has an unjustified, adverse impact on a particular race.

3. Sex Discrimination

Generally, LEAs may not treat persons of one sex differently from another sex in determining whether the person satisfies the requirements for an educational service, provide different services to different sexes, apply different behavioral standards to different sexes, or aid others in sex discrimination. The regulations provide exceptions, however, for contact sports, sex education, choruses, and voluntary classes and activities designed to meet important educational objectives. The regulations further permit single sex, non-vocational schools (so long as the LEA provides a substantially equal school for students of the excluded sex), and also permit single sex charter schools. Restrooms and locker rooms may also be sex-segregated so long as the facilities are comparable. Similarly, athletic programs must provide equal opportunity to both sexes based on factors such as provision of equipment and facilities, access to and quality of coaching, and whether the selection of sports accommodates the interests and abilities of both sexes.

OCR recently issued regulatory guidance in the form of a “Dear Colleague Letter” clarifying that OCR treats discrimination on the basis of gender identity as a form of sex discrimination. Accordingly, if an LEA treats a transgender student differently than other

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38 Id. at 7-10.
39 Id. at 11-13. In determining whether an adverse impact is justified, OCR considers whether the policy or practice is necessary to achieve an important educational goal, and whether an effective alternative exists which would have a less adverse impact. Id.
40 34 C.F.R. § 106.31(b)(1), -(2), -(4), -(6) (2015). Academic or occupational counseling materials may only differentiate by sex if doing so is essential to eliminate sex bias. 34 C.F.R. § 106.36. Generally, LEAs must treat pregnancy like any other temporary disability, but may offer a separate program for pregnant students if the program is voluntary. 34 C.F.R. § 106.50; see generally OFFICE FOR CIVIL RIGHTS, SUPPORTING THE ACADEMIC SUCCESS OF PREGNANT AND PARENTING STUDENTS UNDER TITLE IX OF THE EDUCATION AMENDMENTS OF 1972 (June 2013), http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf.
41 34 C.F.R. § 106.34(a)-(b); see generally CATHERINE E. LHAMON, OFFICE FOR CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IX AND SINGLE-SEX ELEMENTARY AND SECONDARY CLASSES AND EXTRACURRICULAR ACTIVITIES (Dec. 1, 2014), http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf.
42 34 C.F.R. § 106.34(c).
43 34 C.F.R. § 106.33.
44 34 C.F.R. § 106.41(c).
45 CATHERINE E. LHAMON & VANITA GUPTA, U.S. DEP’T OF EDUC. & JUSTICE, DEAR COLLEAGUE LETTER: TRANSGENDER STUDENTS (May 13, 2016), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201605-title-
students who share that student’s gender identity, then OCR will determine that the LEA has unlawfully discriminated on the basis of sex.\textsuperscript{46} The Letter specifically directs schools to use names and pronouns consistent with a student’s gender identity, to allow students to access sex-segregated programs and facilities (such as restrooms) consistent with their gender identity, and to protect students’ gender-related personal information.\textsuperscript{47}

4. \textit{Disability Discrimination}

An LEA may not provide inferior benefits or services to people with disabilities, segregate on the basis of disability unless necessary to provide equally effective services, or aid others in disability discrimination.\textsuperscript{48} The disability requirements apply to academic as well as nonacademic or extracurricular services and activities such as counseling, athletics, and clubs.\textsuperscript{49} The effectiveness of a benefit or service is measured by the extent to which it provides equal opportunity, not identical results.\textsuperscript{50}

LEAs may not use “criteria or methods of administration,” directly or indirectly, which have the purpose or effect of discriminating on the basis of disability, substantially impairing the objectives of a program for people with disabilities, or perpetuating discrimination by another LEA.\textsuperscript{51} When deciding the location for facilities, LEAs may not make selections that would have an adverse, disparate impact on people with disabilities.\textsuperscript{52} Failure to provide facilities which are accessible and usable by people with disabilities may constitute prohibited discrimination.\textsuperscript{53}

The regulations require LEAs to take a variety of affirmative steps to support students with disabilities. Notably, LEAs must provide a free, appropriate, public education to every

\textsuperscript{46} JAMAON \& GUPTA, \textit{supra} note 45, at 2.

\textsuperscript{47} Id. at 3-5.

\textsuperscript{48} 34 C.F.R. § 104.4(b)(1)(iii)-(v) (2015). For instance, OCR has clarified that an LEA may not exclude a student with a disability from an accelerated academic program solely on the basis of their disability. STEPHANIE J. MUNROE, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: ACCESS BY STUDENT WITH DISABILITIES TO CHALLENGING ACADEMIC PROGRAMS (Dec. 26, 2007), \url{http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20071226.pdf}.

\textsuperscript{49} 34 C.F.R. § 104.37. See generally SETH M. GALANTER, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: STUDENTS WITH DISABILITIES IN EXTRACURRICULAR ACTIVITIES (Jan. 25, 2013), \url{http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf}.

\textsuperscript{50} 34 C.F.R. § 104.4(b)(2).

\textsuperscript{51} 34 C.F.R. § 104.4(b)(4).

\textsuperscript{52} 34 C.F.R. § 104.4(b)(5).

\textsuperscript{53} 34 C.F.R. §§ 104.21-104.23.
student with a disability in the LEA’s jurisdiction. Accordingly, LEAs must annually undertake to identify students with disabilities who are not receiving a public education, and notify students with disabilities and their parents of the LEA’s obligations. LEAs must also establish and follow standards and procedures for evaluating the educational needs of students with disabilities, and for placing the student in an appropriate educational setting.

Additionally, LEAs must establish and follow procedural safeguards to ensure that students with disabilities are properly identified, evaluated, and placed. Compliance with the procedural safeguards of the Individuals with Disabilities Education Act (“IDEA”) satisfies this requirement. It should be noted, however, that the safeguards requirement applies to any student protected by Section 504, regardless of whether the student is also eligible for services under the IDEA.

5. Additional Procedural Requirements

LEAs must take affirmative, continuing steps to notify beneficiaries that they do not discriminate on the basis of sex or disability. All LEAs must designate at least one employee to coordinate compliance with Title IX, and LEAs with fifteen or more employees must designate at least one employee to coordinate compliance with Section 504. LEAs must also adopt and publish procedures that provide for “prompt and equitable resolution” of grievances alleging sex or disability discrimination.

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54 34 C.F.R. § 104.33. Consequently, LEAs must ensure that bullying does not prevent any student with a disability from receiving a free, appropriate, public education. CATHARINE E. LHAMON, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: RESPONDING TO BULLYING OF STUDENTS WITH DISABILITIES 5-7 (Oct. 21, 2014), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-bullying-201410.pdf (citing 34 C.F.R. §§ 104.33-36).

55 34 C.F.R. § 104.32.

56 34 C.F.R. § 104.35. A student’s placement must be among students without disabilities to the maximum extent appropriate. 34 C.F.R. § 104.34.

57 34 C.F.R. § 104.36.


59 34 C.F.R. § 104.36.


61 34 C.F.R. §§ 104.8 (disability), 106.9 (sex).


63 34 C.F.R. § 104.7(a).

64 34 C.F.R. §§ 104.7(b) (disability) 106.8(b) (sex).
B. Enforcement Process

Any person who believes that an LEA has discriminated in violation of the regulatory requirements may file a complaint with OCR within 180 days of the alleged discrimination.\(^{65}\) OCR is legally obligated to investigate an LEA’s compliance whenever it receives a complaint or otherwise gains information that an LEA violated the regulations.\(^{66}\) The regulations require OCR to seek the cooperation of LEAs “to the fullest extent practicable” in obtaining compliance.\(^{67}\) Accordingly, OCR must seek to resolve compliance issues “by informal means whenever possible.”\(^{68}\) If OCR cannot obtain compliance by informal means, it can suspend or terminate funding, refer the matter to the Department of Justice to commence judicial proceedings, or bring an action under state or local law.\(^{69}\) OCR’s Case Processing Manual organizes the complaint process into five principal phases: complaint evaluation, early or rapid resolution, investigation and resolution, monitoring, and enforcement action.\(^{70}\) Each phase is discussed in turn below.

1. Complaint Evaluation

The main purpose of the evaluation phase is to determine whether OCR will investigate a complaint and, if so, to set the stage for the investigation.\(^{71}\) Once a complaint is opened,\(^{72}\) OCR will determine whether each allegation is timely,\(^{73}\) and whether OCR has personal and subject

\(^{65}\) 34 C.F.R. §§ 100.7(b), 104.61, 106.71. Retaliating against an individual for filing an OCR complaint is a form of prohibited discrimination. 34 C.F.R. §§ 100.7(e), 104.61, 106.71.

\(^{66}\) 34 C.F.R. §§ 100.7(c), 104.61, 106.71. OCR also conducts periodic compliance reviews. Id.

\(^{67}\) 34 C.F.R. §§ 100.6(a), 104.61, 106.71. See generally Stephen S. Worthington, Note, Roles for Neutrals in Remediying the School Discipline Gap, 7 Y.B. ON ARB. & MEDIATION 289, 291-93 (2015) (explaining a procedural justice rationale for OCR’s use of consensual processes in its enforcement activities).

\(^{68}\) 34 C.F.R. §§ 100.7(d), 104.61, 106.71.

\(^{69}\) 34 C.F.R. §§ 100.8, 104.61, 106.71. Funding may only be terminated after a formal administrative hearing, which is subject to judicial review. Id.; see also Marlow v. U.S. Dep’t of Educ., 820 F.2d 581, 582 (2d Cir. 1987) (Section 504 provides for judicial review of fund termination proceedings); 34 C.F.R. §§ 100.11 (providing for judicial review of fund termination proceedings under Title VI), 106.71 (incorporating § 100.11 for proceedings under Title IX).

\(^{70}\) OFFICE FOR CIVIL RIGHTS, CASE PROCESSING MANUAL (Feb. 2015), http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf [hereinafter “OCR, CPM”].

\(^{71}\) Id. art. I.

\(^{72}\) OCR will not create a case file for a complaint unless the complaint is submitted in writing, asserts a violation of legal rights, requests action by OCR, and includes the complainant’s contact information. Id. § 101.\(^{73}\)

\(^{73}\) Generally, OCR will only investigate complaints filed within 180 days of the alleged discrimination. Id. § 106; see also 34 C.F.R. §§ 100.7(b), 104.61, 106.71. OCR will waive this requirement under certain circumstances. OCR, CPM, supra note 70, § 107.
matter jurisdiction. During this process, OCR will assist the complainant in understanding the information OCR requires to proceed with the complaint. After endeavoring to clarify a complaint, OCR will dismiss any individual allegation that fails to state a violation, lacks sufficient factual detail, or is excessively speculative or conclusory. Complaints which OCR does not dismiss during the evaluation phase but later closes without resolving are considered “administratively closed.”

2. **Early or Rapid Resolution**

If a complaint proceeds past the evaluation phase, OCR may determine that the case is appropriate for “Early Complaint Resolution” or “Rapid Resolution.” In Early Complaint Resolution, OCR acts as an impartial, confidential facilitator to help the LEA and complainant negotiate a resolution. In Rapid Resolution, OCR will follow expedited procedures to resolve the complaint. OCR uses Rapid Resolution in certain substantive areas determined by OCR where the LEA has already taken action to resolve the complaint, where the LEA has indicated that it will take such action, or where OCR has enough information to make a compliance determination without further investigation.

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74 OCR, CPM, *supra* note 70, §§ 104-105. For purposes of Title VI, Title IX, and Section 504, OCR has personal jurisdiction over any institution receiving federal funding through the Department of Education. *Id.* § 105. See *supra* Section II.A for a discussion of OCR’s subject matter jurisdiction.

75 OCR, CPM, *supra* note 70, § 108.

76 *Id*.

77 *Id.* § 110 n.6. Complaints may be administratively closed when:

- the dispute is being processed in another forum;
- investigation is foreclosed by judicial precedent or OCR policy;
- the complaint has already been resolved;
- OCR is unable to gather necessary information;
- the complaint continues a pattern of frivolous complaints by the same complainant;
- the allegations are already being addressed by OCR
- the complainant withdraws the complaint;
- OCR refers the complainant to another agency; or
- the allegations are moot

*Id.* § 110.

78 *Id.* art. II.

79 *Id.* § 201. OCR does not approve or monitor agreements reached through Early Complaint Resolution, but will consider breach of such agreements when investigating any future complaints. *Id.* §§ 201, 205.

80 *Id.* § 207. OCR monitors agreement reached through Rapid Resolution where appropriate. *Id.*

81 *Id.*
3. Investigation and Resolution

If a complaint proceeds to investigation, OCR will gather information about the alleged violation through interviews, surveys, onsite visits, or examining records.\textsuperscript{82} OCR will use this information to decide that either (A) “There is insufficient evidence to support a conclusion of noncompliance;” or (B) “The evidence supports a conclusion of noncompliance.”\textsuperscript{83} OCR uses a preponderance of the evidence standard in making this determination.\textsuperscript{84} If OCR decides that the LEA is out of compliance, it will negotiate a monitored resolution agreement with the LEA with action steps and timeframes to bring the LEA into compliance.\textsuperscript{85} Alternatively, OCR may forego making an investigative determination if the LEA enters a monitored agreement to resolve the complaint before OCR completes its investigation.\textsuperscript{86}

4. Monitoring

OCR will monitor an LEA’s implementation of a resolution agreement until the LEA attains compliance.\textsuperscript{87} OCR may conduct site visits during monitoring, which could include individual interviews, focus groups, or soliciting information about the LEA’s compliance from the public.\textsuperscript{88} Resolution agreements may be modified or terminated during monitoring in response to changed circumstances, such as facts that resolve the compliance issue or render it moot, or changes in controlling law or OCR policy.\textsuperscript{89}

5. Enforcement Action

If an LEA breaches a resolution agreement, OCR will initiate an enforcement action.\textsuperscript{90} Such action may take the form of an administrative proceeding to suspend, terminate, or withhold the LEA’s federal funds,\textsuperscript{91} or a judicial proceeding filed by the Department of Justice.\textsuperscript{92}

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\textsuperscript{82} Id. §§ 301(a), 702.
\textsuperscript{83} Id. § 303.
\textsuperscript{84} Id.
\textsuperscript{85} Id. §§ 303(b), 304. If OCR identifies compliance issues unrelated to the initial complaint during investigation, it may address those issues in the resolution agreement. Id. § 301(b).
\textsuperscript{86} Id. § 302(a).
\textsuperscript{87} Id. §§ 303(b), 504.
\textsuperscript{88} Id. art. V.
\textsuperscript{89} Id. § 503.
\textsuperscript{90} Id. §§ 502, 604.
\textsuperscript{91} See 34 C.F.R. § 101 (2015) (procedures for administrative proceedings).
\textsuperscript{92} OCR, CPM, supra 70, art. VI.
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OCR will also bring an enforcement action if the LEA fails to enter a resolution agreement within prescribed timeframes.  

III. METHODS

This Part describes the data used to examine OCR complaints filed against local educational agencies (“LEAs”) in Pennsylvania, the measures derived from those data, the statistical procedures used to analyze the data, and the findings of the statistical analysis. A summary of findings is provided in Part IV.

A. Data Sources

Data were gathered from two separate components of the U.S. Department of Education. Data on local educational agencies were obtained from the Common Core of Data of the National Center for Education Statistics ("NCES"). Unless otherwise noted, NCES data was drawn for the 2013-2014 school year, which roughly corresponds to the midpoint of the period under study. Data on individual complaints were obtained from OCR’s Philadelphia Field Office.

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93 Id. §§ 303(b), 305.
95 Data for 805 Pennsylvania LEAs were obtained, but only 654 LEAs were included in the regression analysis. The excluded LEAs consisted of:
• 81 LEAs that had zero enrollment or no listed enrollment.
• 40 charter schools which were not active during the entire period of study. Charter schools were deemed to be inactive for the entire period of study if they were unlisted in either the Pennsylvania Department of Education’s enrollment reports for the 2010-2011 school year, or the 2014-2015 school year. See Charter School Reports, Data, and Resources, PA. DEP’T OF EDUC., http://www.education.pa.gov/K-12/Charter%20Schools/Pages/Annual-Reports,-Data-and-Resources.aspx#.VydtWPktrJph (last visited May 2, 2016). If included, the inactive charter schools would have comprised 5% of the LEAs and 1% of the students under study.
• 29 intermediate units (“IUs”). IUs provide a variety of services to local educational agencies. 24 P.S. § 9-901-A (2016); see generally 43 PA. L. ENCYCLOPEDIA Intermediate Units § 33 (2016). Because each IU operates a variety of specialized programs (such as adult GED courses, art programs, and classes for students who are blind or visually impaired), aggregated data for an IU is unlikely to reflect the experience of students enrolled in a particular program. See, e.g., CENT. INTERMEDIATE UNIT #10, CATALOG OF SERVICES 2014-2015, at 13-14 (2014), http://www.ciu10.org/cms/lib/PA06001249/Centricity/Domain/7/2014-15%20Catalog%20of%20Services.pdf (IU catalogue offering wide variety of specialized programs). IUs were therefore excluded from the regression analysis. Six of the 536 OCR complaints in this study were filed against IUs.
• 1 school district, Bryn Athyn, was excluded because it contracts out all its educational services to other school districts. Bryn Athyn School District, http://www.brynathynschooldistrict.org/ (last visited May 6, 2016).
Office through a request under the Freedom of Information Act. The data supplied by OCR included information for all 536 OCR complaints which were filed against elementary or secondary schools in Pennsylvania and resolved between April 1, 2011 and November 30, 2015. The OCR data provided, among other information, the statutory and regulatory provisions implicated by each allegation, and the resolution type of each complaint.

B. Selected Measures

1. Target Variables

The analyses in this study focused on two groups of target variables: How each complaint was resolved (“resolution type”), and whether an OCR complaint was filed against an LEA.

a. Resolution Type

Complaints were assigned to one of four exclusive categories based on the procedural mechanism used to resolve each complaint under OCR’s Complaint Processing Manual:

Dismissal: This category included all complaints which were dismissed in their entirety by OCR because the complaint failed to state a violation, lacked sufficient factual detail, or was excessively speculative or conclusory. It also included complaints which OCR dismissed as untimely or as outside its personal or subject matter jurisdiction. The dismissal category contained a majority (340, or 63%) of the complaints under study.

Insufficient Evidence Determination: This category included all complaints where OCR conducted an investigation and then determined, under a preponderance standard, that the evidence did not support the conclusion that the LEA had violated relevant regulations. Fifty-nine (11%) of the complaints under study resulted in insufficient evidence determinations.

Monitored Agreement: This category denotes that the school entered a written agreement to change its policy or practices in response to an OCR investigation, and serves as the best

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97 OCR, CPM, supra note 70, § 108.
98 OCR, CPM, supra note 70, §§ 106-107; see also supra note 73.
99 OCR, CPM, supra note 70, §§ 104-105; see also supra note 74.
100 OCR, CPM, supra note 70, § 303(a).
101 OCR, CPM, supra note 70, §§ 302-304; see also supra notes 85 to 86 and accompanying text.
available indicator that an LEA violated its civil rights obligations.\textsuperscript{102} It included a total of 69 complaints (13\%). In 8 of the complaints, the LEA voluntarily entered a monitored agreement after OCR determined that the LEA had violated civil rights law.\textsuperscript{103} In the other 61, the LEA voluntarily entered a monitored agreement before OCR concluded its investigation.\textsuperscript{104}

Other: This catchall category includes complaints which were administratively closed\textsuperscript{105} and complaints which were resolved through OCR’s Early Complaint Resolution process.\textsuperscript{106} Complaints in this category neither indicate that a complaint lacked a legal or factual foundation (as dismissals and insufficient evidence determinations do), nor that an LEA altered its policy or practices as a result of a complaint (as monitored agreements do).\textsuperscript{107} Sixty-eight complaints (13\%) were included in this category.

a. Whether OCR Complaint Was Filed

This group contained six binary variables: (1) whether any OCR complaint was filed against the LEA; (2) whether a complaint alleging any type of racial discrimination was filed against the LEA; (3) whether a complaint alleging anti-Black discrimination was filed against an LEA; (4) whether a complaint alleging sex discrimination was filed against the LEA; (5) whether a complaint alleging disability discrimination was filed against the LEA; and (6) whether a disability complaint which resulted in a monitored agreement was filed against the LEA.\textsuperscript{108}

\textsuperscript{102} Because OCR is legally obligated to seek LEAs’ cooperation in effecting compliance, LEAs typically resolve \textit{de facto} violations before OCR formally determines whether they are out of compliance. \textit{See supra} notes 67 to 68 and accompanying text. OCR monitors these agreements until it is satisfied with their implementation. OCR, CPM, \textit{supra} note 70, art. V.

\textsuperscript{103} OCR, CPM, \textit{supra} note 70, §§ 303(b), 304; \textit{see also} supra note 85 and accompanying text.

\textsuperscript{104} OCR, CPM, \textit{supra} note 70, § 302(a); \textit{see also} supra note 86 and accompanying text.

\textsuperscript{105} OCR, CPM, \textit{supra} note 70, § 110 n.6; \textit{see also} supra note 77 and accompanying text.

\textsuperscript{106} OCR, CPM, \textit{supra} note 70, §§ 201, 204; \textit{see also} supra notes 78 to 79 and accompanying text.

\textsuperscript{107} Administrative closure does not meaningfully indicate any complaint characteristics of interest to this study because complaints may be administratively closed for reasons that suggest a \textit{de facto} violation (such as when OCR is currently addressing the allegations), reasons that suggest there is no violation (such as when the complaint continues a pattern of frivolous complaints), or reasons that are irrelevant to a complaint’s merits (such as when the allegations have been submitted to another forum). \textit{See OCR, CPM, supra} note 70, § 110. Early Complaint Resolution similarly fails to meaningfully indicate any characteristics of interest because formal fact-finding is not part of the ECR process, and because OCR does not monitor agreements reached through Early Complaint Resolution. \textit{See id.} §§ 201, 205.

\textsuperscript{108} Other subcategories, such as race complaints alleging discrimination against Latinos and race- or sex-related monitored agreements, were not examined because the small number of complaints in the subcategories prohibited meaningful statistical analysis.
2. **Predictor Variables**

This study used an array of school characteristics as predictor variables calculated from a combination of NCES and OCR data.

\[ \text{LEA Type} \]

Each LEA was categorized as either a school district, local educational services agency, state operated institution, or charter school.\(^{109}\) Table 1 shows the distribution of students and LEAs by LEA type:

<table>
<thead>
<tr>
<th>LEA Type</th>
<th>Student Distribution</th>
<th>LEA Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>School Districts</td>
<td>1,596,656</td>
<td>499</td>
</tr>
<tr>
<td>Charter Schools</td>
<td>128,701</td>
<td>136</td>
</tr>
<tr>
<td>Regional Education Services Agencies</td>
<td>8,708</td>
<td>12</td>
</tr>
<tr>
<td>State Operated Institutions</td>
<td>269</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,716,691</strong></td>
<td><strong>654</strong></td>
</tr>
</tbody>
</table>

\[ \text{Locale} \]

Each LEA was placed into one of eight exclusive locale categories based on NCES data.\(^{110}\) The eight categories consist of four broad designations (city, suburb, town, and rural).\(^{111}\) The broad designations were subdivided into a total of eight categories based on the size of the population center (“large” or “nonlarge” for cities and suburbs)\(^{112}\) and proximity to the

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\(^{110}\) The locale categories used here are a modification of the U.S. census locale categories used by NCES. See CHEN-SU CHEN, JENNIFER SABLE, LINDSEY MITCHELL, & FEI LIIU, NAT’L CTR. EDUC. STATISTICS, U.S. DEP’T OF EDUC., NCES 2011-348, DOCUMENTATION TO THE NCES COMMON CORE OF DATA PUBLIC ELEMENTARY/SECONDARY SCHOOL UNIVERSE SURVEY: SCHOOL YEAR 2009-2010 at C-8 to C-9 (2011), https://nces.ed.gov/ccd/pdf/INsc09101a.pdf. For this study, the twelve-category system used by NCES was organized into an eight-category system to ensure that each category contained at least thirty LEAs. Midsize cities were combined with small cities; midsize suburbs were combined with small suburbs; distant towns were combined with remote towns; and distant rural areas were combined with remote rural areas.

\(^{111}\) An LEA was assigned to a “City” category if its physical address was located within a principal city as defined by the U.S. Census, a “Suburb” category if located within an urbanized area but outside of a principal city, a “Town” category if located within an urban cluster as defined by the U.S. census, or a “Rural” category if located within a Census-defined rural territory. CHEN ET AL., supra note 110, at C-10.

\(^{112}\) “Large” indicates that the urbanized area had a population of 250,000, and “Nonlarge” indicates a population of less than 250,000. See id.
population center ("fringe" and "far" for towns and rural areas). Table 2 shows the
distribution of LEAs by locale:

<table>
<thead>
<tr>
<th>LEA Locale</th>
<th>Student Distribution</th>
<th>LEA Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>City: Large</td>
<td>212,101</td>
<td>12.36%</td>
</tr>
<tr>
<td>City: Nonlarge</td>
<td>148,208</td>
<td>8.63%</td>
</tr>
<tr>
<td>Suburb: Large</td>
<td>780,964</td>
<td>45.49%</td>
</tr>
<tr>
<td>Suburb: Midsize</td>
<td>129,330</td>
<td>7.53%</td>
</tr>
<tr>
<td>Town: Fringe</td>
<td>70,502</td>
<td>4.11%</td>
</tr>
<tr>
<td>Town: Far</td>
<td>92,042</td>
<td>5.36%</td>
</tr>
<tr>
<td>Rural: Fringe</td>
<td>196,585</td>
<td>11.45%</td>
</tr>
<tr>
<td>Rural: Far</td>
<td>86,959</td>
<td>5.07%</td>
</tr>
<tr>
<td>Total</td>
<td>1,716,691</td>
<td></td>
</tr>
</tbody>
</table>

c. Demographic Predictors

Percentages were calculated by dividing student enrollment for the identified groups by
total student enrollment.

*Total Enrollment:* The total number of students enrolled in the LEA, as reported by the
LEA. It includes students enrolled in prekindergarten through twelfth grade, as well as students
who were not assigned to a grade level.114

*Pupil-staff Ratio:* Total enrollment divided by the total number of staff for an LEA, as
reported by NCES.115

*Revenue per Pupil:* Total general revenue divided by fall membership as reported in the
LEA’s finance file.116

*Racial Composition:* The percentage of White students was used as a reverse-indicator of
the percentage of students of color attending an LEA.117 Where relevant, the percentage of
Black students was also examined.118

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113 LEAs in the “Town: Fringe” category lay within 10 miles of an urbanized area, while LEAs in the
“Town: Far” categories lay outside that radius. LEAs in the “Rural: Fringe” category were either located within 5
miles of an urbanized area (i.e., city) or 2.5 miles of an urban cluster (i.e., town). LEAs in the “Rural: Far” category
lay outside those radii. See id.
visited June 15, 2016) (see entry for “Total Students (UG, PK-12) (District)”).
115 See id. (see entry for “Total Staff (District)”).
116 See id. (see entry for “total Revenue per Student (District-Fin.)”). Data for the 2011-2012 school year
were used because data for later school years were not available.
**English Language Learners ("ELLs"):** The percentage of students served by appropriate programs for language assistance.\(^{119}\)

**Students with Individualized Education Programs: ("IEP Students"):** The percentage of students with written individualized education programs under the Individuals with Disabilities Education Act.\(^{120}\)

**Students Eligible for Free or Reduced Lunch ("FRL Students"):** The percentage of students eligible to participate in the Free Lunch or Reduced Prince Lunch Programs under the National School Lunch Act,\(^{121}\) based on family size and income criteria. Because students are eligible for reduced price lunch if their household income is less than 185% of the poverty level,\(^{122}\) this measure was used as a rough indicator of the percentage of low income students attending an LEA.\(^{123}\)

**Other OCR Complaints:** This variable indicates whether an LEA was targeted by a separate OCR complaint alleging discrimination other than the target variable.

**C. Procedures and Findings**

The principal method was binary logistic regression targeting different types of OCR complaints.\(^{124}\) Chi-square testing was also used to examine the relationship between the types of discrimination alleged in complaints, and the outcome of those complaints. All analyses were performed using version 23 of the SPSS statistical software package.

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\(^{117}\) See CHEN ET AL., supra note 110, at C-8 to C-9.

\(^{118}\) See id. at C-16.


\(^{121}\) 42 U.S.C. § 1758(b).

\(^{122}\) CHEN ET AL., supra note 110, at C-6, C-11; see also 42 U.S.C. § 1758(b)(1).

\(^{123}\) Educational researchers frequently use FRL eligibility as a rough indicator of socioeconomic status, largely because of the high accessibility of FRL data. See, e.g., ROBERT CRONINGER, JENNIFER KING RICE, & LAURA CHECOVICH, EVALUATION OF THE USE OF FREE AND REDUCED-PRICE MEAL ELIGIBILITY AS A PROXY FOR IDENTIFYING ECONOMICALLY DISADVANTAGED STUDENTS, ALTERNATIVES, AND RECOMMENDATIONS 29 (2015), http://marylandpublicschools.org/adequacystudy/docs/EvaluationFRPMEligibilityProxyEconomicDisadvantage.pdf (evaluating nine measures of student economic disadvantage and concluding that Maryland should continue using FRL eligibility). Because of significant imperfections in FRL eligibility as a poverty measure, however, the inferences which can be drawn from FRL rates are limited. Michael Harwell & Brandon LeBeau, Student Eligibility for a Free Lunch as an SES Measure in Education Research, 39 EDUC. RESEARCHER 120 (2010). The implications of those limitations for this study are discussed infra at notes 186 to 187 and accompanying text.

\(^{124}\) ANDY FIELD, DISCOVERING STATISTICS USING SPSS 264-99 (3d ed. 2009).
1. Predictors of Whether an OCR Complaint Was Filed

Hierarchal binary logistic regression was used to produce statistical models identifying which LEA characteristics predicted whether a complaint was filed against a school. A total of 654 LEAs and 486 complaints were included in the regression analyses. It should be noted that the models reported below only explain a portion of the variability in the relevant outcome variable. Table 3 provides an overview of the types of complaints targeted by the analyses:

<table>
<thead>
<tr>
<th>Complaint Type</th>
<th>Complaints (% of all complaints)</th>
<th>LEAs Targeted (% of all LEAs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Race</td>
<td>129 (27%)</td>
<td>78 (12%)</td>
</tr>
<tr>
<td>Race: Anti-Black</td>
<td>68 (14%)</td>
<td>43 (7%)</td>
</tr>
<tr>
<td>Sex</td>
<td>84 (17%)</td>
<td>70 (11%)</td>
</tr>
<tr>
<td>Disability</td>
<td>291 (60%)</td>
<td>161 (25%)</td>
</tr>
<tr>
<td>Disability: Monitored Agreement</td>
<td>49 (10%)</td>
<td>39 (6%)</td>
</tr>
<tr>
<td>All</td>
<td>486 (100%)</td>
<td>237 (36%)</td>
</tr>
</tbody>
</table>

Note: The sum of race, sex, and disability complaints does not equal the number of “all” complaints because some complaints alleged more than one type of discrimination, and some complaints did not allege either race, sex, or disability discrimination.

Each regression proceeded in four or more hierarchal “blocks” (not counting Block 0, where only a constant was entered). A different set of predictors was entered at each block. The first three blocks were common to each model, and are reported in Table 4:

---

125 When examining LEA type, only school districts and charter schools were entered into the regression models. Regional education services agencies (N = 12) and state-operated institutions (N = 7) were omitted because of the small number of LEAs in those categories. See JULIE PALLANT, SPSS SURVIVAL MANUAL 169 (4th ed. 2010).

126 See supra note 95.

127 Although data were obtained for all 536 OCR complaints filed during the period under examination, 50 complaints were excluded from the binary logistic regression analysis. Forty-eight were excluded because the complaints were filed against private schools, overarching administrative entities such as state agencies or intermediate units, or unidentifiable entities. All 48 were dismissed by OCR. Additionally, 2 complaints filed against charter schools were excluded because the targeted charter school was not active during the entire period under study. See supra note 95. One of those complaints was dismissed, and the other resulted in an insufficient evidence determination.

128 Because the ordinary coefficient of determination (R^2) is not an appropriate measure of variability in logistic regression, each model includes two pseudo R^2 statistics (Cox & Snell’s and Nagelkerke’s) which serve as estimates of the variance explained by the model. FIELD, supra note 124, at 268-69. The pseudo R^2 statistics range from 0 to 1, and are designed to be interpreted similarly to R^2. Specifically, “0” indicates that the model explains none of the variance in the outcome variable, and “1” indicates that the model explains all of the variance. See PALLANT, supra note 125, at 176.

129 When a stepwise method was used, variables were included in the model based on forward selection (likelihood ratio), with p < 0.05 as the entry threshold and p > 0.10 as the removal threshold. See FIELD, supra note 124, at 272, 281 (explaining forward stepwise likelihood ratio method for logistic regression).
Table 4. Procedures: Common Predictors

<table>
<thead>
<tr>
<th>Block</th>
<th>Variables</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>0</td>
<td>• Constant</td>
<td>-</td>
</tr>
<tr>
<td>1</td>
<td>• Total Enrollment ÷ 10</td>
<td>Forced Entry</td>
</tr>
<tr>
<td>2</td>
<td>• School District (reference)</td>
<td>Forced Entry</td>
</tr>
<tr>
<td></td>
<td>• Charter School</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>• City: Large</td>
<td>Forced Entry</td>
</tr>
<tr>
<td></td>
<td>• City: Nonlarge</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Suburb Large (reference)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Suburb Nonlarge</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Town: Fringe</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Town: Far</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Rural: Fringe</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Rural: Far</td>
<td></td>
</tr>
</tbody>
</table>

a. Predictors of Whether Any OCR Complaint Was Filed

Table 5 shows the variables and methods entered in Block 4 of the hierarchal logistic regression targeting whether any OCR complaint was filed against a school:

Table 5. Procedures: Logistic Regression Targeting Whether Any Complaint was Filed

<table>
<thead>
<tr>
<th>Block</th>
<th>Variables</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>• % English Language Learners (“ELL”)</td>
<td>Forward Stepwise</td>
</tr>
<tr>
<td></td>
<td>• % with individualized education programs (“IEP”)</td>
<td>(Likelihood Ratio)</td>
</tr>
<tr>
<td></td>
<td>• % eligible for Free or Reduced Lunch (“FRL”)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• % White</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Pupil/Staff Ratio</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Revenue per Pupil</td>
<td></td>
</tr>
</tbody>
</table>

Because none of the Block 4 variables improved the statistical significance of the model according to the selection criteria, none of those variables were entered and no model was produced for Block 4. The model produced for Block 3 correctly classified 77.2% of cases, compared to 62.2% for Block 0. Table 6 shows the results for the model produced for Block 3:

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130 See supra note 129.
131 See FIELD, supra note 124, at 272.
Table 6. Results: Logistic Regression Targeting Whether Any Complaint was Filed

<table>
<thead>
<tr>
<th>Variable</th>
<th>B (S.E.)</th>
<th>Odds Ratio</th>
<th>95% Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>-1.163 (0.263)</td>
<td>0.313***</td>
<td>-</td>
</tr>
<tr>
<td>Total Enrollment</td>
<td>0.005 (0.001)</td>
<td>1.005***</td>
<td>(1.004, 1.007)</td>
</tr>
<tr>
<td>LEA Type</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School District</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Charter School</td>
<td>-1.200 (0.492)</td>
<td>0.301**</td>
<td>(0.115, 0.790)</td>
</tr>
<tr>
<td>Locale</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City: Large</td>
<td>-0.869 (0.698)</td>
<td>0.420</td>
<td>(0.107, 1.647)</td>
</tr>
<tr>
<td>City: Nonlarge</td>
<td>-0.209 (0.617)</td>
<td>0.812</td>
<td>(0.242, 2.721)</td>
</tr>
<tr>
<td>Suburb: Large</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Suburb: Nonlarge</td>
<td>-1.245 (0.411)</td>
<td>0.288***</td>
<td>(0.129, 0.645)</td>
</tr>
<tr>
<td>Town: Fringe</td>
<td>-1.281 (0.497)</td>
<td>0.278**</td>
<td>(0.105, 0.737)</td>
</tr>
<tr>
<td>Town: Far</td>
<td>-1.051 (0.394)</td>
<td>0.349***</td>
<td>(0.161, 0.757)</td>
</tr>
<tr>
<td>Rural: Fringe</td>
<td>-0.166 (0.279)</td>
<td>0.847</td>
<td>(0.490, 1.461)</td>
</tr>
<tr>
<td>Rural: Far</td>
<td>-0.725 (0.342)</td>
<td>0.484**</td>
<td>(0.248, 0.946)</td>
</tr>
</tbody>
</table>

Notes:
- Model $\chi^2 (9) = 219.935***$
- Pseudo $R^2 = 0.296$ (Cox & Snell)
- Pseudo $R^2 = 0.403$ (Nagelkerke)

The results indicate that charter schools were less likely to be targeted by an OCR complaint than school districts, and that LEAs located within the suburbs of large cities were more likely to be targeted than LEAs in other locales. The difference between LEAs in the suburbs of large cities and LEAs in other locales varied in terms of size and statistical significance. No locale category, however, was more likely to be targeted by an OCR complaint than the “Suburb: Large” category. The model accounts for between 30% and 40% of the variance in whether a complaint was filed.

b. Predictors of Race Complaints

i. Predictors of Whether a Race Complaint Was Filed

Table 7 shows the variables and methods entered in Blocks 4 and 5 of the hierarchal logistic regression targeting whether any race complaint was filed against an LEA:
Table 7. Procedures: Logistic Regression Targeting Whether Race Complaint was Filed

<table>
<thead>
<tr>
<th>Block</th>
<th>Variables</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>• % English Language Learners (“ELL”)</td>
<td>Forced Entry</td>
</tr>
<tr>
<td></td>
<td>• % White</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>• % with individualized education programs (“IEP”)</td>
<td>Forward Stepwise (Likelihood Ratio)</td>
</tr>
<tr>
<td></td>
<td>• % eligible for Free or Reduced Lunch (“FRL”)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Pupil/Staff Ratio</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Revenue per Pupil</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Non-race Complaint Filed</td>
<td></td>
</tr>
</tbody>
</table>

The Model produced for Block 5 correctly classified 89.3% of cases, compared to 87.6% for Block 0. Table 8 shows the results:

Table 8. Results: Logistic Regression Targeting Whether Race Complaint was Filed

<table>
<thead>
<tr>
<th>Variable</th>
<th>B (S.E.)</th>
<th>Odds Ratio</th>
<th>95% Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>1.876 (1.169)</td>
<td>6.524</td>
<td>-</td>
</tr>
<tr>
<td>Total Enrollment</td>
<td>0.002 (0.001)</td>
<td>1.002***</td>
<td>(1.001, 1.003)</td>
</tr>
<tr>
<td>LEA Type</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School District</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Charter School</td>
<td>-3.015 (0.932)</td>
<td>0.049***</td>
<td>(0.008, 0.305)</td>
</tr>
<tr>
<td>Locale</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City: Large</td>
<td>-1.287 (1.212)</td>
<td>0.276</td>
<td>(0.026, 2.968)</td>
</tr>
<tr>
<td>City: Nonlarge</td>
<td>0.627 (0.642)</td>
<td>1.872</td>
<td>(0.532, 6.585)</td>
</tr>
<tr>
<td>Suburb: Large</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Suburb: Nonlarge</td>
<td>-0.391 (0.589)</td>
<td>0.676</td>
<td>(0.213, 2.144)</td>
</tr>
<tr>
<td>Town: Fringe</td>
<td>0.366 (0.686)</td>
<td>1.442</td>
<td>(0.376, 5.536)</td>
</tr>
<tr>
<td>Town: Far</td>
<td>-0.372 (0.808)</td>
<td>0.690</td>
<td>(0.142, 3.359)</td>
</tr>
<tr>
<td>Rural: Fringe</td>
<td>0.321 (0.446)</td>
<td>1.378</td>
<td>(0.575, 3.304)</td>
</tr>
<tr>
<td>Rural: Far</td>
<td>-0.259 (0.696)</td>
<td>0.772</td>
<td>(0.197, 3.022)</td>
</tr>
<tr>
<td>% ELL</td>
<td>0.030 (0.049)</td>
<td>1.030</td>
<td>(0.936, 1.135)</td>
</tr>
<tr>
<td>% White</td>
<td>-0.043 (0.010)</td>
<td>0.958***</td>
<td>(0.938, 0.979)</td>
</tr>
<tr>
<td>% FRL</td>
<td>-0.022 (0.010)</td>
<td>0.978**</td>
<td>(0.958, 0.998)</td>
</tr>
</tbody>
</table>

Notes:
- Model $\chi^2(12) = 110.306$***
- Pseudo $R^2 = 0.161$ (Cox & Snell)
- Pseudo $R^2 = 0.305$ (Nagelkerke)
- $*p < 0.10$
- **$p < 0.05$, ***$p < 0.01$,

The results indicate that charter schools were less likely to be targeted by complaints alleging racial discrimination than school districts, as were LEAs with many students who were eligible for free or reduced lunch. Schools with more students of color were more likely to be targeted by complaints alleging racial discrimination.
ii. Predictors of Complaints Alleging Anti-Black Discrimination

Table 9 shows the variables and methods entered in each block of the hierarchal logistic regression targeting whether an OCR complaint alleging anti-Black discrimination was filed against an LEA:

<table>
<thead>
<tr>
<th>Block</th>
<th>Variables</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>% Black</td>
<td>Forced Entry</td>
</tr>
<tr>
<td>5</td>
<td>% English Language Learners (“ELL”)&lt;br&gt;% with individualized education programs (“IEP”)&lt;br&gt;% eligible for Free or Reduced Lunch (“FRL”)&lt;br&gt;Pupil/Staff Ratio&lt;br&gt;Revenue per Pupil&lt;br&gt;Non-Black Race Complaint Filed&lt;br&gt;Non-race Complaint Filed</td>
<td>Forward Stepwise (Likelihood Ratio)</td>
</tr>
</tbody>
</table>

The model produced for Block 5 correctly classified 93.6% of cases, a very slight improvement over Block 0, which correctly classified 93.1%. Table 10 shows the results:
Table 10. Results: Logistic Regression Targeting Whether Race Complaint (Black) was Filed

<table>
<thead>
<tr>
<th>Variable</th>
<th>B (S.E.)</th>
<th>Odds Ratio</th>
<th>95% Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>-1.592 (0.497)</td>
<td>0.204***</td>
<td>-</td>
</tr>
<tr>
<td>Total Enrollment</td>
<td>0.001 (0.001)</td>
<td>1.001**</td>
<td>(1.000, 1.002)</td>
</tr>
<tr>
<td>LEA Type</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School District (reference)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Charter School</td>
<td>-2.015 (1.110)</td>
<td>0.133*</td>
<td>(0.015, 1.173)</td>
</tr>
<tr>
<td>Locale</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City: Large</td>
<td>-1.464 (1.398)</td>
<td>0.231</td>
<td>(0.015, 3.582)</td>
</tr>
<tr>
<td>City: Nonlarge</td>
<td>-0.089 (0.690)</td>
<td>0.915</td>
<td>(0.237, 3.539)</td>
</tr>
<tr>
<td>Suburb: Large (reference)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Suburb: Nonlarge</td>
<td>-1.344 (1.077)</td>
<td>0.261</td>
<td>(0.032, 2.151)</td>
</tr>
<tr>
<td>Town: Fringe</td>
<td>0.209 (0.806)</td>
<td>1.232</td>
<td>(0.254, 5.985)</td>
</tr>
<tr>
<td>Town: Far</td>
<td>-18.250 (5727.971)</td>
<td>0.000</td>
<td>(0.000, -)</td>
</tr>
<tr>
<td>Rural: Fringe</td>
<td>-0.174 (0.563)</td>
<td>0.840</td>
<td>(0.279, 2.531)</td>
</tr>
<tr>
<td>Rural: Far</td>
<td>-0.409 (0.807)</td>
<td>0.664</td>
<td>(0.137, 3.231)</td>
</tr>
<tr>
<td>% Black</td>
<td>0.032 (0.009)</td>
<td>1.033***</td>
<td>(1.015, 1.051)</td>
</tr>
<tr>
<td>Non-Black Race Complaint Filed</td>
<td>-1.893 (4.13)</td>
<td>0.151***</td>
<td>(0.067, 0.338)</td>
</tr>
</tbody>
</table>

Notes:
Model $\chi^2(11) = 85.891***$
Pseudo $R^2 = 0.128$ (Cox & Snell)
0.325 (Nagelkerke)

The results indicate that LEAs with a higher percentage of Black students were more likely to be targeted by complaints alleging anti-Black discrimination. Additionally, complaints alleging anti-Black discrimination were less likely to be filed against charter schools, and against LEAs that were targeted by complaints alleging other types of racial discrimination. Unlike race complaints generally, no relationship arose between the percentage of students eligible for free or reduced lunch and whether a complaint alleging anti-Black discrimination was filed. The model explains between 13% and 33% of the variance in whether a complaint alleging anti-Black discrimination was filed.

c. Predictors of Sex Complaints

Table 11 shows the variables and methods entered in Block 4 of the hierarchal logistic regression targeting whether a complaint alleging sex discrimination was filed against an LEA.
Table 11. Procedures: Logistic Regression Targeting Whether Sex Complaint was Filed

<table>
<thead>
<tr>
<th>Block</th>
<th>Variables</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>• % English Language Learners (&quot;ELL&quot;)</td>
<td>Forward Stepwise (Likelihood Ratio)</td>
</tr>
<tr>
<td></td>
<td>• % with individualized education programs (&quot;IEP&quot;)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• % eligible for Free or Reduced Lunch (&quot;FRL&quot;)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• % White</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Pupil/Staff Ratio</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Revenue per Pupil</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Non-sex Complaint Filed</td>
<td></td>
</tr>
</tbody>
</table>

Because none of the Block 4 variables improved the statistical significance of the model according to the selection criteria,\(^{132}\) none of the Block 4 variables were entered and no model was produced for Block 4.\(^{133}\) The model produced for Block 3 did not improve upon the accuracy of the model for Block 0. Both models correctly classified 88.8% of cases. Table 12 shows the model produced for Block 3:

Table 12. Results: Logistic Regression Targeting Whether Sex Complaint was Filed

<table>
<thead>
<tr>
<th>Variable</th>
<th>B (S.E.)</th>
<th>Odds Ratio</th>
<th>95% Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>-2.227 (0.287)</td>
<td>0.108***</td>
<td>-</td>
</tr>
<tr>
<td>Total Enrollment</td>
<td>0.002 (0.000)</td>
<td>1.002***</td>
<td>(1.001, 1.002)</td>
</tr>
<tr>
<td>LEA Type</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School District</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Charter School</td>
<td>-2.534 (1.173)</td>
<td>0.079**</td>
<td>(0.008, 0.791)</td>
</tr>
<tr>
<td>Locale</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City: Large</td>
<td>-0.840 (1.626)</td>
<td>0.432</td>
<td>(0.018, 10.463)</td>
</tr>
<tr>
<td>City: Nonlarge</td>
<td>0.721 (0.554)</td>
<td>2.056</td>
<td>(0.694, 6.089)</td>
</tr>
<tr>
<td>Suburb: Large</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Suburb: Nonlarge</td>
<td>-0.183 (0.522)</td>
<td>0.833</td>
<td>(0.299, 2.317)</td>
</tr>
<tr>
<td>Town: Fringe</td>
<td>-0.271 (0.648)</td>
<td>0.763</td>
<td>(0.214, 2.715)</td>
</tr>
<tr>
<td>Town: Far</td>
<td>-1.171 (0.757)</td>
<td>0.310</td>
<td>(0.070, 1.368)</td>
</tr>
<tr>
<td>Rural: Fringe</td>
<td>0.004 (0.379)</td>
<td>1.004</td>
<td>(0.477, 2.112)</td>
</tr>
<tr>
<td>Rural: Far</td>
<td>-0.639 (0.525)</td>
<td>0.528</td>
<td>(0.188, 1.477)</td>
</tr>
</tbody>
</table>

Notes:
Model $\chi^2(9) = 61.768***$
Pseudo $R^2 = 0.094$ (Cox & Snell)
$0.186$ (Nagelkerke)

\(^{132}\) See supra note 129.
\(^{133}\) See FIELD, supra note 124, at 272.
The results indicate that charter schools were less likely to be targeted by complaints alleging sex discrimination than school districts. The model explains between 9% and 19% of the variance in whether a sex complaint was filed.

*d. Predictors of Disability Complaints*

*i. Predictors of Whether a Disability Complaint Was Filed*

Table 13 shows the variables and methods entered in Blocks 4 and 5 of the hierarchal logistic regression targeting whether a disability complaint was filed against an LEA.

<table>
<thead>
<tr>
<th>Block</th>
<th>Variables</th>
<th>Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>• % with individualized education programs (“IEP”)</td>
<td>Forced Entry</td>
</tr>
<tr>
<td>5</td>
<td>• % English Language Learners (“ELL”)</td>
<td>Forward Stepwise (Likelihood Ratio)</td>
</tr>
<tr>
<td></td>
<td>• % eligible for Free or Reduced Lunch (“FRL”)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• % White</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Pupil/Staff Ratio</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Revenue per Pupil</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Non-disability Complaint Filed</td>
<td></td>
</tr>
</tbody>
</table>

Because none of the Block 5 variables improved the statistical significance of the model according to the selection criteria, none of the Block 5 variables were entered and no model was produced for Block 5. Block 4 of the model correctly classified 76.9% of cases, compared to 74.3% for Block 0. Table 14 shows the results for Block 4.

---

134 See supra note 129.
135 See FIELD, supra note 124, at 272.
Table 14. Results: Logistic Regression Targeting Whether Disability Complaint Was Filed

<table>
<thead>
<tr>
<th>Variable</th>
<th>B (S.E.)</th>
<th>Odds Ratio</th>
<th>95% Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>-0.849 (0.468)</td>
<td>0.428*</td>
<td>(0.174, 1.046)</td>
</tr>
<tr>
<td>Total Enrollment</td>
<td>0.003 (0.000)</td>
<td>1.003***</td>
<td>(1.002, 1.003)</td>
</tr>
<tr>
<td><strong>LEA Type</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School District (reference)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Charter School</td>
<td>-0.851 (0.457)</td>
<td>0.427*</td>
<td>(0.174, 1.046)</td>
</tr>
<tr>
<td><strong>Locale</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City: Large</td>
<td>-1.351 (0.733)</td>
<td>0.259*</td>
<td>(0.062, 1.089)</td>
</tr>
<tr>
<td>City: Nonlarge</td>
<td>-0.468 (0.504)</td>
<td>0.626</td>
<td>(0.233, 1.682)</td>
</tr>
<tr>
<td>Suburb: Large (reference)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Suburb: Nonlarge</td>
<td>-1.221 (0.455)</td>
<td>0.295***</td>
<td>(0.121, 0.720)</td>
</tr>
<tr>
<td>Town: Fringe</td>
<td>-0.789 (0.487)</td>
<td>0.454</td>
<td>(0.175, 1.181)</td>
</tr>
<tr>
<td>Town: Far</td>
<td>-0.998 (0.446)</td>
<td>0.369**</td>
<td>(0.154, 0.884)</td>
</tr>
<tr>
<td>Rural: Fringe</td>
<td>-0.278 (0.285)</td>
<td>0.757</td>
<td>(0.433, 1.324)</td>
</tr>
<tr>
<td>Rural: Far</td>
<td>-1.001 (0.389)</td>
<td>0.368**</td>
<td>(0.171, 0.788)</td>
</tr>
<tr>
<td>% with IEP</td>
<td>-0.021 (0.024)</td>
<td>0.979</td>
<td>(0.934, 1.026)</td>
</tr>
</tbody>
</table>

Notes:
- Model $\chi^2(10) = 116.712***$
- Pseudo $R^2 = 0.170$ (Cox & Snell)
- $0.250$ (Nagelkerke)

The results indicate that charter schools were less likely to be targeted by disability complaints than school districts, while LEAs located in the suburbs of large cities were more likely to be targeted than LEAs in other locales. Like the overall number of complaints, the difference between LEAs in the suburbs of large cities and LEAs in other locales varied in size and statistical significance, but no locale category was more likely to be targeted by OCR complaints than the “Suburb: Large” category. Notably, the percentage of students with IEPs was not a significant predictor of whether a complaint alleging disability discrimination was filed. The model accounts for between 17% and 25% of the variance in whether a complaint was filed.

**ii. Predictors of Whether an LEA Entered a Disability-related Monitored Agreement**

The predictor variables and methods for hierarchal logistic regression targeting whether an LEA entered a disability-related monitored agreement were identical to the regression targeting whether a disability complaint was filed, and are shown in Table 13. As in the regression targeting whether a disability complaint was filed, none of the Block 5 variables
improved the statistical significance of the model according to the selection criteria, so no Block 5 variables were entered and no model was produced for Block 5. The model produced for Block 4 correctly classified 94.1% of cases, a very slight improvement over the 93.8% which were correctly classified in Block 0. Table 15 shows the results:

<table>
<thead>
<tr>
<th>Variable</th>
<th>B (S.E.)</th>
<th>Odds Ratio</th>
<th>95% Confidence Interval</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>-3.538 (0.574)</td>
<td>0.029***</td>
<td>-</td>
</tr>
<tr>
<td>Total Enrollment ÷ 10</td>
<td>0.001 (0.001)</td>
<td>1.001**</td>
<td>(1.000, 1.002)</td>
</tr>
<tr>
<td>LEA Type</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>School District</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charter School</td>
<td>-2.489 (1.424)</td>
<td>0.083*</td>
<td>(0.005, 1.353)</td>
</tr>
<tr>
<td>Locale</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City: Large</td>
<td>-0.264 (1.688)</td>
<td>0.768</td>
<td>(0.028, 21.027)</td>
</tr>
<tr>
<td>City: Nonlarge</td>
<td>0.094 (0.679)</td>
<td>1.098</td>
<td>(0.290, 4.152)</td>
</tr>
<tr>
<td>Suburb: Large</td>
<td>-</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Suburb: Nonlarge</td>
<td>-1.373 (1.042)</td>
<td>0.253</td>
<td>(0.033, 1.955)</td>
</tr>
<tr>
<td>Town: Fringe</td>
<td>-0.231 (0.778)</td>
<td>0.794</td>
<td>(0.173, 3.646)</td>
</tr>
<tr>
<td>Town: Far</td>
<td>-0.780 (0.772)</td>
<td>0.458</td>
<td>(0.101, 2.082)</td>
</tr>
<tr>
<td>Rural: Fringe</td>
<td>-0.511 (0.527)</td>
<td>0.600</td>
<td>(0.213, 1.686)</td>
</tr>
<tr>
<td>Rural: Far</td>
<td>-1.892 (1.049)</td>
<td>0.151*</td>
<td>(0.019, 1.179)</td>
</tr>
<tr>
<td>% with IEP</td>
<td>0.050 (0.026)</td>
<td>1.052*</td>
<td>(0.999, 1.108)</td>
</tr>
</tbody>
</table>

Notes: Model $\chi^2(10) = 43.774***$ 
Pseudo $R^2 = 0.067$ (Cox & Snell) 
$0.181$ (Nagelkerke)

The results indicate that school districts and LEAs with a high percentage of students with IEPs were more likely to enter monitored agreements as a result of disability complaints. The model’s explanatory power is very modest. It explains between 7% and 18% of the variance in whether a school entered a disability-related monitored agreement.

2. Relationship Between Basis and Outcome of Complaints

Table 14 shows a cross-tabulation of the 536 complaints’ according to the type of discrimination alleged in the compliant, and how the complaint was resolved.

---

136 See supra note 129.

137 See FIELD, supra note 124, at 272.
### Table 16. Cross-tabulation of Complaints by Basis and Outcome

<table>
<thead>
<tr>
<th>Basis</th>
<th>Dismissal Column Proportion</th>
<th>Insufficient Evidence Determination Column Proportion</th>
<th>Monitored Agreement Column Proportion</th>
<th>Other Column Proportion</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>None or Unknown</td>
<td>11%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>7%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>36%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>36%</td>
</tr>
<tr>
<td>Multiple Bases</td>
<td>14%</td>
<td>12%</td>
<td>10%</td>
<td>10%</td>
<td>13%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>68%</td>
<td>12%</td>
<td>10%</td>
<td>10%</td>
<td>68%</td>
</tr>
<tr>
<td>Disability</td>
<td>42%</td>
<td>58%</td>
<td>64%</td>
<td>66%</td>
<td>50%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>54%</td>
<td>13%</td>
<td>17%</td>
<td>17%</td>
<td>266%</td>
</tr>
<tr>
<td>Race</td>
<td>18%</td>
<td>22%</td>
<td>6%</td>
<td>16%</td>
<td>16%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>68%</td>
<td>15%</td>
<td>5%</td>
<td>16%</td>
<td>88%</td>
</tr>
<tr>
<td>Sex</td>
<td>13%</td>
<td>7%</td>
<td>20%</td>
<td>7%</td>
<td>13%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>66%</td>
<td>6%</td>
<td>21%</td>
<td>7%</td>
<td>68%</td>
</tr>
<tr>
<td>Age</td>
<td>3%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>100%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>10%</td>
</tr>
<tr>
<td>Total</td>
<td><strong>340</strong></td>
<td><strong>59</strong></td>
<td><strong>69</strong></td>
<td><strong>68</strong></td>
<td><strong>536</strong></td>
</tr>
</tbody>
</table>

To perform a Pearson’s chi-square test, the 36 “None or Unknown” complaints were removed to ensure that assumptions were met and the remaining 500 complaints were re-
tabulated. A significant association was found between statutory basis and resolution type ($\chi^2(12) = 27.662, p = 0.006$). Specifically, race complaints were significantly less likely to result in monitored agreements than other complaints ($p = 0.019$).

IV. SUMMARY OF FINDINGS

Quantitative analysis of the complaint and local education agency (“LEA”) data produced seven key findings. These findings, grouped by predictor, are summarized below.

A. LEA Type

Key Finding #1: Charter schools were less likely to be targeted by an OCR complaint than school districts.

In general, the odds that a charter school was targeted by an OCR complaint were about 70% lower than the odds that a school district was targeted. The odds of a charter school being targeted for specific types of complaints were:

- 95% lower for race complaints generally;
- 87% lower for race complaints alleging anti-Black discrimination specifically;
- 92% lower for sex complaints;
- 57% lower for disability complaints generally; and
- 92% lower for disability complaints which resulted in monitored agreements.

B. Locale

Key Finding #2: LEAs in the suburbs of large cities were more likely to be targeted by OCR complaints than LEAs in other locales.

Geographic differences in the likelihood that an LEA was targeted by an OCR complaint are largely attributable to the fact that disability complaints were more likely to be filed against LEAs in the suburbs of large cities than LEAs in other locales. Specifically, LEAs in the suburbs of large cities were between 1.3 and 3.9 times as likely to be targeted by complaints alleging disability discrimination as other LEAs, though the statistical significance of this difference varied with the comparison locale. The LEAs which were especially unlikely to be

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139 Id. at 691-92 (chi-square testing assumes that 80% of the expected frequencies are five or greater, and that none of the expected frequencies are below 1).
targeted by disability complaints were located in the suburbs of small-to-midsize cities, and in towns and rural areas distant from population centers.

C. Student Demographics

**Key Finding #3:** Free-or-reduced lunch eligibility was negatively associated with whether an LEA was targeted by a complaint alleging racial discrimination.

**Key Finding #4:** Minority enrollment was positively associated with whether an LEA was targeted by a complaint alleging racial discrimination.

**Key Finding #5:** The percentage of students with individualized education programs was positively associated with whether an LEA entered a disability-related monitored agreement, but not with whether it was targeted by a disability complaint.

An LEA’s percentage of students who were eligible for free or reduced lunch had a modest, negative association with whether the LEA was targeted by a race complaint, but had no association with any other target variable. Although an LEA’s percentage of students of color had a strong, positive association with whether a race complaint was filed, its percentage of students with disabilities was not associated with whether a disability complaint was filed. The association between students of color and race complaints held true when the examination was narrowed to race complaints alleging anti-Black discrimination: LEAs with a higher percentage of Black students were more likely to be targeted by such complaints.

D. Relationship Between Types of OCR Complaints

**Key Finding #6:** LEAs targeted by complaints alleging anti-Black discrimination were unlikely to be targeted by complaints alleging other types of racial discrimination.

A negative association arose between whether an LEA was targeted by an OCR complaint alleging anti-Black discrimination and whether it was targeted by race complaints alleging discrimination against other races. This relationship was independent of the percentage of Black students attending an LEA.

E. Relationship Between Basis and Outcome

**Key Finding #7:** LEAs were less likely to change their policies and practices as a result of race complaints, compared to other complaints.
Race complaints were less likely to result in monitored agreements than complaints alleging other types of discrimination. The fact that LEAs were unlikely to enter monitored agreements as a result of race complaints suggests that race complaints were unlikely to produce changes in LEAs’ policies or practices.

V. DISCUSSION

This Part aims to interpret this study’s findings in light of previous research and existing legal frameworks. It first draws from prior literature to explore possible explanations for the trends observed in this study, and suggests that the findings indicate the presence of gaps in current civil rights protections. Methodological limitations will then be addressed.

A. Possible Explanations: Gaps in the Armor

As often occurs in educational and socio-legal research, the complexity of this study’s findings call for a multifaceted explanation. The following discussion points are offered as possible explanations for the predictors identified in this study. First, the fact that race complaints were less likely to produce change in the policies or practices of local educational agencies (“LEAs”) may stem from differences between the regulations governing racial discrimination on one hand, and sex and disability discrimination on the other. Second, potential complainants with high social capital may be more likely to actually file complaints, leading to “cultures of claiming” where social capital is concentrated. Third, charter schools may be less likely to be targeted by OCR complaints because charter students who have been subjected to discrimination may respond by exiting (i.e., dis-enrolling) rather than filing a complaint. Fourth, an LEA’s tendencies toward certain civil rights violations may explain why racial demographics predict whether the LEA was targeted by a race complaint, and why disability demographics predict whether it entered a disability-related monitored agreement.

One implication common to all four explanations is that certain students who are among the intended beneficiaries of federal civil rights law still frequently find themselves subjected to discrimination. In other words, these students are left vulnerable to discrimination due to flaws in civil rights protections. The specific ways that gaps in the civil rights armor leave these students vulnerable are discussed below.
1. Differences in the Regulations Governing Race, Sex, and Disability Discrimination

The most significant “gap in the armor” may stem from the fact that civil rights law provides fewer protections from racial discrimination than from sex discrimination and, especially, from disability discrimination. In general, the dominant plurality of OCR’s enforcement efforts focus on disability discrimination.\(^{140}\) Consistent with that larger trend, this study found that 59% (N = 318) of the OCR complaints filed against K-12 schools in Pennsylvania alleged disability discrimination. While this outsize focus on disability complaints could be interpreted as evidence that disability discrimination is more widespread, evidence from prior studies weighs against this interpretation. Specifically, Morrill et al. found that students of every race were more likely to report that they had been subjected to discrimination, inappropriate sexual language or behavior, and due process violations in school discipline than that they had been denied services for special needs.\(^{141}\) Students of color were especially likely to report that they had been subjected to discrimination.\(^{142}\) Morrill et al. also found that students with disabilities were significantly more likely to take formal legal action in response to civil rights violations.\(^{143}\) Because this prior research suggests that improper denial of special education services may be less likely to occur than other forms of discrimination, and that students with disabilities are more likely to take legal action than those without, the primary contributor to the high percentage of disability complaints observed here is probably a disproportionately high claim rate for disability discrimination.

This study also found that LEAs were significantly less likely to enter agreements to change their policies or practices in response to race complaints, as compared to sex and disability complaints. Mica Pollock, writing of her experience as an OCR investigator during the Clinton and Bush administrations, identified three potential reasons for this outsize focus on disability rather than race: (1) OCR provides comparatively little outreach in the domain of race discrimination; (2) civil rights law affords more procedural protections to students with

\(^{140}\) Nationally, 46% of OCR complaints alleged disability discrimination during the 2013 and 2014 fiscal years, compared to 28% for sex, 22% for race, and 5% for age. OFFICE FOR CIVIL RIGHTS, PROTECTING CIVIL RIGHTS, ADVANCING EQUITY: REPORT TO THE PRESIDENT AND SECRETARY OF EDUCATION 9 (2015), http://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2013-14.pdf. See also POLLOCK, supra note 15, at 16-17 (noting that disability cases averaged about 54% of OCR’s caseload circa 2000).

\(^{141}\) Morrill et al., supra note 1, at 671.

\(^{142}\) Id.

\(^{143}\) Id. at 681.
disabilities than students of color; and (3) OCR employees are unlikely to label denials of educational opportunities to students of color as “discrimination.”144

While the first and third reasons proffered by Pollock may have been substantial factors during the Clinton or Bush era, they have less explanatory force for the disparities observed in the current study. The Obama administration has taken steps to raise awareness of civil rights in education and sharpen OCR’s enforcement, particularly in the domain of racial discrimination.145 These efforts began before and continued throughout the period under study.146 Nevertheless, this study’s findings indicate that the apparent systemic preference for disability complaints over race complaints persists. This leaves Pollock’s second reason, that civil rights law affords more protections from disability discrimination than racial discrimination, as the leading factor.

As noted in Part II, the regulations governing disability discrimination are far more detailed than the regulations governing racial discrimination.147 Notably, the regulations implementing Section 504 obligate LEAs to: notify students and parents that the LEA does not discriminate on the basis of disability;148 evaluate the individual educational needs of students with disabilities;149 provide procedural safeguards to ensure that students with disabilities receive an appropriate education;150 designate a responsible employee to oversee its compliance with Section 504;151 and offer grievance procedures for students and parents to resolve disputes

144 POLLOCK, supra note 15, at 17-18.
145 Mary Ann Zehr, Duncan Plans to Prod Schools on Civil Rights Laws, EDUC. WK. (Mar. 8, 2010), http://www.edweek.org/ew/articles/2010/03/08/25civilrights_h29.html. Conservative analysts, in fact, have argued that OCR improperly expanded the scope of Title VI during the Obama administration, which suggests that OCR was more receptive of race complaints during the period under study than during Pollock’s time as an OCR investigator. See Epstein, supra note 6, at 31-32 (arguing that, contrary to OCR’s 2014 Dear Colleague Letter on school discipline, “differential punishment rates by race” should not be sufficient to establish “patterns of discrimination”); Melnick, supra note 6, at 33 (arguing that OCR Dear Colleague Letter on resource comparability misinterprets Title VI); Hans Bader, Education Department Floods Schools with New Uncodified Bureaucratic Mandates, COMPETITIVE ENTER. INST. (Feb. 25, 2015), https://cei.org/blog/education-department-floods-schools-new-uncodified-bureaucratic-mandates (arguing that, contrary to OCR guidance, school discipline policies and practices which have a disparate impact along racial lines do not constitute discrimination under Title VI).
146 See ALL, DCL: HARRASSMENT & BULLYING, supra note 27, (2010 Dear Colleague Letter explaining law governing racial harassment); LHAMON, supra note 34, (2014 Dear Colleague Letter explaining Title VI’s requirement to distribute educational resources equitably); LHAMON & GUPTA, supra note 35, (2015 Dear Colleague Letter explaining Title VI rights of English learner students and parents with limited English proficiency); LHAMON, ROSENFELT, & SAMUELS, supra note 33, (2014 Dear Colleague Letter explaining Title VI rights of undocumented students and the children of undocumented parents); LHAMON & SAMUELS, supra note 37, (2014 Dear Colleague Letter explaining the application of Title VI to school discipline).
147 See supra Section II.A.
149 34 C.F.R. § 104.35.
150 Id.
151 34 C.F.R. § 104.7(a).
stemming from any of Section 504’s regulatory requirements. None of those protections apply to racial discrimination. As a result of this legal framework, students who have been subjected to disability discrimination have more legal grounds on which to base their claims than students who have been subjected to racial discrimination. The greater amount and greater success of disability complaints relative to race complaints may be attributable to this framework.

Three reasons could potentially explain the differences between the regulations governing race and disability discrimination: (1) the sequence in which the regulations were drafted; (2) the greater importance of protecting students with disabilities than protecting students of color; and (3) competing conceptions of educational equity. The first two reasons fail to justify the differences in the regimes from an equity standpoint. The third reason justifies some—but not all—of the differences.

First, as mentioned in Part II, the difference in the regulations implementing Title VI and Section 504 can be attributed to the fact that the latter regulations were drafted when the process became more protracted. Consequently, rulemaking for Section 504 featured more input from stakeholders and produced more detailed regulations. This reason fails to justify the lack of detail in Title VI’s regulations because it stems from historical happenstance rather than reasoned policy judgment differentiating racial discrimination from sex or disability discrimination.

Second, the difference between the Title VI regulations and the Section 504 regulations could also be due to a stronger policy preference for protecting students with disabilities from

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152 34 C.F.R. § 104.7(b).
153 See 34 C.F.R. §§ 100.1 to 100.13.
154 See Mica Pollock, supra note 6, at 2118 (“Racial discrimination complaints often seem far less easily investigated and remedied than the other complaints of discrimination now covered by OCR.”).
155 See supra text accompanying notes 18 to 22.
156 The debates which shaped the content of the Title VI regulations occurred primarily between different departments within the executive branch. See ORFIELD, supra note 18, at 67-75. In contrast, the final version of the Section 504 regulations were not issued until after the Department of Health, Education, and Welfare issued two proposed versions and revised the regulations in response to public comments. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 42 Fed. Reg. 22,676, 22,676-77 (May 4, 1977) (describing rulemaking history).
157 For instance, although the Title VI regulations did not include a grievance procedure requirement, federal officials added this requirement to the Title IX regulations at the suggestion of women’s groups, and added language requiring “appropriate due process standards” to Section 504’s version of the requirement in response to public comments. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 42 Fed. Reg. at 22,680 (describing rulemaking history of Section 504 regulations); Nash, Klein, Bitters et al., supra note 18, at 66 (describing history of Title IX regulations). See also supra note 22.
discrimination, rather than students of color.\textsuperscript{158} This preference could be attributed to the fact that political support for disability protections cuts across racial, socioeconomic, and ideological lines;\textsuperscript{159} that the (predominantly White) parents of students with disabilities tend to be more vocal and strategic in their advocacy than other stakeholders;\textsuperscript{160} or that crafting policy to benefit people with disabilities (who tend to be viewed as disenfranchised and needful/deserving of benefits) produces greater political rewards for policymakers than crafting policy to benefit racial minorities (who are more likely to be viewed as powerful and not needful/deserving of benefits).\textsuperscript{161} This reason fails to justify the differences in the two regulatory regimes from an equity standpoint because it is grounded in power dynamics rather than ethics.\textsuperscript{162}

The difference between the protections for disability discrimination and racial discrimination could also be attributed to differences in the conceptions of equity undergirding each regulatory regime. Kornhaber et al., building upon Jencks and others, have drawn a distinction between an “equal” conception of educational equity, which is concerned with the equal treatment of all students, and “equalizing” and “expansive” conceptions of educational equity, which are concerned with distributing resources to achieve more equal educational outcomes.\textsuperscript{163} The fact that the regulations afford more protections from disability discrimination than racial discrimination may reflect that the “equalizing” conception undergirds the Section 504 regulations to a greater extent than the Title VI regulations. For instance, the Title VI and Section 504 regulations each prohibit “criteria or methods of administration” which have the effect of substantially impairing the objectives of a program for particular racial groups or people with disabilities.\textsuperscript{164} The Section 504 regulations, however, also require LEAs to provide

\textsuperscript{158} Cf. GEORGE ORWELL, ANIMAL FARM 114 (Rupa Publications 2010) (1945) (“ALL ANIMALS ARE EQUAL / BUT SOME ARE MORE EQUAL THAN OTHERS”).

\textsuperscript{159} R. SHEP MELNICK, BETWEEN THE LINES 150 (1994) (“Disabilities . . . fall upon rich and poor, black and white, residents of inner cities, suburbs, and farm districts . . .”).

\textsuperscript{160} POLLOCK, supra note 15, at 110.

\textsuperscript{161} See Anne Schneider & Helen Ingram, Social Construction of Target Populations: Implications for Politics and Policy, 87 AM. POL. SCI. REV. 334 (1993) (noting that children and those with disabilities tend to be viewed as “dependents” in need of protection and racial minorities tend to be viewed as “contenders” jockeying for policy benefits).

\textsuperscript{162} Compare sources cited supra notes 159 to 161 with Christopher Jencks, Whom Must We Treat Equally for Educational Opportunity to be Equal?, 98 ETHICS 518 (1988).

\textsuperscript{163} Mindy L. Kornhaber, Kelly Griffith, & Alison Tyler, It’s Not Education by Zip Code Anymore – But What is It? Conceptions of Equity under the Common Core, EDUC. POL’Y ANALYSIS ARCHIVES, Jan. 27, 2014, at 1, 3-9 (citing Jencks, supra note 162).

“appropriate” (i.e., individualized)\textsuperscript{165} education to students with disabilities, where the Title VI regulations have no similar requirement. This provision may reflect a policy judgment that a student’s disability status may warrant educational services above and beyond those offered to all students to ensure an equal opportunity to learn,\textsuperscript{166} but that a student’s race could not warrant such services.

While some of the discrepancies between the two regimes may be warranted by ontological differences between disability status and race, these differences fail to justify other discrepancies in the regulations. Specifically, LEAs are not required to notify beneficiaries that the LEA is prohibited from discriminating based on race, designate an employee to oversee its compliance with the Title VI regulations, or adopt internal procedures to resolve grievances stemming from racial discrimination. Analogous requirements for sex and disability discrimination, however, do exist in the Title IX and Section 504 regulations.\textsuperscript{167} In the absence of a principled reason for applying these protections to sex and disability but not to race, these gaps in the Title VI regulations serve as unjustified obstacles to complainants seeking to remedy racial discrimination. By showing that race complaints are less likely to produce changes in LEAs’ policies and practices, this study provides evidence of the need to repair those gaps in Title VI protections.

2. \textit{Cultures of Claiming}

Before filing an OCR complaint, claimants must first perceive that they have been harmed, fault the school for the harm, and recognize the harm as grounds for legal action. Feilstiner et al. have referred to these requisites as “naming,” “blaming,” and “claiming.”\textsuperscript{168} This study found that charter schools were less likely to be targeted by OCR complaints than school districts, that LEAs located in the suburbs of large cities were more likely to be targeted than LEAs in other locales, and that schools with many students who were eligible for free-or-reduced lunch (“FRL”) were less likely to be targeted by race complaints. One possible explanation for these differences may be that the parents of students attending charter schools, LEAs located

\textsuperscript{165}34 C.F.R. § 104.33(b).
\textsuperscript{166}20 U.S.C. § 1400(c)(1) (2016) (providing rationale for the Individuals with Disabilities Education Act (“IDEA”)). \textit{See also} 34 C.F.R. § 104.33(b)(2) (implementing individualized education program developed under the IDEA satisfies the standard for “appropriate education”).
\textsuperscript{167}34 C.F.R. §§ 106.8-106.9, 104.7-104.8. \textit{See supra} Section II.A.5.
outside the suburbs of large cities, and LEAs with high poverty rates are less likely to “name,” “blame,” and “claim” discrimination through the OCR complaint process. In other words, these factors may all contribute to a “culture of claiming” civil rights violations.

The finding that FRL eligibility was negatively linked with whether a race complaint was filed is consistent with prior research finding a negative link between a person’s socioeconomic status and the likelihood that they will take action to remedy a harm, and the likelihood that their actions will involve a formal “claim.” People with low incomes are less likely to take such action partially because they tend to lack the resources and knowledge to pursue claims or endure the ensuing social disruption, and partially because of a sense of powerlessness.

This study also found that LEAs in the suburbs of large cities were more likely to be targeted by OCR complaints, and that this tendency is independent of the percentage of students who were FRL eligible. This finding suggests that social capital generated within the suburbs of large cities may also contribute to a culture of claiming. Prior research indicates that neighborhood resources such as churches, recreational facilities, and supermarkets play an important role in generating social capital among residents. Specifically, these resources provide mechanisms for building social networks which may subsequently be used to gain information about students’ civil rights and the processes for enforcing those rights. If residents of the suburbs of large cities are more likely to benefit from the social capital generated by access to such resources, they may also be more likely to “claim” civil rights violations through filing OCR complaints. This explanation would be particularly significant because it operates independently of socioeconomic status.

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170 *Id.* at 347. The fact that this relationship only emerged in the context of general race complaints in the present study may stem from FRL eligibility’s imperfection as a measure of poverty. See text accompanying notes 186 to 187.
172 One study found that parents of children with autism were more likely to report that their child’s civil rights had been violated when the family lived in a large city or suburban setting, and less likely to so report when they lived in a rural area. Dana Lee Baker & Leal Keiser, *The Role of Nonprofits in Shaping Civil Rights: Understanding of Disability in Families of Children with Autism*, 4 REV. OF DISABILITY STUDIES: AN INT’L J. 53, 60 (2008).
173 This explanation is also consistent with Mica Pollock’s contention that OCR’s priorities are driven “by the civil rights community’s most sophisticated and vocal members—the parents of handicapped children.” POLLOCK, supra note 15, at 110 (quoting Kenyon D. Bunch & Grant B. Mindle, *Judicial Activism and the Administration of Civil Rights Policy*, 1993 BYU EDUC. & L. J. 76, 99). The fact that an LEA was more likely to be targeted by an OCR complaint if it was located in the suburb of a large city is largely attributable to the fact that
Conversely, the fact that OCR complaints are unlikely to be filed against charter schools may result from a lack of information about civil rights protections. Charter schools are often presented as free of the regulatory constraints which burden traditional public schools. Consequently, would-be complainants may mistakenly infer that charter schools are exempted from relevant requirements under federal civil rights law. Therefore, even when would-be complainants “name” prohibited discrimination and “blame” the school for it, they may opt against filing an OCR complaint out of the mistaken belief that the violation is not a valid “claim.”

3. Exit as Escape?

An alternative explanation for the lack of complaints filed against charter schools may be that some students who have been subjected to discrimination in charter schools opt to transfer out rather than file an OCR complaint. This explanation would be consistent with prior research finding that students of color exit charter schools at higher rates than White students. Other research, however, has found no significant difference between the attrition rates of students with disabilities in charter schools and those in traditional public schools.

4. Noncompliance Trends

This study found that while an LEA’s percentage of students of color was associated with whether the LEA was targeted by a race complaint, its percentage of students with individualized education programs (“IEPs”) did not predict whether it was targeted by a disability complaint. This suggests that while students of color are more likely to file race complaints than White students, students with IEPs are not more likely to file disability complaints than those without. Because prior research suggests that students with disabilities may be more likely to take formal

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such LEAs were more likely to be targeted by disability complaints. Parents who possess a high degree of social capital, therefore, may be especially likely to file disability complaints.


See LHAMON, supra note 10, (clarifying that federal civil rights laws apply fully to charter schools).


legal action in response to rights violations than students without disabilities.\textsuperscript{178} The difference in filing rates between students with disabilities and students of color is likely attributable to the fact that disability complainants have an array of other dispute resolution options which are not necessarily available to race complainants.\textsuperscript{179}

An LEA’s percentage of students with IEPs was modestly associated, however, with whether the LEA entered a disability-related monitored agreement. This finding could be attributed to fiscal pressures resulting from the structure of special education funding in Pennsylvania. Before the 2014-2015 school year, special education funding in Pennsylvania was allocated under the assumption that 16% of the students in each district had an IEP.\textsuperscript{180} As a result, LEAs with a high percentage of students with IEPs were required to spread their special education resources more thinly than school districts with a low percentage.\textsuperscript{181} LEAs with a high IEP rate, therefore, may have been more likely to resort to noncompliant special education policies and practices as a cost-saving measure.

Additionally, this study found a negative association between whether an LEA was targeted by a race complaint alleging anti-Black discrimination and whether it was targeted by other race complaints. This finding is significant because it provides counterevidence to the claim that complainants misattribute harsh-but-colorblind treatment to racial discrimination.\textsuperscript{182}

If an LEA which tended toward harsh treatment were an “equal opportunity suppressor,” then one would expect different racial groups to file complaints against it at similar rates. Because anti-Black complaints are more likely to be filed where other race complaints are less likely to be

\textsuperscript{178} Morrill et al., \textit{supra} note 1, at 681.
\textsuperscript{179} \textit{See generally} Perry A. Zirkel & Brooke L. McGuire, \textit{A Roadmap to Legal Dispute Resolution for Students with Disabilities}, 23 \textit{J. Special Educ. Leadership} 100 (2010).
\textsuperscript{181} Browne \& O’Neill, \textit{supra} note 180, at 40.
\textsuperscript{182} \textit{See, e.g.,} Andrew Coulson, \textit{Administration’s Good Intentions Could Hurt Black Students’ Achievement}, \textit{Cato Inst.: Cato at Liberty} (Jan. 8, 2014 1:03 PM), \texttt{http://www.cato.org/blog/administrations-good-intentions-could-hurt-black-students-achievement} (arguing that racial disparities in school discipline are “almost entirely explained by the school the students attend, and not by racism”). \textit{See generally} Josh Kinsler, \textit{Understanding the Black-White School Discipline Gap}, 30 \textit{Econ. Educ. Rev.} 1370 (2011) (finding that racial demographics predict discipline rates across schools more strongly than within schools).
filed, however, the data indicate that when racial discrimination occurs, it tends to afflict Black students.\textsuperscript{183}

\textbf{B. Limitations}

This study examined OCR complaints filed in Pennsylvania. Because social, political, and legal contexts vary across states, this study’s findings may not reflect complaint trends in other states. Although this study took steps to improve the generalizability of its findings from a statistical standpoint, readers should be mindful of variations in local contexts when considering its implications outside of Pennsylvania.

The predictors identified here varied in effect size. The regression model with the strongest predictive effect accounted for 30\% to 40\% of the variability in whether a complaint was filed. The model with the weakest predictive effect accounted for 7\% to 18\% of the variability in whether an LEA entered a monitored agreement.\textsuperscript{184} The fact that between 60\% and 93\% of the variability in the different models cannot be explained by the identified predictors suggests that other, unexamined factors significantly contribute to whether an LEA was targeted by a given type of OCR complaint.

As with all correlational research, causal inferences drawn from this study are only sound to the extent that the outcome and predictor variables are not influenced by a common cause.\textsuperscript{185} Because the modest effect sizes identified here suggest that unexamined factors significantly influence the number and type of OCR complaints filed against a school, ruling out the influence of a common cause is especially problematic. Any causal inferences drawn from this study, therefore, must be highly tentative.

This study’s failure to find a stronger association between an LEA’s socioeconomic makeup and whether the LEA was targeted by an OCR complaint is incongruous with prior research indicating that socioeconomic status influences disputants’ decisions to take formal

\textsuperscript{183} Other research supports the proposition that Black students are especially likely to be disadvantaged by racial inequity. For instance, one recent study found that while the percentage of Black students attending a school is positively linked with the severity of the school’s disciplinary punishments, this relationship only persists to the extent that the school punishes students inconsistently. Anton Bekkerman & Gregory Gilpin, \textit{On Understanding Inconsistent Disciplinary Behaviour in Schools}, 22 \textit{Applied Econ. Letters} 772 (2015). No analogous trend was found for Latino students. \textit{Id.}

\textsuperscript{184} Effect sizes in this range are common in social science research. \textsc{Timothy Z. Keith}, \textsc{Multiple Regression and Beyond: An Introduction to Multiple Regression and Structural Equation Modeling} 183 (2d ed. 2015).

\textsuperscript{185} \textit{Id.} at 249 (articulating necessary conditions to infer causality).
legal action and their choice of action. This incongruence may stem from the imperfections of FRL eligibility as a poverty measure, such as its dichotomous nature and reliance on household size. Readers, therefore, should exercise caution when drawing inferences about the role of socioeconomics in civil rights complaints from this study.

VI. RECOMMENDATIONS & CONCLUSION

To conclude, this study offers four recommendations for strengthening students’ civil rights protections. First, lawmakers should “patch the armor” by extending regulatory requirements which currently apply to sex and disability discrimination to also cover racial discrimination. Second, policymakers should “ready the troops” by ensuring that educators have the necessary training and resources to protect students’ civil rights. Third, researchers should “scout the terrain” through deeper study of particular civil rights issues in K-12 schools. Fourth, regulators, educators, and advocates should “sound the trumpet” by raising awareness of students’ civil rights, especially in spaces where violations are most likely to occur. Each recommendation is discussed in turn below.

A. Recommendations

Recommendation #1 – Patch the Armor: Extend procedural requirements for sex and disability discrimination to racial discrimination.

Many of the procedural protections from sex and disability discrimination under the Title IX and Section 504 regulations do not extend to racial discrimination under Title VI. Notably, the regulations require each LEA to designate a responsible employee to oversee compliance with Title IX and Section 504, to notify beneficiaries that the LEA is prohibited from discriminating on the basis of sex or disability, and to adopt internal procedures to resolve

\[186\] See Sandefur, supra note 169, at 346-47 (surveying research showing that people with low incomes are less likely to use formal processes to resolve disputes); Michael J. Opuda, A Comparison of Parents Who Initiated Due Process Hearings and Complaints in Maine (Nov. 17, 1997) (Ph.D. dissertation, Virginia Polytechnic Institute and State University) (finding that wealthier special education complainants tended to pursue claims through due process hearings under the IDEA while poorer complainants tended to pursue claims through the IDEA’s state complaint process).

\[187\] See generally Harwell & LaBeau, supra note 123. Other imperfections of FRL as a poverty measure include over-classification, under-classification, and an inability to capture the effects of concentrated poverty. Id. at 124-25.

\[188\] See supra Section V.A.1.

\[189\] 34 C.F.R. §§ 104.7(a), 106.8(a) (2015).

\[190\] 34 C.F.R. § 104.8, 106.9.
grievances alleging sex or disability discrimination. The regulations also prohibit LEAs from aiding or perpetuating sex or disability discrimination by others. All of those protections should also apply to racial discrimination under Title VI. Amending the Title VI regulations through notice-and-comment is one way of extending these protections.

Alternatively, states could enact regulations to the same effect under their own nondiscrimination statutes. For instance, Pennsylvania state regulations require LEAs to notify parents of their nondiscrimination obligations under Section 504, and to provide internal procedures for resolving claims of disability discrimination. However, the regulations provide no similar procedural protections from discrimination on the basis of race, color, national origin, sex, or religion, even though schools are prohibited from such discrimination under the Pennsylvania Human Relations Act (“HRA”). The state regulations could be amended to extend the notice and grievance procedure requirements for disability discrimination to other forms of discrimination prohibited under the HRA, including racial discrimination. Provisions requiring LEAs to designate an employee to coordinate compliance with Title VI or analogous provisions of the HRA could also be added.

**Recommendation #2 – Ready the Troops:**

Ensure educators have adequate training and resources to protect students’ civil rights.

Prior commentators in Pennsylvania and elsewhere have repeatedly called for increased training in educators’ legal literacy, especially in the domain of special education

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191 34 C.F.R. §§ 104.7(b), 106.8(b).
192 34 C.F.R. §§ 104.4(b)(1)(v), 106.31(b)(6).
197 Because these procedural protections would originate from state law, they would be enforced by the Pennsylvania Human Relations Commission, the state agency which enforces the HRA, rather than by OCR. 43 P.S. §§ 956 (establishing Commission), 957 (powers and duties), 959 (procedures).
This study’s findings are consistent with such calls. A fuller understanding of students’ civil rights protections will enable teachers and administrators to prevent civil rights violations, and more effectively remedy any violations which do occur. Educators serving many students who are at-risk for civil rights violations, particularly students of color and students with disabilities, are especially likely to benefit from such training.

As noted above, the fact that OCR was more likely to require LEAs with high IEP rates to change their disability-related practices could be explained by the fact that such LEAs faced fiscal pressures to cut the costs of special education services. Pennsylvania made legislative changes to ease those pressures during the period under study, but the effects of these changes are unclear. At any rate, policymakers should craft funding systems to ensure that the allocation of special education dollars or other resources does not incentivize civil rights violations. They should also revisit current funding systems to ensure that such incentives are not already in place. Policymakers can further protect students’ civil rights by ensuring that educators have adequate resources to meet their legal obligations to provide an equitable and appropriate education for all students, including those with disabilities.

**Recommendation #3 – Scout the Terrain:**
*Advance research on civil rights in elementary and secondary schools*

This study reveals many issues that are ripe for further research. For instance, while this study raises the possibility that some charter students may dis-enroll rather than file an OCR complaint when subjected to discrimination, it does not provide direct evidence that “exit-as-

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201 See Ali, DCL: HARASSMENT & BULLYING, *supra* note 27, at 1 (noting that school personnel are in the best position to prevent and respond appropriately to discrimination when they understand their legal obligations).

202 See *supra* notes 180 to 181 and accompanying text.


205 See *supra* Section V.A.3.
escape” actually occurs.\textsuperscript{206} Future research aimed at discerning the extent of exit-as-escape should also examine the educational disruption which ensues when students transfer schools.\textsuperscript{207} Additionally, while this study found some indication that poverty inhibits use of the OCR complaint process, the limitations of FRL eligibility as a poverty measure warrant further exploration of this relationship.\textsuperscript{208}

Although this study considered the statutory basis and outcome of OCR complaints, it did not examine specific manifestations of alleged discrimination, or how the OCR complaint process played out in any particular context. Research examining these dimensions, especially qualitative research aimed at enriching contextual understanding,\textsuperscript{209} will be especially valuable in determining why the predictors identified here are linked with OCR complaints. For instance, this study did not explore how the OCR complaint process interacts with other forms of dispute resolution such as internal grievance procedures, the myriad dispute resolution options provided by the Individuals with Disabilities Education Act, or informal processes. Similarly, this study sheds little light on the role of advocacy groups in the OCR complaint process,\textsuperscript{210} though prior research suggests that such groups play an influential role in the civil rights arena.\textsuperscript{211}

\textsuperscript{206}The implications of exit-as-escape are likely to be contested. Some analysts may interpret the disenrollment of students who have been subjected to discrimination as another mechanism for charter schools to “push out” vulnerable students. See, e.g., Robert Garda, Searching for Equity amid a System of Schools: The View from New Orleans, 42 FORDHAM URB. L.J. 613, 640-43 (2015) (describing efforts to abolish pushout tactics in New Orleans’ Recovery School District); ANNENBERG INST. FOR SCH. REFORM, PUBLIC ACCOUNTABILITY FOR CHARTER SCHOOLS: STANDARDS AND POLICY RECOMMENDATIONS FOR EFFECTIVE OVERSIGHT 7-8 (2014), http://annenberginstitute.org/sites/default/files/CharterAccountabilityStds.pdf (advising against counseling out and other tactics to “push out” struggling students). Others may interpret it as a mechanism for market accountability. Cf. Eric A. Hanushek, John F. Kain, Steven G. Rivkin, & Gregory F. Branch, Charter School Quality and Parental Decision Making with School Choice, J. PUB. ECON. 823, 843-44 (2007) (finding that parents are more likely to disenroll students from low quality charter schools).

\textsuperscript{207}Such disruption has negative impacts both on the students who transfer, and on the schools burdened with high student turnover. See Eric A. Hanushek, John F. Kain, & Steven G. Rivkin, Disruption versus Tiebout Improvement: The Costs and Benefits of Switching Schools, 88 J. PUB. ECON. 1721 (2004).

\textsuperscript{208}See supra notes 186 to 187 and accompanying text.

\textsuperscript{209}See generally, Louise Adler, Qualitative Research Redux: Researching Contemporary Legal Issues Concerning Education, in RESEARCH METHODS FOR STUDYING LEGAL ISSUES IN EDUCATION’25 (Steve Permuth, Ralph Mawdsley, & Susan Silver eds., 2d ed. 2015).

\textsuperscript{210}Because Pennsylvania has a robust community of advocacy groups working on civil rights issues in schools, this factor may be especially influential for the population studied here. See A Quality Public Education for All, PUB. INT. L. CTR. OF PHILA., http://www.pilcop.org/education/ (last visited May 2, 2016) (identifying “eliminating harmful policies and vigorously enforcing the rights of students with disabilities” as goals of the Public Interest Law Center of Philadelphia); About the Notebook, THE NOTEBOOK, http://thenotebook.org/about-the-notebook (last visited May 2, 2016) (nonprofit news service emphasizing “social justice, equity, and public accountability” in Philadelphia public schools); ARC OF PA., HTTP://WWW.THEARCPA.ORG/ (last visited May 2, 2016) (advocacy group for people with intellectual and developmental disabilities and their families in Pennsylvania); DISABILITY RTS. PA., HTTPS://DISABLEYRIGHTSBA.ORG/ (last visited May 2, 2016) (federally-designated advocacy organization for adults and children with disabilities in Pennsylvania); EDUC. L. CTR.,
**Recommendation #4 – Sound the Trumpet:**  
*Raise awareness of students’ civil rights, especially in vulnerable communities and charter schools.*

Under the Obama administration, OCR has taken steps to raise awareness of students’ civil rights protections.\(^{211}\) OCR should continue these efforts to increase awareness and understanding of civil rights law among students, parents, educators, policymakers, and other stakeholders. School and community leaders should contribute to these efforts by undertaking local civil rights outreach. Outreach by local stakeholders is especially important because some mechanisms for enforcing civil rights, such as internal grievance procedures which are unique to individual schools, require understanding of local contexts.

Civil rights advocacy groups and similar organizations can also play a vital role in outreach by focusing their activism on vulnerable communities. This study’s findings suggest that civil rights outreach efforts would be especially beneficial where students are less likely to file complaints, such as charter schools, areas that are distant from population centers, and low-income neighborhoods. Local advocacy groups who are familiar with local contexts can play a vital role in protecting civil rights by targeting activism and outreach toward these communities.

\[^{211}\] See Baker & Keiser, *supra* note 172 (finding that the parents of children with autism were more likely to recognize civil rights violations when they had contact with nonprofit organizations); Joe Soss & Lael R. Keiser, *The Political Roots of Disability Claims: How State Environments and Policies Shape Citizen Demands*, 59 Pol. Research Q. 133 (2006) (finding that claim rates for disability benefits are higher in states with a high concentration of civic organizations).

\[^{212}\] One of OCR’s most visible strategies has been to increase output of regulatory guidance documents, such as “Dear Colleague Letters,” to remind stakeholders of particular civil rights laws and to explain the laws’ requirements. For instance, under President Bush in FY 2008, OCR issued three regulatory guidance documents, *Office for Civil Rights, Annual Report to Congress of the Office for Civil Rights: Fiscal Year 2007-08 at 34-35* (Jan. 2009), [http://www2.ed.gov/about/reports/annual/ocr/annrpt2007-08/annrpt2007-08.pdf](http://www2.ed.gov/about/reports/annual/ocr/annrpt2007-08/annrpt2007-08.pdf). In FY 2015, it issued nine guidance documents. *Office for Civil Rights, supra* note 3, at 17. OCR has similarly increased the rate at which it disseminates reports on the civil rights data it collects. From 2006 to 2008, OCR did not issue any data reports. *Office for Civil Rights, Annual Report to Congress of the Office for Civil Rights: Fiscal Year 2006 at 28-29* (July 2007), [http://www2.ed.gov/about/reports/annual/ocr/annrpt2006/annrpt2006.pdf](http://www2.ed.gov/about/reports/annual/ocr/annrpt2006/annrpt2006.pdf); *Office for Civil Rights, supra* note 140, at 49-50. From 2013 to 2015, it issued six reports. *Office for Civil Rights, supra* note 140, at 14-17; *Office for Civil Rights, supra* note 3, at 15-16.
B. Conclusion

Although this study validates some strategies policymakers have used to combat educational inequity, it also indicates that disadvantaged students, especially students of color, remain vulnerable to discrimination because of gaps in federal civil rights protections. This study’s findings suggest that communities with lower incomes and fewer neighborhood resources are less likely to benefit from federal enforcement efforts. It also provides evidence that Black students are more likely to be subjected to discrimination than students of other races. Most importantly, this study has highlighted discrepancies in civil rights law, and has found evidence indicating that these discrepancies prevent students of color from obtaining meaningful remedy for racial discrimination.

Lawmakers should repair the flaws in civil rights protections by extending requirements which currently apply to sex and disability discrimination to also cover racial discrimination. Policymakers should thwart discrimination by ensuring that educators are equipped with the policies, practices, and knowledge to protect students’ rights. Researchers should deepen their investigation of civil rights policy in elementary and secondary schools. Advocates should strengthen their defense of student rights by focusing activism on the most vulnerable communities. By invigorating enforcement of students’ civil rights, educators and leaders can close the gaps in civil rights protections.