GAPS IN THE ARMOR:

PREDICTORS OF CIVIL RIGHTS COMPLAINTS

IN PENNSYLVANIA’S ELEMENTARY & SECONDARY SCHOOLS

A Thesis in

Educational Theory & Policy

by

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ABSTRACT

This thesis uses legal analysis and statistical techniques to explore the relationship between the characteristics of elementary and secondary schools in Pennsylvania, and the characteristics of complaints filed against those schools with the U.S. Department of Education’s Office for Civil Rights (“OCR”). It also examines the relationship between the basis of OCR complaints, and the outcome of those complaints. Findings indicate that: schools located within the suburbs of large cities were more likely to be targeted by OCR complaints, while charter schools were less likely to be targeted; schools were more likely to be targeted by complaints alleging racial discrimination when they enrolled a high percentage of minority students, but less likely when they enrolled a high percentage of free-or-reduced lunch eligible students; schools were more likely to enter agreements with OCR to change their disability-related policies and practices when the schools had a high percentage of students with disabilities; and schools were relatively unlikely to enter agreements to change their policies or practices in response to complaints alleging racial discrimination. This thesis recommends that lawmakers “close the gaps” in civil rights protections by extending certain procedural requirements which apply to sex and disability discrimination to also cover racial discrimination; that policymakers ensure that educators have the resources and training to protect students’ civil rights; and that regulators and civil rights advocates further their efforts to raise awareness of student rights, especially in vulnerable communities.
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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
Chapter 1

Introduction

Despite the judicial and legislative victories of mid-twentieth century civil rights activists, today’s youth of color experience civil rights violations more often than their White peers. Youth of color are especially likely to experience discrimination at the hands of school personnel. Federal law protects public elementary and secondary students from discrimination on the basis of race, sex, and disability, but prior 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. Latino students were less likely than White students to take such

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2 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).

3 Morrill et al., supra note 2, at 671 (Latino and Asian students are more likely to experience inappropriate sexual language or behavior by a teacher, and all nonwhite racial groups are more likely to experience discrimination by teachers or administrators); Rosenbloom & Way, supra note 2, at 434-38 (describing experiences of Black and Latino youth who were subjected to discrimination by adults).

4 These protections apply to any educational institution receiving federal funding, which includes public K-12 schools as well as public and private colleges and universities. 20 U.S.C. § 1681(a) (prohibiting sex discrimination); 29 U.S.C. § 794 (prohibiting disability discrimination); 42 U.S.C. § 2000d (prohibiting racial discrimination); OFFICE FOR CIVIL RIGHTS, DELIVERING JUSTICE 6 (May 2016), http://www2.ed.gov/about/reports/annual/ocr/report-to-president-and-secretary-of-education-2015.pdf (protections apply to approximately 16,900 local education agencies and 2,300 postsecondary institutions). This thesis focuses on public K-12 schools in Pennsylvania.

5 Morrill et al., supra note 2, at 674-76.
action. Because students and parents cannot benefit from civil rights protections without engaging the corresponding enforcement 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 thesis closely examines a principal enforcement mechanism: The administrative complaint process of the U.S. Department of Education’s Office for Civil Rights (“OCR”). OCR enforces federal civil rights law in the nation’s schools and colleges by receiving complaints alleging civil rights violations, investigating them, and using informal resolution or the suspension or termination of federal funding to induce schools to remedy civil rights violations. Using data about OCR complaints filed against elementary and secondary schools in Pennsylvania from April 1, 2011 to November 30, 2015, this study uses statistical techniques to analyze the relationship between the characteristics of schools where OCR complaints were filed and the basis and outcome of those complaints.

Research on educators’ legal literacy underscores the importance of expedient legal mechanisms for enforcing students’ civil rights. One study which synthesized more than seventy other studies from a thirty year period found that most researchers have concluded that

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6 Id.

7 34 C.F.R. §§ 107 (providing for reception, investigation, and resolution of complaints alleging racial discrimination); 100.8(a) (prohibition on racial discrimination may be enforced through suspension or termination of federal funding); 104.61, 106.71 (incorporating §§ 100.7, 100.8 to prohibitions on disability and sex discrimination) (2015); OCR’s other functions include proactive investigation and monitoring of institutions’ compliance with the laws it enforces; issuing regulatory guidance about those laws; providing technical assistance on civil rights issues in education; and gathering, analyzing, and disseminating data on those issues. OFFICE FOR CIVIL RIGHTS, supra note 4, at 7.

educators lack adequate legal knowledge. A 2007 study surveying teachers’ knowledge of student rights in seventeen states concluded that “a substantial majority of teachers are misinformed about . . . student rights.” A similar national survey from 2009 found that secondary school principals identified legal issues relating to special education, limited English proficiency, discrimination, harassment, and student due process and discipline as areas where teachers need more knowledge. Principals themselves correctly answered only 65% of the survey’s questions on student rights, and 85% of principals responded that they would change their behavior with fuller information. The researchers characterized this latter finding as “stunning” and concluded that principals have inadequate knowledge of teacher and student rights. Because studies specific to Pennsylvania have reached similar conclusions, the inadequacy of educators’ legal literacy is especially relevant for the population studied in this thesis. In light of the widespread shortcomings in educators’ legal literacy, the prevalence of civil rights violations in schools should be unsurprising, but no less troubling.

12 Id. at 36.
13 Id. at 36, 41-42.
15 In the 2015 fiscal year, OCR received 10,392 complaints against schools and colleges across the country. Office for Civil Rights, supra note 4, at 8. Prominent civil rights issues at the K-12 level included the rights of English learners, racial harassment, and inappropriate restraint and seclusion. Id. at 8-9.
The disconcerting regularity of civil rights violations in public schools highlights the need to understand the processes for enforcing student rights. Scholarly literature, however, lacks empirical examination of these processes, particularly the OCR complaint process. Much of the literature around OCR consists of normative arguments over whether OCR exercises too much or too little restraint in its enforcement approach. The literature has also focused on OCR’s role in addressing sex discrimination on college campuses. This study aspires to enrich scholarly discourse on OCR by offering an empirical examination of the OCR complaint process, and expanding the focus of that discourse to include K-12 issues.

Chapter 2 will explain the statutes and regulations governing discrimination in the K-12 context, with an emphasis on the requirements enforced by OCR. Chapter 3 will describe the school and complaint data which were examined in this study. Chapter 4 will walk through the statistical methods used to analyze the data, and the resulting findings. Chapter five discusses possible explanations, limitations, and implications of these findings.

16 In recent years, the most vocal commentators at a given time tend to stand in contraposition to the party controlling the executive branch. Compare Daniel J. Losen, Challenging Racial Disparities: The Promise and Pitfalls of the No Child Left Behind Act’s Race-Conscious Accountability, 47 HOW. L.J. 243, 287-88 (2004) (arguing that, under Bush, “OCR’s unofficial internal policy threatens to gut review of disparate impact altogether”); and Mica Pollock, Keeping on Keeping On: OCR and Complaints of Racial Discrimination 50 Years After Brown, 107 TEACHER’S COLL. REC. 2106, 2112-18 (2005) (arguing that, under Bush, “OCR’s current effectiveness in remediying racial discrimination in education is that its own administration at times quietly or overtly hinders its work to protect students of color from discrimination”); with Richard A. Epstein, Civil Rights Enforcement Gone Haywire, EDUC. NEXT, Fall 2014, at 29 http://educationnext.org/files/ednext_XIV_4_epstein.pdf (arguing that OCR overstepped its authority by issuing “a substantive rule of dubious legal validity” during the Obama administration), and R. Shep Melnick, Civil Wrongs, EDUC. NEXT, Winter 2016, at 30 http://educationnext.org/files/ednext_XVI_1_melnick.pdf (arguing that OCR’s “unilateral announcements of agency policy” under the Obama administration amount to an excess of authority).

Chapter 2

Legal Framework

Elementary and secondary students in Pennsylvania are protected from discrimination under both state and federal law. The Pennsylvania Human Relations Act 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 . . .”18 These protections apply in elementary and secondary schools.19 Federal law protects students from discrimination on the basis of race,20 sex, disability status, age, and affiliation with patriotic societies.21 Because the United States Department of Education’s Office for Civil Rights (“OCR”) only enforces federal law, the balance of this chapter focuses on the federal protections.

Federal Statutes

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.22 The six statutes enforced by OCR are:23

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18 43 P.S. § 953 (2016).
20 Title VI of the Civil Rights Act of 1964 and its implementing regulations prohibit discrimination on the basis of “race, color, or national origin.” 42 U.S.C. § 2000d (2016); 34 C.F.R. pt. 100 (2015). For brevity, this thesis uses “race” and “racial” as shorthand for all forms of discrimination prohibited by Title VI.
21 See infra notes 24 to 29.
23 OFFICE FOR CIVIL RIGHTS, supra note 4, at 6.
• Title VI of the Civil Rights Act of 1964 ("Title VI"),\textsuperscript{24} which prohibits discrimination on the basis of race, color, or national origin in all federally funded programs or activities;

• Title IX of the Education Amendments of 1972 ("Title IX"),\textsuperscript{25} which prohibits discrimination on the basis of sex in federally funded educational programs or activities;

• Section 504 of the Rehabilitation Act ("Section 504"),\textsuperscript{26} which prohibits discrimination on the basis of disability in federally funded programs, services, or activities;

• The Age Discrimination Act of 1975,\textsuperscript{27} which prohibits discrimination on the basis of age in federally funded programs or activities;

• Title II of the Americans with Disabilities Act,\textsuperscript{28} which prohibits discrimination on the basis of disability in state and local government services; and

• The Boy Scouts of America Equal Access Act ("Boy Scouts Act"),\textsuperscript{29} which prohibits state and local educational agencies from denying patriotic youth organizations such as the Boy Scouts from equal access to school facilities.

The lion’s share of OCR’s enforcement effort occurs in the domains of race, sex, and disability discrimination.\textsuperscript{30} For instance, 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 Act.

\textsuperscript{24} 42 U.S.C. § 2000d.
\textsuperscript{25} 20 U.S.C. § 1681.
\textsuperscript{26} 29 U.S.C. § 794.
\textsuperscript{27} 42 U.S.C. § 6102.
\textsuperscript{28} 42 U.S.C. §§ 12131 to 12165. 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.
\textsuperscript{29} 20 U.S.C. § 7905.
\textsuperscript{30} OCR, supra note 4, at 8.
Federal Regulations & Policy

Like many statutes, the antidiscrimination provisions of Title VI, Title IX, and Section 504 are vague. Although the statutes prohibit excluding, denying benefits, or 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 agencies which administer federal funding 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. This section surveys those regulations, as well as subsequent regulatory guidance issued by OCR interpreting the regulations.

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. All three sets of regulations are currently codified in Title 34 of the Code of Federal Regulations, Chapter 1.

Regulatory Requirements

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


39 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 Federally-Assisted Programs of the Department of Health, Education, and Welfare—Effectuation of Title VI of the Civil Rights Act of 1964, 29 Fed. Reg. at 16,298 to 16,303, with Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefitting from Federal Financial Assistance, 40 Fed. Reg. at 24,137 to 24,144, and Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefitting from Federal Financial Assistance, 42 Fed. Reg. at 22,677 to 22,685. See also Pollock, supra note 16, at 2119 (“Civil rights law, federal regulations developed by the department to ‘implement’ civil rights laws, and internal policy guidance became more specific and detailed as they developed, having first offered basic protection to students from discrimination on the basis of race and gradually developing more specific provisions to protect language minorities from academic discrimination, girls from sexual harassment and inequity in athletic resources or academic opportunities, and finally, ‘the disabled’ from inattention to their conditions or academic needs.”).


41 34 C.F.R. §§ 100.3(b), 104.4(b), 106.31(b).
any service or benefit on the basis of protected characteristics,\textsuperscript{42} or impose different restrictions on privileges based on protected characteristics.\textsuperscript{43} All LEAs may take affirmative steps to overcome the effects of conditions which resulted in limited participation by members of a particular protected class.\textsuperscript{44} LEAs which have previously engaged in prohibited discrimination must take such steps.\textsuperscript{45} The regulations also prohibit discrimination on the basis of protected classes in employment decisions, and provide similarly detailed rules governing this prohibition.\textsuperscript{46} Additionally, LEAs must submit assurances that they will comply with all regulatory requirements under Title VI, Title IX, and Section 504,\textsuperscript{47} and keep records of and report their compliance.\textsuperscript{48}

An LEA’s failure to respond appropriately to certain forms of harassment can constitute a violation of these requirements.\textsuperscript{49} OCR will find that prohibited discrimination has occurred when the harassment is based on race, sex, or disability, and is serious enough to create a hostile environment.\textsuperscript{50} Harassment creates a hostile environment when it is “sufficiently severe, pervasive, or persistent so as to interfere with or limit a student’s ability to participate in or benefit from the services, activities, or opportunities offered by a school.”\textsuperscript{51} In the case of sexual harassment, a single instance of sexual violence may be severe enough to create a hostile

\textsuperscript{42} 34 C.F.R. §§ 100.3(b)(1)(i), 104.4(b)(1)(i), 106.31(b)(3).
\textsuperscript{43} 34 C.F.R. §§ 100.3(b)(1)(iv), 104.4(b)(1)(vii), 106.31(b)(7).
\textsuperscript{44} 34 C.F.R. §§ 100.3(b)(6)(ii), 104.6(b), 106.3(b).
\textsuperscript{45} 34 C.F.R. §§100.3(b)(6)(i), 104.6(a), 106.3(a).
\textsuperscript{46} 34 C.F.R. §§ 100.3(c), 104.11-104.14, 106.51-106.61.
\textsuperscript{47} 34 C.F.R. §§ 100.4, 104.5, 106.4.
\textsuperscript{48} 34 C.F.R. § 100.6, 104.61 (incorporating § 100.6), 106.71 (same).
\textsuperscript{49} RUSSLYNN ALI, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: HARASSMENT AND BULLYING I (Oct. 26, 2010), \url{http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf}.
\textsuperscript{50} Id. at 8.
environment. OCR will find that an LEA has failed to respond appropriately 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.”

In addition to these overarching considerations, the regulations specify forms of
discrimination that only apply under particular statutes. This subsection will discuss the
substantive requirements particular to each statute in turn, and then discuss procedural
requirements that apply under Title IX and Section 504. A table summarizing the key
differences is provided in the appendix.

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.

52 RUSSLYNN ALI, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: SEXUAL VIOLENCE 3 (Apr. 4,
53 ALI, supra note 49, at 2-3. See also Sexual Harassment Guidance, 62 Fed. Reg. at 12,042-44; Racial
Incidents and Harassment Against Students at Educational Institutions; 59 Fed. Reg. at 11,450; CANTU &
HEUMANN, supra note 49, at 4-5.
54 34 C.F.R. § 100.3(b)(1)(ii)-(iii), -(v) (2015).
55 CATHERINE E. LHAMON, PHILIP H. ROSENFELT, & JOCELYN SAMUELS, U.S. DEP’T OF EDUC. & JUSTICE,
DEAR COLLEAGUE LETTER: SCHOOL ENROLLMENT PROCEDURES (May 8, 2014),
(state statute denying public education to undocumented students violated Equal Protection Clause).
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.\(^56\) 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.\(^57\) When deciding the location for facilities, LEAs may not make selections with the purpose or effect of discriminating on the basis of race.\(^58\)

In the school discipline context, OCR has issued guidance explaining two forms of prohibited racial discrimination.\(^59\) The first form, termed “different treatment” discrimination, occurs when an LEA disciplines students differently based on their race.\(^60\) It includes:

- disciplinary policies with explicitly discriminatory language;
- imposing different punishments according to race under a facially neutral disciplinary policy;
- selectively enforcing a facially neutral disciplinary policy against students of a particular race;
- implementing a facially neutral discipline policy designed to target a particular race; and
- acting upon racial animus.\(^61\)

\(^{56}\) 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.


\(^{58}\) 34 C.F.R. § 100.3(b)(3).


\(^{60}\) Id. at 7-10.

\(^{61}\) Id. at 7-8.
The second form, “disparate impact” discrimination, occurs when the evenhanded implementation of a facially neutral policy or practice has an unjustified, adverse impact on a particular race.\textsuperscript{62} 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.\textsuperscript{63}

\textbf{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.\textsuperscript{64} Academic or occupational counseling materials may only differentiate by sex if doing so is essential to eliminate sex bias.\textsuperscript{65}

Although the regulations generally prohibit sex segregation, they provide exceptions for contact sports, sex education, choruses, and voluntary classes and activities designed to meet important educational objectives.\textsuperscript{66} Restrooms and locker rooms may also be sex-segregated provided that they are comparable.\textsuperscript{67} 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.\textsuperscript{68} Generally, LEAs must treat pregnancy like any

\begin{footnotes}
\footnote{62 Id. at 11-13.}
\footnote{63 Id. at 11-12.}
\footnote{64 34 C.F.R. § 106.31(b)(1), -(2), -(4), -(6) (2015).}
\footnote{65 34 C.F.R. § 106.36.}
\footnote{66 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.}
\footnote{67 34 C.F.R. § 106.33.}
\footnote{68 34 C.F.R. § 106.34(c).}
\end{footnotes}
other temporary disability, but may offer a separate program for pregnant students provided that
the program is voluntary.69 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.70

OCR has 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.71
Accordingly, if an LEA treats a transgender student differently than other students who share
that student’s gender identity, then OCR will determine that the LEA has unlawfully
discriminated on the basis of sex.72 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.73 More than a dozen states have joined a pending
lawsuit challenging the Letter.74 The dispute centers around whether the Letter created new
regulatory obligations without undergoing the notice-and-comment requirements of the
Administrative Procedure Act,75 and whether the Title IX regulation which permits sex-
segregated restrooms, locker rooms, and showers is ambiguous as to transgender students.76 In a
separate case, the U.S. Supreme Court recently decided to hear arguments on whether OCR’s

69 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.
70 34 C.F.R. § 106.41(c).
71 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-
ix-transgender.pdf.
72 Id. at 2.
73 Id. at 3-5.
position regarding use of sex-segregated facilities by transgender students is legally enforceable.\textsuperscript{77}

\textbf{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{78} 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.\textsuperscript{79} The disability requirements apply to academic as well as nonacademic or extracurricular services and activities such as counseling, athletics, clubs, and student employment.\textsuperscript{80} The effectiveness of a benefit or service is measured by the extent to which it provides equal opportunity, not identical results.\textsuperscript{81}

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

\textsuperscript{77} Order Granting Writ of Certiorari, Gloucester Cnty. Sch. Bd. v. G.G., No. 16-273, 2016 U.S. LEXIS 6408 (U.S. Oct. 28, 2016) (granting writ as to “Questions 2 and 3 presented by the petition”); see also Petition for Writ of Certiorari at i, Gloucester Cnty. Sch. Bd., No. 16-273 (U.S. Aug. 29, 2016) (Question 3: “With or without deference to the agency, should the Department’s specific interpretation of Title IX and 34 C.F.R. § 106.33 be given effect?”)

\textsuperscript{78} 34 C.F.R. § 104.4(b)(1)(iii)-(v).

\textsuperscript{79} STEPHANIE J. MUNROE, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: ACCESS BY STUDENTS WITH DISABILITIES TO CHALLENGING ACADEMIC PROGRAMS (Dec. 26, 2007), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-20071226.pdf.

\textsuperscript{80} 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), http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201301-504.pdf.

\textsuperscript{81} 34 C.F.R. § 104.4(b)(2).
When deciding the location for facilities, LEAs may not make selections that would have an adverse, disparate impact on people with disabilities. Failure to provide facilities which are accessible and usable by people with disabilities may constitute prohibited discrimination.

The regulations require LEAs to take a variety of affirmative steps to support students with disabilities. LEAs must provide a free, appropriate, public education to every student with a disability in the LEA’s jurisdiction. Accordingly, every year an LEA must 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. A student’s placement must be among students without disabilities to the maximum extent appropriate.

LEAs must establish and follow procedural safeguards to ensure that students with disabilities are properly identified, evaluated, and placed. These safeguards must include notice, an opportunity for the student’s parents or guardian to examine relevant records, an impartial hearing in which a parent or guardian may participate and be represented by counsel, and a review procedure. Compliance with the procedural safeguards of the Individuals with

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82 34 C.F.R. § 104.4(b)(4).
83 34 C.F.R. § 104.4(b)(5).
84 34 C.F.R. §§ 104.21-104.23.
85 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. CATHERINE 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).
86 34 C.F.R. § 104.32.
87 34 C.F.R. § 104.35.
88 34 C.F.R. § 104.34.
89 34 C.F.R. § 104.36.
90 Id.
Disabilities Education Act\textsuperscript{91} ("IDEA") satisfies this requirement.\textsuperscript{92} 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.\textsuperscript{93}

\textit{Additional Procedural Requirements}

LEAs must take affirmative, continuing steps to notify beneficiaries that they do not discriminate on the basis of sex or disability.\textsuperscript{94} An LEA must designate at least one employee to coordinate its compliance with Title IX,\textsuperscript{95} and adopt and publish “procedures providing for the prompt and equitable resolution” of grievances alleging violation of Title IX.\textsuperscript{96} Additionally, LEAs must provide students and employees with contact information for the Title IX coordinator, who oversees grievance investigations.\textsuperscript{97} Similarly, an LEA with fifteen or more employees must designate at least one employee to coordinate its compliance with Section 504, and adopt “procedures that provide for the prompt and equitable resolution” of grievances alleging violations of Section 504.\textsuperscript{98} The grievance procedures for disability discrimination must incorporate “appropriate due process standards.”\textsuperscript{99} No similar requirements exist under Title VI.

\textsuperscript{91} 20 U.S.C. ch. 33 (2016).
\textsuperscript{92} 34 C.F.R. § 104.36.
\textsuperscript{94} 34 C.F.R. §§ 104.8 (disability), 106.9 (sex).
\textsuperscript{95} 34 C.F.R. § 106.8(a); \textit{see generally} CATHERINE E. LHAMON, OFFICE FOR CIVIL RIGHTS, DEAR COLLEAGUE LETTER: TITLE IX COORDINATORS (Apr. 24, 2015), \url{http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf}.
\textsuperscript{96} 34 C.F.R. § 106.8(b). The Supreme Court has noted that while the grievance procedure requirement cannot support a private right of action, it is enforceable through administrative action. \textit{Gebser v. Lago Vista Indep. Sch. Dist.}, 524 U.S. 274, 291-92 (1998).
\textsuperscript{97} 34 C.F.R. § 106.8(a).
\textsuperscript{98} 34 C.F.R. § 104.7.
\textsuperscript{99} 34 C.F.R. § 104.7(b).
In its enforcement actions, OCR has consistently evaluated the promptness and equity of LEAs’ Title IX and Section 504 grievance procedures based on whether the LEA:

- provides adequate notice of how to file grievances;
- applies its procedures to discrimination by employees, students, and third parties;
- investigates grievances reliably and impartially;
- follows reasonably prompt timeframes;
- notifies parties of the outcome; and
- assures beneficiaries that it will take steps to prevent the recurrence and correct the effects of discrimination.

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.

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100 See, e.g., OFFICE FOR CIVIL RIGHTS, RESOLUTION AGREEMENT: LOGAN CITY SCHOOL DISTRICT (UTAH), OCR CASE NO. 08-13-1243 at 1-2 (May 8, 2014), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/08131243-b.pdf (requiring LEA to revise its Title IX grievance procedures to satisfy the six “prompt & equitable” elements); OFFICE FOR CIVIL RIGHTS, RESOLUTION AGREEMENT: METROPOLITAN NASHVILLE PUBLIC SCHOOLS, OCR CASE NO. 04-13-1333 at 1-2 (n.d.), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/04131333-b.pdf (requiring LEA to adopt Section 504 grievance procedures to satisfy the six “prompt & equitable” elements); OFFICE FOR CIVIL RIGHTS, RESOLUTION AGREEMENT: VIRGINIA BEACH CITY PUBLIC SCHOOLS, OCR CASE NO. 11-13-1249 at 2 (May 23, 2014), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11131249-b.pdf (requiring LEA to review and revise its Section 504 grievance procedures to satisfy, inter alia, the six “prompt & equitable” elements); Letter from Timothy C.J. Blanchard, Office for Civil Rights, to Dr. Craig Carr, Superintendent, Cent. Islip Pub. Schs., at 4-5 (Jan. 11, 2016), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02131179-a.pdf (articulating six “prompt & equitable” elements in evaluating LEAs’ Title IX grievance procedures); Letter from Timothy C.J. Blanchard, Office for Civil Rights, to Stephen M. Tomlinson, Superintendent, Broadalbin-Perth Cent. Sch. Dist. at 3-4 (Dec. 22, 2015), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/02131220-a.pdf (finding that LEA’s Title IX grievance procedure did not meet the six “prompt & equitable” elements); Letter from Donald S. Yarab, Supervisory Attorney, Office for Civil Rights, to John Felske, Superintendent, Muskegon Pub. Schs., at 2 (Sept. 22, 2015), http://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/15151215-a.pdf (finding that LEA’s Section 504 grievance procedures did not satisfy all six “prompt & equitable” elements”). See also CATHERINE E. LHAMON, OFFICE FOR CIVIL RIGHTS, QUESTIONS AND ANSWERS ON TITLE IX AND SEXUAL VIOLENCE 12-13 (Apr. 29, 2014), http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf.

101 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; see generally SETH M. GALANTER,
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.\textsuperscript{102} OCR also conducts periodic compliance reviews.\textsuperscript{103}

The regulations require OCR to seek the cooperation of LEAs “to the fullest extent practicable” in obtaining compliance.\textsuperscript{104} Accordingly, OCR must seek to resolve compliance issues “by informal means whenever possible.”\textsuperscript{105} 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.\textsuperscript{106} Funding may only be terminated after a formal administrative hearing,\textsuperscript{107} which is subject to judicial review.\textsuperscript{108}

OCR’s Case Processing Manual (“Manual”) organizes the complaint process into five principal phases: Evaluation, early or rapid resolution, investigation and resolution, monitoring, and enforcement action.\textsuperscript{109} Each phase is discussed in turn below.

\textsuperscript{102} 34 C.F.R. §§ 100.7(c), 104.61, 106.71.
\textsuperscript{103} 34 C.F.R. §§ 100.7(a), 104.61, 106.71.
\textsuperscript{105} 34 C.F.R. §§ 100.7(d), 104.61, 106.71.
\textsuperscript{106} 34 C.F.R. §§ 100.8(a), 104.61, 106.71.
\textsuperscript{107} 34 C.F.R. §§ 100.8(c), 104.61, 106.71.
\textsuperscript{108} 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).
\textsuperscript{109} OFFICE FOR CIVIL RIGHTS, CASE PROCESSING MANUAL (Feb. 2015), \url{http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf} [hereinafter “OCR, CPM”]. The manual also provides instructions for compliance reviews and directed investigation. \textit{Id.} art. V.
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. 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. Once a case file is created, OCR will decide whether to dismiss the complaint under § 108 of the Manual. To do so, OCR determines whether it has personal and subject matter jurisdiction over the complaint, and whether the complaint is timely. During this process, OCR will assist the complainant in understanding the information OCR requires to proceed with investigation.

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. OCR will notify a complainant of its decision to dismiss or proceed. Complaints which OCR does not dismiss under § 108 during the evaluation phase but later closes without resolving are considered “administratively closed” under § 110.

110 Id. art. I.
111 Id. § 101. If an allegation meets these criteria, OCR will create a case file for the complaint and contact the complainant to acknowledge receipt and, if necessary, obtain the complainant’s consent to proceed. Id. §§ 102-103. Consent is necessary when OCR must disclose the complainant’s identity in order to resolve the complaint. Id. § 102.
112 Id. §§ 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 text accompanying notes 22 through 30 for a discussion of OCR’s subject matter jurisdiction.
113 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, such as when the complainant could not reasonably be expected to know that an act was discriminatory, when the complainant was incapacitated, or when the complaint was being processed by another agency or an internal grievance procedure. OCR, CPM, supra note 109, § 107.
114 OCR, CPM, supra note 109, § 108.
115 Id.
116 Id. § 109. If appropriate, OCR will refer the complaint to another agency. Id. § 105.
117 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.
**Early and 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” under Article II of the Manual. In Early Complaint Resolution, OCR acts as an impartial, confidential facilitator to help the LEA and complainant negotiate a resolution. If the parties agree to use the Early Complaint Resolution process, OCR may suspend its investigation for up to thirty days while the parties negotiate.

In Rapid Resolution, OCR will follow expedited procedures to resolve the complaint. OCR uses this process 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 if OCR has enough information to make a compliance determination without further investigation. OCR monitors agreement reached through Rapid Resolution where appropriate.

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- 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.

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118 *Id.* art. II.
119 *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. Generally, OCR will not assign the same staff to investigate and serve as a facilitator for the same compliant. *Id.* § 202.

120 *Id.* § 202.
121 *Id.* § 207.
122 *Id.*
123 *Id.*
Investigation and Resolution

If a complaint proceeds to investigation, OCR will gather information about the alleged violation through interviews, onsite visits, examination of records, or surveys.\(^{124}\) 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.”\(^{125}\) OCR uses a preponderance of the evidence standard in making this determination.\(^{126}\) 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.\(^{127}\) Alternatively, OCR may forego making an investigative determination if the LEA enters a monitored agreement to resolve the complaint before OCR completes its investigation.\(^{128}\)

Monitoring

OCR will monitor an LEA’s implementation of a resolution agreement until the LEA attains compliance.\(^{129}\) OCR may conduct site visits during monitoring, which may include individual interviews, focus groups, or soliciting information about the LEA’s compliance from the public.\(^ {130}\) Resolution agreements may be modified or terminated during monitoring in

\(^{124}\) Id. §§ 301(a), 702.
\(^{125}\) Id. § 303. In either case, OCR will send a letter to both parties explaining its findings. Id. §§ 301(c), 303. Complainants may file an internal appeal of OCR determinations. Id. § 306.
\(^{126}\) Id.
\(^{127}\) 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).
\(^{128}\) Id. § 302(a). OCR may opt to suspend its investigation for up to thirty days to negotiate such an agreement. Id. § 302(b).
\(^{129}\) Id. §§ 303(b), 504.
\(^{130}\) Id. art. V.
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{131}

\textit{Enforcement Action}

If an LEA breaches a resolution agreement, OCR will initiate an enforcement action.\textsuperscript{132} An enforcement action may take the form of an administrative proceeding to suspend, terminate, or withhold the LEA’s federal funds,\textsuperscript{133} or a judicial proceeding filed by the Department of Justice.\textsuperscript{134} OCR will also bring an enforcement action if the LEA fails to enter a resolution agreement within prescribed timeframes.\textsuperscript{135}

\textsuperscript{131} Id. § 503.
\textsuperscript{132} Id. §§ 502, 604.
\textsuperscript{133} See 34 C.F.R. § 101 (2015) (procedures for administrative proceedings).
\textsuperscript{134} Id. art. VI.
\textsuperscript{135} Id. §§ 303(b), 305.
Chapter 3

Data

Sources and Overview

Data were obtained from two separate components of the U.S. Department of Education. Data on local educational agencies ("LEAs") were obtained from the Common Core of Data of the National Center for Education Statistics ("NCES"). The Elementary/Secondary Information System ("ElSi"),\textsuperscript{136} a web tool hosted by NCES, served as the access point. Data on individual complaints were obtained from OCR’s Philadelphia Field Office through a request under the Freedom of Information Act ("FOIA").\textsuperscript{137}

Data on Local Educational Agencies

This study focused on LEAs in Pennsylvania, and used data from the 2013-2014 school year (which roughly corresponds to the midpoint of the period under study), except where noted. The following measures were obtained using ElSI’s “table generator” tool:\textsuperscript{138}

- “Agency Type:” NCES classifies LEAs into eight categories: (1) regular local school districts, (2) school districts that are part of a supervisory union, (3) administrative centers, (4) regional education services agencies, (5) state operated institutions, (6) federally operated institutions, (7) charter schools, and (8) other.\textsuperscript{139}

\begin{footnotesize}


\textsuperscript{138} ElSi Table Generator, NAT’L CTR. FOR EDUC. STAT., \url{https://nces.ed.gov/ccd/elsi/tableGenerator.aspx} (last visited May 6, 2016).

\end{footnotesize}
• “Urban-centric Locale:” NCES classifies LEAs into four broad locale categories (city, suburb, town, and rural) based on U.S. Census data. The broad categories are further subdivided into a total of twelve subcategories based on the size of the population center (“small,” “midsize,” or “large” for cities and suburbs), or proximity to a population center (“fringe,” “distant,” and “remote” for towns and rural areas).

• “Total Students (UG, PK-12):” 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.

• “Total Staff:” The sum of each LEA’s full-time equivalent teacher and staff positions.

• “Total Revenue per Pupil” (2011-2012): An LEA’s total general revenue divided by its fall membership as reported in the LEA’s finance file. Data from the 2011-2012 school year was used because data for later school years were not available.

Student demographics

  o “White Students:” The total number of White students as reported by the LEA. NCES defines “White” as “having origins in any of the original peoples of Europe, North Africa, or the Middle East.”

  o “Black Students:” The total number of Black students as reported by the LEA. NCES defines “Black” as “having origins in any of the Black racial groups of Africa.”

  o “English Language Learners” (“ELLs”): The total number of students attending the LEA who were served by appropriate programs for language assistance.

  o “Individualized Education Program Students” (“IEP students”): The total number of students with a written individualized education program under the Individuals with Disabilities Education Act.

  o “Total Free and Reduced Lunch Students” (“FRL students”): The total number of students eligible to participate in the Free Lunch or Reduced Price Lunch Programs under the National School Lunch Act, based on family size and income criteria. Students are eligible for reduced lunch if their household income is less than 185% of the poverty level.

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140 Id. at C-8 to C-9.
141 Id. at C-16.
142 Id. at C-3.
143 Id. at C-6.
144 Id. at C-8; see also 20 U.S.C. § 1414(d) (2016).
146 CHEN ET AL., supra note 139, at C-6, C-11; see also 42 U.S.C. § 1758(b)(1).
Data for 805 Pennsylvania LEAs were obtained. Twenty-nine were excluded from the study because the LEAs were intermediate units,¹⁴⁷ 81 more were excluded because no students were enrolled, and 1 school district, Bryn Athyn, was excluded because it contracts out all its educational services to other school districts.¹⁴⁸ Additionally, 40 of the 176 charter schools were excluded because they were not active during the entire period of study.¹⁴⁹ Ultimately, 654 local educational agencies were included.

As shown in Table 3-1, 76% of the LEAs under study were school districts, 21% were charter schools, and 3% were operated by state or regional educational agencies. The distribution of LEAs by type does not, however, reflect the distribution of students by the type of LEA they attended. 93% of the Pennsylvania public school students under study attended school districts, while 6% attended charter schools, and 1% attended schools operated by a state or regional agency. The fact that school districts enrolled 93% of students while only comprising 76% of LEAs reflects the fact that school districts tend to enroll many more students than other types of LEAs.

¹⁴⁷ Intermediate units are regional educational agencies which 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). Six of the 536 OCR complaints in this study were filed against IUs. Because each IU operates a variety of specialized programs (such as adult GED courses, art programs, physical education and extended school year services for special education students, and classes for students who are blind or visually impaired), ElSi’s aggregated data for each IU is unlikely to reflect the experiences of students enrolled in particular programs. 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). Therefore, the IUs were excluded from this analysis.

¹⁴⁸ BRYN ATHYN SCHOOL DISTRICT, HTTP://WWW.BRYNATHYNSCHOOLDISTRICT.ORG/ (last visited May 6, 2016).

¹⁴⁹ 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#.VydWPkrJph (last visited May 2, 2016). If included, the inactive charter schools would have comprised 5% of LEAs and 1% of students under study.
Table 3-1: Student and LEA Distributions by LEA type\(^{150}\)

<table>
<thead>
<tr>
<th>LEA Type</th>
<th>Student Distribution</th>
<th>LEA Distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(N)</td>
<td>%</td>
</tr>
<tr>
<td>School Districts</td>
<td>1,596,656</td>
<td>93.01%</td>
</tr>
<tr>
<td>Charter Schools</td>
<td>128,701</td>
<td>6.47%</td>
</tr>
<tr>
<td>Regional Education Services Agencies</td>
<td>8,708</td>
<td>0.51%</td>
</tr>
<tr>
<td>State Operated Institutions</td>
<td>269</td>
<td>0.02%</td>
</tr>
<tr>
<td>Total</td>
<td>1,716,691</td>
<td></td>
</tr>
</tbody>
</table>

Table 3-2 shows that a dominant plurality of LEAs (42\%) are located in suburbs, with 17\% in urban areas, 13\% in small towns, and 28\% in rural areas. Similar to LEA type, the geographic distribution of LEAs does not reflect the distribution of students who attended those LEAs. A majority (53\%) of the students under study attended suburban schools, while 21\% attended urban schools, 9\% attended small-town schools, and 17\% attended rural schools. The fact that urban and suburban LEAs enroll 74\% of students while only comprising 69\% of LEAs reflects the fact that they tend to be larger than LEAs in small towns and rural areas.

\(^{150}\) ElSi Table Generator, supra note 138.
Table 3-2: Student and LEA Distributions by Urban-Centric Locale\textsuperscript{151}

<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:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Large</td>
<td>212,101</td>
<td>12.36%</td>
</tr>
<tr>
<td>Midsize</td>
<td>30,412</td>
<td>1.77%</td>
</tr>
<tr>
<td>Small</td>
<td>117,796</td>
<td>6.86%</td>
</tr>
<tr>
<td>Suburb:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Large</td>
<td>780,964</td>
<td>45.49%</td>
</tr>
<tr>
<td>Midsize</td>
<td>68,460</td>
<td>3.99%</td>
</tr>
<tr>
<td>Small</td>
<td>60,870</td>
<td>3.55%</td>
</tr>
<tr>
<td>Town:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fringe</td>
<td>70,502</td>
<td>4.11%</td>
</tr>
<tr>
<td>Distant</td>
<td>73,968</td>
<td>4.31%</td>
</tr>
<tr>
<td>Remote</td>
<td>18,074</td>
<td>1.05%</td>
</tr>
<tr>
<td>Rural:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fringe</td>
<td>196,585</td>
<td>11.45%</td>
</tr>
<tr>
<td>Distant</td>
<td>78,991</td>
<td>4.60%</td>
</tr>
<tr>
<td>Remote</td>
<td>7,968</td>
<td>0.46%</td>
</tr>
<tr>
<td>Total</td>
<td>1,716,691</td>
<td>65%</td>
</tr>
</tbody>
</table>

Table 3-3 shows distributional data about the demographic and other characteristics of the LEAs under study. All these characteristics were right-skewed except for the percentage of White students (which was left-skewed), and the percentage of students eligible for free or reduced lunch (which was approximately normal).

Table 3-3: Distributional LEA Data: Demographics and Other Characteristics\textsuperscript{152}

<table>
<thead>
<tr>
<th></th>
<th>Minimum</th>
<th>25\textsuperscript{th} percentile</th>
<th>Median</th>
<th>75\textsuperscript{th} percentile</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enrollment</td>
<td>20</td>
<td>798</td>
<td>1,579</td>
<td>3,124</td>
<td>133,703</td>
</tr>
<tr>
<td>% White</td>
<td>0.0%</td>
<td>64.6%</td>
<td>87.7%</td>
<td>95.2%</td>
<td>100.0%</td>
</tr>
<tr>
<td>% ELL</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.4%</td>
<td>1.4%</td>
<td>35.2%</td>
</tr>
<tr>
<td>% IEP</td>
<td>0.0%</td>
<td>13.7%</td>
<td>16.7%</td>
<td>19.4%</td>
<td>100.0%</td>
</tr>
<tr>
<td>% FRL</td>
<td>0.0%</td>
<td>28.5%</td>
<td>42.0%</td>
<td>57.6%</td>
<td>99.5%</td>
</tr>
<tr>
<td>Pupil/Staff Ratio</td>
<td>2.4</td>
<td>7.0</td>
<td>7.8</td>
<td>8.7</td>
<td>30.3</td>
</tr>
<tr>
<td>Revenue/Pupil</td>
<td>$8,938</td>
<td>$12,825</td>
<td>$14,131</td>
<td>$15,815</td>
<td>$39,194</td>
</tr>
<tr>
<td>Complaints\textsuperscript{153}</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>42</td>
</tr>
</tbody>
</table>

\textsuperscript{151} Id.
\textsuperscript{152} Elsi Table Generator, supra note 138 (except where noted).
\textsuperscript{153} OCR data from FOIA request.
Complaint Data

Pursuant to a FOIA request, OCR’s Philadelphia Office provided data 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. OCR provided the following data about those complaints:

- The OCR docket number for each complaint.
- The dates the complaint was opened, resolved, and closed (where applicable).
- The basis for each allegation. These included:
  - The “specific basis” for each allegation. This variable identified the statute implicated by the allegation (Title VI, Title IX, Section 504 / ADA, and the Age Discrimination Act). It also identified the specific class of the person who was allegedly disadvantaged by discrimination. For instance, allegations based on Title VI identified the race of the person, allegations based on Title IX identified whether the person was male or female, and allegations based on Section 504 identified a category of disability such as diabetes or ADHD.
  - An “issue code” which identified the section of the Code of Federal Regulations implicated by the allegation.
- An “issue description” which briefly identified the nature of the alleged discrimination.
- A “resolution code” which identified the section of OCR’s Complaint Processing Manual under which the allegation was resolved. For instance, allegations which lacked sufficient details to infer discrimination were coded as dismissed under § 108 of the Manual, while complaints which were resolved after OCR determined that the agency was out of compliance were coded as resolved under § 303b of the Manual.
- A “resolution type” which assigned each complaint (rather than individual allegations) to five broad categories based on how the complaint was resolved:
  - 1 – Dismissal: All of the allegations in the complaint were dismissed under § 108 of the Manual.

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155 See generally OCR, CPM, supra note 109.
2 – Administrative Closure: Complaint was closed under § 110 of the Manual.\textsuperscript{156}

3 – Early Complaint Resolution: Complaint was resolved through Early Complaint Resolution under Art. II of the Manual.

4 – Insufficient Evidence Determination: OCR determined, in accordance with § 303(a) of the Manual, that the preponderance of the evidence did not support a conclusion that the school violated the relevant regulations.

5 – Monitored Agreement: The LEA agreed to change its policy or practices after OCR began a complaint investigation, and OCR subsequently monitored implementation of the agreement. Monitored agreements may be reached during OCR investigation under § 302 of the Manual, or after OCR makes a noncompliance determination under § 303(b) of the Manual.

\textbf{Selected Measures}

A variety of measures were derived from the NCES and OCR data. These measures consist of two related types: target variables and predictor variables. For purposes of this study, “target variables” are measures which may vary according to differences in predictor variables.\textsuperscript{157} As a corollary, “predictor variables” (or “predictors”) are measures which may explain differences in target variables.\textsuperscript{158} This study seeks to explore the extent to which the predictor variables can be used to meaningfully gauge, or “predict,” the values of the target variables. Because the data in this study are organized cross-sectionally rather than longitudinally, predictor variables do not necessarily precede target variables in terms of chronology.

\textsuperscript{156} See supra note 117 and accompanying text.

\textsuperscript{157} In other contexts, target variables may be referred to as “dependent variables” or “outcome variables.” See Andy Field, Discovering Statistics Using SPSS 7 (3d ed. 2009). “Target variables” is used here for two reasons: First, because the methods of this study only permit highly tentative causal inferences, the terms “dependent” and “outcome” imply more causal certainty than is warranted. See infra note 256 and accompanying text. Second, the SPSS statistical software package, which was used to perform the analyses in this study, uses the term “target” to refer to such variables.

\textsuperscript{158} See Field, supra note 157, at 7. In the experimental context, “predictor variables” are referred to as “independent variables.” Id.
Target Variables

The analyses in this study focused on two groups of target variables: Whether an OCR complaint was filed against an LEA, and how each complaint was resolved.

Whether OCR Complaint Was Filed

This group contained four binary variables: Whether an OCR complaint alleging racial discrimination was filed against the LEA during the period under study, whether a complaint alleging sex discrimination was filed, whether a complaint alleging disability discrimination was filed, and whether any complaint was filed.

Modified Resolution Type

Complaints were assigned to one of four exclusive categories based on their resolution type as identified by OCR.

Dismissal: All complaints which OCR assigned to Resolution Type 1 (dismissed under § 108 of the Manual) were assigned to this category. It contained a majority (340 or 63%) of the complaints under study.

Insufficient Evidence Determination: All complaints which OCR assigned to Resolution Type 4 were assigned to this category. Resolution Type 4 denotes that OCR determined that the preponderance of the evidence did not support a conclusion that the school had violated relevant

159 OCR, CPM, supra note 109, § 108; see supra notes 112 to 115 and accompanying text.
regulations under § 303(a) of the Manual.\textsuperscript{160} It contained 59, or 11\%, of the complaints under study.

\textit{Monitored Agreement:} All complaints which OCR assigned to Resolution Type 5 (voluntary agreement reached during or after investigation) were assigned to this category. It denotes that the school entered a written agreement to change its policy or practices in response to an OCR investigation,\textsuperscript{161} and serves as the best available indicator that an LEA violated its civil rights obligations.\textsuperscript{162} It included a total of 69 complaints (13\%). In 8 of the complaints, the LEA entered a voluntary monitored agreement after OCR determined that the LEA had failed to comply with civil rights law.\textsuperscript{163} In the other 61, the LEA entered a monitored agreement before OCR concluded its investigation.\textsuperscript{164}

\textit{Other:} All complaints which OCR assigned to Resolution Types 2 (administrative closure)\textsuperscript{165} and 3 (Early Complaint Resolution)\textsuperscript{166} were assigned to this category. These Resolution Types were combined for this study because they similarly fail to strongly indicate that a complaint lacked a legal or factual foundation (as dismissals and insufficient evidence determinations do), or that an LEA altered its policy or practices as a result of a complaint (as monitored agreements do).\textsuperscript{167} Sixty-eight complaints (13\%) were included in this category.

\textsuperscript{160} OCR, CPM, \textit{supra} note 109, § 303; \textit{see supra} notes 124 to 126 and accompanying text.
\textsuperscript{161} \textit{See supra} notes 127 to 128 and accompanying text.
\textsuperscript{162} 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 104 to 105 and accompanying text. OCR monitors these agreements until it is satisfied with their implementation. OCR, CPM, \textit{supra} note 109, art. V.
\textsuperscript{163} OCR, CPM, \textit{supra} note 109, §§ 303(b), 304; \textit{see supra} note 127 and accompanying text.
\textsuperscript{164} OCR, CPM, \textit{supra} note 109, § 302(a); \textit{see supra} note 128 and accompanying text.
\textsuperscript{165} OCR, CPM, \textit{supra} note 109, § 110 n.6; \textit{see supra} note 117 and accompanying text.
\textsuperscript{166} OCR, CPM, \textit{supra} note 109, §§ 201, 204; \textit{see supra} notes 118 to 120 and accompanying text.
\textsuperscript{167} Because complaints may be administratively closed for reasons that suggest \textit{a 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), they do not meaningfully indicate any phenomena of interest to this study. \textit{See OCR}, CPM, \textit{supra} note 109, § 110. Similarly, because OCR serves as a neutral
Predictor Variables

This study used an array of school characteristics as predictor variables.

LEA Type

Because OCR complaints were only filed against regular school districts, local educational service agencies, state operated institutions, and charter schools, all other LEAs were eliminated from the study.

Modified Locale

The twelve urban-centric locale categories provided by NCES were organized into eight categories 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. Table 3-4 shows how the original NCES categories were modified for this study.
Table 3-4. Modified Locale Categories and LEA distribution.

<table>
<thead>
<tr>
<th>NCES Locale</th>
<th>N</th>
<th>%</th>
<th>Modified Locale</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>City: Large</td>
<td>81</td>
<td>12.4%</td>
<td>City: Large</td>
<td>81</td>
<td>12.4%</td>
</tr>
<tr>
<td>City: Mid-size</td>
<td>6</td>
<td>0.9%</td>
<td>City: Nonlarge</td>
<td>32</td>
<td>4.9%</td>
</tr>
<tr>
<td>City: Small</td>
<td>26</td>
<td>4.0%</td>
<td>Suburb: Large</td>
<td>230</td>
<td>35.2%</td>
</tr>
<tr>
<td>Suburb: Large</td>
<td>230</td>
<td>35.2%</td>
<td>Suburb: Nonlarge</td>
<td>46</td>
<td>7.0%</td>
</tr>
<tr>
<td>Suburb: Mid-size</td>
<td>19</td>
<td>2.9%</td>
<td>Suburb: Nonlarge</td>
<td>46</td>
<td>7.0%</td>
</tr>
<tr>
<td>Suburb: Small</td>
<td>27</td>
<td>4.1%</td>
<td>Town: Fringe</td>
<td>34</td>
<td>5.2%</td>
</tr>
<tr>
<td>Town: Fringe</td>
<td>34</td>
<td>5.2%</td>
<td>Town: Fringe</td>
<td>34</td>
<td>5.2%</td>
</tr>
<tr>
<td>Town: Distant</td>
<td>38</td>
<td>5.8%</td>
<td>Town: Fringe</td>
<td>34</td>
<td>5.2%</td>
</tr>
<tr>
<td>Town: Distant</td>
<td>38</td>
<td>5.8%</td>
<td>Town: Distant</td>
<td>38</td>
<td>5.8%</td>
</tr>
<tr>
<td>Town: Distant</td>
<td>38</td>
<td>5.8%</td>
<td>Town: Far</td>
<td>49</td>
<td>7.5%</td>
</tr>
<tr>
<td>Rural: Fringe</td>
<td>98</td>
<td>15.0%</td>
<td>Rural: Fringe</td>
<td>98</td>
<td>15.0%</td>
</tr>
<tr>
<td>Rural: Distant</td>
<td>74</td>
<td>11.3%</td>
<td>Rural: Distant</td>
<td>74</td>
<td>11.3%</td>
</tr>
<tr>
<td>Rural: Distant</td>
<td>74</td>
<td>11.3%</td>
<td>Rural: Far</td>
<td>84</td>
<td>12.8%</td>
</tr>
<tr>
<td>Rural: Distant</td>
<td>74</td>
<td>11.3%</td>
<td>Rural: Distant</td>
<td>74</td>
<td>11.3%</td>
</tr>
<tr>
<td>Rural: Distant</td>
<td>74</td>
<td>11.3%</td>
<td>Rural: Distant</td>
<td>74</td>
<td>11.3%</td>
</tr>
<tr>
<td>Rural: Remote</td>
<td>10</td>
<td>1.5%</td>
<td>Rural: Remote</td>
<td>10</td>
<td>1.5%</td>
</tr>
<tr>
<td>Rural: Remote</td>
<td>10</td>
<td>1.5%</td>
<td>Rural: Remote</td>
<td>10</td>
<td>1.5%</td>
</tr>
<tr>
<td>Total</td>
<td>654</td>
<td>100%</td>
<td>Total</td>
<td>654</td>
<td>100%</td>
</tr>
</tbody>
</table>

Under the modified locale scheme, 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. City and Suburb categories were further subdivided by size, with “Large” denoting that the city or urbanized area had a population of 250,000 or more, and “Nonlarge” denoting a population of less than 250,000. Town and rural categories were subdivided by proximity to population centers. LEAs in the “Town: Fringe” category were located 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

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168 ELSi Table Generator, supra note 138.
169 CHEN ET AL., supra note 139, at C-10
170 See id.
171 See id.
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.

**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.

**Pupil-staff ratio**

This was calculated by dividing Total Enrollment by Total Staff.

**Revenue per pupil**

Total general revenue divided by fall membership as reported in the LEA’s finance file.

**Student demographics**

Percentages were calculated by dividing enrollments for the following groups by total enrollment:

- **White students**: This measure was used as a reverse-indicator of the percentage of students of color attending an LEA.
- **Black students**: This measure was used as a predictor variable when targeting complaints alleging racial discrimination against a Black complainant.
- **ELLs**
• **IEP students**

• **FRL students**: This measure was used as a rough indicator of the percentage of low income students attending an LEA.\(^{172}\)

**Other OCR Complaints**

Whether an LEA was targeted by a separate OCR complaint alleging discrimination other than the target variable was also used as a predictor variable.

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\(^{172}\) 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/EvaluationFRPMDefinitionProxyEconomicDisadvantage.pdf](http://marylandpublicschools.org/adequacystudy/docs/EvaluationFRPMDefinitionProxyEconomicDisadvantage.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 socioeconomic 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 thesis are discussed in Chapter 5. *See infra* notes 257 to 258 and accompanying text.
Chapter 4

Methods & Findings

This chapter explains the statistical techniques used to examine OCR complaints filed against local educational agencies (“LEAs”) in Pennsylvania, and the findings from those techniques. All statistical analyses were performed using version 23 of the SPSS statistical software package.

Overview of Methods

The principal method was binary logistic regression, a form of multiple regression used to quantify the relationship between one or more predictor variables and a single, binary target variable. In a binary logistic regression model, each predictor variable is assigned a numeric value which expresses the predictor’s contribution to the odds that the target variable will manifest as one binary category rather than the other. For this study, an “odds ratio” of less than 1 indicates that an LEA characteristic decreased the probability that a given OCR complaint was filed, while an odds ratio of greater than 1 indicates that the characteristic increased the probability that a complaint was filed.

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173 See generally FIELD, supra note 157, at 264-99. Linear regression was used to examine the relationship between a school’s characteristics and the number of OCR complaints filed against the school. Because most of the variables examined were highly skewed, however, the results of the linear regression analysis were prohibitively heteroskedastic, even after applying log transformations, and are not reported here. See id. at 153-56, 247-51.

174 See id. at 265, 270-71.
Binary logistic regression is predicated upon three principal assumptions: Independence of errors, the assumption of no multicollinearity, and the assumption of linearity of the logits.\(^{175}\) The assumption of independence of errors is met in this case because each of the LEAs under study supplied only one observation for purposes of regression analysis.\(^{176}\) To meet the assumption of no multicollinearity, none of the predictors must be excessively correlated with any other predictor.\(^{177}\) That assumption is met in this case because all the predictors in the present study passed statistical tests for multicollinearity.\(^{178}\)

The assumption of linearity of the logits is met when a linear relationship exists between any continuous predictor variables and the likelihood that the target variable will occur (in this case, the likelihood that a complaint was filed).\(^{179}\) If a predictor violates this assumption, then the logistic regression analysis may generate a false negative for that predictor (i.e., the model may indicate that there is no significant relationship between the predictor and the target variable when there actually is such a relationship).\(^{180}\) One of the predictors in this study, total enrollment, did not meet the assumption of linearity of the logit for some target variables,\(^{181}\) but was included in the regression analysis to control for the fact that LEAs with more students are more likely to be targeted by OCR complaints. A significant relationship was found between total enrollment and each target variable despite the increased risk of a false negative.

\(^{175}\) Id. at 273.

\(^{176}\) Id.

\(^{177}\) Id.

\(^{178}\) Specifically, tolerance values for the predictors ranged from 0.326 to 1.00 across all models, where a tolerance value of less than 0.100 would indicate a multicollinearity problem. See id. at 297. Similarly, variance inflation factors (“VIF”) for the predictors ranged from to 1.00 to 5.627 across all models, where a VIF of greater than 10 indicates a multicollinearity issue. See id.

\(^{179}\) Id.


\(^{181}\) Specifically, the Box-Tidwell transformation test for linearity of the logit indicated a nonlinear relationship between total enrollment and the logits of whether a race complaint was filed (\(p = 0.049\)) and whether a sex complaint was filed (\(p = 0.032\)). See id. locs. 4671-83; FIELD, supra note 157, at 296.
Additionally, this study used chi-square testing to examine the relationship between the basis and outcome of OCR complaints. Specifically, Pearson’s chi-square test for independence was used to determine whether a statistically significant association existed between the type of discrimination alleged in an OCR complaint, and the procedural mechanism used to resolve the complaint. In Pearson’s chi-square test, data are organized into a contingency table, and expected counts are calculated for each cell of the table based on row and column totals. The test assumes that each observed item (complaints, in this case) contributes to only one cell, that none of the expected counts are less than 1, and that less than 20% of the expected counts are below 5.

**Predictors of Whether an OCR Complaint Was Filed**

A total of 654 LEAs and 486 complaints were included in the regression analysis. Hierarchal binary logistic regression was used to examine which LEA characteristics were associated with whether a complaint was filed against a school. Models were produced targeting whether any complaint was filed, whether a complaint alleging racial discrimination was filed,

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182 See generally FIELD, supra note 157, at 686-701.
183 See id. at 688-89.
184 Id. at 691-92.
185 See supra text accompanying notes 147 to 149.
186 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. One of those complaints was dismissed, and the other resulted in an insufficient evidence determination.
187 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 these categories. See JULIE PALLANT, SPSS SURVIVAL MANUAL 169 (4th ed. 2010).
whether a complaint alleging sex discrimination was filed, and whether a complaint alleging
disability discrimination was filed. Race complaints alleging anti-Black discrimination were also
examined, as were disability complaints which resulted in monitored agreements. Table 4-1
provides an overview of the types of complaints targeted by the regression analyses:

Table 4-1: Overview of Target Variables (Complaint Type)

<table>
<thead>
<tr>
<th>Complaint Type</th>
<th>N (% 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.

The first three blocks of the hierarchal regression procedures were identical for each analysis.

Total enrollment was entered at Block 1 under the reasoning that LEAs with high enrollment are
more likely to be targeted by OCR complaints because they serve more potential complainants.

LEA type was entered at Block 2 under the reasoning that an LEA’s governance structure
influences the policy and practices which could be implicated by an OCR complaint. Locale
category was entered at Block 3 under the reasoning that an LEA’s policy, practices, and
demographics are shaped by local context tied to its locale.

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188 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.

189 Cf. Robert A. Garda, Jr., Culture Clash: Special Education in Charter Schools, 90 N.C. L. REV. 655,
662-93 (2012) (arguing that the charter schools’ governance structure incentivizes violations of disability law).

in Educational Aspirations of Rural Youth, 77 RURAL SOC. 355, 360-61 (2012) (surveying differences between rural
and non-rural settings pertinent to students’ educational aspirations).
The configuration of the remaining blocks varied with each analysis according to the particular target variable. Most of the remaining variables were entered using a stepwise method. In stepwise regression, variables are included in or removed from the regression model based on statistical criteria. The stepwise method used in this study was forward selection (likelihood ratio), in which identified variables were included in the model if they had a score statistic below a certain threshold ($p < 0.05$ in this case), and removed from the model if their inclusion did not significantly improve the model according to a likelihood ratio test ($p > 0.10$ for this study). Stepwise methods are often criticized because they are inappropriate for hypothesis testing. However, when prior literature provides insufficient theoretical guidance for structuring a regression model, as it does here, then stepwise regression can be an effective tool for exploring relationships between variables. Because this thesis aims to explore such relationships and generate hypotheses, rather than test hypotheses, stepwise methods are particularly apt.

It should be noted that the models reported below only explain a portion of the variability in the relevant target variable. Each model includes two “pseudo $R^2$” statistics (Cox & Snell’s

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191 See generally Field, supra note 157, at 212-13 (introducing stepwise regression), 272 (applying stepwise methods to logistic regression).
192 See id. at 794.
193 See id. at 272, 281 (explaining forward stepwise likelihood ratio method for logistic regression).
194 See id. at 272 (observing that “some people believe that stepwise methods have no value in theory testing”); Timothy Z. Keith, Multiple Regression and Beyond: An Introduction to Multiple Regression and Structural Equation Modeling 102 (2d ed. 2015) (“Stepwise regression should not be used when you want to understand the effect of a group of variables on some outcome (explanation).”); Jerome D. Thayer, Paper Presented at the Annual Meeting of the American Educational Research Association: Stepwise Regression as an Exploratory Data Analysis Procedure at 1-3 (Apr. 2, 2002), http://files.eric.ed.gov/fulltext/ED464932.pdf (arguing that stepwise regression, by itself, is inappropriate for confirming hypotheses).
195 See supra notes 16 to 17 and accompanying text.
196 See Field, supra note 157, at 272 (stepwise methods are appropriate for “exploratory work”); Keith, supra note 194, at 101-02 (arguing that stepwise regression is appropriate for prediction, but not explanation); Thayer, supra note 194, at 2 (arguing that stepwise and other exploratory regression methods should “be used to understand the relationship between the variables to allow a specific hypothesis or theory to be constructed which can be confirmed with later research”).
and Nagelkerke’s) which serve as estimates of the variance explained by the model.\textsuperscript{197} These measures are called “pseudo $R^2$” statistics because they are calculated differently than $R^2$, but indicate the variance explained by a logistic regression model analogously to $R^2$ in a linear regression model.\textsuperscript{198} Specifically, the statistics range from 0 to 1, with 0 indicating that the model explains none of the variance in the target variable, and 1 indicating that the model explains all of the variance.\textsuperscript{199} The model reported in Table 4-3, for example, explains between 29.6\% and 40.3\% of the variance in whether an LEA was targeted by any OCR complaint. Therefore, most (60\%-70\%) of the variability in whether a complaint was filed was not explained by the predictors included in the model.

**Predictors of Whether Any OCR Complaint Was Filed**

Table 4-2 shows the variables and methods entered in each block of the hierarchal logistic regression targeting whether any OCR complaint was filed against a school:

\textsuperscript{197} See \textit{FIELD}, supra note 157, at 268-69.

\textsuperscript{198} Pseudo $R^2$ statistics were used because the ordinary coefficient of determination ($R^2$) is not an appropriate measure of variability in logistic regression. \textit{Id.}

\textsuperscript{199} See \textit{PALLANT}, supra note 187, at 176.
Table 4-2. 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>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>
<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>

The Block 4 variables were entered using stepwise methods because of uncertainty regarding their relationship with whether any OCR complaint was filed.

Because none of the Block 4 variables improved the statistical significance of the model according to the selection criteria, none of the Block 4 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 (which only included a constant). Table 4-3 shows the results for the model produced for Block 3:

See supra text accompanying note 193.
See FIELD, supra note 157, at 272.
Table 4-3. 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><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>-1.200 (0.492)</td>
<td>0.301**</td>
<td>(0.115, 0.790)</td>
</tr>
<tr>
<td><strong>Locale</strong></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 (reference)</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)
- 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. Specifically, 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 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.
Predictors of Race Complaints

Of the 486 complaints included in the regression analysis, 129 (27%) alleged racial discrimination. Seventy-eight of the included LEAs (12%) were targeted by race complaints. Sixty-eight of the race complaints alleged discrimination against a Black person, accounting for 53% of race complaints and 14% of all complaints. Forty-three of the included LEAs (7%) were targeted by complaints alleging anti-Black discrimination.

Predictors of Whether a Race Complaint Was Filed

Table 4-4 shows the variables and methods entered in each block of the hierarchal logistic regression targeting whether any race complaint was filed against an LEA:

Table 4-4. 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>0</td>
<td>• Constant</td>
<td>-</td>
</tr>
<tr>
<td>1</td>
<td>• Total Enrollment ÷ 10</td>
<td>Forced Entry</td>
</tr>
</tbody>
</table>
| 2     | • School District (reference)  
     | • Charter School | Forced Entry |
| 3     | • City: Large  
     | • City: Nonlarge  
     | • Suburb Large (reference)  
     | • Suburb Nonlarge  
     | • Town: Fringe  
     | • Town: Far  
     | • Rural: Fringe  
     | • Rural: Far | Forced Entry |
| 4     | • % English Language Learners (“ELL”)  
     | • % White | Forced Entry |
| 5     | • % with individualized education programs (“IEP”)  
     | • % eligible for Free or Reduced Lunch (“FRL”)  
     | • Pupil/Staff Ratio  
     | • Revenue per Pupil  
     | • Non-race Complaint Filed | Forward Stepwise (Likelihood Ratio) |
Since the percentages of White and ELL students directly or indirectly reflect the proportion of students who are vulnerable to discrimination prohibited by Title VI, these variables were entered at Block 4 under the reasoning that an association between the variables and whether an LEA was targeted by a race complaint was likely. The remaining variables were entered at Block 5 using stepwise methods because of uncertainty regarding their relationship with whether a race complaint was filed.

The Model produced for Block 5 correctly classified 89.3% of cases, compared to 87.6% for Block 0. Table 4-5 shows the results:

---

202 Title VI prohibits discrimination on the basis of race, color, or national origin. 42 U.S.C. § 2000d (2016). Because ELL students are more likely to have a national origin outside the United States, the percentage of ELL students serves as an indirect indicator of the proportion of students who are vulnerable to discrimination on the basis of national origin. Furthermore, OCR treats discrimination on the basis of ELL status as a form of prohibited national origin discrimination. See supra note 57. The percentage of White students directly reflects the proportion of students who are vulnerable to racial discrimination because it serves as a reverse measure of the percentage of students who are members of racial minorities.
Table 4-5. 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 (reference)</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 (reference)</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)
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, and that schools with more students of color and fewer students eligible for free or reduced lunch were more likely to be targeted by such complaints. To put these figures into perspective, Table 4-6 applies the model to five hypothetical school districts. Odds ratios and probabilities were calculated using hypothetical demographic data identified in Table 4-6, and b values reported in Table 4-5.
Table 4-6. Odds Ratios and Probability that Race Complaint Was Filed in Five Hypothetical School Districts

<table>
<thead>
<tr>
<th>School District</th>
<th>% White</th>
<th>% FRL</th>
<th>Odds Ratio</th>
<th>Probability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Typical</td>
<td>85%</td>
<td>40%</td>
<td>0.1154</td>
<td>9.57%</td>
</tr>
<tr>
<td>Low Minority</td>
<td>95%</td>
<td>40%</td>
<td>0.0751</td>
<td>6.98%</td>
</tr>
<tr>
<td>High Minority</td>
<td>10%</td>
<td>40%</td>
<td>2.9038</td>
<td>74.38%</td>
</tr>
<tr>
<td>Low Poverty</td>
<td>85%</td>
<td>15%</td>
<td>0.2001</td>
<td>16.67%</td>
</tr>
<tr>
<td>High Poverty</td>
<td>85%</td>
<td>80%</td>
<td>0.0479</td>
<td>4.57%</td>
</tr>
</tbody>
</table>

Note: All five hypothetical school districts are located in the suburb of a large city, have a total enrollment of 2,500 students, and no ELL students.

As Table 4-6 shows, LEAs with many minority students were much more likely to be targeted by complaints alleging racial discrimination than schools with few minority students. Additionally, the share of students who were eligible for free or reduced lunch was negatively associated with whether a complaint was filed, although this effect was more modest. The model explains between 16% and 31% of the variance in whether a race complaint was filed.

**Predictors of Complaints Alleging Anti-Black Discrimination**

Table 4-7 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:

---

203 Data to represent a typical school district were selected to reflect the modal locale category, and to approximate mean total enrollment and median percentages of White students, ELL students, and FRL eligible students. *See supra,* Tables 3-3 (p. 27) and 3-4 (p. 32). Data to represent a school district with a low percentage of minority students were selected to approximate an otherwise typical school district with White enrollment near the 90th percentile. Data to represent a school district with a high percentage of minority students were selected to approximate an otherwise typical school district with White enrollment near the 10th percentile. Analogous methods were used to select data for high poverty and low poverty school districts using FRL eligibility as the poverty measure.
Table 4-7. Procedures: Logistic Regression Targeting Whether Race Complaint (Black) was Filed

<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>
<tr>
<td>4</td>
<td>• % Black</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>• % with individualized education programs (“IEP”)</td>
<td></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-Black Race Complaint Filed</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Non-race Complaint Filed</td>
<td></td>
</tr>
</tbody>
</table>

The percentage of Black students was entered at Block 4 under the reasoning that LEAs with a higher percentage of Black students are more likely to be targeted by complaints alleging anti-Black discrimination. The remaining variables were entered at Block 5 using stepwise methods because of uncertainty regarding their relationship with whether an anti-Black complaint was filed.

The model produced by Block 5 correctly classified 93.6% of cases, a very slight improvement over Block 0, which correctly classified 93.1% of cases using only a constant. Table 4-8 shows the results:
Table 4-8. 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>0.031***</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>6.642***</td>
<td>(2.954, 14.933)</td>
</tr>
</tbody>
</table>

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

*p < 0.10
**p < 0.05,
***p < 0.01

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 was found between the percentage of students eligible for free or reduced lunch and whether a complaint alleging anti-Black discrimination was filed. Complaints alleging anti-Black discrimination were more likely to be filed against LEAs where other race complaints were filed. The model explains between 13% and 33% of the variance in whether a complaint alleging anti-Black discrimination was filed.
Predictors of Sex Complaints

Eighty-four (17%) of the complaints included in the regression analysis alleged sex discrimination. Seventy of the included LEAs (11%) were targeted by sex complaints. Table 4-9 shows the variables and methods entered in each block of the hierarchal logistic regression targeting whether such a complaint was filed against an LEA.

Table 4-9. 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>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) • Charter School</td>
<td>Forced Entry</td>
</tr>
<tr>
<td>3</td>
<td>• City: Large • City: Nonlarge • Suburb Large (reference) • Suburb Nonlarge • Town: Fringe • Town: Far • Rural: Fringe • Rural: Far</td>
<td>Forced Entry</td>
</tr>
<tr>
<td>4</td>
<td>• % English Language Learners (“ELL”) • % with individualized education programs (“IEP”) • % eligible for Free or Reduced Lunch (“FRL”) • % White • Pupil/Staff Ratio • Revenue per Pupil • Non-sex Complaint Filed</td>
<td>Forward Stepwise (Likelihood Ratio)</td>
</tr>
</tbody>
</table>

The Block 4 variables were entered using stepwise methods because of uncertainty regarding their relationship with whether a sex complaint was filed.
Because none of the Block 4 variables improved the statistical significance of the model according to the selection criteria,\textsuperscript{204} none of the Block 4 variables were entered and no model was produced for Block 4.\textsuperscript{205} The model produced for Block 3 did not improve upon the accuracy of the model for Block 0, which only included a constant. Both models correctly classified 88.8\% of cases. Table 4-10 shows the model produced for Block 3:

Table 4-10. 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 (reference)</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 (reference)</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)

The results indicate that charter schools were less likely to be targeted by complaints alleging sex discrimination than school districts. Specifically, the odds that a charter school was targeted by a complaint alleging sex discrimination were about 92\% lower than the odds that a

\begin{footnotesize}
\textsuperscript{204} See supra text accompanying note 193.
\textsuperscript{205} See FIELD, supra note 157, at 272.
\end{footnotesize}
school district was targeted. The model explains between 9% and 19% of the variance in whether a sex complaint was filed.

**Predictors of Disability Complaints**

Of the complaints included in the regression analysis, 291 (60%) alleged disability discrimination. Forty-nine of those complaints resulted in monitored agreements between OCR and the LEA. Of the LEAs included in the regression analysis, 161 (25%) were targeted by disability complaints. Complaints which resulted in disability-related monitored agreements accounted for 17% of disability complaints and 10% of all complaints. Thirty-nine of the included LEAs entered monitored agreements, accounting for 24% of LEAs targeted by disability complaints and 6% of all LEAs.

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

Table 4-11 shows the variables and methods entered in each block of the hierarchal logistic regression targeting whether a disability complaint was filed against an LEA.
Table 4-11. Procedures: Logistic Regression Targeting Whether Disability Complaint Was Filed and Whether LEA Entered Disability Related Monitored Agreement

<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>
</tbody>
</table>
| 2     | • School District (reference)  
   • Charter School | Forced Entry |
| 3     | • City: Large  
   • City: Nonlarge  
   • Suburb Large (reference)  
   • Suburb Nonlarge  
   • Town: Fringe  
   • Town: Far  
   • Rural: Fringe  
   • Rural: Far | Forced Entry |
| 4     | • % with individualized education programs (“IEP”) | Forced Entry |
| 5     | • % English Language Learners (“ELL”)  
   • % eligible for Free or Reduced Lunch (“FRL”)  
   • % White  
   • Pupil/Staff Ratio  
   • Revenue per Pupil  
   • Non-disability Complaint Filed | Forward Stepwise (Likelihood Ratio) |

The percentage of students with IEPs was entered at Block 4 under the reasoning that LEAs with a higher percentage of such students are more likely to be targeted by complaints alleging disability discrimination. The remaining variables were entered at Block 5 using stepwise methods because of uncertainty regarding their relationship with whether a disability complaint was filed.

Because none of the Block 5 variables improved the statistical significance of the model according to the selection criteria,\textsuperscript{206} none of the Block 5 variables were entered and no model was produced for Block 5.\textsuperscript{207} Block 4 of the model correctly classified 76.9% of cases, a modest increase over Block 0 (74.3%). Table 4-12 shows the results for Block 4.

\textsuperscript{206} See supra text accompanying note 193.
\textsuperscript{207} See FIELD, supra note 157, at 272.
Table 4-12. 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>-</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>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>-0.851 (0.457)</td>
<td>0.427*</td>
<td>(0.174, 1.046)</td>
</tr>
<tr>
<td>Locale</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)  
*p < 0.10  
**p < 0.05,  
***p < 0.01.

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. Specifically, charter schools were about half as likely to be targeted by complaints alleging disability discrimination as school districts. 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 associated with 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.
Predictors of Whether an LEA Entered a Disability-related Monitored Agreement

A hierarchical logistic regression was performed targeting whether an LEA entered a monitored agreement as a result of a complaint alleging disability discrimination. As noted above, the formation of a monitored agreement is the best available indicator that an LEA violated the regulations implementing Section 504. The predictor variables and methods for this logistic regression were identical to the regression targeting whether a disability complaint was filed, and are shown in Table 4-11. The percentage of students with IEPs was entered at Block 4 under the reasoning that LEAs with a higher percentage of such students are more likely to enter disability-related monitoring agreements. The remaining variables were entered at Block 5 using stepwise methods because of uncertainty regarding their relationship with whether an LEA entered a disability-related monitoring agreement.

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 using only a constant. Table 4-13 shows the results:

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208 See supra text accompanying note 193.
209 See FIELD, supra note 157, at 272.
Table 4-13. Results: Logistic Regression Targeting Whether LEA Entered Disability-related Monitored Agreement

<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><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>-2.489 (1.424)</td>
<td>0.083*</td>
<td>(0.005, 1.353)</td>
</tr>
<tr>
<td><strong>Locale</strong></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 (reference)</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)  
$\quad 0.181$ (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.

**Relationship Between Basis and Outcome of Complaints**

Table 4-14 shows a cross-tabulation of the 536 complaints’ according to the type of discrimination alleged in the compliant, and the how the complaint was resolved.
Table 4-14. 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><strong>None or Unknown</strong></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><strong>Multiple Bases</strong></td>
<td>14%</td>
<td>12%</td>
<td>10%</td>
<td>10%</td>
<td>13%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>46</td>
<td>8</td>
<td>7</td>
<td>7</td>
<td>68</td>
</tr>
<tr>
<td><strong>Disability</strong></td>
<td>42%</td>
<td>58%</td>
<td>64%</td>
<td>66%</td>
<td>50%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>143</td>
<td>34</td>
<td>44</td>
<td>45</td>
<td>266</td>
</tr>
<tr>
<td><strong>Race</strong></td>
<td>18%</td>
<td>22%</td>
<td>6%</td>
<td>16%</td>
<td>16%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>60</td>
<td>13</td>
<td>4</td>
<td>11</td>
<td>88</td>
</tr>
<tr>
<td><strong>Sex</strong></td>
<td>13%</td>
<td>7%</td>
<td>20%</td>
<td>7%</td>
<td>13%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>45</td>
<td>4</td>
<td>14</td>
<td>5</td>
<td>68</td>
</tr>
<tr>
<td><strong>Age</strong></td>
<td>3%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
<tr>
<td>Row Proportion</td>
<td>10</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>340</td>
<td>59</td>
<td>69</td>
<td>68</td>
<td>536</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-

\[\text{FIELD, supra note 157, at 686-701.}\]
tabulated.\textsuperscript{211} 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 \((p = 0.019)\).

**Summary of Key Findings**

Statistical analysis of the complaint and LEA data produced seven key findings. These findings, grouped by predictor, are summarized below.

**LEA Type**

*Key Finding #1: Charter schools were less likely to be targeted by OCR complaints 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.

\textsuperscript{211} 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).
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 targeted by disability complaints were located in the suburbs of small-to-midsize cities, and in towns and rural areas distant from population centers.

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.

Relationship Between Types of OCR Complaints

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

A positive association was observed 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. Specifically, the odds that an LEA was targeted by a complaint alleging anti-Black discrimination were about 6.6 times higher for LEAs which were targeted by complaints alleging other types of racial discrimination. This relationship was independent of the percentage of Black students attending an LEA.
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. A monitored agreement indicates that an LEA agreed to change its policy or practices to resolve a complaint, and that OCR determined that further monitoring was appropriate to ensure that the LEA complied with the agreement.\(^{212}\) The fact that LEAs were unlikely to enter monitored agreements as a result of race complaints, therefore, suggests that race complaints were unlikely to produce changes in LEAs’ policies or practices.

\(^{212}\) *See supra* notes 127 to 128 and accompanying text.
Chapter 5
Discussion

This chapter aims to interpret this study’s findings in light of prior research and existing legal frameworks. First, this chapter draws from the existing 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. Finally, this chapter offers several recommendations to policymakers, educators, and advocates to repair the gaps and otherwise strengthen students’ civil rights protections.

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, legal considerations specific to special education disputes and funding may explain why an
LEA’s disability rate was associated with whether it entered a disability-related monitored agreement, but not with whether it was targeted by a disability complaint.

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.

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 disability discrimination. In general, the dominant plurality of OCR’s enforcement efforts focus on disability discrimination.²¹³ 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

²¹³ 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 31, at 16-17 (noting that disability cases averaged about 54% of OCR’s caseload circa 2000).
Students of color were especially likely to report that they had been subjected to discrimination. Morrill et al. also found that students with disabilities were significantly more likely to take formal legal action in response to civil rights violations. 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 comparatively 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 disabilities than students of color; and (3) OCR employees are unlikely to label denials of educational opportunities to students of color as “discrimination.”

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.

\[\text{Morrill et al., supra note 2, at 671.}\]
\[\text{Id. at 681.}\]
\[\text{Id. at 681.}\]
\[\text{POLLOCK, supra note 31, at 17-18.}\]
\[\text{Mary Ann Zehr, \textit{Duncan Plans to Prod Schools on Civil Rights Laws}, \textsc{Educ. Wk.} (Mar. 8, 2010), http://www.edweek.org/ew/articles/2010/03/08/25civilrights.h29.html. Conservative analysts, in fact, have argued that OCR improperly expanded the scope of Title VI during the Obama administration, which suggests that OCR was more receptive of race complaints during the period of study than during Pollock’s time as an OCR investigator.}\]
These efforts began before and continued throughout the period under study. 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 Chapter 2, the regulations governing disability discrimination are far more detailed than the regulations governing racial discrimination. Notably, the regulations implementing Section 504 obligate LEAs to: notify students and parents that the LEA does not discriminate on the basis of disability; evaluate the individual educational needs of students with disabilities; provide procedural safeguards to ensure that students with disabilities receive an appropriate education; designate a responsible employee to oversee its compliance with Section 504; and offer grievance procedures for students and parents to resolve disputes 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

See Epstein, supra note 16, 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 16, 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).

219 See ALI, supra note 49, (2010 Dear Colleague Letter explaining law governing racial harassment); LHAMON, supra note 56, (2014 Dear Colleague Letter explaining Title VI’s requirement to distribute educational resources equitably); LHAMON & GUPTA, supra note 57, (2015 Dear Colleague Letter explaining Title VI rights of English learner students and parents with limited English proficiency); LHAMON, ROSENFELT, & SAMUELS, supra note 55, (2015 Dear Colleague Letter explaining Title VI rights of undocumented students and the children of undocumented parents); LHAMON & SAMUELS, supra note 59, (2014 Dear Colleague Letter explaining the application of Title VI to school discipline).

220 See supra text accompanying notes 54 to 100.


222 34 C.F.R. § 104.35.

223 Id.

224 34 C.F.R. § 104.7(a).

225 34 C.F.R. § 104.7(b).

226 See 34 C.F.R. §§ 100.1 to 100.13.
to disability discrimination have more legal grounds on which to base their claims than students who have been subjected to racial discrimination.\textsuperscript{227} 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 Chapter 2, 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.\textsuperscript{228} Consequently, rulemaking for Section 504 featured more input from stakeholders,\textsuperscript{229} and produced more detailed regulations.\textsuperscript{230} This reason fails to justify the lack of detail in Title VI’s regulations because it stems from historical happenstance

\textsuperscript{227} See Mica Pollock, supra note 39, at 2118 (“Racial discrimination complaints often seem far less easily investigated and remedied than the other complaints of discrimination now covered by OCR.”).

\textsuperscript{228} See supra text accompanying notes 35 to 39.

\textsuperscript{229} The debates which shaped the content of the Title VI regulations occurred primarily between different departments within the executive branch. See ORFIELD, supra note 35, 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).

\textsuperscript{230} 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 35, at 66 (describing history of Title IX regulations). See also supra note 39.
rather than a 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 discrimination, rather than students of color.\textsuperscript{231} This preference could be attributed to the fact that political support for disability protections cuts across racial, socioeconomic, and ideological lines;\textsuperscript{232} that the (predominantly White) parents of students with disabilities tend to be more vocal and strategic in their advocacy than other stakeholders;\textsuperscript{233} 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{234} 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{235}

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

\begin{itemize}
  \item \textsuperscript{231} See \textsc{George Orwell}, \textsc{Animal Farm} 114 (Rupa Publications 2010) (1945) (“ALL ANIMALS ARE EQUAL / BUT SOME ARE MORE EQUAL THAN OTHERS”).
  \item \textsuperscript{232} R. \textsc{Shep Melnick}, \textsc{Between the Lines} 150 (1994) (“Disabilities . . . fall upon rich and poor, black and white, residents of inner cities, suburbs, and farm districts . . .”).
  \item \textsuperscript{233} \textsc{Pollock}, supra note 31, at 110.
  \item \textsuperscript{234} See Anne Schneider & Helen Ingram, \textit{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 while racial minorities tend to be viewed as “contenders” jockeying for policy benefits).
  \item \textsuperscript{235} Compare sources cited supra notes 232 to 234 with Christopher Jencks, \textit{Whom Must We Treat Equally for Educational Opportunity to be Equal?}, 98 Ethics 518 (1988).
\end{itemize}
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.  

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. The Section 504 regulations, however, also require LEAs to provide “appropriate” (i.e., individualized) 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, 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.

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236 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 235).


238 34 C.F.R. § 104.33(b).

239 20 U.S.C. § 1400(c)(1) (2016) (providing rationale for the Individuals with Disabilities Education Act (“IDEA”). See also 34 C.F.R. § 104.33(b)(2) (implementing individualized education program developed under the IDEA satisfies standard for “appropriate education”).
stemming from racial discrimination. Analogous requirements for sex and disability
discrimination, however, do exist in the Title IX and Section 504 regulations.\textsuperscript{240} 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 serves 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.

**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. Feistliner et al. have referred to these requisites as “naming,” “blaming,” and “claiming.”\textsuperscript{241} 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, that schools with many students who were eligible for free-or-reduced lunch (“FRL”) were less likely to be targeted by race complaints, and that LEAs which were targeted by complaints alleging anti-Black discrimination were more likely to be targeted by other race complaints. One possible explanation for these differences may be that the parents of students attending charter schools, LEAs located 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. Conversely, parents of Black students who attend LEAs targeted by

\textsuperscript{240} 34 C.F.R. §§ 106.8-106.9, 104.7-104.8. *See also* notes 94 to 99 and accompanying text.

complaints alleging discrimination against other minorities may be more likely to use that process to claim racial discrimination. In other words, these factors may all contribute to a “culture of claiming” civil rights violations.

One potential reason that would-be complainants may opt against “claiming” discrimination through the OCR complaint process may be that they are unfamiliar with that process. Even if would-be complainants “name” discrimination and “blame” the school for it, unfamiliarity with the OCR complaint process may prevent them from filing a formal “claim.”

The fact that complaints of anti-Black discrimination were more likely to be filed against LEAs targeted by other race complaints is consistent with this explanation: If parents are aware that a race complaint has recently been filed against an LEA, then they may be more likely to file their own race complaint.

The finding that FRL eligibility is 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 are more likely to be targeted by OCR complaints, and that this tendency is independent of the percentage of students who are FRL eligible. This finding suggests that social capital generated within the suburbs of


\[243\] *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 infra* notes 257 to 258 and accompanying text.
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.\(^{244}\) 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.\(^{245}\) This explanation would be particularly significant because it operates independently of socioeconomic status.\(^{246}\)

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.\(^ {247}\)

\(^{244}\) The research indicates that a neighborhood’s resources have a strong association with residents’ local social support (i.e., the ease with which residents can find help from someone in the neighborhood with matters such as watching children, getting advice, and assisting a disabled or elderly person). Alexandra M. Curley, *Relocating the Poor: Social Capital and Neighborhood Resources*, 32 J. Urb. Aff. 70, 91 (2010). The level of generalized trust and shared norms and values also had a strong association with social support. *Id.* at 88. Neighborhood resources had the strongest explanatory effect on generalized trust and shared norms and values. *Id.* at 93. The absence of neighborhood problems (i.e., crime and social or physical disorder) was also associated with the social capital of a neighborhood’s residents. *Id.* at 91.

\(^{245}\) 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 53, 60 (2008). The authors hypothesized that this difference is due to non-rural residents having easier access to nonprofit advocacy organizations. *Id.* at 61.

\(^{246}\) 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 31, 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 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.

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.”

Exit as Escape?

An alternative explanation for the lack of complaints filed against charter schools may be that 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. The extent to which students dis-enroll as a means to escape civil rights violations is ripe for further research.


Disability Complaints and Special Education Law

While an LEA’s disability rate was associated with whether the LEA entered a disability-related monitored agreement, it was not associated with whether a disability complaint was filed against the LEA. The fact that an LEA’s percentage of students with individualized education programs (“IEPs”) was not associated with whether it was targeted by a disability complaint contrasts with the finding that an LEA’s percentage of students of color was associated with whether it was targeted by a race complaint. These findings indicate 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 legal action in response to rights violations than students without disabilities, 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.

The association between an LEA’s disability rate and whether the LEA entered a disability-related monitored agreement 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. As a result, LEAs with a high percentage of students with

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251 Morrill et al., supra note 2, at 681.
IEPs were required to spread their special education resources more thinly than school districts with a low percentage.\textsuperscript{254} 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.

**Limitations**

This study examined all OCR complaints which were filed against elementary and secondary schools in Pennsylvania and resolved between April 1, 2011 and November 30, 2015. 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 explanatory effect accounted for 30% to 40% of the variability in whether a complaint was filed. The model with the weakest explanatory effect accounted for 7% to 18% of the variability in whether an LEA entered an OCR monitored agreement.\textsuperscript{255} 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 most research, causal inferences drawn from this study are only sound to the extent that (1) variables are correlated; (2) a predictor variable chronologically precedes a target

\textsuperscript{254} BROWNE & O’NEILL, supra note 253, at 40.

\textsuperscript{255} Effect sizes in this range are common in social science research. KEITH, supra note 194, at 183.
variable; and (3) predictor and target variables are not influenced by a common cause. Because the modest effect sizes identified here suggest that unexamined factors significantly influence the number and type of OCR complaints filed against a school, satisfying the third condition for causal inferences may be especially problematic. Without fuller analysis of these unexamined factors, the extent of their influence on the other predictors—and whether the third condition for causal inference has been satisfied—cannot be known. Any causal inferences drawn from this study, therefore, must be highly tentative.

This study found that FRL eligibility was only associated with one of the examined target variables: whether an LEA was targeted by a race complaint. The explanatory effect of FRL eligibility did not persist when examining race complaints alleging anti-Black discrimination. 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 incongruent with prior research indicating that socioeconomic status influences disputants’ decision to take formal 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. In the 2013-2014 school year, for instance, a Pennsylvania student from a two-person household with an income of $30,000 was not eligible for free-or-reduced lunch, while a student from a two-person household with an income of $28,000 and a student from an eight-person

256 Id. at 249 (articulating three necessary conditions to infer causality).
257 See Sandefur, supra note 242, 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).
258 Harwell & LaBeau, supra note 172, at 125. Other imperfection include over-classification, under-classification, and an inability to capture the effects of concentrated poverty. Id. at 124-25.
household with an income of $70,000 were both considered eligible. Readers, therefore, should exercise caution when drawing inferences about the role of socioeconomics in civil rights complaints from this study.

**Implications**

**Directions for Further Research**

Although this study considered the statutory basis and outcome of OCR complaints, it did not examine the 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 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, though prior research suggests that such groups play an influential role in the civil rights arena. Because

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261 For examples of aspects of the OCR complaint process which are ripe for qualitative research, see Pollock, supra note 31.

262 See Baker & Keiser, supra note 245 (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. Res. Q. 133 (2006) (finding that claim rates for disability benefits are higher in states with a high concentration of civic organizations).
Pennsylvania has a robust community of advocacy groups working on civil rights issues in schools,\(^{263}\) this factor may be especially influential for the population studied here. Furthermore, although 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.

While this study raises the possibility that charter school students may dis-enroll rather than file an OCR complaint when subjected to discrimination, it does not provide direct evidence that “exit-as-escape” actually occurs. The implications of exit-as-escape are likely to be highly 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.\(^{264}\) Others may interpret it as a mechanism for market accountability.\(^{265}\) At any rate, further


\(^{264}\) Charter schools have a structural incentive to “push out” underperforming students, and these students tend to be members of racial minorities and to have disabilities. 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); see also 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/CharterAccountabilityStd.pdf (advising against counseling out and other tactics to “push out” struggling students).

\(^{265}\) Cf. Eric A. Hanushek, John F. Kain, Steven G. Rivkin, & Gregory F. Branch, Charter School Quality and Parental Decision Making with School Choice, 91 J. PUB. ECON. 823, 843-44 (2007) (finding that parents are more likely to dis-enroll students from low quality charter schools).
research on this issue should examine the educational disruption which ensues when students transfer schools.\textsuperscript{266} This disruption has negative impacts both on the students who transfer, and on the schools burdened with high student turnover.\textsuperscript{267}

**Policy 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,\textsuperscript{268} to notify beneficiaries that the LEA is prohibited from discriminating on the basis of sex or disability,\textsuperscript{269} and to adopt internal procedures to resolve grievances alleging sex or disability discrimination.\textsuperscript{270} The regulations also prohibit LEAs from aiding or perpetuating sex or disability discrimination by others.\textsuperscript{271} 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.\textsuperscript{272}

Alternatively, states could enact regulations to the same effect under their own nondiscrimination statutes. For instance, Pennsylvania state regulations require LEAs to notify


\textsuperscript{267} Id.

\textsuperscript{268} 34 C.F.R. §§ 104.7(a), 106.8(a) (2015).

\textsuperscript{269} 34 C.F.R. § 104.8, 106.9

\textsuperscript{270} 34 C.F.R. §§ 104.7(b), 106.8(b).

\textsuperscript{271} 34 C.F.R. §§ 104.4(b)(1)(v), 106.31(b)(6).

parents of their nondiscrimination obligations under Section 504,\textsuperscript{273} and to provide internal procedures for resolving claims of disability discrimination.\textsuperscript{274} 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”).\textsuperscript{275} 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 the LEAs’ compliance with Title VI could also be added. 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,\textsuperscript{276} rather than OCR.

\textbf{Recommendation #2 – Ready the Troops: Ensure educators have adequate training and resources to protect students’ civil rights.}

Prior commentators have repeatedly called for increased training in educators’ legal literacy,\textsuperscript{277} especially in the domain of special education law.\textsuperscript{278} This study’s findings are consistent with such calls. A fuller understanding of students’ civil rights protections will enable

\begin{footnotesize}
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\item[274] 22 Pa. Code §§ 15.8(a), 15.10 (2016).
\item[276] 43 P.S. §§ 956 (establishing Commission), 957 (powers and duties), 959 (procedures).
\item[277] Decker, supra note 8, at 695-96; Militello, Schimmel, & Eberwein, supra note 11, at 41-42; Schimmel & Militello, supra note 10, at 271-74. But see Jason Thompson, Richard Arum, Lauren B. Edelman, Calvin Morrill, & Karolyn Tyson, In-services and Empty Threats: The Roles of Organizational Practices and Workplace Experiences in Shaping U.S. Educators’ Understandings of Students’ Rights, 53 SOC. SCI. RESEARCH 391 (2015) (finding that educators with more graduate training tended to see students’ due process rights as more limited, while educators who attended in-service trainings on student rights tended to see those rights as more expansive).
\item[278] See, e.g., Pazey & Cole, supra note 8.
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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.

279 See ALL supra note 49, at I (noting that school personnel are in the best position to prevent and respond appropriately to discrimination when they understand their legal obligations).
280 See supra notes 253 to 254 and accompanying text.
Recommendation #3 – Sound the Trumpet: Raise awareness of students’ civil rights, especially in vulnerable communities and in charter schools.

Under the Obama administration, OCR has taken steps to raise awareness of students’ civil rights protections. One of its 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. OCR has similarly increased the rate at which it disseminates reports on the civil rights data it collects, and collaborated with other executive agencies on a number of outreach programs, such as the Supportive School Discipline Initiative. 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, including scholars, 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 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-


285 OFFICE FOR CIVIL RIGHTS, supra note 4, at 13.
income neighborhoods. Because lack of awareness or understanding about civil rights protections likely contributes to low filing rights, students in charter schools, small towns, and rural or high poverty areas are especially likely to benefit from outreach efforts. 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.
Chapter 6

Conclusion

Although this thesis 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 OCR’s 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 thesis has highlighted discrepancies in federal civil rights law, and has found evidence indicating that these discrepancies prevent students of color from obtaining meaningful remedies for racial discrimination. Advocates should advance students’ civil rights by focusing their efforts on the most vulnerable communities. School leaders should thwart discrimination by ensuring that educators are equipped with the policies, practices, and knowledge to protect students’ civil rights. Finally, lawmakers should build toward more equitable educational policy by ensuring that schools have enough resources to meet their civil rights obligations, and by closing the gaps in civil rights protections.
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Appendix

Summary of OCR Regulations

Table A summarizes key requirements of the regulations implementing Title VI, Title IX, and Section 504 for local educational agencies (“LEAs”), and lists the pertinent sections of Title 34, Chapter 1 of the Code of Federal Regulations. Key differences among the Title VI, Title IX, and Section 504 regulations are also noted.

Table A: Summary of Key Regulations under Title VI, Title IX, and Section 504 for LEAs

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Title VI</th>
<th>Title IX</th>
<th>Section 504</th>
</tr>
</thead>
<tbody>
<tr>
<td>Students and other beneficiaries may not be excluded from, denied the benefits of, or subjected to discrimination based on a protected characteristic.</td>
<td>100.3(a), -(b)(1)(i)</td>
<td>106.31(a), -(b)(3)</td>
<td>104.4(a), -(b)(1)(i)</td>
</tr>
<tr>
<td>LEAs may not discriminate on the basis of protected characteristics in employment.</td>
<td>100.3(c)</td>
<td>106.51-61</td>
<td>104.11-14</td>
</tr>
<tr>
<td>All LEAs may take affirmative steps to overcome the effects of conditions which resulted in limited participation by members of protected classes. LEAs which have previously engaged in prohibited discrimination must take such steps.</td>
<td>100.3(b)(6)(i)-(ii)</td>
<td>106.3(a)-(b)</td>
<td>104.6(a)-(b)</td>
</tr>
<tr>
<td>LEAs may not segregate on the basis of a protected characteristic.</td>
<td>100.3(b)(1)(iii)</td>
<td>Segregation generally prohibited with exceptions for, inter alia, sports, sex education, and restrooms. 106.33-34, -41, -50.</td>
<td>LEAs may only segregate to the extent necessary to provide equally effective services. 104.4(b), -34.</td>
</tr>
<tr>
<td>LEAs may not provide different services or benefits or use different standards for determining eligibility for a service or benefit based on a protected characteristic.</td>
<td>100.3(b)(1)(ii), -(v)</td>
<td>106.31(b)(1)-(2), -(4)</td>
<td>LEAs may provide different services or benefits to people with disabilities provided that the services are as effective as those provided to others. 104.4(b)(1)(iii)-(iv).</td>
</tr>
<tr>
<td>LEAs may not use a protected characteristic as a basis for imposing different restrictions on privileges.</td>
<td>100.3(b)(1)(iv)</td>
<td>106.31(b)(7)</td>
<td>104.4(b)(1)(vii)</td>
</tr>
<tr>
<td>LEAs may not use “criteria or methods of administration” which have the effect of discriminating on the basis of a protected characteristic or substantially impairing the objectives of a program for a protected class.</td>
<td>100.3(b)(2)</td>
<td>n/a</td>
<td>104.4(b)(4)</td>
</tr>
<tr>
<td>LEAs must provide an individualized education to disadvantaged students.</td>
<td>n/a</td>
<td>n/a</td>
<td>104.32-33</td>
</tr>
<tr>
<td>LEAs must establish and follow procedural safeguards to ensure that disadvantaged students are properly identified, evaluated, and placed.</td>
<td>n/a</td>
<td>n/a</td>
<td>104.36</td>
</tr>
<tr>
<td>LEAs may not select sites for facilities which have the purpose or effect of discriminating on the basis of a protected characteristic.</td>
<td>100.3(b)(3)</td>
<td>n/a</td>
<td>104.4(b)(5). Facilities must also be accessible and usable by people with disabilities. 104.21-23.</td>
</tr>
<tr>
<td>LEAs may not aid or perpetuate prohibited discrimination by others.</td>
<td>n/a</td>
<td>106.31(b)(6)</td>
<td>104.4(b)(1)(v)</td>
</tr>
<tr>
<td>LEAs must designate an employee to be responsible for compliance with the relevant regulatory requirements.</td>
<td>n/a</td>
<td>106.8(a)</td>
<td>104.7(a)</td>
</tr>
<tr>
<td>LEAs must take affirmative steps to notify beneficiaries that they do not discriminate on the basis of the protected class.</td>
<td>n/a</td>
<td>106.9</td>
<td>104.8</td>
</tr>
<tr>
<td>LEAs must adopt and publish internal procedures to resolve grievances alleging prohibited discrimination.</td>
<td>n/a</td>
<td>106.8(b)</td>
<td>104.7(b)</td>
</tr>
<tr>
<td>LEAs must submit an assurance of regulatory compliance.</td>
<td>100.4</td>
<td>106.4</td>
<td>104.5</td>
</tr>
<tr>
<td>LEAs must keep records of compliance.</td>
<td>100.6</td>
<td>106.71</td>
<td>104.61</td>
</tr>
</tbody>
</table>