LEGISLATION

APPROPRIATIONS

CGCS Letter on House Education Funding Bill

November 15, 2023

U.S. House of Representatives
Washington D.C. 20515

Dear Representative:

The Council of the Great City Schools, a coalition of the nation's largest central city school districts, strongly opposes H.R 5894, the House Labor, Health and Human Services, and Education appropriations bill that is pending on the House floor despite never being considered by the full Appropriations Committee. Urban school districts have been working hard to address the academic and mental health needs of our students, yet this bill undercuts these efforts by proposing major funding reductions and eliminations that schools need to educate the most vulnerable students in our communities. The Council does not support the Labor-HHS-Education appropriations bill and urges House members to oppose this measure and ask their leaders to produce an appropriations bill that supports students and their ongoing academic recovery.

The subcommittee bill retroactively rescinds nearly 50% of Title I funds for students from low-income families that was already approved by Congress for the current school year, while reducing Title I funding by 30% next school year. This bill also eliminates Title II funding to support effective instruction and Title III funding to support English language learners. School districts rely on these annual sources of revenue to meet the needs of students and provide support to teachers. The proposed cuts in the Labor-HHS-Education bill would upend school district operations by weakening federal support for essential instructional services for targeted student populations.

Districts' usage of these annual federal funds is also separate from the Elementary and Secondary School Emergency Relief (ESSER) funds provided through COVID-19 relief legislation. While ESSER is a one-time infusion of emergency funds for supplemental activities, funding from the annual federal Title programs is fundamental in the efforts to close achievement gaps, recruit and retain teachers, and meet challenging academic content standards. During a time when schools are focused on accelerating learning and supporting students' mental health, now is not the time to weaken the foundations of public schooling.

The Council urges the U.S. House of Representatives to reject the Labor-HHS-Education bill (H.R. 5894) and develop meaningful funding legislation that supports students and families. Funding for our nation's schools should not be threatened as a negotiation tactic during the appropriations process for FY 2024. As urban schools continue to address the ongoing educational challenges facing our students, we urge Congress to support these efforts rather than weaken our nation's public schools.

Sincerely,

Raymond Hart
Executive Director

Email Alert on House Appropriations Action

From: Manish Naik
Sent: Thursday, November 9, 2023
To: Legislation <legis@cgcslists.org>
Subject: Contact your House delegation about proposed funding cuts; CGCS meeting on Monday at 1pm ET

Legislative Liaisons of the Great City Schools –

We have scheduled a virtual meeting for Monday, November 13th at 1pm EASTERN and a calendar invitation will follow. We also ask that you **contact your U.S. House of Representatives delegation immediately** and urge them to oppose consideration of the proposed FY 2024 Labor, Health and Human Services, and Education appropriations bill (H.R. 5894) scheduled for a vote next week.

As we shared in July, the House appropriations subcommittee proposal cuts funding well below the levels outlined in the debt ceiling agreement and includes massive reductions to federal education funding for Title I (both retroactive Title I cuts for the current school year and cuts for next year). The bill also eliminates funding entirely for Title II (teacher effectiveness) and Title III (English learners). After the subcommittee approved the bill by voice vote, House leadership bypassed consideration of this bill in the full Appropriations Committee and has now scheduled a vote on the House floor next week. In the meantime, the House has not yet begun consideration of a Continuing Resolution (CR) ahead of next week's possible federal government shutdown after November 17th.

Action:
Please contact your delegation in the U.S. House of Representatives and tell them to **oppose H.R. 5894 – the FY 2024 Labor-Health and Human Services-Education bill** because:

- The proposed FY 2024 Labor-HHS-Education bill (H.R. 5894) undercuts the efforts of your district to provide essential instruction by cutting Title I funding to support students from low-income families both this current school year and next, while also eliminating Title II funding to support effective instruction and Title III support for English language learners.
- Devastating cuts to education are not acceptable and our schools and students should not be threatened as a negotiating tactic.
- The House of Representatives should vote on a Continuing Resolution to avoid a federal government shutdown after November 17th rather than on funding cuts to education.
- Education appropriations for FY 2024 should follow the spending levels that Congress approved in the Debt Ceiling legislation earlier this year.

Thank you, as always, and feel free to let us know if you have any questions. Feel free to also share this information with other districts and networks in your state that have additional members of the House outside of your jurisdiction. We will provide any updates during our meeting on Monday and look forward to hearing any feedback you get during your outreach.

--Manish Naik
Council of the Great City Schools

Proposed FY 2024 Funding Levels for Federal Education Programs (School Year 2024-25, in thousands)

Federal Education Program	FY 2022 Omnibus Final	FY 2023 Omnibus Final	FY 2024 Biden Proposal	FY 2024 House Subcommittee Proposal	FY 2024 Senate Commitee Proposal
PROPOSED: Title I Mandatory Grants	*0*	*0*	*0*	*0*	*0*
PROPOSED: School Readiness	*NA*	*NA*	*500,000*	*0*	*0*
PROPOSED: Fostering Diverse Schools	*NA*	*0*	*100,000*	*0*	*0*
Title I - Grants to LEAs	17,536,802	18,386,802	20,536,802	3,683,000*	18,562,000
Migrant Education	375,626	375,626	375,626	375,626	375,626
Neglected and delinquent	48,239	49,239	52,000	49,239	49,239
Homeless children and youth	114,000	129,000	129,000	129,000	129,000
Impact Aid	1,557,112	1,618,112	1,618,112	1,618,112	1,628,000
Comprehensive Literacy Dev. Grant	192,000	194,000	194,000	194,000	194,000
Title IV - Support & Academic Grant	1,280,000	1,380,000	1,405,000	1,380,000	1,400,000
State assessments	390,000	390,000	469,100	0	380,000
Rural education	195,000	215,000	215,000	215,000	220,000
Education for Native Hawaiians	38,397	45,897	45,897	45,897	45,897
Alaska Native Education Equity	37,953	44,953	44,953	44,953	44,953
Promise Neighborhoods	85,000	91,000	106,000	0	91,000
21st century learning centers	1,289,673	1,329,673	1,329,673	1,329,673	1,329,673
Full-Service Community Schools	75,000	150,000	368,000	100,000	150,000
Indian Education	189,246	194,746	201,746	194,746	194,746
Education Innovation and Research	234,000	284,000	405,000	284,000	240,000
Title II - Effective Instruction	2,170,080	2,190,080	2,190,080	0	2,190,080
Teacher quality partnership (HEA)	59,092	70,000	132,092	0	83,000
Teacher and Leader Incentive Fund	173,000	173,000	200,000	0	120,000
Charter schools grants	440,000	440,000	440,000	450,000	440,000
Magnet schools assistance	124,000	139,000	149,000	0	139,000

Federal Education Program	FY 2022 Omnibus Final	FY 2023 Omnibus Final	FY 2024 Biden Proposal	FY 2024 House Subcommittee Proposal	FY 2024 Senate Commitee Proposal
School Safety National Activities	201,000	216,000	601,000	216,000	196,000
Title III - English Language Acquisition	831,400	890,000	1,195,000	0	897,000
IDEA - Part B	13,343,704	14,193,704	16,259,193	14,194,000	14,369,000
IDEA Preschool	409,549	420,000	502,620	420,000	420,000
IDEA Infants and Families	496,306	540,000	932,000	540,000	560,000
Perkins CTE	1,379,848	1,462,269	1,688,733	1,462,269	1,482,000
Adult Education	704,167	729,167	759,167	729,167	729,167
GEAR UP	378,000	388,000	408,000	388,000	388,000
Research, dev., and dissemination	204,877	245,000	291,877	245,000	245,000
Statistics	111,500	121,500	127,000	121,500	121,500
Regional educational laboratories	58,733	58,733	60,733	0	54,000
National assessment (NAEP)	180,000	185,000	189,000	185,000	185,000
National Assessment Governing Bd.	7,745	7,799	9,300	7,799	7,799
Statewide data systems	33,500	38,500	38,500	0	29,000
U.S. Department of Education Discretionary Appropriations total	**75,374,000**	**79,233,262**	**90,006,621**	**57,100,000***	**79,380,000**

Proposed funding Increases in GREEN; proposed reductions in RED

* House FY 2024 proposal includes a $10.7 billion recission in FY 2023 funds already appropriated for the 2023-24 school year.

EDUCATION SCIENCES REFORM ACT (ESRA)

CGCS Feedback on Education Sciences Reform Act (ESRA) in Senate HELP Committee

Name: Manish Naik

Group (if applicable): Council of the Great City Schools

Primary Contact Email: mnaik@cgcs.org

- Feedback Area: p. 8 Line Number: 13, Section 103

- Suggestion: strike everything in paragraph 15 after "The term 'evidence-based'" and insert, "has the meaning given the term in section 8101(21)(A) of the ESEA."

- Brief context (optional):

  Based on feedback highlighting the needs of large urban school districts, the definition of "evidence-based" in the committee draft is overly restrictive and would place limitations on certain IES-funded educational activities and dissemination. This definition would limit research designs to only those "capable of causal inference, particularly randomized-control trials."

  While we understand the intent to highlight the highest quality materials, a narrow standard for "evidence-based" research would ultimately lead to the exclusion of crucial research design approaches intended to inform or understand practice, implementation, or context. These requirements will conflict with the committee's goal to make the work of IES more actionable and responsive to school districts and practitioners, stifling innovation while also hindering the ability of LEAs to understand and improve the experiences of specific student populations. Such a narrow definition could also significantly impact leaders of LEAs who cite practice-based research and resources due to the relevance of such materials to their work.

ESSER

January 9, 2024

84.425U Grantees
84.425V Grantees

Dear Grantee:

Thank you for your continued efforts to address the impacts of the COVID-19 pandemic, advance academic recovery, and support students' well-being. The American Rescue Plan (ARP) Act's Elementary and Secondary School Emergency Relief (ESSER) and Emergency Assistance to Non-Public Schools (EANS) funds are vital tools in these efforts, helping to accelerate student learning; rebuild our educator workforce; support record expansion of before, after, and summer learning and enrichment programs; and keep schools operating safely.

As communicated to grantees on September 18, 2023, **the liquidation extension request process that has been available under the Coronavirus Aid, Relief, and Economic Security (CARES) and Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Acts will be available for ARP.** Earlier today, the Department posted the liquidation extension request template for the ARP Act's ESSER and EANS programs. The ARP template is paired with an updated Frequently Asked Questions document to support grantees in completing the request template. Both documents are available on the Deadlines and Announcements page of the Department's Office of State and Grantee Relations (SGR) website. A similar liquidation extension request process for the ARP Act Homeless Children and Youth program will be communicated shortly.

Consistent with the CARES and CRRSA liquidation extension process, grantees requesting liquidation extensions on behalf of subgrantees will list the requested costs as an aggregate amount for each subgrantee, rather than a transaction-by-transaction listing. Similarly, grantees are not required to submit supporting documentation with the request; however, grantees should be prepared to provide relevant documentation as requested for monitoring or auditing purposes.

Grantees are encouraged to submit ARP ESSER or EANS liquidation extension requests by December 31, 2024, to minimize disruptions in accessing funds, though requests submitted after this date will still be reviewed. **Grantees must provide a cover letter that explains how the ARP ESSER and/or EANS liquidation extension request contributes to the acceleration of academic success for students, including those furthest from opportunity and with the greatest need.** In particular, we encourage grantees to highlight investments in three of the evidence-based strategies that can significantly contribute to improved student performance: increasing daily student attendance; providing high-quality tutoring; and increasing access to before, after, and summer learning and extended learning time. For example, a grantee could:

- Describe projects (e.g., parent communications initiatives, adoption of early warning intervention systems, home visiting programs, and interagency data-sharing investments) that promote regular student attendance and reduce chronic absenteeism.
- Indicate how many subgrantees are requesting liquidation extension to support contracted evidence-based tutoring services throughout the 2024-25 school year, and the approximate number and percentage of students to be served; or
- Identify uses of funds to provide summer learning opportunities and to provide afterschool and extended learning time during the regular school year, and the number of students served.

Cover letters may also describe other activities that contribute to academic success, such as:

- Providing counseling services to address mental health needs;
- Offering professional development and coaching to educators to build math and literacy instructional capacity; or
- Making targeted improvements to school infrastructure, including HVAC investments, to enhance indoor air quality and environmental safety that keep students healthy in school.

As with the CARES and CRRSA process, grantees may request liquidation extensions for any allowable costs of the ARP ESSER or EANS programs, provided such costs are properly obligated by September 30, 2024. Requests must be submitted to the relevant State mailbox at (Statename.oese@ed.gov).

The Department's liquidation extension process for ARP ESSER and EANS funds is designed to ensure that every possible resource is available to continue our collective work to address the pandemic's impacts on our students, schools, and families. For additional information or assistance, please contact your SGR program officer.

Sincerely,

Adam Schott
Deputy Assistant Secretary for Policy and Programs
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary
Office of Elementary and Secondary Education

U.S. Department of Education
General and Technical Frequently Asked Questions (FAQs)
for CARES ESSER, CARES GEER, CRRSA ESSER, CRRSA GEER, CRRSA EANS, ARP ESSER, and ARP EANS Liquidation Extension Requests

January 9, 2024

84.425C - GEER Grantees
84.425D, 84.425U - ESSER Grantees
84.425R, 84.425V - EANS Grantees

Introduction

For the Department's State-administered formula grant programs (Part 76 of the Department's regulations), obligations must be made by the grantee or subgrantee by the end of the "carryover" or Tydings Period, which allows funds to be obligated for an additional fiscal year beyond the fiscal year for which they were appropriated. These timely obligations may be liquidated for up to 120 days after that period without requiring Department approval. Beyond that point, after reviewing a request from a grantee, the Department may extend the period for costs associated with certain timely obligated projects to be liquidated in accordance with regulation and policy as discussed below.

More specifically, subject to other requirements discussed in this document, it is the Department's longstanding approach that, under circumstances such as those related to the COVID-19 pandemic, for timely and allowable obligations, services and payments associated with those services may extend through the end of the 120-day liquidation period and, upon request from a grantee, be approved for up to an additional 14 months beyond this date, provided a timely and valid obligation had been made pursuant to 34 C.F.R. § 76.707. For example, States (and, if applicable, their subgrantees) can continue contracted activities under American Rescue Plan (ARP)-funded contracts during ARP's liquidation period if: 1) the binding written contract was made by ARP's obligation deadline of September 30, 2024; 2) the project relates to an allowable activity; and 3) the additional time to liquidate funds is consistent with all State, local, and federal spending rules.

Under a liquidation extension of up to 14 additional months if approved by the Department:

- States (or subgrantees) will have additional time to draw down COVID-relief funds so timely obligated activities can be paid; and
- States (or subgrantees) will have additional time to carry out contracts, or other properly made obligations, for allowable activities when those obligations were made on or before the statutory deadline (September 30, 2024, for ARP funds).

As an example of how liquidation extension approvals may work in practice for ARP funds, if a school district (subgrantee) contracts with a tutoring services vendor prior to September 30, 2024, and that contract meets the requirements described in this document, it is permissible for the district to both receive services and liquidate funds for up to 18 months (*i.e.*, the initial 120-day liquidation period, plus the additional 14 months, if approved) past that date under the contract finalized on or before the obligation deadline.

A liquidation extension beyond the initial 120-day liquidation period is not automatic. Grantees must submit required information and obtain approval from the Department to receive a liquidation extension for themselves or on behalf of their subgrantees. Under no circumstances may a State or subgrantee enter into new contracts—*i.e.*, incur new obligations—relating to ARP after September 30, 2024.

As previously communicated, the Department will continue to help ensure that auditors are aware of this guidance. The Department is also available to speak to State or other auditors with fact-specific questions. Under the circumstances described above with regard to COVID-relief funding, while all Departmental review is fact-specific and would be considered on a case-by-case basis, the Department would not sustain an audit finding related solely to the continuation of services beyond the carryover period under an approved COVID-relief funding liquidation extension, so long as funds were used consistent with prudent business practices and internal controls for an allowable, reasonable and necessary, and timely-obligated project in the context of State and local procurement rules that permit it.

Frequently Asked Questions

Q. 1: May a State request a longer liquidation period extension than 14 months for Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, or American Rescue Plan (ARP) Act Elementary and Secondary School Emergency Relief (ESSER), Governor's Emergency Education Relief (GEER) and Emergency Assistance to Non-Public Schools (EANS) funds through the Liquidation Extension Request template? *(Updated January 9, 2024)*
A: No. A State may only request an extension of up to 14 months past the close of the liquidation period (*i.e.*, 14 months beyond the automatic 120-day liquidation period). Thus, requests submitted through this process may extend to, but not exceed, March 28, 2024, for the CARES Act funds, March 28, 2025, for the CRRSA Act funds, or March 28, 2026, for the ARP Act funds. (If the date of a requested extension falls on a weekend, the Department will default to the next business day to accommodate any final requests to liquidate funds associated with the approved request.)

Q. 2: May a State submit a liquidation extension request for American Rescue Plan (ARP) Act funds using this template? *(Updated January 9, 2024)*
A: Typically, yes. The request template has been updated to include ARP Act ESSER and EANS funds; however, ARP Act Homeless Children and Youth (ARP-HCY) is not included in this template. Information related to this program will be shared shortly. To receive materials to request an extension of ARP Act Outlying Areas State Educational Agencies (ARP-OA SEA) funds, please contact ESF.Outlying@ED.gov.

Q. 3: What should be included in the cover letter that accompanies the grantee's request for an extension of ARP Act ESSER and EANS funds? ***(Updated January 9, 2024)***
A: The Department continues to strongly encourage States and local educational agencies (LEAs) and other subgrantees to obligate and liquidate all ARP Act funds with urgency for activities that support students' academic recovery and mental health. Accordingly, this request must be accompanied by a cover letter that explains how the liquidation extension request contributes to the acceleration of academic success for students. The cover letter should also include a description of how the State has supported, and will continue to support, the expedited liquidation of funds to ensure that funds are leveraged, based on an analysis of data, to maximize investments to address academic recovery.

Q. 4: When may a State submit a liquidation extension request for CARES Act, CRRSA Act, or ARP Act funds? ***(Updated January 9, 2024)***
A: A State may submit a liquidation extension request for CARES Act, CRRSA Act, or ARP Act funds as soon as data are available for submission. The Department recommended submission prior to December 31, 2022, for CARES Act funds. The Department recommended submission prior to December 31, 2023, for CRRSA Act funds and recommends submission prior to December 31, 2024, for ARP Act funds to minimize disruption in accessing funds in the G6 grants management platform. Requests received after these dates will still be reviewed.

Q. 5: May a State submit CARES ESSER and CARES GEER; CRRSA ESSER, CRRSA GEER, and CRRSA EANS; or ARP ESSER and ARP EANS liquidation extension requests on the same document? ***(Updated January 9, 2024)***
A: No. As these are separate funding sources and may also be administered by different governmental entities at the State level, liquidation extension requests for CARES ESSER, CARES GEER, CRRSA ESSER, CRRSA GEER, CRRSA EANS, ARP ESSER, and ARP EANS must be submitted separately by the administering agency.

Q. 6: Why must a State use the liquidation extension request template to request an extension to liquidate CARES, CRRSA, or ARP funding? ***(Updated January 9, 2024)***
A: While the policy for requesting a liquidation extension is not new, the Department determined it would be best to establish standardized templates related to CARES Act ESSER and GEER, CRRSA Act ESSER, GEER, and EANS, and ARP ESSER and EANS funding. Based on consultation with States, subrecipients, and State auditors, the Department developed a streamlined process for liquidation extension requests that will ensure efficient review and notification of approvals.

Q. 7: Must a State submit the supporting documentation that demonstrates the timely obligation of funds, such as purchase orders or contracts for services in conjunction with its submission? ***(Updated January 9, 2024)***
A: No. The Department is not collecting this documentation at the time of initial submission. However, as the grantee, a State must make available upon request supporting documentation to substantiate that the aggregate subrecipient fiscal data included in its submission reflects allowable and timely obligation of funds. While a State should not submit supporting documentation to the Department with the liquidation extension request, the State is required to

attest that all supporting documentation is available and on file with the associated subrecipient(s) consistent with 2 CFR 200.334.

Q. 8: What are a State's responsibilities if an extension is granted? *(Updated January 9, 2024)*
A: A State (SEA or Governor), as the grantee, must retain full responsibility and oversight over the grant, consistent with the attestations included in the liquidation extension request. These continued oversight responsibilities will extend throughout the liquidation period. Related to the initial request, the State must confirm the allowability and proper and timely obligation of the funds, consistent with 34 CFR 76.707 and collect, review, and maintain all documentation to support the State and subrecipient liquidation extension request in a manner consistent with grant requirements and as noted in Q. 7, above. Approved liquidation extensions will be monitored in a manner consistent with the Department's oversight of its grantees and will include evidence of the grantee's oversight of the extension process and its monitoring of subrecipient expenses for timeliness and allowability. Additional information related to program monitoring is available in the ESSER, GEER, and EANS monitoring protocols.

Q. 9: How long will it take to receive a determination in response to a State's request?
A: The Department is committed to providing a prompt review of liquidation extension requests. Review and approval will be based on a complete request, including both State and associated subrecipient information. A State should submit requests to the State's mailbox (Statename.oese@ed.gov) and should anticipate a timely determination.

Q. 10: How will a State be notified about the determination status of its liquidation extension request?
A: A State will receive an official notification of determination in the form of a letter from the Department, which will be communicated to the State from the State mailbox (Statename.oese@ed.gov). The State should keep this letter on file for documentation and auditing purposes.

Q. 11: Has the Department provided any technical assistance regarding a liquidation extension request, and will it do so in the future? *(Updated January 9, 2024)*
A: Yes, SGR provided two technical assistance webinars following the release of the CARES Act funding liquidation extension request template. Associated resources and recordings are available on the ESSER and GEER program websites. Additional live webinar opportunities were provided to States in October and November 2022. Communications to grantees detailing the liquidation extension process are also available on the ESSER, GEER, and EANS Deadlines and Announcements website.

Q. 12: For States that are ready to close out their CARES Act, CRRSA Act, or ARP Act grant(s), when will information regarding closeout procedures be shared? *(Updated January 9, 2024)*
A: The obligation period for CARES ESSER and CARES GEER funds ended September 30, 2022. The closeout processes for the CARES ESSER and CARES GEER grants will incorporate those outlined in 2 CFR 200.344. Closeout information for the CARES ESSER and CARES GEER grants is available on the Resources and Webinars program websites. The obligation period for CRRSA ESSER, CRRSA GEER, and CRRSA EANS funds ended September 30,

2023. The closeout processes for the CRRSA Act and ARP Act grants will be communicated prior to the close of the grant award's regulatory liquidation period (January 29, 2024, for CRRSA Act programs and January 28, 2025, for ARP Act programs) and will incorporate the processes outlined in 2 CFR 200.344.

Q. 13: A State is required to assess the risk level of subrecipients receiving liquidation extensions. How is risk level defined?
A: As noted within the request template, a State uses the data it has available to determine risk. Such data may include results from internal risk assessments, single audits, or other data sources as selected by the State to determine the subrecipient's capacity for liquidating funds within the extended period. The State has flexibility in how it conducts this analysis, but, as noted in the grantee attestation, a State must attest that it has conducted an analysis prior to including a subrecipient in the liquidation extension request. All subrecipients must be provided with adequate oversight within the extended liquidation period and States may elect to provide additional oversight and support for higher risk subrecipients during the extended period as appropriate.

Q. 14: Why must a State verify that funds were obligated by the end of the obligation period as part of its liquidation extension request? *(Updated January 9, 2024)*
A: Verification of timely obligated funds is a standard expectation of liquidation extension requests involving Federal funds. The extension of a liquidation period is for expenses that have been properly obligated by the end of the grant's obligation period. For the CARES ESSER and CARES GEER programs, the final obligation date was September 30, 2022. For the CRRSA ESSER, CRRSA EANS, and CRRSA GEER programs, the final obligation date was September 30, 2023. For the ARP ESSER and ARP EANS programs, the final obligation date is September 30, 2024. The Department does not have the authority to extend the period of obligation. Therefore, to ensure that the liquidation extension request encompasses only those expenses that have been properly obligated by the statutory obligation date, States and subrecipients/LEAs must have documentation on file that demonstrates adherence to the obligation requirements. A State is not required to submit this documentation to the Department at the time of the request; however, the State and its subrecipients may be required at any time, including during monitoring or audit activities, to demonstrate compliance.

Q. 15: May a State request a liquidation extension for subrecipients or LEAs still awaiting a Unique Entity Identifier (UEI) assignment from SAM.gov?
A: Yes, a State may include liquidation extension requests for subrecipients or LEAs still awaiting a UEI assignment. This field in the template may be completed using the temporary UEI if one has been assigned or left blank if a temporary UEI has not yet been assigned. The State should indicate within the optional subrecipient-specific data notes section of the liquidation extension request template that the UEI is temporary.

Q. 16: The CARES Act liquidation date indicated in G6 is January 30, 2023, and the CRRSA Act liquidation date in G6 is January 29, 2024; however, previous communication from the Department indicated a CARES Act liquidation date of January 28, 2023. Can you explain the discrepancy in dates? *(Updated January 9, 2024)*

A: The end of a liquidation period is 120 calendar days following the statutory obligation date. In the case of the CARES ESSER and CARES GEER programs, the end of the obligation period was September 30, 2022. One hundred twenty calendar days after that date was January 28, 2023. Because this date fell on a weekend, G6 defaulted to the next available business date, which was January 30, 2023, for the CARES Act funds. Therefore, States could continue to liquidate CARES ESSER and CARES GEER funds through January 30, 2023. January 28, 2024, is the regulatory liquidation date for the CRRSA Act funds and also falls on a weekend. Thus, the G6 system will default to the next business day: January 29, 2024. States may therefore continue to liquidate CRRSA ESSER, CRRSA GEER, and CRRSA EANS funds through January 29, 2024. (January 28, 2025, is the regulatory liquidation date for the ARP Act funds and will be reflected in G6.)

ESSER SURVEY

CGCS Survey on ESSER Investments – Part II

November 2023

Thank you for participating in the 2023 Council of the Great City Schools (CGCS) ESSER Financial Survey. The purpose of this survey is to collect financial information on the investments made with ESSER funds provided through federal COVID-19 relief funds. The results of this survey will complement an earlier survey from the Council on academic and mental health ESSER investments.

In total, Congress provided approximately $190 billion in ESSER funds to school districts divided into three waves of funding. The survey will refer to each wave in the following way:

- ESSER I - $13.2 billion through the CARES Act in March, 2020;
- ESSER II – 54.3 billion through the CRRSA Act in December, 2020;
- ESSER III - $122 billion through the ARP Act in March, 2021.

Your responses to this survey are automatically saved so you may return to this survey as many times before your final submission. Your survey link is unique to your district so you may simply forward to any staff member who needs access to the survey. You can also find a PDF of the survey here.

Please forward any questions to Moses Valle-Palacios at mvallepalacios@cgcs.org.

ESSER I (CARES ACT)

ESSER I (CARES Act) allocation amount:
Date ESSER I (CARES Act) funds were available to LEA:
Amounts of ESSER I (CARES Act) funds obligated, as of September 30, 2022:
Amounts of ESSER I (CARES Act) funds expended, as of January 31, 2022:

SECTION I: Facilities

Key Definitions

Facilities Repair, Renovations, and Remodeling– Investments to repair or update spaces utilized by the agency including associated labor costs.
HVAC/Indoor Air Quality – Projects to improve air quality which may include replacement/repair of HVAC units and associated labor costs.
New Construction – Capital projects to build new facilities to be used by the school district.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, or additional planning time.
Salaries and Benefits – Regular payments to employees including all benefits minus any incentive pay or bonuses.
Trailers and Modular Units – Portable classrooms to support social distancing.

For each category, indicate how much **ESSER I (CARES)** funds (rounded to the nearest whole dollar, no dollar signs or commas) your district invested in the following areas, along with the number of schools that benefited from the investment. For personnel questions, indicate the number of full-time employees in each category:

	Investment Area	**Dollars Invested**	**Number of Schools**
	Facilities Projects		
	HVAC/Indoor Air Quality		
	Facilities Repair, Renovations and Remodeling		
	School and Classroom spending to direct or separate or protect students or ensure distance		
	Trailers and Modular Units (Purchase and installation)		
	New Construction (Capital spending)		
	Other		

	Investment Area	**Dollars Invested**	**Number of People (FTE) Hired**
	New Personnel Salaries and Benefits		
	Facilities Staff (Place holder)		
	Other		

	Investment Area	**Dollars Invested**	**Number of People (FTE) Supported**
	Existing Personnel Salaries and Benefits		
	Facilities Staff (Place holder)		
	Other		

	Investment Area	**Dollars Invested**	**Number of People (FTE) Provided Incentives**
	Retention and Hiring Incentives (Bonuses, stipends, additional leave, premium pay)		
	Facilities Staff (Place holder)		
	Other		

SECTION II: Operations and COVID Mitigation

This section includes ESSER I (CARES Act) spending on **Operations and COVID-19 Mitigation**.

Key Definitions

COVID-19 Mitigation – Excluding repairs or updates to HVAC/Ventilation systems, systems or elements needed to minimize the spread of COVID in your district (e.g., Protective Personal Equipment, COVID tests).
Food Services – Investments related to serving meals to students minus staff salaries and benefits or incentive pay or bonuses.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, or additional planning time.
Salaries and Benefits – Regular payments to employees including all benefits (including healthcare and retirement) minus any incentive pay or bonuses.
Transportation – Investments related to transporting students minus staff salaries and benefits or incentive pay or bonuses.

For each category, indicate how much **ESSER I (CARES)** funds (rounded to the nearest whole dollar, no dollar signs or commas) your district invested in the following areas. For personnel questions, indicate the number of full-time employees in each category:

	Investment Area	**Dollars Invested**
	Operations	
	Food Services	
	Transportation	

	Investment Area	**Dollars Invested**
	COVID-19 Mitigation	
	Personal Protective Equipment (e.g., masks, face shields, gloves, hand sanitizer)	
	Cleaning Supplies	
	Vaccinations (e.g., clinics, marketing materials)	
	COVID Testing	
	Contact Tracing	
	Other	

	Investment Area	**Dollars Invested**	**Number of People (FTE) Hired**
	New Personnel Salaries and Benefits		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		

	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE) Supported**
	Existing Personnel Salaries and Benefits		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE)**
	Retention and Hiring Incentives (Premium pay, bonuses, stipends, additional leave and planning time)		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

SECTION III: Academic Recovery and Mental Health Support

This section includes ESSER I (CARES Act) spending for **academic programming/supports** in your district.

Key Definitions

Academic Assessments – Materials used to measure student proficiencies and academic progress (e.g., *iReady, Smarter Balanced Assessments,* ACCESS).
After-School Programs – Programs/services that operate outside of traditional instructional hours during the academic year and provide students with opportunities to further develop skills that improve learning.
Data Systems – Systems designed to store data from sources including attendance, assessment, and early intervention data.
Internet Connectivity – Costs associated with providing off-campus internet connectivity to facilitate remote instruction.
Learning Devices – Costs of purchasing laptops, tablets, or other devices to support remote instruction.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, additional planning time, or paying for teacher certifications (e.g., ESL, special education).
Salaries and Benefits – Regular payments to employees including all benefits (including healthcare and retirement) minus any incentive pay or bonuses.
Strategies for Academic Recovery – Investments to address the unfinished learning students experienced as a result of the COVID-19 pandemic.
Summer Enrichment Programs – Programs/services that operate during the summer months and provide students with opportunities to further develop skills that improve learning.
Temporary Class Size Reduction – Investments to reduce teacher-to-student ratios by hiring additional instructional staff.

For each category, indicate how much **ESSER I (CARES)** funds (rounded to the nearest whole dollar, no dollar signs or commas) your district invested in the following areas, along with the number of units of devices purchased. For personnel questions, indicate the number of full-time employees in each category:

	Investment Area	**Dollars Invested**	**Number of Units Provided**
	Investments to Support Remote Instruction		
	Learning Devices (e.g., laptops, tablets)		
	Internet Connectivity (e.g., mobile hotspots, internet service)		
	Other		

	Investment Area	**Dollars Invested**
	Provision of Basic Instruction	
	Acquisition of Instructional Materials	

	High Dosage Tutoring	
	Temporary Class Size Reduction	
	Extended Instructional Time (e.g., extended school day/year/week, before or after school programs)	
	Summer Enrichment Programs	
	Full-Service Community Schools	
	Academic Assessments	
	Data Systems	
	Early Childhood Programs	
	Professional Development in curriculum and/or instruction for teachers, instructional paraprofessionals, and tutors.	
	Other	

Investment Area		**Dollars Invested**
	Mental Health Supports	
	Universal screening for socio-emotional and behavior needs	
	Family outreach including home visits and efforts to find children	
	Interpretation and translation services (contracts, devices, people)	
	Professional development in mental health for mental health staff, teachers, instructional paraprofessionals, and tutors	
	Support for educators and staff	

Investment Area		**Dollars Invested**	**Number of People (FTE) Hired**
	New Personnel Salaries and Benefits		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		Dollars Invested	Number of People (FTE) Supported
	Existing Personnel Salaries and Benefits		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		Dollars Invested	Number of People (FTE) Supported
	Retention and Hiring Incentives (Bonuses, stipends, additional leave, planning time, tuition fees for certification)		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Talent Pipeline Initiatives		
	Grow Your Own Initiatives		
	University-School District Partnerships		
	Teacher Recruitment Efforts		

ESSER II (CRRSA)

ESSER II (CRRSA) allocation amount:
Date ESSER II (CRRSA) funds were received by LEA:
ESSER II (CRRSA) funds expended, as of September 30, 2023:
ESSER II (CRRSA) funds that remained unobligated, as of September 30, 2023:

SECTION I: Facilities

Key Definitions

Facilities Repair, Renovations, and Remodeling– Investments to repair or update spaces utilized by the agency including associated labor costs.
HVAC/Indoor Air Quality – Projects to improve air quality which may include replacement/repair of HVAC units and associated labor costs.
New Construction – Capital projects to build new facilities to be used by the school district.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, or additional planning time.
Salaries and Benefits – Regular payments to employees including all benefits minus any incentive pay or bonuses.
Trailers and Modular Units – Portable classrooms to support social distancing.

For each category, indicate **ESSER II (CCRSA)** funds (rounded to the nearest whole dollar) your district invested (expended or obligated) in the following areas, along with the number of schools that benefited from the investment. For personnel questions, indicate the number of full-time employees in each category:

	Investment Area	**Dollars Invested**	**Number of Schools**
	Facilities Projects		
	HVAC/Indoor Air Quality		
	Facilities Repair, Renovations and Remodeling		
	School and Classroom spending to direct or separate or protect students or ensure distance		
	Trailers and Modular Units (Purchase and installation)		
	New Construction (Capital spending)		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	New Personnel Salaries and Benefits		
	Facilities Staff (Place holder)		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Existing Personnel Salaries and Benefits		
	Facilities Staff (Place holder)		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Retention and Hiring Incentives (Bonuses, stipends, additional leave)		
	Facilities Staff (Place holder)		
	Other		

SECTION II: Operations and COVID Mitigation

This section will consider expenditure of ESSER II (CRRSA) funds for **Operations and COVID-19 Mitigation**.

Key Definitions

COVID-19 Mitigation – Excluding repairs or updates to HVAC/Ventilation systems, systems or elements needed to minimize the spread of COVID in your district (e.g., Protective Personal Equipment, COVID tests).
Food Services – Investments related to serving meals to students minus staff salaries and benefits or incentive pay or bonuses.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, or additional planning time.
Salaries and Benefits – Regular payments to employees including all benefits (including healthcare and retirement) minus any incentive pay or bonuses.
Transportation – Investments related to transporting students minus staff salaries and benefits or incentive pay or bonuses.

For each category, indicate **ESSER II (CCRSA)** funds (rounded to the nearest whole dollar) your district invested (expended or obligated) in the following areas. For personnel questions, indicate the number of full-time employees in each category:

Investment Area		Dollars Invested
	Operations	
	Food Services	
	Transportation	

Investment Area		Dollars Invested
	COVID-19 Mitigation	
	Personal Protective Equipment (e.g., masks, face shields, gloves, hand sanitizer)	
	Cleaning Supplies	
	Vaccinations (e.g., clinics, marketing materials)	
	COVID Testing	
	Contact Tracing	
	Other	

Investment Area		Dollars Invested	Number of People (FTE) Hired
	New Personnel Salaries and Benefits		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

Investment Area		Dollars Invested	Number of People (FTE) Supported
	Existing Personnel Salaries and Benefits		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Retention and Hiring Incentives (Premium pay, bonuses, stipends, additional leave and planning time)		

	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

SECTION III: Academic Recovery and Mental Health Support

This section will consider expenditure of ESSER II (CRRSA) funds for **academic programming/supports** in your district.

Key Definitions

Academic Assessments – Materials used to measure student proficiencies and academic progress (e.g., *iReady, Smarter Balanced Assessments*, ACCESS).
After-School Programs – Programs/services that operate outside of traditional instructional hours during the academic year and provide students with opportunities to further develop skills that improve learning.
Data Systems – Systems designed to store data from sources including attendance, assessment, and early intervention data.
Internet Connectivity – Costs associated with providing off-campus internet connectivity to facilitate remote instruction.
Learning Devices – Costs of purchasing laptops, tablets, or other devices to support remote instruction.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, additional planning time, or paying for teacher certifications (e.g., ESL, special education).
Salaries and Benefits – Regular payments to employees including all benefits (including healthcare and retirement) minus any incentive pay or bonuses.
Strategies for Academic Recovery – Investments to address the unfinished learning students experienced as a result of the COVID-19 pandemic.
Summer Enrichment Programs – Programs/services that operate during the summer months and provide students with opportunities to further develop skills that improve learning.
Temporary Class Size Reduction – Investments to reduce teacher-to-student ratios by hiring additional instructional staff.

For each category, indicate **ESSER II (CCRSA)** funds (rounded to the nearest whole dollar) your district invested (expended or obligated) in the following areas, along with the number of units of devices purchased. For personnel questions, indicate the number of full-time employees in each category:

Investment Area	**Dollars Invested**	**Number of Units Provided**

	Investments to Support Remote Instruction		
	Learning Devices (e.g., laptops, tablets)		
	Internet Connectivity (e.g., mobile hotspots, internet service)		
	Other		

Investment Area		**Dollars Invested**
	Provision of Basic Instruction	
	Acquisition of Instructional Materials	
	High Dosage Tutoring	
	Temporary Class Size Reduction	
	Extended Instructional Time (e.g., extended school day/year/week, before or after school programs)	
	Summer Enrichment Programs	
	Full-Service Community Schools	
	Academic Assessments	
	Data Systems	
	Early Childhood Programs	
	Professional Development in curriculum and/or instruction for teachers, instructional paraprofessionals, and tutors.	
	Other	

Investment Area		**Dollars Invested**
	Mental Health Supports	
	Universal screening for socio-emotional and behavior needs	
	Family outreach including home visits and efforts to find children	
	Interpretation and translation services (contracts, devices, people)	
	Professional development in mental health for mental health staff, teachers, instructional paraprofessionals, and tutors	
	Support for educators and staff	

Investment Area		**Dollars Invested**	**Number of People (FTE) Hired**
	New Personnel Salaries and Benefits		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		

	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE) Supported**
	Existing Personnel Salaries and Benefits		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE) Supported**
	Retention and Hiring Incentives (Bonuses, stipends, additional leave, planning time, tuition fees for certification)		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE)**
	Talent Pipeline Initiatives		
	Grow Your Own Initiatives		
	University-School District Partnerships		
	Teacher Recruitment Efforts		

ESSER III (ARP)

ESSER III (ARP) allocation amount:
Date ESSER III (ARP) funds were received by LEA:
ESSER III (ARP) funds expended, as of September 30, 2023:
ESSER III (ARP) funds that remain unobligated, as of September 30, 2023:

PART I: ESSER III (ARP) FUNDS ALREADY INVESTED (EXPENDED OR OBLIGATED)

SECTION I: Facilities

Key Definitions

Facilities Repair, Renovations, and Remodeling– Investments to repair or update spaces utilized by the agency including associated labor costs.
HVAC/Indoor Air Quality – Projects to improve air quality which may include replacement/repair of HVAC units and associated labor costs.
New Construction – Capital projects to build new facilities to be used by the school district.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, or additional planning time.
Salaries and Benefits – Regular payments to employees including all benefits minus any incentive pay or bonuses.
Trailers and Modular Units – Portable classrooms to support social distancing.

For each category, indicate **ESSER III (ARP)** funds (rounded to the nearest whole dollar) your district invested (expended or obligated as of September 30, 2023) in the following areas, along with the number of schools that benefited from the investment. For personnel questions, indicate the number of full-time employees in each category:

Investment Area		**Dollars Invested**	**Number of Schools**
	Facilities Projects		
	HVAC/Indoor Air Quality		
	Facilities Repair, Renovations and Remodeling		
	School and Classroom spending to direct or separate or protect students or ensure distance		
	Trailers and Modular Units (Purchase and installation)		
	New Construction (Capital spending)		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	New Personnel Salaries and Benefits		
	Facilities Staff (Place holder)		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Existing Personnel Salaries and Benefits		
	Facilities Staff (Place holder)		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Retention and Hiring Incentives (Bonuses, stipends, additional leave)		
	Facilities Staff (Place holder)		
	Other		

SECTION II: Operations and COVID Mitigation

This section will consider expenditure of ESSER III (ARP) funds for **Operations and COVID-19 Mitigation**.

Key Definitions

COVID-19 Mitigation – Excluding repairs or updates to HVAC/Ventilation systems, systems or elements needed to minimize the spread of COVID in your district (e.g., Protective Personal Equipment, COVID tests).
Food Services – Investments related to serving meals to students minus staff salaries and benefits or incentive pay or bonuses.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, or additional planning time.
Salaries and Benefits – Regular payments to employees including all benefits (including healthcare and retirement) minus any incentive pay or bonuses.
Transportation – Investments related to transporting students minus staff salaries and benefits or incentive pay or bonuses.

For each category, indicate **ESSER III (ARP)** funds (rounded to the nearest whole dollar) your district invested (expended or obligated as of September 30, 2023) in the following areas. For personnel questions, indicate the number of full-time employees in each category:

Investment Area		Dollars Invested
	Operations	
	Food Services	
	Transportation	

Investment Area		Dollars Invested
	COVID-19 Mitigation	
	Personal Protective Equipment (e.g., masks, face shields, gloves, hand sanitizer)	
	Cleaning Supplies	
	Vaccinations (e.g., clinics, marketing materials)	
	COVID Testing	
	Contact Tracing	
	Other	

Investment Area		Dollars Invested	Number of People (FTE) Hired
	New Personnel Salaries and Benefits		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

Investment Area		Dollars Invested	Number of People (FTE) Supported
	Existing Personnel Salaries and Benefits		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Retention and Hiring Incentives (Premium pay, bonuses, stipends, additional leave and planning time)		

	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

SECTION III: Academic Recovery and Mental Health Support

This section will consider expenditure of ESSER III (ARP) funds for **academic programming/supports** in your district.

Key Definitions

Academic Assessments – Materials used to measure student proficiencies and academic progress (e.g., *iReady, Smarter Balanced Assessments*, ACCESS).
After-School Programs – Programs/services that operate outside of traditional instructional hours during the academic year and provide students with opportunities to further develop skills that improve learning.
Data Systems – Systems designed to store data from sources including attendance, assessment, and early intervention data.
Internet Connectivity – Costs associated with providing off-campus internet connectivity to facilitate remote instruction.
Learning Devices – Costs of purchasing laptops, tablets, or other devices to support remote instruction.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, additional planning time, or paying for teacher certifications (e.g., ESL, special education).
Salaries and Benefits – Regular payments to employees including all benefits (including healthcare and retirement) minus any incentive pay or bonuses.
Strategies for Academic Recovery – Investments to address the unfinished learning students experienced as a result of the COVID-19 pandemic.
Summer Enrichment Programs – Programs/services that operate during the summer months and provide students with opportunities to further develop skills that improve learning.
Temporary Class Size Reduction – Investments to reduce teacher-to-student ratios by hiring additional instructional staff.

For each category, indicate **ESSER III (ARP)** funds (rounded to the nearest whole dollar) your district invested (expended or obligated as of September 30, 2023) in the following areas, along with the number of units of devices purchased. For personnel questions, indicate the number of full-time employees in each category:

Investment Area	**Dollars Invested**	**Number of Units Provided**

	Investments to Support Remote Instruction		
	Learning Devices (e.g., laptops, tablets)		
	Internet Connectivity (e.g., mobile hotspots, internet service)		
	Other		

Investment Area		**Dollars Invested**
	Provision of Basic Instruction	
	Acquisition of Instructional Materials	
	High Dosage Tutoring	
	Temporary Class Size Reduction	
	Extended Instructional Time (e.g., extended school day/year/week, before or after school programs)	
	Summer Enrichment Programs	
	Full-Service Community Schools	
	Academic Assessments	
	Data Systems	
	Early Childhood Programs	
	Professional Development in curriculum and/or instruction for teachers, instructional paraprofessionals, and tutors.	
	Other	

Investment Area		**Dollars Invested**
	Mental Health Supports	
	Universal screening for socio-emotional and behavior needs	
	Family outreach including home visits and efforts to find children	
	Interpretation and translation services (contracts, devices, people)	
	Professional development in mental health for mental health staff, teachers, instructional paraprofessionals, and tutors	
	Support for educators and staff	

Investment Area		**Dollars Invested**	**Number of People (FTE) Hired**
	New Personnel Salaries and Benefits		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		

	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE) Supported**
	Existing Personnel Salaries and Benefits		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE) Supported**
	Retention and Hiring Incentives (Bonuses, stipends, additional leave, planning time, tuition fees for certification)		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE)**
	Talent Pipeline Initiatives		
	Grow Your Own Initiatives		
	University-School District Partnerships		
	Teacher Recruitment Efforts		

PART II: PLANNED INVESTMENTS OF ESSER III (ARP) FUNDS (NOT YET EXPENDED OR OBLIGATED)

SECTION I: Facilities

Key Definitions

Facilities Repair, Renovations, and Remodeling– Investments to repair or update spaces utilized by the agency including associated labor costs.
HVAC/Indoor Air Quality – Projects to improve air quality which may include replacement/repair of HVAC units and associated labor costs.
New Construction – Capital projects to build new facilities to be used by the school district.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, or additional planning time.
Salaries and Benefits – Regular payments to employees including all benefits minus any incentive pay or bonuses.
Trailers and Modular Units – Portable classrooms to support social distancing.

For each category, indicate **ESSER III (ARP)** funds (rounded to the nearest whole dollar) your district plans to invest in the following areas, along with the estimated number of schools that will benefit from the investment. For personnel questions, indicate the number of estimated numbers of full-time employees in each category:

Investment Area		**Dollars Invested**	**Number of Schools**
	Facilities Projects		
	HVAC/Indoor Air Quality		
	Facilities Repair, Renovations and Remodeling		
	School and Classroom spending to direct or separate or protect students or ensure distance		
	Trailers and Modular Units (Purchase and installation)		
	New Construction (Capital spending)		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE)**
	New Personnel Salaries and Benefits		
	Facilities Staff (Place holder)		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Existing Personnel Salaries and Benefits		
	Facilities Staff (Place holder)		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Retention and Hiring Incentives (Bonuses, stipends, additional leave)		
	Facilities Staff (Place holder)		
	Other		

SECTION II: Operations and COVID Mitigation

This section will consider expenditure of ESSER III (ARP) funds for **Operations and COVID-19 Mitigation**.

Key Definitions

COVID-19 Mitigation – Excluding repairs or updates to HVAC/Ventilation systems, systems or elements needed to minimize the spread of COVID in your district (e.g., Protective Personal Equipment, COVID tests).
Food Services – Investments related to serving meals to students minus staff salaries and benefits or incentive pay or bonuses.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, or additional planning time.
Salaries and Benefits – Regular payments to employees including all benefits (including healthcare and retirement) minus any incentive pay or bonuses.
Transportation – Investments related to transporting students minus staff salaries and benefits or incentive pay or bonuses.

For each category, indicate **ESSER III (ARP)** funds (rounded to the nearest whole dollar) your district plans to invest in the following areas. For personnel questions, indicate the estimated number of full-time employees in each category:

Investment Area		Dollars Invested
	Operations	
	Food Services	
	Transportation	

Investment Area		Dollars Invested
	COVID-19 Mitigation	
	Personal Protective Equipment (e.g., masks, face shields, gloves, hand sanitizer)	
	Cleaning Supplies	
	Vaccinations (e.g., clinics, marketing materials)	
	COVID Testing	
	Contact Tracing	
	Other	

Investment Area		Dollars Invested	Number of People (FTE) Hired
	New Personnel Salaries and Benefits		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

Investment Area		Dollars Invested	Number of People (FTE) Supported
	Existing Personnel Salaries and Benefits		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

Investment Area		Dollars Invested	Number of People (FTE)
	Retention and Hiring Incentives (Premium pay, bonuses, stipends, additional leave and planning time)		
	Bus Drivers and other transportation staff		
	Safety and Security Staff		
	Food Service Staff		
	School Custodial Staff		
	Engineers/Mechanics		
	Repair Technicians		
	Other		

SECTION III: Academic Recovery and Mental Health Support

This section will consider expenditure of ESSER III (ARP) funds for **academic programming/supports** in your district.

Key Definitions

Academic Assessments – Materials used to measure student proficiencies and academic progress (e.g., *iReady, Smarter Balanced Assessments,* ACCESS).
After-School Programs – Programs/services that operate outside of traditional instructional hours during the academic year and provide students with opportunities to further develop skills that improve learning.
Data Systems – Systems designed to store data from sources including attendance, assessment, and early intervention data.
Internet Connectivity – Costs associated with providing off-campus internet connectivity to facilitate remote instruction.
Learning Devices – Costs of purchasing laptops, tablets, or other devices to support remote instruction.
Retention and Hiring Incentives – Initiatives to reduce employee turnover and recruit new employees by employing strategies such as premium pay, bonuses, stipends, paid time off, additional planning time, or paying for teacher certifications (e.g., ESL, special education).
Salaries and Benefits – Regular payments to employees including all benefits (including healthcare and retirement) minus any incentive pay or bonuses.
Strategies for Academic Recovery – Investments to address the unfinished learning students experienced as a result of the COVID-19 pandemic.
Summer Enrichment Programs – Programs/services that operate during the summer months and provide students with opportunities to further develop skills that improve learning.
Temporary Class Size Reduction – Investments to reduce teacher-to-student ratios by hiring additional instructional staff.

For each category, indicate **ESSER III (ARP)** funds (rounded to the nearest whole dollar) your district plans to invest in the following areas, along with the estimated number of units to be provided. For personnel questions, indicate the estimated number of full-time employees in each category:

	Investment Area	**Dollars Invested**	**Number of Units Provided**
	Investments to Support Remote Instruction		
	Learning Devices (e.g., laptops, tablets)		
	Internet Connectivity (e.g., mobile hotspots, internet service)		
	Other		

	Investment Area	**Dollars Invested**
	Provision of Basic Instruction	
	Acquisition of Instructional Materials	

	High Dosage Tutoring	
	Temporary Class Size Reduction	
	Extended Instructional Time (e.g., extended school day/year/week, before or after school programs)	
	Summer Enrichment Programs	
	Full-Service Community Schools	
	Academic Assessments	
	Data Systems	
	Early Childhood Programs	
	Professional Development in curriculum and/or instruction for teachers, instructional paraprofessionals, and tutors.	
	Other	

Investment Area		**Dollars Invested**
	Mental Health Supports	
	Universal screening for socio-emotional and behavior needs	
	Family outreach including home visits and efforts to find children	
	Interpretation and translation services (contracts, devices, people)	
	Professional development in mental health for mental health staff, teachers, instructional paraprofessionals, and tutors	
	Support for educators and staff	

Investment Area		**Dollars Invested**	**Number of People (FTE) Hired**
	New Personnel Salaries and Benefits		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area	**Dollars Invested**	**Number of People (FTE)**

			Supported
	Existing Personnel Salaries and Benefits		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE) Supported**
	Retention and Hiring Incentives (Bonuses, stipends, additional leave, planning time, tuition fees for certification)		
	Teachers, Instructional Paraprofessionals, and Tutors		
	School Administrators		
	School Psychologists		
	Nurses		
	Guidance Counselors		
	Social Workers		
	Interpreters and translators		
	Content Coaches		
	Interventionalists		
	Other		

Investment Area		**Dollars Invested**	**Number of People (FTE)**
	Talent Pipeline Initiatives		
	Grow Your Own Initiatives		
	University-School District Partnerships		
	Teacher Recruitment Efforts		

SURVEY QUESTIONAIRE

Investments with ESSER Funds

1. Please rate each of the following statements related to planning the use of ESSER funds:
    a. 4-point Likert scale: Strongly disagree, Disagree, Agree, Strongly agree
    b. Statements:
        i. My district has taken steps that will minimize the funding cliff once ESSER has ended.
        ii. My state has been a helpful partner in planning the use of ESSER funds.
        iii. My state provided timely approval of my district's ESSER spending plan.
        iv. My state provided timely approval of my district's changes to our initial ESSER spending plan.
        v. My state provided clear communications about the denial of specific expenditures in my district's ESSER spending plan.
        vi. My state denied significant investments that were in my district's initial ESSER spending plan.
2. If your district encountered issues with your state approving or denying spending plans or specific expenditures, please describe them below. (Open-ended)
3. What is the pace of your district's actual spending as compared to your planned expenditures for ESSER II and ESSER III as of September 30, 2023?
    a. Columns: On Track, Behind Schedule, Ahead of Schedule
    b. Rows: ESSER II, ESSER III
4. What percentage of total expenditures have been divided between central office and school-level purposes for ESSER I, II, and II:

    Columns: ESSER I, ESSER II, ESSER III

    a. Percentage of funds spent by the central office for districtwide purposes or priorities.
    b. Percentage of total funds distributed to schools for their expenditure.

5. How did your district allocate funds to schools for ESSER I, II, and III? (Mark all that apply)
    a. Columns: ESSER I, II, III
    b. Choices:
        i. Flat amount per school or per pupil
        ii. Number or proportion of students at the school with specific curricular needs (ELL, SPED)
        iii. Number or proportion of low-income students or students eligible for free or reduced-price meals
        iv. Measure of lost instructional time
        v. Title I status
        vi. Other data (please specify)

Flexibilities for Spending ESSER Funds

Key Definitions

Obligation – funds that have been committed in writing for a specific use to be paid at an agreed-upon date (e.g. a signed contract). Federal coronavirus relief funds must be obligated by specific deadlines specified in law, although the actual payment or expenditure of funds may come later depending on the activity. For example, ESSER III funds have to be obligated by September 30, 2024, but districts generally have 120 days after this deadline to spend the funds.

Expenditures – payment of funds (outlays) made for a specific use. Districts have 120 days beyond the ESSER obligation deadline to spend funds committed (obligated) for a specific use.

The obligation date for ESSER II funds was September 30, 2023 and ESSER III will be September 30, 2024. All school districts have an automatic 120 days to liquidate (i.e. spend) obligated funds after September 30th. The U.S. Department of Education announced an extension to ESSER I, ESSER II, and ESSER III liquidation deadlines in some circumstances for funds that were properly obligated by September 30th. States have to apply for the extension on behalf of their school districts.

1. Has your state applied or are they planning to apply for the late liquidation extension available for ESSER II or ESSER III?
    a. Rows: ESSER II, ESSER III
    b. Columns: Has already applied, Plans to apply, Does not plan to apply, Not sure
2. If your district could benefit from a late liquidation extension for ESSER II and ESSER III, which investments may need additional time to spend and the reason why? (Open-ended)
3. If your state is planning to apply for the late liquidation extension, does your state have a clear and efficient process for submitting and approving district requests? (Matrix, one selection per row)
    a. Rows:
        i. Clear
        ii. Efficient
    b. Columns
        i. Yes
        ii. No

ESSER III (American Rescue Plan) Policy Requirements

4. ARP included new "Maintenance of Equity" requirements for school districts in 2021-22 and 2022-23. School districts were prohibited from reducing per-pupil funding and per-pupil FTE staffing in high-poverty schools beyond similar reductions for all its schools. The U.S. Department of Education eventually provided an exception from the local Maintenance of Equity requirement for school districts that did not implement an aggregate district-wide reduction in state and local per-pupil funding.

    Please indicate if your district used the Maintenance of Equity exception in the following school years:
    a. Rows: SY 2021-22; SY 2022-23
    b. Columns: Yes, No

5. ESSER III (ARP) requires that school districts use at least 20% of its allocation to address the academic impact of lost instructional time and COVID-19 (referred to as “unfinished learning”).

   Please indicate the following:

   a. Percentage of total ESSER III funds invested (expended or obligated) in unfinished learning as of September 30, 2023:
   b. Percentage of total ESSER III funds you plan on spending on unfinished learning overall:

FCC

Email Questions on FCC Cybersecurity Pilot Program

From: Moses Valle-Palacios
Sent: Monday, January 8, 2024
To: Chief Information Officers
Subject: School and Libraries Cybersecurity Pilot Program

Dear Colleagues –

The FCC has published a proposed rule seeking input on the *Schools and Libraries Cybersecurity Pilot Program*. The proposed pilot program is in response to the escalating rates of cyberattacks on school districts and would provide participants with three-year grants toward eligible services and equipment to bolster cybersecurity infrastructure. The proposed pilot program would be funded at a total of $200 million and administered by USAC (Read the proposed rule).

The Council plans to submit feedback and would like your general thoughts on the proposed pilot program and the following questions posed by the FCC. Please send us your feedback by **January 19, 2024.**

As always, your input is invaluable to guiding our work.
-Moses Valle-Palacios

Structure of Pilot

- Funding would be available for three years. Is three years enough time to evaluate the pilot? Should the pilot length be shortened? Can it be shortened without compromising the quality or quantity of the data? Should there be lead up time to allow participants to prepare for the pilot?
- Is $200 million enough to obtain meaningful data on the pilot? Should the money be split up among the three years equally? Or is there a need to access more of the money in the early years?
- Should there be a funding cap per participant or a per student cap? Should awards be adjusted based on Category 2 discount rate level? Should they require participants to contribute a percentage of costs in order to receive pilot funding?
- Should the pilot fund smaller amounts to a larger number of participants or more funds to a smaller number of participants?
- Is it a good idea to permit participants to seek funding for equipment and services for the three-year funding period in a single application using multi-year contracts?

Eligibility and Selection of Pilot Participants

- What eligibility criteria should the pilot have? Should participants be limited to current E-Rate participants? What other factors should be considered such as size of district, location, or cybersecurity expertise of district or school?
- Should the pilot limit participants who have faced or are facing certain types of cyberattacks?
- Should a district's history of cyberattacks be prioritized? And how should the pilot measure/define districts with a "greater" history of cyberattacks?
- Should participants be limited to one-time purchases or should there be support for on-going, reoccurring costs that pilot participants may incur.
- Also seek comment on whether to define eligible equipment/services generally or list specific technologies? If the Commission creates a list of eligible services and equipment, what should be on the list and at what level of granularity should it be?
- Should pilot fund only advanced next gen firewalls, or should it fund broader security measures? If the FCC were to make advanced firewalls eligible, how should it be defined?

Evaluating the Pilot

- How to measure whether pilot programs are effective in protecting E-Rate funded broadband networks and data?
- What data should be collected to measure effectiveness of funded equipment and services?
- Should pilot program require applicants to implement recommendations from CISA's K-12 Cybersecurity Report? What about the recommendations from the Department of Education's K-12 Digital Infrastructure Briefs? How can the pilot incentivize applicants to take advantage of free federal resources?
- What data should be collected on the funded services and equipment? What outcomes should the pilot require recipients to measure and record?
- How should the pilot be evaluated? What metrics should be included to determine whether cybersecurity investments improved a school district's cybersecurity infrastructure? The Commission proposes that recipients submit data before the pilot, during the pilot, and after the pilot.

Moses Valle-Palacios
Legislative Manager
Council of The Great City Schools

Email Survey on FCC Proposal for E-Rate-funded Hotspots

From: Manish Naik
Sent: Monday, December 18, 2023
To: CIO <cio@cgcslists.org>
Subject: Questions from FCC proposal for E-Rate-funded hotspots

Chief Information Officers of the Great City Schools –

As discussed on Friday's call, the FCC's proposal to include hotspot service for E-Rate support has been published in the Federal Register. The comment deadline for responses are due on January 8th. The proposal can be read in its entirety here.

I have included the major questions that the Council will likely respond to in our comments below. Please provide any quick feedback or thoughts on these questions, or any other in the proposal, to me at mnaik@cgcs.org. Districts can also submit their own individual comments in addition to the comments we will provide on behalf of the CGCS membership.

Thanks as always for your insight and I will be sure to let you know if the comment deadline is extended. Have a safe and happy holiday season.

--Manish Naik
Council of the Great City Schools

_____

Major Questions from FCC Proposal to Fund Hotspots under the E-Rate

What devices or services should be covered? The FCC proposal would create E-Rate eligibility for Wi-Fi hotspots receiving mobile services, but are there any devices or services that perform the same functions as a Wi-Fi hotspot that are not covered by this definition and that should be included?

Should the FCC limit support to just the off-premises use of the recurring internet access services needed for remote learning and not the Wi-Fi hotspot equipment itself? The FCC has previously declined to support "computers and other peripheral equipment" in the E-Rate programs because it found that only equipment that is an essential element in the transmission of information is eligible (e.g.,internal connections). The FCC seeks comment on whether Wi-Fi hotspot devices are "peripheral equipment" or if they serve the necessary transmission function contemplated by the FCC to be considered internal connections, like wireless access points.

Are there other issues or concerns the FCC should consider when determining how to fund Wi-Fi hotspot devices and/or services? For example, how should leased or bundled equipment and service packages offered by providers be treated and should they be eligible for E-Rate support?

If the FCC funds Wi-Fi hotspot equipment, should the FCC limit their eligibility to purchases made once every three years (or some other eligibility timeframe, based on useful life)?

What are the anticipated costs of the Wi-Fi hotspots and services if provided on a program-wide basis? The anticipated costs should consider and describe any secondary components, such as additional hotspot features, different bandwidth capabilities, and any reasonable fees incurred with the purchase of Wi-Fi hotspots and services.

Should the FCC adopt a cap on the amount of costs that will be considered cost-effective for Wi-Fi hotspots and/or monthly services, and if so, should the FCC rely on ECF program data to establish a cap for a Wi-Fi hotspot provided to an individual user? For services, the Affordable Connectivity Program (ACP) provides discounts of up to $30 per month towards internet service – are these reasonable caps for monthly service?

Should the FCC allow applicants to select multiple service providers for Wi-Fi hotspots and services based on the geographic area(s) of their students, school staff, and library patrons? For instance, in geographically large districts, a single service provider may not be able to provide service throughout the school's or library's service area.

If the FCC makes students', school staff members', and library patrons' off-premises use of Wi-Fi hotspots devices and services eligible, what category of service should these devices and services be? Wireless internet services are currently Category One services and are eligible under limited circumstances. Should the FCC therefore considers Wi-Fi hotspots to be network equipment necessary to make Category One wireless internet services functional? If the FCC determines that Wi-Fi hotspots are comparable to internal connections, should these devices be considered Category Two services?

What is the best way for applicants to determine unmet need? Because ECF was an emergency COVID–19 relief program, schools and libraries were required to provide only their best estimate of unmet need during the application stage. Should the FCC require schools and libraries to conduct and submit as part of their funding requests a survey or other documentation that substantiates their student and school staff, or patron population who has current unmet needs? Would such a requirement raise any privacy concerns (e.g., insofar as such surveys would be intended to elicit information from potentially lower-income children, families, and individuals)? Are there other ways that the FCC can ensure it focuses and targets support to only students, school staff, and library patrons who currently lack broadband access—parental or guardian certification that they lack broadband at home plus eligibility for the free or reduced-price lunch program (NSLP)?

What safeguards should be imposed to mitigate the risk of off-premises use of E-Rate-supported Wi-Fi hotspots and services for non-educational purposes.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Addressing the Homework Gap through the E-Rate Program	)	WC Docket No. 21-31
	)	

COMMENTS OF THE COUNCIL OF THE GREAT CITY SCHOOLS

The Council of the Great City Schools is pleased to submit comments in response to the Commission's Notice of Proposed Rulemaking released on November 8, 2023 (WC Docket No. 21-31) regarding Addressing the Homework Gap through the E-Rate Program. The Council supports the Commission's proposal to support off-campus and at-home internet service for students and staff that lack connectivity, and urges quick action by the Commission to assist school districts with their ongoing efforts.

INTRODUCTION

The Council of the Great City Schools offers its support and gratitude to the Commission and its proposal to bridge the Homework Gap using the E-Rate program. In the years since the COVID-19 pandemic began, the Council has urged the Commission to resume consideration of the necessary and permanent use of E-Rate support for off-campus connectivity, as it has in the past.

While temporary pandemic support was available for this purpose for students through the Emergency Connectivity Fund (ECF) and for households through the Affordable Connectivity Program (ACP), the imminent lapse of these programs means that, absent further action, schools will once again struggle to support remote internet access for students at home. Off-campus and remote connectivity that has long been needed for homework and other educational activities is now recognized as an essential part of the education experience, daily instruction, and blended learning for all students. The pandemic-era programs not only supported students and communities with their connectivity efforts but can be used as pilot programs to guide the permanent support that the E-Rate can provide to students wherever they learn.

Since COVID-19 began forcing changes to K-12 instruction across the country, the nation has become more aware of the institutional inequities that exist in our public school systems, especially in large urban districts

with some of the highest concentrations of students of color, English learners, and high poverty. The 78 school district members in the Council alone (representing less than 1% of the 14,000 school districts in the US) enroll almost 8 million urban students, including more than a quarter of the nation's Latino and African American students, and the nation's children living in poverty. For more than two decades, the E-Rate has been an invaluable resource to connect our classrooms, but many of the urban students we enroll have long lacked the at-home access that is now essential to participate in modern educational instruction.

The Commission's consideration to allow E-Rate funds to support remote connectivity following the lessons learned from the COVID-19 pandemic is a great relief to school districts, as our work to ensure that all urban students have reliable Internet access is ongoing and costly. Our comments in this proceeding will focus on the services, cost-effectiveness, and eligibility questions contained in the Notice. We also urge the Commission to continue to use the principles that guided the ECF and ACP, targeting allowable services that ensure access and best meet student and staff needs.

ELIGIBLE SERVICES, COSTS, AND PRIORITIZATION

As the NPRM noted, the E-Rate program does not currently provide support for off-premises use of eligible services, and school districts are typically required to back out of services that are not used on-campus from their funding requests. But the Commission has previously found that the provision of off-campus service is "integral, immediate, and proximate to the education of students or the provision of library services to library patrons, and thus, serves an educational purpose." We support the Commission's proposal in the Notice to use this finding to support the use of E-Rate for such a purpose.

Eligible Off-Campus Services

We also appreciate the Notice's question about whether E-Rate support should be limited to Wi-Fi hotspots as the sole method of providing off-campus internet access. As the Commission itself noted, broadband access is proven to improve individuals' educational outcomes, and lack of access has been shown to severely hamper educational opportunities. Through the experience of the ECF and ACP, there is ample evidence that hotspots are not a sufficient solution for every student and home.

A number of urban school districts and communities have stopped deploying hotspots for a number of reasons, including an insufficient or complete lack of cellular signal in certain neighborhoods and public housing locations. Administrators have also found that students and families with the greatest need for

technology support were least likely to use hotspots for reasons such as misunderstanding their monthly broadband allocation and lacking the technical skill required to connect the hotspot to their device.

Urban districts know too well that a variety of efforts are needed to ensure students in all settings and locales are connected remotely and the Council suggests the broadest-possible solutions for the E-Rate. As outlined by the ECF program, we suggest the E-Rate should support the cost of commercially available Internet access services to provide off-premises broadband connections to students and school staff who otherwise lack sufficient broadband access. If applicants are bound by a maximum monthly subscription cost, eligible services should include additional connectivity options beyond Wi-Fi hotspots (wired internet, smartphone tethering, internal data cards, eSIM access on computing devices, etc.) that are necessary to support safe and appropriate remote teaching and learning.

Costs and Prioritization

ACP and ECF have demonstrated that $30 is a reasonable cap for monthly internet access. By supporting available services within the $30 limit, Wi-Fi hotspot services would be eligible for monthly E-Rate support, and as discussed above, eligibility at the same $30 limit for other recurring internet access services should also be eligible for E-Rate reimbursement. School districts should be responsible for determining both the service that works best for their students and staff and those that operate within the monthly cost requirements of the E-Rate.

E-Rate funding for off-campus connectivity should be included under Category 1 and prioritized and approved according to the current Category 1 discount matrix. Students attending schools and districts with a discount at the maximum level, as determined by the Category 1 discount matrix, should receive the highest priority. This will help to ensure that prioritization is reflective of need and targets the E-Rate support to the most disadvantaged and at-risk populations that are the most likely to lack internet access when they are not at school. Internet connectivity during non-school hours is essential for all students, and Commission action to ensure reliable connectivity, student safety, and minimal disruption to instruction for the students most in need is imperative.

OTHER ISSUES – DEVICE COSTS, SERVICE PROVIDERS, AND ELIGIBILITY

The Council also supports including the cost of the Wi-Fi hotspot device itself through the E-Rate. These devices are often included at no charge or offered at a very discounted rate ($1.00 or less per device) from service providers with the monthly subscriptions and will have minimal impact on the program's finances.

We support the Commission's proposal that the monthly cost should be limited to one-per-eligible user (not eligible household) to ensure that E-Rate support is sufficient to meet the existing need. The Council would caution against limiting hotspot device eligibility to purchases made within a certain timeframe. Hotspots can be easily lost, stolen, or broken, and device eligibility should be limited to one device/service per eligible student without time limitations if replacements are necessary.

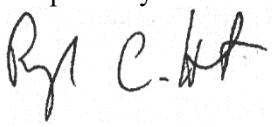
The Council also requests that the Commission allow applicants to select multiple service providers for Wi-Fi hotspots and other internet access services that work best based on the geographic area of their students and staff. As described in the Notice, a single service provider may not be able to provide service throughout a large school district's geographic area. The Commission should allow applicants to select and contract with multiple service providers for hotspots and internet access services based on service area coverage. The Commission can be assured that the E-Rate's competitive bidding rules or districts' use of existing master contracts, coupled with the requirement that districts are responsible for the non-discounted share, will ensure cost-effective purchases and prevent wasteful spending.

Finally, we suggest the Commission rely on existing free and reduced-price lunch (FRPL) data as the method to identify students who may need home internet access. Income levels are the strongest determinant of those students and families lacking home internet access, and the current system would provide the targeting needed to preserve E-Rate funding and minimize the burden of additional surveys or data collection on school district staff. FRPL identifiers also include built-in privacy protections to mitigate the personally-identifiable risks that may come with a newly required survey. School districts could also certify that reimbursements are only applied when students or staff are certified as meeting the income requirement and lack broadband at home.

CONCLUSION

The COVID-19 crisis provided the nation with an opportunity to address historical gaps in internet access and invest in solutions that transform schools and make a difference in the lives of urban students nationwide. Since the end of school closures and lockdowns, the goal of our large urban school districts has not been simply a return to pre-pandemic norms, but to reshape our educational systems into a new model that meets the needs of today's and tomorrow's students. The assistance of the Commission and funding from E-Rate is sorely needed to help our school districts best serve the students, staff, families, and communities in our cities.

Respectfully Submitted,



Raymond Hart, Executive Director
Council of the Great City Schools

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Member districts: Albuquerque, Anchorage, Arlington (Texas), Atlanta, Aurora, Austin, Baltimore, Birmingham, Boston, Bridgeport, Broward County (Ft. Lauderdale), Buffalo, Charleston County, Charlotte-Mecklenburg, Chicago, Cincinnati, Clark County (Las Vegas), Cleveland, Columbus, Dallas, Dayton, Denver, Des Moines, Detroit, Duval County (Jacksonville), East Baton Rouge, El Paso, Fayette County (Lexington), Fort Worth, Fresno, Guilford County (Greensboro, N.C.), Hawaii, Hillsborough County (Tampa), Houston, Indianapolis, Jackson, Jefferson County (Louisville), Kansas City, Long Beach, Los Angeles, Miami-Dade County, Milwaukee, Minneapolis, Nashville, New Orleans, New York City, Newark, Norfolk, Oakland, Oklahoma City, Omaha, Orange County (Orlando), Palm Beach County, Philadelphia, Phoenix, Pinellas County, Pittsburgh, Portland, Providence, Puerto Rico, Richmond, Rochester, Sacramento, San Antonio, San Diego, San Francisco, Santa Ana, Seattle, Shelby County (Memphis), St. Louis, St. Paul, Toledo, Toronto, Tulsa, Washoe County (Reno), Washington, D.C., and Wichita, and Winston-Salem (Forsyth County).

LEGAL

Email Update on First Circuit Case Involving Race-Neutral Admissions

From: Mary Stablein Lawson
Sent: Tuesday, December 26, 2023
To: Legal <legal@cgcslists.org>
Subject: First Circuit Decision in School Admissions Case

Good morning General Counsels,

As a follow up to the race-in-admissions cases that we have been discussing this year, the First Circuit affirmed a race-neutral admissions plan utilized by Boston Public Schools during the pandemic for its "Exam Schools". Although the challenged BPS plan is no longer in effect, the ruling is impactful to other race-neutral admissions plans. (The challenged Plan was replaced with a plan based on GPA, a new standardized examination, and census tracts.)

The BPS Plan first awarded Exam School slots to those students who, citywide, had the top 20% of the rank-ordered GPAs. The remaining applicants were then divided into groups based on the zip codes in which they resided (or, in the case of students without homes or in state custody, to a designated zip code). Next, starting with the highest ranked applicants living in the zip code with the lowest median family income (for families with school age children), and continuing with applicants in each zip code in ascending order of the zip code's median family income, 10% of the remaining seats at each of the three Exam Schools were filled based on GPA and student preferences. Ten rounds of this process filled more or less all remaining available seats in the three schools.

According to the First Circuit, the Plan was only subject to rational basis review because treating students differently based on the zip codes in which they reside was not like treating them differently because of their skin color. The plaintiff failed to show any legally cognizable disparate impact on White or Asian students under the facially neutral Plan. Although the percentages of invited students classified as White dropped from 40% to 31%, while the percentage classified as Asian dropped from 21% to 18%, White and Asian students respectively made up approximately 16% and 7% of the eligible school-age population; therefore, 31% and 40% of the successful applicants reflected a continuing overrepresentation in admissions. As a result, the Court held that use of the Plan caused no relevant disparate impact on those groups. "[The Plan] encourages precisely what the Coalition claims the Plan has done here: as between equally valid selection processes that meet the selector's legitimate needs, to use the one that reduces under[1]representation (and therefore over-representation as well). So, in seeking to leverage a disparate-impact theory of discrimination against the Plan for its alleged reduction -- but not reversal -- of certain races' stark over-representation among Exam School invitees, the Coalition has it backwards."

The First Circuit cited *Students for Fair Admissions* decision, in which 3 of 6 Justices stressed that universities can lawfully employ valid facially neutral selection criteria that tend towards achieving a racially diverse student body, even if race-conscious measures are prohibited, and the Court reiterated the proposition in *PICS v. Seattle* that, "[i]n the administration of public schools by the state and local authorities it is permissible to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is its racial composition." In sum, the Plan reasonably reflected the racial, socioeconomic, and geographic diversity of all students (K–12) in the city of Boston. According to the First Circuit, "selection criteria -- residence, family income, and GPA -- can hardly be deemed otherwise unreasonable."

We will continue to monitor this issue. Happy New Year everyone!

Best regards,

Mary C. Lawson | General Counsel

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United States Court of Appeals
For the First Circuit

Nos. 21-1303
22-1144

BOSTON PARENT COALITION FOR ACADEMIC EXCELLENCE CORP.,

Plaintiff, Appellant,

v.

THE SCHOOL COMMITTEE FOR THE CITY OF BOSTON; ALEXANDRA OLIVER-DÁVILA; MICHAEL O'NEILL; HARDIN COLEMAN; LORNA RIVERA; JERI ROBINSON; QUOC TRAN; ERNANI DEARAUJO; BRENDA CASSELLIUS,

Defendants, Appellees,

THE BOSTON BRANCH OF THE NAACP; THE GREATER BOSTON LATINO NETWORK; ASIAN PACIFIC ISLANDER CIVIC ACTION NETWORK; ASIAN AMERICAN RESOURCE WORKSHOP; MAIRENY PIMENTAL; H.D.,

Defendants, Intervenors, Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. William G. Young, U.S. District Judge]

Before

Kayatta, Howard, and Thompson,
Circuit Judges.

Christopher M. Kieser, Joshua P. Thompson, and Pacific Legal Foundation, with whom William H. Hurd, and Eckert Seamans Cherin & Mellott, LLC, were on brief for appellant.
Kay H. Hodge, John M. Simon, and Stoneman, Chandler & Miller

LLP, with whom Lisa Maki, Legal Advisor, Boston Public Schools, were on brief for appellees.

Doreen M Rachal, and Sidley Austin LLP, with whom Susan M. Finegan, Andrew N. Nathanson, Mathilda S. McGee-Tubb, and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., were on brief for intervenors-appellees.

Rachael S. Rollins, United States Attorney, Lisa Brown, General Counsel, U.S. Department of Education, Daniel Kim, and Jessica Wolland, Attorneys, Office of the General Counsel, U.S. Department of Education, Kristen Clarke, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Nicolas Y. Riley, and Sydney A.R. Foster, Attorneys, Civil Rights Division, were on brief for the United States of America, amicus curiae.

Amanda Buck Varella, Melanie Dahl Burke, and Brown Rudnick LLP, with whom Francisca D. Fajana, Niyati Shah, and Eri Andriola, were on brief for Asian Americans Advancing Justice-AAJC, Autism Sprinter, Boston University Center for Antiracist Research, Citizens for Public Schools, Edvestors, GLBTQ Legal Advocates & Defenders, Hamkae Center, Hispanic Federation, Inc., Jamaica Plain Progressives, LatinoJustice PRLDEF, Massachusetts Advocates for Children, Massachusetts Appleseed Center for Law and Justice, Massachusetts Law Reform Institute, Mass Insight Education and Research Institute, Montgomery County Progressive Asian American Network, and Progressive West Roxbury/Roslindale, amici curiae.

Maura Healey, Attorney General of Massachusetts, Elizabeth N. Dewar, State Solicitor, Ann E. Lynch, and David Ureña, Assistant Attorneys General of Massachusetts, were on brief for Massachusetts, California, Colorado, the District of Columbia, Hawai'i, Illinois, Maine, Maryland, Minnesota, Nevada, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, and Washington, amici curiae.

Michael Sheetz, Adam S. Gershenson, Michael McMahon, Robby K.R. Saldaña, and Cooley LLP, were on brief for the Anti-Defamation League, Black Economic Council of Massachusetts, Inc., Boston Bar Association, The Greater Boston Chamber of Commerce, Jewish Alliance for Law and Social Action, King Boston, and Massachusetts Immigrant and Refugee Advocacy Coalition, amici curiae.

Sarah Hinger, Woo Ri Choi, Matthew Segal, Ruth A. Bourquin, Jon Greenbaum, David Hinojosa, and Genevieve Bonadies Torres, were on brief for the American Civil Liberties Union Foundation, American Civil Liberties Union of Massachusetts, Inc., Lawyers' Committee for Civil Rights Under Law, and National Coalition on School Diversity, amici curiae.

Paul Lantieri III, and Ballard Spahr LLP, were on brief for the National Association for Gifted Children, amicus curiae.

December 19, 2023

KAYATTA, Circuit Judge. We consider for a second time this appeal challenging on equal protection grounds a temporary admissions plan (the "Plan") for three selective Boston public schools. Previously, we denied a motion by plaintiff Boston Parent Coalition to enjoin use of the Plan until this appeal could be decided on the merits. In so doing, we held that the Coalition failed to show that it would likely prevail in establishing that defendants' adoption of the Plan violated the equal protection rights of the Coalition's members.

We turn our attention now to the merits of the appeal after full briefing and oral argument. For the following reasons, we find our previously expressed skepticism of the Coalition's claim to be well-founded. We therefore affirm the judgment below. We also explain why events since we last opined in this case do not mandate a different resolution.

I.

A full discussion of the facts and litigation giving rise to this appeal can be found in the prior opinions of this court and the district court. See Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos. (Boston Parent I), 996 F.3d 37, 41–43 (1st Cir. 2021); Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos. (Indicative Ruling), No. CV 21-10330, 2021 WL 4489840, at *3–4 (D. Mass. Oct. 1, 2021); Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City

of Bos., No. 21-10330, 2021 WL 1422827 (D. Mass. Apr. 15, 2021) withdrawn by Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos., No. 21-10330, 2021 WL 3012618 (D. Mass. July 9, 2021). We provide now only an abbreviated review of the record, focusing on those points pertinent to the appeal before us.

Boston Latin Academy, Boston Latin School, and the John D. O'Bryant School (collectively known as the "Exam Schools") are three of Boston's selective public schools. For the twenty years preceding the 2021-2022 school year, admission to the Exam Schools was based on applicants' GPAs and their performance on a standardized test. The schools combined each applicant's GPA and standardized test score to establish a composite score ranking applicants citywide. Exam School seats were then filled in order, beginning with the student with the highest composite score, based on the students' ranked preferences among the three schools. The racial/ethnic demographics for the students offered admission to the Exam Schools for the 2020-2021 school year were: White (39%); Asian (21%); Latinx (21%); Black (14%); and mixed race (5%). By contrast, the racial/ethnic demographics for the citywide school-

age population in Boston that same year were: White (16%); Asian (7%); Latinx (36%); Black (35%); and mixed race (5%).[1]

During the summer of 2019, Boston Public Schools conducted several analyses of how potential changes to admissions criteria would affect racial/ethnic demographics at the Exam Schools. Following this process, Boston Public Schools developed a new exam to be administered to Exam School applicants beginning with the 2021–2022 school year. However, when COVID-19 struck, the Boston School Committee determined that the Exam School admissions criteria for 2021–2022 needed revision in light of the pandemic's impact on applicants during both the 2019-2020 and the prospective 2020–2021 school years.

In March 2020, citing the COVID-19 pandemic, Massachusetts Governor Charlie Baker suspended all regular, in-person instruction and other educational operations at K–12 public schools through the end of the 2019–2020 school year. Schools transitioned to full remote learning. Pandemic-related gathering restrictions made administering the in-person test difficult.

The Boston School Committee convened a Working Group to recommend revised admissions procedures for the 2021–2022 school year. This group met regularly from August to October 2020,

[1] We use the listed racial classifications only to be consistent with the district court's usage, to which neither party lodges any objection.

reviewing extensive data regarding the existing Exam School admissions process, alternative selection methods used in other cities, and potential impacts of different proposed methodologies on students. As part of its process, the Working Group completed a so-called "equity impact statement" that stated the desired outcomes of the revised admissions criteria recommendation as follows:

> Ensure that students will be enrolled (in the three exam high schools) through a clear and fair process for admission in the 21-22 school year that takes into account the circumstances of the COVID-19 global pandemic that disproportionately affected families in the city of Boston.
>
> Work towards an admissions process that will support student enrollment at each of the exam schools such that it better reflects the racial, socioeconomic and geographic diversity of all students (K-12) in the city of Boston.

As part of its process, the Working Group reviewed multiple simulations of the racial compositions that would result from different potential admissions criteria.

The Working Group presented its initial recommendations to the Boston School Committee on October 8, 2020. During this meeting, members of the Working Group discussed historical racial inequities in the Exam Schools, and previous efforts to increase equity across the Exam Schools. The Working Group also discussed a substantial disparity in the increase in fifth grade GPAs for

White and Asian students as compared to Black and Latinx students, the disproportionate negative impact of the COVID-19 pandemic on minority and low-income students, a desired outcome of "rectifying historic racial inequities afflicting exam school admissions for generations," and, as one School Committee member stated, the "need to figure out again how we could increase these admissions rates, especially for Latinx and Black students." Another School Committee member stated that she "want[ed] to see [the Exam Schools] reflect the District[,]" and that "[t]here's no excuse . . . for why they shouldn't reflect the District, which has a larger Latino population and Black African-American population."

The School Committee met on October 21, 2020, to discuss the Working Group's plan. At that meeting, race again became a topic of discussion. Some School Committee members voiced concerns that the revised plan, while an improvement, "actually [did not] go far enough" because it would likely still result in a greater percentage of White and Asian students in exam schools than in the general school-age population. During this meeting, School Committee chairperson Michael Loconto made comments mocking the names of some Asian parents. Two members of the School Committee, Alexandra Oliver-Dávila and Lorna Rivera, texted each other regarding the comments, with one saying "I think he was making fun of the Chinese names! Hot mic!!!" and another responding that she

"almost laughed out loud." The chairperson apologized and resigned the following day.

Subsequently, the Working Group recommended and the School Committee adopted the Plan. With test administration not feasible during the COVID-19 pandemic, the Plan relied on GPAs to select Exam School admittees for the 2021–2022 school year. It first awarded Exam School slots to those students who, citywide, had the top 20% of the rank-ordered GPAs. The remaining applicants were then divided into groups based on the zip codes in which they resided (or, in the case of students without homes or in state custody, to a designated zip code).

Next, starting with the highest ranked applicants living in the zip code with the lowest median family income (for families with school age children), and continuing with applicants in each zip code in ascending order of the zip code's median family income, 10% of the remaining seats at each of the three Exam Schools were filled based on GPA and student preferences. Ten rounds of this process filled more or less all remaining available seats in the three schools.

The Coalition, a corporation acting on behalf of some parents and their children who reside in Boston, sued the School Committee, its members, and the Boston Public Schools superintendent. The Coalition asserted that the Plan violated the Equal Protection Clause of the Fourteenth Amendment of the United

States Constitution and chapter 76, section 5 of the Massachusetts General Laws by intentionally discriminating against White and Asian students. Boston Parent I, 996 F.3d at 43. After the Coalition moved for a preliminary injunction to bar the School Committee from implementing the Plan, the district court consolidated a hearing on the motion with a trial on the merits following the parties' submission of a Joint Agreed Statement of Facts. The district court found the Plan to be constitutional. The Coalition subsequently appealed that decision on the merits and sought interim injunctive relief from this Court pending resolution of the merits appeal. We denied the interim request for injunctive relief, in large part because we determined the Coalition was unlikely to succeed on the merits. Id. at 48.

Following our decision, on June 7, 2021, the Boston Globe published previously undisclosed evidence of an additional text-message exchange between School Committee members Oliver-Dávila and Rivera during the Board Meeting at which the Committee adopted the Plan. Reacting to the Committee chairman's mocking of Asian parent names, Oliver-Dávila texted Rivera "[b]est s[chool] c[ommittee] m[ee]t[in]g ever I am trying not to cry." Rivera responded, "Me too!! Wait til the White racists start yelling [a]t us!" Oliver-Dávila then responded "[w]hatever . . . they are delusional." Additionally, Oliver-Dávila texted "I hate WR," which the parties seem to agree is short for West Roxbury, a

predominantly White neighborhood. Rivera then responded "[s]ick of westie whites," to which Oliver-Dávila replied "[m]e too I really feel [l]ike saying that!!!!"

Armed with these revelations, the Coalition moved for relief under Federal Rule of Civil Procedure 60(b), asking the district court to reconsider its judgment or at least allow more discovery. Following an indicative ruling by the district court pursuant to Federal Rule of Civil Procedure 12.1, we remanded the case to the district court so that it could rule formally on the Coalition's Rule 60(b) motion. The district court deemed the text messages "racist," and found that they showed that "[t]hree of the seven School Committee members harbored some form of racial animus." Bos. Parent Coal., 2021 WL 4489840, at *15. The district court nonetheless denied the Coalition's motion, finding that relief under Rule 60(b) was not warranted on at least two grounds. Id. at *13–16. First, the district court found that the Coalition could have discovered the new evidence earlier with due diligence, and that it was only the result of the Coalition's deliberate litigation strategy -- namely, its theory that it need not show animus to prove intentional discrimination -- that no such evidence was discovered. Id. at *15. Second, the district court found that the new evidence would not change the result were a new trial to be granted. Id. at *15–16.

As to the second finding, the district court noted that "it is clear from the new record that the race-neutral criteria were chosen precisely because of their effect on racial demographics," that is, "but for the increase in Black and Latinx students at the Exam Schools, the Plan's race-neutral criteria would not have been chosen." Id. at *15. However, the court concluded that the new evidence in question did not cure the Coalition's persistent failure to show any legally cognizable disparate impact on White or Asian students under the facially neutral Plan. Id. The district court thus denied the Coalition's Rule 60(b) motion. Id. at *17.

Meanwhile, following our earlier denial of the Coalition's request for injunctive relief, Boston Public Schools implemented the Plan for admissions to the Exam Schools for the 2021–2022 school year. Shortly thereafter, the challenged Plan was replaced with a plan based on GPA, a new standardized examination, and census tracts. The Coalition does not challenge the current admissions plan in this appeal.

With its request to enjoin use of the Plan now moot, the Coalition still persists with this appeal, pointing to five children of its members who were denied admission to the Exam Schools in 2021 despite allegedly having higher GPAs than those of some students in other zip codes who were admitted. The Coalition asks that we remand the case to the district court with

instructions to order the School Committee to admit these five students to an Exam School.[2] Additionally, the Coalition appeals the district court's denial of its Rule 60(b) motion.

II.

Before we turn to the merits, we address a threshold question of justiciability. The Coalition argues that if the Plan had not been adopted, the City would have based invites to the Exam Schools on GPA in a citywide competition, just as it did for 20% of the slots. And in that event, all five students for whom the Coalition seeks relief would have been admitted. The School Committee argues that the Coalition has no Article III standing to seek relief on behalf of five students who are not parties to this lawsuit, and that even if it did, there is no basis for granting the requested relief.

An association has standing to bring suit on behalf of its individual members when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the

[2] Defendants contend that it is too late for the Coalition to revise its request for relief. But the Coalition promptly revised its request as events unfolded in the district court. And in these circumstances, granting such a revised request is not beyond the court's "broad and flexible" power to fashion an equitable remedy. See Morgan v. Kerrigan, 530 F.2d 431, 432 (1st Cir. 1976).

participation of individual members in the lawsuit." Coll. of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co., 585 F.3d 33, 40 (1st Cir. 2009) (quoting Hunt v. Wash. State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)). Here, only the third of these so-called Hunt factors is in dispute. The School Committee contends that, because the Coalition now seeks injunctive relief for five individual members who are not themselves plaintiffs in this action, their individual participation in the lawsuit is required. Therefore, they argue, the Coalition lacks independent associational standing under Hunt.

"There is no well-developed test in this circuit as to how the third prong of the Hunt test -- whether 'the claim asserted [or] the relief requested requires the participation of individual members in the lawsuit,' -- applies in cases where injunctive relief is sought." Pharm. Care Mgmt. Ass'n v. Rowe, 429 F.3d 294, 313-14 (1st Cir. 2005) (Boudin, J. & Dyk, J., concurring) (quoting Hunt, 432 U.S. at 343). Here, granting the Coalition's requested remedy would certainly require some factual showing that some or all of the five students would have been admitted to an Exam School but for the adoption of the Plan. However, given the documented and apparently uncontested nature of the student-specific facts likely to be included in such a showing (i.e., GPA and school preference), it seems unlikely that any of the students would need to do much, if anything, in the lawsuit. Moreover, the Coalition's

requested remedy, if granted, would clearly "inure to the benefit of those members of the association actually injured." Id. at 307 (quoting Warth v. Seldin, 422 U.S. 490, 515 (1975)).

The School Committee responds that if it did not use zip codes, it would not have chosen to use GPAs citywide as its sole selection criterion instead. It notes that such a GPA-only admissions plan has not been used for over twenty years, and therefore that the basis for the Coalition members' asserted injuries is purely speculative. Moreover, the School Committee questions the evidentiary basis of the assertions on behalf of the unnamed children.

These arguments strike us as better suited to challenging the merits of the Coalition's claims, not its standing to assert those claims. In substance, the School Committee disputes what would have happened had it not used the Plan. And on that point, the record is not clear enough to dismiss the Coalition's position as speculative. Moreover, at this stage, we need only note that courts have broad authority to fashion equitable relief following a finding of an equal protection violation. See Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."). Therefore, we see no bar -- at least at

the threshold of justiciability -- to the Coalition's claim for equitable relief on behalf of some of its individual members. We now turn to the merits.

III.

A.

When reviewing the merits of a district court's decision on a stipulated record, we review legal conclusions de novo and factual findings for clear error. See Consumer Data Indus. Ass'n v. Frey, 26 F.4th 1, 5 (1st Cir. 2022). Yet, "when the issues on appeal 'raise[ ] either questions of law or questions about how the law applies to discerned facts,' such as whether the proffered evidence establishes a discriminatory purpose or a disproportionate racial impact, 'our review is essentially plenary.'" Boston Parent I, 996 F.3d at 45 (quoting Anderson ex rel. Dowd v. City of Bos., 375 F.3d 71, 80 (1st Cir. 2004)). "Similarly, we review de novo the district court's other legal conclusions, including the level of scrutiny it applied when evaluating the constitutionality of the challenged action." Id.

B.

The Fourteenth Amendment prohibits "all governmentally imposed discrimination based on race," save for those rare and compelling circumstances that can survive the daunting review of strict scrutiny. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 206 (2023) (quoting

Palmore v. Sidoti, 466 U.S. 429, 432 (1984)). The Equal Protection Clause's "central purpose" is to "prevent the States from purposefully discriminating between individuals on the basis of race." See Shaw v. Reno, 509 U.S. 630, 642 (1993). Generally, purposeful racial discrimination violative of the Equal Protection Clause falls into three categories of state action that merit strict scrutiny: (1) where state action expressly classifies individuals by race (see, e.g., Students for Fair Admissions, 600 U.S. at 194–95; Grutter v. Bollinger, 539 U.S. 306, 327–28 (2003)); (2) where a policy is facially neutral but is in fact unevenly implemented based on race (see Yick Wo v. Hopkins, 118 U.S. 356, 373–74 (1886)); and (3) where a facially race-neutral, and evenly applied, policy results in a racially disparate impact and was motivated by discriminatory intent (see Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264–65 (1977); Washington v. Davis, 426 U.S. 229, 242 (1976)).

The Coalition's principal arguments for challenging the Plan fall into category (3) -- an evenly applied, facially race-neutral plan that was motivated by a discriminatory purpose and has a disparate impact. But the record provides no evidence of a relevant disparate impact. And the evidence of defendants' intent to reduce racial disparities is not by itself enough to sustain the Coalition's claim. Our reasoning follows.

1.

The Coalition makes two attempts to show that the School Committee's use of the Plan to determine Exam School admissions had a disparate impact on the Coalition's members. We address each in turn.

a.

To prove that the Plan had a disparate impact on its members, the Coalition first points out that White and Asian students made up a smaller percentage of the students invited to join the Exam Schools under the Plan than in the years before the Plan was implemented. Specifically, with respect to the prior year, the percentages of invited students classified as White dropped from 40% to 31%, while the percentage classified as Asian dropped from 21% to 18%.

The Coalition's reliance on these raw percentages without the benefit of some more robust expert analysis serves poorly as proof that the observed changes were caused by the Plan rather than by chance. See Boston Parent I, 996 F.3d at 46 (noting that the Coalition "offers no analysis or argument for why these particular comparators, rather than a plan based on random selection, are apt for purposes of determining adverse disparate impact"); see also Coal. for TJ v. Fairfax Cnty. Sch. Bd., 68 F.4th 864, 881 (4th Cir. 2023).

Nevertheless, given the size of the overall pool, the reductions cited by the Coalition may be at least minimally significant. Notably, when the defendants applied the Plan to the prior year's admission applications in a test-run simulation, it produced virtually the same percentage changes. And defendants have never claimed that the changes were entirely random. To the contrary, the Plan's effects were expected, at least in part, by those who knew the schools best: the defendants themselves. We therefore do not rest our decision on the lack of expert evidence that changes in the racial makeup of the admitted class in 2021–2022, as compared to 2020–2021, were not the result of mere chance.

Rather, we find that the Coalition fails to show disparate impact for another, more fundamental reason. To see why this is so, we find it instructive to consider disparate impact theory in its most customary form -- a statutory cause of action for unintentional discrimination in certain settings, such as employment. See, e.g., Jones v. City of Bos., 752 F.3d 38, 53 (1st Cir. 2014) (applying Title VII, 42 U.S.C. § 2000e–2(k)). A theory of unintentional discrimination cannot, by itself, establish liability in an equal protection case such as this, which requires proof of both disparate impact and discriminatory intent. See Arlington Heights, 429 U.S. at 266–68. Our point, instead, is that even when sufficient to establish liability in its native habitat of Title VII, disparate impact theory does not call into

question the introduction of facially neutral, and otherwise valid, selection criteria that reduce racial disparities in the selection process. In fact, where applicable, disparate-impact discrimination jurisprudence does just the opposite. As between alternative, equally valid selection criteria, it encourages the use of the criterion expected to create the least racial disparity unless there is some good reason to do otherwise. Cf. 42 U.S.C. § 2000e-2(k)(1)(A)(ii) and (C).

In this manner, disparate-impact analysis aims to counter the use of facially neutral policies that "'freeze' the status quo of prior discriminatory . . . practices." Griggs v. Duke Power Co., 401 U.S 424, 430 (1971). That is to say, it encourages precisely what the Coalition claims the Plan has done here: as between equally valid selection processes that meet the selector's legitimate needs, to use the one that reduces under-representation (and therefore over-representation as well). So, in seeking to leverage a disparate-impact theory of discrimination against the Plan for its alleged reduction -- but not reversal -- of certain races' stark over-representation among Exam School invitees, the Coalition has it backwards.

To be sure, where race itself is used as a selection criterion, certainly a before-and-after comparison would provide relevant support for an equal protection challenge. In that context, any "negative" effect resulting from the use of race would

be relevant because "race may never be used as a 'negative.'" Students for Fair Admissions, 600 U.S. at 218. Here, though, the Plan did not use the race of any individual student to determine his or her admission to an Exam School. And the Coalition offers no evidence that geography, family income, and GPA were in any way unreasonable or invalid as selection criteria for public-school admissions programs.

In sum, even assuming the Coalition's statistics show non-random demographic changes in the pool of Exam School invitees between 2020-2021 and 2021-2022 as a result of the Plan's implementation, those changes simply show that as between equally valid, facially neutral selection criteria, the School Committee chose an alternative that created less disparate impact, not more.[3] To rule otherwise would turn "the previous status quo into an immutable quota" and risk subjecting any new policy that "might impact a public institution's racial demographics -- even if by wholly neutral means -- to a constitutional attack." Coal. for TJ, 68 F.4th at 881 (internal quotation omitted).

b.

This brings us to the Coalition's alternative attempt to employ disparate-impact theory to prove prohibited intentional

[3] Moreover, by not using zip codes to award 20% of the invitations, the School Committee opted not to use an approach that would have reduced racial disparities even more.

race discrimination. The Coalition contends that the Plan, even when measured against a process of random selection, had a disparate impact on White and Asian applicants. To make this argument, the Coalition first notes that the overall acceptance rate for applicants for the 2021–2022 school year was 58.5%. And it posits that a random distribution would result in an even application of that 58.5% rate across each zip code. The Coalition then isolates certain zip codes where the population was either "predominantly" (as in 55% or greater) White/Asian or Black/Latinx, and juxtaposes those zip codes' respective acceptance rates under the Plan with those under a hypothetical 58.5% comparator. Following this logic, the Coalition concludes that the Plan resulted in 66 fewer than expected spots allocated across ten predominantly White/Asian zip codes, and 57 more spots across seven predominantly Black/Latinx zip codes. Using this same data, the Coalition also argues that because the average GPA of the admitted students from the predominantly White/Asian zip codes was higher than that from the predominantly Black/Latinx zip codes, the Plan made it disproportionally more difficult for White and Asian students to gain acceptance.

In our view, this backfilled analysis -- crafted by counsel in an appellate brief -- falls woefully short of the mark. The analysis uses GPA data from only ten of the twenty zip codes that the Coalition identifies as "predominantly" White and Asian.

It also neglects another two zip codes where, ostensibly, there was neither a predominantly White/Asian nor Black/Latinx population under the Coalition's definition. And all the while, the Coalition never explains why 55% should be the relevant threshold, nor why aggregating populations of separate racial groups is methodologically coherent.[4]

Moreover, the Coalition's analysis rests on a sleight of hand. It counterfactually assumes that if White/Asian students comprised 55% or more of the students in a given zip code, then every marginal student in that zip code who just missed out on acceptance was also White or Asian. Suffice it to say, there is zero evidence for this assumption. The bottom line remains the same: White and Asian students respectively made up approximately 16% and 7% of the eligible school-age population and 31% and 40% of the successful applicants. Use of the Plan caused no relevant disparate impact on those groups.[5] Cf. Coal. for TJ, 68 F.4th at

[4] Intervenors-appellees raise additional alarms about the Coalition's data, noting that several zip codes cited by the Coalition as "predominantly" White and Asian actually have a greater Black or Latinx population than Asian.

[5] The district court found that "the Coalition's evidence of disparate impact was a projection of a prior plan that showed White students going from representing 243 percent of their share of the school-age population in Boston to 200 percent, and Asian students going from representing 300 percent of their share of the school-age population in Boston to 228 percent." Bos. Parent Coal., 2021 WL 4489840, at *15. As to the actual admissions data, the district court made no such findings, but we take notice that for seventh-grade applicants, the Plan resulted in White students, who

879 (finding no disparate impact on Asian-American students under school admissions policy where "those students have had greater success in securing admission to [the school] under the policy than students from any other racial or ethnic group").

2.

We turn next to the Coalition's argument that it need not prove a disparate impact per se. Rather, the Coalition contends that any change in the racial composition of admitted students is unconstitutional if the change was intended -- even if it is the result of facially neutral and valid selection criteria that merely reduce, but do not reverse, the numerical over-representation of a particular race. There are several problems with this theory.

First, the Coalition points to no case in which a facially neutral selection process was found to violate the Equal Protection Clause based on evidence of intent without any corollary disparate impact. To the contrary, to successfully challenge the use of a facially neutral, and otherwise bona fide, selection criterion, the Coalition must prove both improper intent and disparate impact. Anderson ex rel. Dowd, 375 F.3d at 89 (noting that "[c]ourts can only infer that an invidious racial purpose

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constitute 16% of the Boston school-age population, receiving 31% of the invitations, and Asian students, who constitute 7% of that population, receiving 18% of the invitations.

motivated a facially neutral policy when that policy creates disproportionate racial results"); see also Lewis v. Ascension Parish Sch. Bd., 806 F.3d 344, 359 (5th Cir. 2015) ("To subject a facially race neutral government action to strict scrutiny, the plaintiff must establish both discriminatory intent and a disproportionate adverse effect upon the targeted group."); Coal. for TJ, 68 F.4th at 882 (quoting Palmer v. Thompson, 403 U.S. 217, 224 (1971)) (agreeing and noting that "[n]o case in [the Supreme] Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it . . . ."); Doe ex rel. Doe v. Lower Merion Sch. Dist., 665 F.3d 524, 549 (3d Cir. 2011) ("Although disproportionate impact, alone, is not dispositive, a plaintiff must show discriminatory impact in order to prove an equal protection violation.").

Second, the Coalition's "intent only" theory runs counter to what appears to be the view of a majority of the members of the Supreme Court as expressed in Students for Fair Admissions. There, the Court found that Harvard and UNC's race-conscious admissions programs violated the Equal Protection Clause. 600 U.S. at 213. But in rejecting the universities' use of an applicant's race as a means to achieve a racially diverse student body, three of the six justices in the majority -- with no disagreement voiced by the three dissenters -- separately stressed that universities can lawfully employ valid facially neutral

selection criteria that tend towards the same result. See id. at 299–300 (Gorsuch, J., with Thomas, J., concurring) (recounting the argument that the universities "could obtain significant racial diversity without resorting to race-based admissions practices," and noting that "Harvard could nearly replicate [its] current racial composition without resorting to race-based practices" if it increased tips for "socioeconomically disadvantaged applicants" and eliminated tips for "children of donors, alumni, and faculty"); id. at 280 (Thomas, J., concurring) ("If an applicant has less financial means (because of generational inheritance or otherwise), then surely a university may take that into account."); id. at 317 (Kavanaugh, J., concurring) (universities "'can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race'") (quoting City of Richmond v. J.A. Croson Co., 488 U.S. 469, 526 (1989) (Scalia, J., concurring in the judgment)).

Granted, no concurring opinion expressly held that a school may adopt a facially neutral admissions policy precisely because it would reduce racial disparities in the student body as compared to the population of eligible applicants. But the message is clear. Justice Gorsuch, and indeed plaintiff Students for Fair Admissions itself, identified use of socio-economic status indicators -- i.e., family income -- as a tool for universities who "sought" to increase racial diversity. See id. at 299–300

(Gorsuch, J., with Thomas, J., concurring). And Justice Kavanaugh wrote that "universities still 'can, of course, act to undo the effects of past discrimination in many permissible ways.'" Id. at 317 (Kavanaugh, J., concurring) (emphasis added).

Nor is there any reason to suppose that these assurances do not apply to admission to selective public schools. As Justice Kennedy wrote in his pivotal concurring opinion in Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, "[i]n the administration of public schools by the state and local authorities it is permissible to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is its racial composition." 551 U.S. 701, 788 (2007) (Kennedy, J., concurring) (internal citation omitted).

Third, holding school officials liable for any reduction in the statistical over-representation of any racial group, merely because the change was the intended result of a new facially neutral and valid selection policy, would deter efforts to reduce unnecessary racial disparities. A school might base admission on residence in geographical proximity to the school, on attendance at specific schools in a lower grade, on tests or GPA, or some combination of the myriad indicia of students' prior success. A school might even decide to rely only on a lottery. It hardly would be surprising to find that a change from one of those

selection criteria to another significantly altered the racial composition of the pool of successful applicants.

Nor would a lack of intent provide any safe harbor given that responsible school officials would likely attempt to predict the effects of admissions changes, if for no other reason than to avoid increasing disparities. And many honest school officials would admit that as between two equally valid selection criteria, they preferred the one that resulted in less rather than greater demographic disparities. In short, any distinction between adopting a criterion (like family income) notwithstanding its tendency to increase diversity, and adopting the criterion because it likely increases diversity, would, in practice, be largely in the eye of the labeler. Cf. Coal. for TJ, 68 F.4th at 882 (quoting Palmer, 403 U.S. at 224) ("If the law is struck down for [intent alone] . . . it would presumably be valid as soon as the legislature or relevant governing body repassed it for different reasons.").

To be sure, in striking down Harvard and UNC's race-conscious plans in Students for Fair Admissions, the Supreme Court noted that "[w]hat cannot be done directly cannot be done indirectly," such that "universities may not simply establish through application essays or other means the regime [the Court found unlawful]." 600 U.S. at 230 (citation omitted). But we do not read that admonition as calling into question the use of a

bona fide, race-neutral selection criterion merely because it bears a marginal but significant statistical correlation with race.

Certainly, Justices Gorsuch, Thomas, and Kavanaugh, in joining the majority opinion, did not read the Court's opinion to foreclose use of the very selection criteria to which their concurrences pointed as permissible race-neutral alternatives to the race-conscious admissions programs before the Court.

Of course, at some point, facially neutral criteria might be so highly correlated with an individual's race and have so little independent validity that their use might fairly be questioned as subterfuge for indirectly conducting a race-based selection process. In that event, nothing in this opinion precludes a person harmed by such a scheme from pursuing an equal protection claim under the authority of Students for Fair Admissions. Here, though, admission under the Plan correlated positively with being White or Asian, the only groups numerically over-represented under the Plan. And the Plan's prosaic selection criteria -- residence, family income, and GPA -- can hardly be deemed otherwise unreasonable. Nor is this a case in which a school committee settled on and employed a valid selection criterion, and then simply threw out the results because the committee did not like the racial demographics of the individuals selected.

Thus, we find no reason to conclude that Students for Fair Admissions changed the law governing the constitutionality of facially neutral, valid secondary education admissions policies under equal protection principles. For such policies to merit strict scrutiny, the challenger still must demonstrate (1) that the policy exacts a disparate impact on a particular racial group and (2) that such impact is traceable to an invidious discriminatory intent. See Arlington Heights, 429 U.S. at 264–65; see also Coal. for TJ, 68 F.4th at 879; Lower Merion Sch. Dist., 665 F.3d at 549; Hayden v. County of Nassau, 180 F.3d 42, 48 (2d Cir. 1999); Raso v. Lago, 135 F.3d 11, 16 (1st Cir. 1998).

As we previously stated:

> [O]ur most on-point controlling precedent, Anderson ex rel. Dowd v. City of Boston, makes clear that a public school system's inclusion of diversity as one of the guides to be used in considering whether to adopt a facially neutral plan does not by itself trigger strict scrutiny. See 375 F.3d at 85–87 (holding that strict scrutiny did not apply to attendance plan adopted based on desire to promote student choice, equitable access to resources for all students, and racial diversity). In Anderson, we expressly held that "the mere invocation of racial diversity as a goal is insufficient to subject [a facially neutral school selection plan] to strict scrutiny." Id. at 87.

Boston Parent I, 996 F.3d at 46. Our view has not changed. There is nothing constitutionally impermissible about a school district including racial diversity as a consideration and goal in the

enactment of a facially neutral plan. To hold otherwise would "mean that that any attempt to use neutral criteria to enhance diversity . . . would be subject to strict scrutiny." Boston Parent I, 996 F.3d at 48.

"The entire point of the Equal Protection Clause is that treating someone differently because of their skin color is not like treating them differently because they are from a city or from a suburb . . . ." Students for Fair Admissions, 600 U.S. at 220. So too here, treating students differently based on the zip codes in which they reside was not like treating them differently because of their skin color.

C.

Because we find that the Plan is not subject to strict scrutiny, we would normally proceed to consider its constitutionality under rational basis review. But the Coalition, for good reason, does not argue that the Plan fails rational basis review. So we deem any such claim waived.

IV.

Finally, the Coalition appeals the district court's denial of its motion under Federal Rule of Civil Procedure 60(b), which allows for relief from a final judgment in "exceptional circumstances . . . favoring extraordinary relief." See Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir. 2002). We review the district court's denial of the Coalition's Rule 60(b) motion for

abuse of discretion. Fisher v. Kadant, Inc., 589 F.3d 505, 512 (1st Cir. 2009).

Pursuant to Rule 60(b), a "court may relieve a party . . . from a final judgment, order, or proceeding" based on, inter alia, "newly discovered evidence that, with reasonable diligence, could not have been discovered in time." Fed. R. Civ. P. 60(b)(2). The newly discovered evidence to which the Coalition pointed was the text messages, discussed above, between Oliver-Dávila and Rivera, particularly their agreement that they were "[s]ick of westie whites."

"Under this rule, a party moving for relief . . . must persuade the district court that: (1) the evidence has been discovered since the trial; (2) the evidence could not by due diligence have been discovered earlier by the movant; (3) the evidence is not merely cumulative or impeaching; and (4) the evidence is of such a nature that it would probably change the result were a new trial to be granted." González-Piña v. Rodríguez, 407 F.3d 425, 433 (1st Cir. 2005) (internal quotation and citation omitted). Here, the district court concluded, among other things, that the Coalition failed to meet the second and fourth requirements. See Bos. Parent Coal., 2021 WL 4489840, at *15-16.

As to the second requirement, the district court found that the Coalition failed to show that "the evidence could not by

due diligence have been discovered earlier." González-Piña, 407 F.3d at 433. The district court -- buttressed by its experience closely supervising this litigation and the parties' arguments along the way -- reasonably determined that the Coalition made a deliberate decision to forgo discovery, despite its apparent suspicion that the two School Committee members harbored racial animus, and even discouraged further development of the record at trial. Bos. Parent Coal., 2021 WL 4489840, at *15. The Coalition purportedly did so because it was, and remains, adamant that it did not need to make a showing of racial animus to prevail. See id. Additionally, the district court found that the School Committee's failure to disclose the text messages in its response to various third parties' public records requests did not constitute the kind of misconduct -- such as that occurring within the judicially imposed discovery process -- that warrants Rule 60(b) relief. See id. at *14. We see no abuse of discretion in any of these findings.

As to the fourth requirement, the district court found that the text-message evidence was not "of such a nature that it would probably change the result were a new trial to be granted," González-Piña, 407 F.3d at 433, principally on the grounds that the evidence did not rectify the Coalition's failure to make a proper showing of the Plan's disparate impact. See Bos. Parent Coal., 2021 WL 4489840, at *15-16. The district court did not

abuse its discretion in reaching this conclusion. More evidence of intent does not change the result of this case, given that our analysis assumes that the Plan was chosen precisely to alter racial demographics. We recognize that the text messages evince animus toward those White parents who opposed the Plan. But the district court supportably found as fact that the added element of animus played no causal role that was not fully and sufficiently played by the motive of reducing the under-representation of Black and Latinx students. Id. at *15. In the district court's words, what drove the Plan's selection was the expected "increase in Black and Latinx students." Id. (citing Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256, 258 (1979)) (distinguishing "action taken because of animus" from action taken "in spite of [its] necessary effect on a group") (emphasis in original). So, we need not decide what to make of a case in which a school district took action to reduce a numerically over-represented group's share of admissions because of animus toward that group.

Consequently, we find that the district court did not abuse its discretion in denying the Coalition relief under Rule 60(b).

V.

For the foregoing reasons, we affirm the district court's denial of the Coalition's motion under Rule 60(b), and its judgment rejecting the Coalition's challenges to the Plan.

United States Court of Appeals
For the First Circuit

Nos. 21-1303
22-1144

BOSTON PARENT COALITION FOR ACADEMIC EXCELLENCE CORP.,

Plaintiff, Appellant,

v.

THE SCHOOL COMMITTEE FOR THE CITY OF BOSTON; ALEXANDRA OLIVER-DÁVILA; MICHAEL O'NEILL; HARDIN COLEMAN; LORNA RIVERA; JERI ROBINSON; QUOC TRAN; ERNANI DEARAUJO; BRENDA CASSELLIUS,

Defendants, Appellees,

THE BOSTON BRANCH OF THE NAACP; THE GREATER BOSTON LATINO NETWORK; ASIAN PACIFIC ISLANDER CIVIC ACTION NETWORK; ASIAN AMERICAN RESOURCE WORKSHOP; MAIRENY PIMENTAL; H.D.,

Defendants, Intervenors, Appellees.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. William G. Young, U.S. District Judge]

Before

Kayatta, Howard, and Thompson,
Circuit Judges.

Christopher M. Kieser, Joshua P. Thompson, and Pacific Legal Foundation, with whom William H. Hurd, and Eckert Seamans Cherin & Mellott, LLC, were on brief for appellant.
Kay H. Hodge, John M. Simon, and Stoneman, Chandler & Miller

LLP, with whom Lisa Maki, Legal Advisor, Boston Public Schools, were on brief for appellees.

Doreen M Rachal, and Sidley Austin LLP, with whom Susan M. Finegan, Andrew N. Nathanson, Mathilda S. McGee-Tubb, and Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., were on brief for intervenors-appellees.

Rachael S. Rollins, United States Attorney, Lisa Brown, General Counsel, U.S. Department of Education, Daniel Kim, and Jessica Wolland, Attorneys, Office of the General Counsel, U.S. Department of Education, Kristen Clarke, Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Nicolas Y. Riley, and Sydney A.R. Foster, Attorneys, Civil Rights Division, were on brief for the United States of America, amicus curiae.

Amanda Buck Varella, Melanie Dahl Burke, and Brown Rudnick LLP, with whom Francisca D. Fajana, Niyati Shah, and Eri Andriola, were on brief for Asian Americans Advancing Justice-AAJC, Autism Sprinter, Boston University Center for Antiracist Research, Citizens for Public Schools, Edvestors, GLBTQ Legal Advocates & Defenders, Hamkae Center, Hispanic Federation, Inc., Jamaica Plain Progressives, LatinoJustice PRLDEF, Massachusetts Advocates for Children, Massachusetts Appleseed Center for Law and Justice, Massachusetts Law Reform Institute, Mass Insight Education and Research Institute, Montgomery County Progressive Asian American Network, and Progressive West Roxbury/Roslindale, amici curiae.

Maura Healey, Attorney General of Massachusetts, Elizabeth N. Dewar, State Solicitor, Ann E. Lynch, and David Ureña, Assistant Attorneys General of Massachusetts, were on brief for Massachusetts, California, Colorado, the District of Columbia, Hawai'i, Illinois, Maine, Maryland, Minnesota, Nevada, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, and Washington, amici curiae.

Michael Sheetz, Adam S. Gershenson, Michael McMahon, Robby K.R. Saldaña, and Cooley LLP, were on brief for the Anti-Defamation League, Black Economic Council of Massachusetts, Inc., Boston Bar Association, The Greater Boston Chamber of Commerce, Jewish Alliance for Law and Social Action, King Boston, and Massachusetts Immigrant and Refugee Advocacy Coalition, amici curiae.

Sarah Hinger, Woo Ri Choi, Matthew Segal, Ruth A. Bourquin, Jon Greenbaum, David Hinojosa, and Genevieve Bonadies Torres, were on brief for the American Civil Liberties Union Foundation, American Civil Liberties Union of Massachusetts, Inc., Lawyers' Committee for Civil Rights Under Law, and National Coalition on School Diversity, amici curiae.

Paul Lantieri III, and Ballard Spahr LLP, were on brief for the National Association for Gifted Children, amicus curiae.

December 19, 2023

KAYATTA, Circuit Judge. We consider for a second time this appeal challenging on equal protection grounds a temporary admissions plan (the "Plan") for three selective Boston public schools. Previously, we denied a motion by plaintiff Boston Parent Coalition to enjoin use of the Plan until this appeal could be decided on the merits. In so doing, we held that the Coalition failed to show that it would likely prevail in establishing that defendants' adoption of the Plan violated the equal protection rights of the Coalition's members.

We turn our attention now to the merits of the appeal after full briefing and oral argument. For the following reasons, we find our previously expressed skepticism of the Coalition's claim to be well-founded. We therefore affirm the judgment below. We also explain why events since we last opined in this case do not mandate a different resolution.

I.

A full discussion of the facts and litigation giving rise to this appeal can be found in the prior opinions of this court and the district court. See Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos. (Boston Parent I), 996 F.3d 37, 41–43 (1st Cir. 2021); Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos. (Indicative Ruling), No. CV 21-10330, 2021 WL 4489840, at *3–4 (D. Mass. Oct. 1, 2021); Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City

of Bos., No. 21-10330, 2021 WL 1422827 (D. Mass. Apr. 15, 2021) withdrawn by Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos., No. 21-10330, 2021 WL 3012618 (D. Mass. July 9, 2021). We provide now only an abbreviated review of the record, focusing on those points pertinent to the appeal before us.

Boston Latin Academy, Boston Latin School, and the John D. O'Bryant School (collectively known as the "Exam Schools") are three of Boston's selective public schools. For the twenty years preceding the 2021-2022 school year, admission to the Exam Schools was based on applicants' GPAs and their performance on a standardized test. The schools combined each applicant's GPA and standardized test score to establish a composite score ranking applicants citywide. Exam School seats were then filled in order, beginning with the student with the highest composite score, based on the students' ranked preferences among the three schools. The racial/ethnic demographics for the students offered admission to the Exam Schools for the 2020-2021 school year were: White (39%); Asian (21%); Latinx (21%); Black (14%); and mixed race (5%). By contrast, the racial/ethnic demographics for the citywide school-

age population in Boston that same year were: White (16%); Asian (7%); Latinx (36%); Black (35%); and mixed race (5%).[1]

During the summer of 2019, Boston Public Schools conducted several analyses of how potential changes to admissions criteria would affect racial/ethnic demographics at the Exam Schools. Following this process, Boston Public Schools developed a new exam to be administered to Exam School applicants beginning with the 2021–2022 school year. However, when COVID-19 struck, the Boston School Committee determined that the Exam School admissions criteria for 2021–2022 needed revision in light of the pandemic's impact on applicants during both the 2019-2020 and the prospective 2020–2021 school years.

In March 2020, citing the COVID-19 pandemic, Massachusetts Governor Charlie Baker suspended all regular, in-person instruction and other educational operations at K–12 public schools through the end of the 2019–2020 school year. Schools transitioned to full remote learning. Pandemic-related gathering restrictions made administering the in-person test difficult.

The Boston School Committee convened a Working Group to recommend revised admissions procedures for the 2021–2022 school year. This group met regularly from August to October 2020,

[1] We use the listed racial classifications only to be consistent with the district court's usage, to which neither party lodges any objection.

reviewing extensive data regarding the existing Exam School admissions process, alternative selection methods used in other cities, and potential impacts of different proposed methodologies on students. As part of its process, the Working Group completed a so-called "equity impact statement" that stated the desired outcomes of the revised admissions criteria recommendation as follows:

> Ensure that students will be enrolled (in the three exam high schools) through a clear and fair process for admission in the 21-22 school year that takes into account the circumstances of the COVID-19 global pandemic that disproportionately affected families in the city of Boston.
>
> Work towards an admissions process that will support student enrollment at each of the exam schools such that it better reflects the racial, socioeconomic and geographic diversity of all students (K-12) in the city of Boston.

As part of its process, the Working Group reviewed multiple simulations of the racial compositions that would result from different potential admissions criteria.

The Working Group presented its initial recommendations to the Boston School Committee on October 8, 2020. During this meeting, members of the Working Group discussed historical racial inequities in the Exam Schools, and previous efforts to increase equity across the Exam Schools. The Working Group also discussed a substantial disparity in the increase in fifth grade GPAs for

White and Asian students as compared to Black and Latinx students, the disproportionate negative impact of the COVID-19 pandemic on minority and low-income students, a desired outcome of "rectifying historic racial inequities afflicting exam school admissions for generations," and, as one School Committee member stated, the "need to figure out again how we could increase these admissions rates, especially for Latinx and Black students." Another School Committee member stated that she "want[ed] to see [the Exam Schools] reflect the District[,]" and that "[t]here's no excuse . . . for why they shouldn't reflect the District, which has a larger Latino population and Black African-American population."

The School Committee met on October 21, 2020, to discuss the Working Group's plan. At that meeting, race again became a topic of discussion. Some School Committee members voiced concerns that the revised plan, while an improvement, "actually [did not] go far enough" because it would likely still result in a greater percentage of White and Asian students in exam schools than in the general school-age population. During this meeting, School Committee chairperson Michael Loconto made comments mocking the names of some Asian parents. Two members of the School Committee, Alexandra Oliver-Dávila and Lorna Rivera, texted each other regarding the comments, with one saying "I think he was making fun of the Chinese names! Hot mic!!!" and another responding that she

"almost laughed out loud." The chairperson apologized and resigned the following day.

Subsequently, the Working Group recommended and the School Committee adopted the Plan. With test administration not feasible during the COVID-19 pandemic, the Plan relied on GPAs to select Exam School admittees for the 2021–2022 school year. It first awarded Exam School slots to those students who, citywide, had the top 20% of the rank-ordered GPAs. The remaining applicants were then divided into groups based on the zip codes in which they resided (or, in the case of students without homes or in state custody, to a designated zip code).

Next, starting with the highest ranked applicants living in the zip code with the lowest median family income (for families with school age children), and continuing with applicants in each zip code in ascending order of the zip code's median family income, 10% of the remaining seats at each of the three Exam Schools were filled based on GPA and student preferences. Ten rounds of this process filled more or less all remaining available seats in the three schools.

The Coalition, a corporation acting on behalf of some parents and their children who reside in Boston, sued the School Committee, its members, and the Boston Public Schools superintendent. The Coalition asserted that the Plan violated the Equal Protection Clause of the Fourteenth Amendment of the United

States Constitution and chapter 76, section 5 of the Massachusetts General Laws by intentionally discriminating against White and Asian students. Boston Parent I, 996 F.3d at 43. After the Coalition moved for a preliminary injunction to bar the School Committee from implementing the Plan, the district court consolidated a hearing on the motion with a trial on the merits following the parties' submission of a Joint Agreed Statement of Facts. The district court found the Plan to be constitutional. The Coalition subsequently appealed that decision on the merits and sought interim injunctive relief from this Court pending resolution of the merits appeal. We denied the interim request for injunctive relief, in large part because we determined the Coalition was unlikely to succeed on the merits. Id. at 48.

Following our decision, on June 7, 2021, the Boston Globe published previously undisclosed evidence of an additional text-message exchange between School Committee members Oliver-Dávila and Rivera during the Board Meeting at which the Committee adopted the Plan. Reacting to the Committee chairman's mocking of Asian parent names, Oliver-Dávila texted Rivera "[b]est s[chool] c[ommittee] m[ee]t[in]g ever I am trying not to cry." Rivera responded, "Me too!! Wait til the White racists start yelling [a]t us!" Oliver-Dávila then responded "[w]hatever . . . they are delusional." Additionally, Oliver-Dávila texted "I hate WR," which the parties seem to agree is short for West Roxbury, a

predominantly White neighborhood. Rivera then responded "[s]ick of westie whites," to which Oliver-Dávila replied "[m]e too I really feel [l]ike saying that!!!!"

Armed with these revelations, the Coalition moved for relief under Federal Rule of Civil Procedure 60(b), asking the district court to reconsider its judgment or at least allow more discovery. Following an indicative ruling by the district court pursuant to Federal Rule of Civil Procedure 12.1, we remanded the case to the district court so that it could rule formally on the Coalition's Rule 60(b) motion. The district court deemed the text messages "racist," and found that they showed that "[t]hree of the seven School Committee members harbored some form of racial animus." Bos. Parent Coal., 2021 WL 4489840, at *15. The district court nonetheless denied the Coalition's motion, finding that relief under Rule 60(b) was not warranted on at least two grounds. Id. at *13–16. First, the district court found that the Coalition could have discovered the new evidence earlier with due diligence, and that it was only the result of the Coalition's deliberate litigation strategy -- namely, its theory that it need not show animus to prove intentional discrimination -- that no such evidence was discovered. Id. at *15. Second, the district court found that the new evidence would not change the result were a new trial to be granted. Id. at *15–16.

As to the second finding, the district court noted that "it is clear from the new record that the race-neutral criteria were chosen precisely because of their effect on racial demographics," that is, "but for the increase in Black and Latinx students at the Exam Schools, the Plan's race-neutral criteria would not have been chosen." Id. at *15. However, the court concluded that the new evidence in question did not cure the Coalition's persistent failure to show any legally cognizable disparate impact on White or Asian students under the facially neutral Plan. Id. The district court thus denied the Coalition's Rule 60(b) motion. Id. at *17.

Meanwhile, following our earlier denial of the Coalition's request for injunctive relief, Boston Public Schools implemented the Plan for admissions to the Exam Schools for the 2021–2022 school year. Shortly thereafter, the challenged Plan was replaced with a plan based on GPA, a new standardized examination, and census tracts. The Coalition does not challenge the current admissions plan in this appeal.

With its request to enjoin use of the Plan now moot, the Coalition still persists with this appeal, pointing to five children of its members who were denied admission to the Exam Schools in 2021 despite allegedly having higher GPAs than those of some students in other zip codes who were admitted. The Coalition asks that we remand the case to the district court with

instructions to order the School Committee to admit these five students to an Exam School.[2] Additionally, the Coalition appeals the district court's denial of its Rule 60(b) motion.

II.

Before we turn to the merits, we address a threshold question of justiciability. The Coalition argues that if the Plan had not been adopted, the City would have based invites to the Exam Schools on GPA in a citywide competition, just as it did for 20% of the slots. And in that event, all five students for whom the Coalition seeks relief would have been admitted. The School Committee argues that the Coalition has no Article III standing to seek relief on behalf of five students who are not parties to this lawsuit, and that even if it did, there is no basis for granting the requested relief.

An association has standing to bring suit on behalf of its individual members when: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the

[2] Defendants contend that it is too late for the Coalition to revise its request for relief. But the Coalition promptly revised its request as events unfolded in the district court. And in these circumstances, granting such a revised request is not beyond the court's "broad and flexible" power to fashion an equitable remedy. See Morgan v. Kerrigan, 530 F.2d 431, 432 (1st Cir. 1976).

participation of individual members in the lawsuit." Coll. of Dental Surgeons of P.R. v. Conn. Gen. Life Ins. Co., 585 F.3d 33, 40 (1st Cir. 2009) (quoting Hunt v. Wash. State Apple Advertising Comm'n, 432 U.S. 333, 343 (1977)). Here, only the third of these so-called Hunt factors is in dispute. The School Committee contends that, because the Coalition now seeks injunctive relief for five individual members who are not themselves plaintiffs in this action, their individual participation in the lawsuit is required. Therefore, they argue, the Coalition lacks independent associational standing under Hunt.

"There is no well-developed test in this circuit as to how the third prong of the Hunt test -- whether 'the claim asserted [or] the relief requested requires the participation of individual members in the lawsuit,' -- applies in cases where injunctive relief is sought." Pharm. Care Mgmt. Ass'n v. Rowe, 429 F.3d 294, 313-14 (1st Cir. 2005) (Boudin, J. & Dyk, J., concurring) (quoting Hunt, 432 U.S. at 343). Here, granting the Coalition's requested remedy would certainly require some factual showing that some or all of the five students would have been admitted to an Exam School but for the adoption of the Plan. However, given the documented and apparently uncontested nature of the student-specific facts likely to be included in such a showing (i.e., GPA and school preference), it seems unlikely that any of the students would need to do much, if anything, in the lawsuit. Moreover, the Coalition's

requested remedy, if granted, would clearly "inure to the benefit of those members of the association actually injured." Id. at 307 (quoting Warth v. Seldin, 422 U.S. 490, 515 (1975)).

The School Committee responds that if it did not use zip codes, it would not have chosen to use GPAs citywide as its sole selection criterion instead. It notes that such a GPA-only admissions plan has not been used for over twenty years, and therefore that the basis for the Coalition members' asserted injuries is purely speculative. Moreover, the School Committee questions the evidentiary basis of the assertions on behalf of the unnamed children.

These arguments strike us as better suited to challenging the merits of the Coalition's claims, not its standing to assert those claims. In substance, the School Committee disputes what would have happened had it not used the Plan. And on that point, the record is not clear enough to dismiss the Coalition's position as speculative. Moreover, at this stage, we need only note that courts have broad authority to fashion equitable relief following a finding of an equal protection violation. See Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies."). Therefore, we see no bar -- at least at

the threshold of justiciability -- to the Coalition's claim for equitable relief on behalf of some of its individual members. We now turn to the merits.

III.

A.

When reviewing the merits of a district court's decision on a stipulated record, we review legal conclusions de novo and factual findings for clear error. See Consumer Data Indus. Ass'n v. Frey, 26 F.4th 1, 5 (1st Cir. 2022). Yet, "when the issues on appeal 'raise[ ] either questions of law or questions about how the law applies to discerned facts,' such as whether the proffered evidence establishes a discriminatory purpose or a disproportionate racial impact, 'our review is essentially plenary.'" Boston Parent I, 996 F.3d at 45 (quoting Anderson ex rel. Dowd v. City of Bos., 375 F.3d 71, 80 (1st Cir. 2004)). "Similarly, we review de novo the district court's other legal conclusions, including the level of scrutiny it applied when evaluating the constitutionality of the challenged action." Id.

B.

The Fourteenth Amendment prohibits "all governmentally imposed discrimination based on race," save for those rare and compelling circumstances that can survive the daunting review of strict scrutiny. Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 600 U.S. 181, 206 (2023) (quoting

Palmore v. Sidoti, 466 U.S. 429, 432 (1984)). The Equal Protection Clause's "central purpose" is to "prevent the States from purposefully discriminating between individuals on the basis of race." See Shaw v. Reno, 509 U.S. 630, 642 (1993). Generally, purposeful racial discrimination violative of the Equal Protection Clause falls into three categories of state action that merit strict scrutiny: (1) where state action expressly classifies individuals by race (see, e.g., Students for Fair Admissions, 600 U.S. at 194–95; Grutter v. Bollinger, 539 U.S. 306, 327–28 (2003)); (2) where a policy is facially neutral but is in fact unevenly implemented based on race (see Yick Wo v. Hopkins, 118 U.S. 356, 373–74 (1886)); and (3) where a facially race-neutral, and evenly applied, policy results in a racially disparate impact and was motivated by discriminatory intent (see Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264–65 (1977); Washington v. Davis, 426 U.S. 229, 242 (1976)).

The Coalition's principal arguments for challenging the Plan fall into category (3) -- an evenly applied, facially race-neutral plan that was motivated by a discriminatory purpose and has a disparate impact. But the record provides no evidence of a relevant disparate impact. And the evidence of defendants' intent to reduce racial disparities is not by itself enough to sustain the Coalition's claim. Our reasoning follows.

1.

The Coalition makes two attempts to show that the School Committee's use of the Plan to determine Exam School admissions had a disparate impact on the Coalition's members. We address each in turn.

a.

To prove that the Plan had a disparate impact on its members, the Coalition first points out that White and Asian students made up a smaller percentage of the students invited to join the Exam Schools under the Plan than in the years before the Plan was implemented. Specifically, with respect to the prior year, the percentages of invited students classified as White dropped from 40% to 31%, while the percentage classified as Asian dropped from 21% to 18%.

The Coalition's reliance on these raw percentages without the benefit of some more robust expert analysis serves poorly as proof that the observed changes were caused by the Plan rather than by chance. See Boston Parent I, 996 F.3d at 46 (noting that the Coalition "offers no analysis or argument for why these particular comparators, rather than a plan based on random selection, are apt for purposes of determining adverse disparate impact"); see also Coal. for TJ v. Fairfax Cnty. Sch. Bd., 68 F.4th 864, 881 (4th Cir. 2023).

Nevertheless, given the size of the overall pool, the reductions cited by the Coalition may be at least minimally significant. Notably, when the defendants applied the Plan to the prior year's admission applications in a test-run simulation, it produced virtually the same percentage changes. And defendants have never claimed that the changes were entirely random. To the contrary, the Plan's effects were expected, at least in part, by those who knew the schools best: the defendants themselves. We therefore do not rest our decision on the lack of expert evidence that changes in the racial makeup of the admitted class in 2021–2022, as compared to 2020–2021, were not the result of mere chance.

Rather, we find that the Coalition fails to show disparate impact for another, more fundamental reason. To see why this is so, we find it instructive to consider disparate impact theory in its most customary form -- a statutory cause of action for unintentional discrimination in certain settings, such as employment. See, e.g., Jones v. City of Bos., 752 F.3d 38, 53 (1st Cir. 2014) (applying Title VII, 42 U.S.C. § 2000e–2(k)). A theory of unintentional discrimination cannot, by itself, establish liability in an equal protection case such as this, which requires proof of both disparate impact and discriminatory intent. See Arlington Heights, 429 U.S. at 266–68. Our point, instead, is that even when sufficient to establish liability in its native habitat of Title VII, disparate impact theory does not call into

question the introduction of facially neutral, and otherwise valid, selection criteria that reduce racial disparities in the selection process. In fact, where applicable, disparate-impact discrimination jurisprudence does just the opposite. As between alternative, equally valid selection criteria, it encourages the use of the criterion expected to create the least racial disparity unless there is some good reason to do otherwise. Cf. 42 U.S.C. § 2000e-2(k)(1)(A)(ii) and (C).

In this manner, disparate-impact analysis aims to counter the use of facially neutral policies that "'freeze' the status quo of prior discriminatory . . . practices." Griggs v. Duke Power Co., 401 U.S 424, 430 (1971). That is to say, it encourages precisely what the Coalition claims the Plan has done here: as between equally valid selection processes that meet the selector's legitimate needs, to use the one that reduces under-representation (and therefore over-representation as well). So, in seeking to leverage a disparate-impact theory of discrimination against the Plan for its alleged reduction -- but not reversal -- of certain races' stark over-representation among Exam School invitees, the Coalition has it backwards.

To be sure, where race itself is used as a selection criterion, certainly a before-and-after comparison would provide relevant support for an equal protection challenge. In that context, any "negative" effect resulting from the use of race would

be relevant because "race may never be used as a 'negative.'" Students for Fair Admissions, 600 U.S. at 218. Here, though, the Plan did not use the race of any individual student to determine his or her admission to an Exam School. And the Coalition offers no evidence that geography, family income, and GPA were in any way unreasonable or invalid as selection criteria for public-school admissions programs.

In sum, even assuming the Coalition's statistics show non-random demographic changes in the pool of Exam School invitees between 2020-2021 and 2021-2022 as a result of the Plan's implementation, those changes simply show that as between equally valid, facially neutral selection criteria, the School Committee chose an alternative that created less disparate impact, not more.[3] To rule otherwise would turn "the previous status quo into an immutable quota" and risk subjecting any new policy that "might impact a public institution's racial demographics -- even if by wholly neutral means -- to a constitutional attack." Coal. for TJ, 68 F.4th at 881 (internal quotation omitted).

b.

This brings us to the Coalition's alternative attempt to employ disparate-impact theory to prove prohibited intentional

[3] Moreover, by not using zip codes to award 20% of the invitations, the School Committee opted not to use an approach that would have reduced racial disparities even more.

race discrimination. The Coalition contends that the Plan, even when measured against a process of random selection, had a disparate impact on White and Asian applicants. To make this argument, the Coalition first notes that the overall acceptance rate for applicants for the 2021–2022 school year was 58.5%. And it posits that a random distribution would result in an even application of that 58.5% rate across each zip code. The Coalition then isolates certain zip codes where the population was either "predominantly" (as in 55% or greater) White/Asian or Black/Latinx, and juxtaposes those zip codes' respective acceptance rates under the Plan with those under a hypothetical 58.5% comparator. Following this logic, the Coalition concludes that the Plan resulted in 66 fewer than expected spots allocated across ten predominantly White/Asian zip codes, and 57 more spots across seven predominantly Black/Latinx zip codes. Using this same data, the Coalition also argues that because the average GPA of the admitted students from the predominantly White/Asian zip codes was higher than that from the predominantly Black/Latinx zip codes, the Plan made it disproportionally more difficult for White and Asian students to gain acceptance.

In our view, this backfilled analysis -- crafted by counsel in an appellate brief -- falls woefully short of the mark. The analysis uses GPA data from only ten of the twenty zip codes that the Coalition identifies as "predominantly" White and Asian.

It also neglects another two zip codes where, ostensibly, there was neither a predominantly White/Asian nor Black/Latinx population under the Coalition's definition. And all the while, the Coalition never explains why 55% should be the relevant threshold, nor why aggregating populations of separate racial groups is methodologically coherent.[4]

Moreover, the Coalition's analysis rests on a sleight of hand. It counterfactually assumes that if White/Asian students comprised 55% or more of the students in a given zip code, then every marginal student in that zip code who just missed out on acceptance was also White or Asian. Suffice it to say, there is zero evidence for this assumption. The bottom line remains the same: White and Asian students respectively made up approximately 16% and 7% of the eligible school-age population and 31% and 40% of the successful applicants. Use of the Plan caused no relevant disparate impact on those groups.[5] Cf. Coal. for TJ, 68 F.4th at

[4] Intervenors-appellees raise additional alarms about the Coalition's data, noting that several zip codes cited by the Coalition as "predominantly" White and Asian actually have a greater Black or Latinx population than Asian.

[5] The district court found that "the Coalition's evidence of disparate impact was a projection of a prior plan that showed White students going from representing 243 percent of their share of the school-age population in Boston to 200 percent, and Asian students going from representing 300 percent of their share of the school-age population in Boston to 228 percent." Bos. Parent Coal., 2021 WL 4489840, at *15. As to the actual admissions data, the district court made no such findings, but we take notice that for seventh-grade applicants, the Plan resulted in White students, who

879 (finding no disparate impact on Asian-American students under school admissions policy where "those students have had greater success in securing admission to [the school] under the policy than students from any other racial or ethnic group").

2.

We turn next to the Coalition's argument that it need not prove a disparate impact per se. Rather, the Coalition contends that any change in the racial composition of admitted students is unconstitutional if the change was intended -- even if it is the result of facially neutral and valid selection criteria that merely reduce, but do not reverse, the numerical over-representation of a particular race. There are several problems with this theory.

First, the Coalition points to no case in which a facially neutral selection process was found to violate the Equal Protection Clause based on evidence of intent without any corollary disparate impact. To the contrary, to successfully challenge the use of a facially neutral, and otherwise bona fide, selection criterion, the Coalition must prove both improper intent and disparate impact. Anderson ex rel. Dowd, 375 F.3d at 89 (noting that "[c]ourts can only infer that an invidious racial purpose

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constitute 16% of the Boston school-age population, receiving 31% of the invitations, and Asian students, who constitute 7% of that population, receiving 18% of the invitations.

motivated a facially neutral policy when that policy creates disproportionate racial results"); see also Lewis v. Ascension Parish Sch. Bd., 806 F.3d 344, 359 (5th Cir. 2015) ("To subject a facially race neutral government action to strict scrutiny, the plaintiff must establish both discriminatory intent and a disproportionate adverse effect upon the targeted group."); Coal. for TJ, 68 F.4th at 882 (quoting Palmer v. Thompson, 403 U.S. 217, 224 (1971)) (agreeing and noting that "[n]o case in [the Supreme] Court has held that a legislative act may violate equal protection solely because of the motivations of the men who voted for it . . . ."); Doe ex rel. Doe v. Lower Merion Sch. Dist., 665 F.3d 524, 549 (3d Cir. 2011) ("Although disproportionate impact, alone, is not dispositive, a plaintiff must show discriminatory impact in order to prove an equal protection violation.").

Second, the Coalition's "intent only" theory runs counter to what appears to be the view of a majority of the members of the Supreme Court as expressed in Students for Fair Admissions. There, the Court found that Harvard and UNC's race-conscious admissions programs violated the Equal Protection Clause. 600 U.S. at 213. But in rejecting the universities' use of an applicant's race as a means to achieve a racially diverse student body, three of the six justices in the majority -- with no disagreement voiced by the three dissenters -- separately stressed that universities can lawfully employ valid facially neutral

selection criteria that tend towards the same result. See id. at 299–300 (Gorsuch, J., with Thomas, J., concurring) (recounting the argument that the universities "could obtain significant racial diversity without resorting to race-based admissions practices," and noting that "Harvard could nearly replicate [its] current racial composition without resorting to race-based practices" if it increased tips for "socioeconomically disadvantaged applicants" and eliminated tips for "children of donors, alumni, and faculty"); id. at 280 (Thomas, J., concurring) ("If an applicant has less financial means (because of generational inheritance or otherwise), then surely a university may take that into account."); id. at 317 (Kavanaugh, J., concurring) (universities "'can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race'") (quoting City of Richmond v. J.A. Croson Co., 488 U.S. 469, 526 (1989) (Scalia, J., concurring in the judgment)).

Granted, no concurring opinion expressly held that a school may adopt a facially neutral admissions policy precisely because it would reduce racial disparities in the student body as compared to the population of eligible applicants. But the message is clear. Justice Gorsuch, and indeed plaintiff Students for Fair Admissions itself, identified use of socio-economic status indicators -- i.e., family income -- as a tool for universities who "sought" to increase racial diversity. See id. at 299–300

(Gorsuch, J., with Thomas, J., concurring). And Justice Kavanaugh wrote that "universities still 'can, of course, act to undo the effects of past discrimination in many permissible ways.'" Id. at 317 (Kavanaugh, J., concurring) (emphasis added).

Nor is there any reason to suppose that these assurances do not apply to admission to selective public schools. As Justice Kennedy wrote in his pivotal concurring opinion in Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, "[i]n the administration of public schools by the state and local authorities it is permissible to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is its racial composition." 551 U.S. 701, 788 (2007) (Kennedy, J., concurring) (internal citation omitted).

Third, holding school officials liable for any reduction in the statistical over-representation of any racial group, merely because the change was the intended result of a new facially neutral and valid selection policy, would deter efforts to reduce unnecessary racial disparities. A school might base admission on residence in geographical proximity to the school, on attendance at specific schools in a lower grade, on tests or GPA, or some combination of the myriad indicia of students' prior success. A school might even decide to rely only on a lottery. It hardly would be surprising to find that a change from one of those

selection criteria to another significantly altered the racial composition of the pool of successful applicants.

Nor would a lack of intent provide any safe harbor given that responsible school officials would likely attempt to predict the effects of admissions changes, if for no other reason than to avoid increasing disparities. And many honest school officials would admit that as between two equally valid selection criteria, they preferred the one that resulted in less rather than greater demographic disparities. In short, any distinction between adopting a criterion (like family income) notwithstanding its tendency to increase diversity, and adopting the criterion because it likely increases diversity, would, in practice, be largely in the eye of the labeler. Cf. Coal. for TJ, 68 F.4th at 882 (quoting Palmer, 403 U.S. at 224) ("If the law is struck down for [intent alone] . . . it would presumably be valid as soon as the legislature or relevant governing body repassed it for different reasons.").

To be sure, in striking down Harvard and UNC's race-conscious plans in Students for Fair Admissions, the Supreme Court noted that "[w]hat cannot be done directly cannot be done indirectly," such that "universities may not simply establish through application essays or other means the regime [the Court found unlawful]." 600 U.S. at 230 (citation omitted). But we do not read that admonition as calling into question the use of a

bona fide, race-neutral selection criterion merely because it bears a marginal but significant statistical correlation with race.

Certainly, Justices Gorsuch, Thomas, and Kavanaugh, in joining the majority opinion, did not read the Court's opinion to foreclose use of the very selection criteria to which their concurrences pointed as permissible race-neutral alternatives to the race-conscious admissions programs before the Court.

Of course, at some point, facially neutral criteria might be so highly correlated with an individual's race and have so little independent validity that their use might fairly be questioned as subterfuge for indirectly conducting a race-based selection process. In that event, nothing in this opinion precludes a person harmed by such a scheme from pursuing an equal protection claim under the authority of Students for Fair Admissions. Here, though, admission under the Plan correlated positively with being White or Asian, the only groups numerically over-represented under the Plan. And the Plan's prosaic selection criteria -- residence, family income, and GPA -- can hardly be deemed otherwise unreasonable. Nor is this a case in which a school committee settled on and employed a valid selection criterion, and then simply threw out the results because the committee did not like the racial demographics of the individuals selected.

Thus, we find no reason to conclude that Students for Fair Admissions changed the law governing the constitutionality of facially neutral, valid secondary education admissions policies under equal protection principles. For such policies to merit strict scrutiny, the challenger still must demonstrate (1) that the policy exacts a disparate impact on a particular racial group and (2) that such impact is traceable to an invidious discriminatory intent. See Arlington Heights, 429 U.S. at 264–65; see also Coal. for TJ, 68 F.4th at 879; Lower Merion Sch. Dist., 665 F.3d at 549; Hayden v. County of Nassau, 180 F.3d 42, 48 (2d Cir. 1999); Raso v. Lago, 135 F.3d 11, 16 (1st Cir. 1998).

As we previously stated:

> [O]ur most on-point controlling precedent, Anderson ex rel. Dowd v. City of Boston, makes clear that a public school system's inclusion of diversity as one of the guides to be used in considering whether to adopt a facially neutral plan does not by itself trigger strict scrutiny. See 375 F.3d at 85–87 (holding that strict scrutiny did not apply to attendance plan adopted based on desire to promote student choice, equitable access to resources for all students, and racial diversity). In Anderson, we expressly held that "the mere invocation of racial diversity as a goal is insufficient to subject [a facially neutral school selection plan] to strict scrutiny." Id. at 87.

Boston Parent I, 996 F.3d at 46. Our view has not changed. There is nothing constitutionally impermissible about a school district including racial diversity as a consideration and goal in the

enactment of a facially neutral plan. To hold otherwise would "mean that that any attempt to use neutral criteria to enhance diversity . . . would be subject to strict scrutiny." Boston Parent I, 996 F.3d at 48.

"The entire point of the Equal Protection Clause is that treating someone differently because of their skin color is not like treating them differently because they are from a city or from a suburb . . . ." Students for Fair Admissions, 600 U.S. at 220. So too here, treating students differently based on the zip codes in which they reside was not like treating them differently because of their skin color.

C.

Because we find that the Plan is not subject to strict scrutiny, we would normally proceed to consider its constitutionality under rational basis review. But the Coalition, for good reason, does not argue that the Plan fails rational basis review. So we deem any such claim waived.

IV.

Finally, the Coalition appeals the district court's denial of its motion under Federal Rule of Civil Procedure 60(b), which allows for relief from a final judgment in "exceptional circumstances . . . favoring extraordinary relief." See Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir. 2002). We review the district court's denial of the Coalition's Rule 60(b) motion for

abuse of discretion. Fisher v. Kadant, Inc., 589 F.3d 505, 512 (1st Cir. 2009).

Pursuant to Rule 60(b), a "court may relieve a party . . . from a final judgment, order, or proceeding" based on, inter alia, "newly discovered evidence that, with reasonable diligence, could not have been discovered in time." Fed. R. Civ. P. 60(b)(2). The newly discovered evidence to which the Coalition pointed was the text messages, discussed above, between Oliver-Dávila and Rivera, particularly their agreement that they were "[s]ick of westie whites."

"Under this rule, a party moving for relief . . . must persuade the district court that: (1) the evidence has been discovered since the trial; (2) the evidence could not by due diligence have been discovered earlier by the movant; (3) the evidence is not merely cumulative or impeaching; and (4) the evidence is of such a nature that it would probably change the result were a new trial to be granted." González-Piña v. Rodríguez, 407 F.3d 425, 433 (1st Cir. 2005) (internal quotation and citation omitted). Here, the district court concluded, among other things, that the Coalition failed to meet the second and fourth requirements. See Bos. Parent Coal., 2021 WL 4489840, at *15-16.

As to the second requirement, the district court found that the Coalition failed to show that "the evidence could not by

due diligence have been discovered earlier." González-Piña, 407 F.3d at 433. The district court -- buttressed by its experience closely supervising this litigation and the parties' arguments along the way -- reasonably determined that the Coalition made a deliberate decision to forgo discovery, despite its apparent suspicion that the two School Committee members harbored racial animus, and even discouraged further development of the record at trial. Bos. Parent Coal., 2021 WL 4489840, at *15. The Coalition purportedly did so because it was, and remains, adamant that it did not need to make a showing of racial animus to prevail. See id. Additionally, the district court found that the School Committee's failure to disclose the text messages in its response to various third parties' public records requests did not constitute the kind of misconduct -- such as that occurring within the judicially imposed discovery process -- that warrants Rule 60(b) relief. See id. at *14. We see no abuse of discretion in any of these findings.

As to the fourth requirement, the district court found that the text-message evidence was not "of such a nature that it would probably change the result were a new trial to be granted," González-Piña, 407 F.3d at 433, principally on the grounds that the evidence did not rectify the Coalition's failure to make a proper showing of the Plan's disparate impact. See Bos. Parent Coal., 2021 WL 4489840, at *15-16. The district court did not

abuse its discretion in reaching this conclusion. More evidence of intent does not change the result of this case, given that our analysis assumes that the Plan was chosen precisely to alter racial demographics. We recognize that the text messages evince animus toward those White parents who opposed the Plan. But the district court supportably found as fact that the added element of animus played no causal role that was not fully and sufficiently played by the motive of reducing the under-representation of Black and Latinx students. Id. at *15. In the district court's words, what drove the Plan's selection was the expected "increase in Black and Latinx students." Id. (citing Personnel Adm'r of Mass. v. Feeney, 442 U.S. 256, 258 (1979)) (distinguishing "action taken because of animus" from action taken "in spite of [its] necessary effect on a group") (emphasis in original). So, we need not decide what to make of a case in which a school district took action to reduce a numerically over-represented group's share of admissions because of animus toward that group.

Consequently, we find that the district court did not abuse its discretion in denying the Coalition relief under Rule 60(b).

V.

For the foregoing reasons, we affirm the district court's denial of the Coalition's motion under Rule 60(b), and its judgment rejecting the Coalition's challenges to the Plan.

CGCS Legal Webinar on Religious Freedom & Accommodations for Students and Employees

From: Mary Stablein Lawson <mlawson@cgcs.org>
Sent: Tuesday, November 14, 2023
To: Legal <legal@cgcslists.org>
Subject: New Webinar | Religious Freedom & Accommodations for Students and Employees

General Counsels,

Please join us for the next installment of our webinar series on November 21, 2023.

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Religious Freedom & Accommodations for Students and Employees

Join Husch Blackwell education attorneys and a representative from the Council of the Great City Schools (CGCS) as they delve into the intersection of religious freedom and accommodations for students and employees, including in the charter school context. We will discuss the recent federal court decisions involving religious discrimination claims under the First Amendment, Title VII, and state law. Specific topics will include the right of

public employees to engage in demonstrative religious expression, and the ability of school districts to require employees to refer to students by their preferred pronouns.

The webinar will review the jurisprudence associated with the Free Speech, Free Exercise, and Establishment Clauses; summarize recent legal developments; and use scenarios from recent cases to facilitate discussion on the possible effect of the decisions on public school districts.

Presenters
John W. Borkowski, Partner, Husch Blackwell
Aleks O. Rushing, Attorney, Husch Blackwell
Claire Hawley, Attorney, Husch Blackwell
Mary Stablein Lawson, General Counsel, Council of the Great City Schools

Who Should Attend
Husch Blackwell clients and members of the Council of the Great City Schools who are educational leaders, including superintendents, in-house counsel, board members, administrators, compliance officers, and others with influence over institutional compliance practices.

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OCR

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

November 7, 2023

Dear Colleague:

As we witness a nationwide rise in reports of hate crimes[1] and harassment, including an alarming rise in disturbing antisemitic incidents and threats to Jewish, Israeli, Muslim, Arab, and Palestinian students on college campuses and in P-12 schools, the fulfillment of school communities' federal legal obligations to ensure nondiscriminatory environments have renewed urgency. As the President promised, the federal government is "…working with community partners to identify, prevent, and disrupt any threats that could harm the Jewish, Muslim, Arab American, Palestinian American, or any other communities."[2] Hate-based discrimination, including based on antisemitism and Islamophobia among other bases, have no place in our nation's schools.

It is in this context that I write to remind colleges, universities, and schools that receive federal financial assistance of their legal responsibility under Title VI of the Civil Rights Act of 1964 and its implementing regulations (Title VI) to provide all students a school environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics.[3] It is your legal obligation under Title VI to address prohibited discrimination against students and others on your campus—including those who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian—in the ways described in this letter.

Every student has the right to a learning environment that is free from discrimination. The Department of Education's Office for Civil Rights (OCR) stands ready to support schools in fulfilling this promise and to ensure every student's right to learn without discrimination. All students, including students who are or are perceived to be Jewish, Israeli, Muslim, Arab, or Palestinian, as well as students who come from, or are perceived to come from, all regions of the world, are entitled to a school environment free from discrimination based on race, color, or national origin.

Title VI's protection from race, color, and national origin discrimination extends to students who experience discrimination, including harassment, based on their actual or perceived: (i) shared ancestry or ethnic characteristics; or (ii) citizenship or residency in a country with a dominant religion

[1] *See, e.g.*, U.S. Department of Justice, "2022 FBI Hate Crimes Statistics," www.justice.gov/crs/highlights/2022-hate-crime-statistics. *See also*, U.S. Department of Justice, "Attorney General Merrick B. Garland Delivers Remarks at the U.S. Attorney's Office for the Northern District of Florida," (October 20, 2023), www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-us-attorneys-office-northern.

[2] The White House, Statement from President Joe Biden on the 25th Anniversary of the International Religious Freedom Act (Oct. 27, 2023), www.whitehouse.gov/briefing-room/statements-releases/2023/10/27/statement-from-president-joe-biden-on-the-25th-anniversary-of-the-international-religious-freedom-act/.

[3] 42 U.S.C. § 2000d; 34 C.F.R. § 100.3.

or distinct religious identity.[4] Schools that receive federal financial assistance have a responsibility to address discrimination against Jewish, Muslim, Sikh, Hindu, Christian, and Buddhist students, or those of another religious group, when the discrimination involves racial, ethnic, or ancestral slurs or stereotypes; when the discrimination is based on a student's skin color, physical features, or style of dress that reflects both ethnic and religious traditions; and when the discrimination is based on where a student came from or is perceived to have come from, including discrimination based on a student's foreign accent; a student's foreign name, including names commonly associated with particular shared ancestry or ethnic characteristics; or a student speaking a foreign language.

Harassing conduct can be verbal or physical and need not be directed at a particular individual. OCR interprets Title VI to mean that the following type of harassment creates a hostile environment: unwelcome conduct based on shared ancestry or ethnic characteristics that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity. Schools must take immediate and effective action to respond to harassment that creates a hostile environment.[5]

Through the enforcement of federal civil rights laws, OCR has a longstanding commitment to addressing discrimination in our nation's schools. OCR has developed a variety of resources, including a Dear Colleague Letter and Fact Sheet, to help inform school communities that receive federal financial assistance from the Department of their obligation to maintain educational environments free

[4] See *T.E. v. Pine Bush Cent. Sch. Dist.*, 58 F. Supp. 3d 332, 353-55 (S.D.N.Y. 2014) (giving deference to U.S. Department of Education's interpretation of its Title VI regulation and holding that discrimination based on shared ancestry and ethnic characteristics is prohibited by Title VI); *see also* 42 U.S.C. § 2000d; 34 C.F.R. § 100.3(b)(1)(iv) and (vi), and OCR Dear Colleague Letter: Harassment or Bullying, 4-6 (Oct. 26, 2010), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf. Title VI does not protect students from discrimination based solely on religion. OCR refers complaints of discrimination based exclusively on religion to the U.S. Department of Justice, which has jurisdiction on this issue. *See* Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c, *et seq*.

[5] *See, e.g.*, *Zeno v. Pine Plains Cent. Sch. Dist*., 702 F.3d 655, 670 n.14 (2d Cir. 2012) (citing school districts' "longstanding legal duty to 'take reasonable steps to eliminate' racial harassment in its schools" (quoting OCR's Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance, 59 Fed. Reg. 11448, 11450 (Mar. 10, 1994))). For additional information, please see Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance (March 1994); U.S. Department of Education Office for Civil Rights, Harassment and Bullying Dear Colleague Letter (October 2010).

OCR interprets its regulations consistent with the requirements of the First Amendment to the U.S. Constitution, and all actions taken by OCR must comport with First Amendment principles. No OCR regulation should be interpreted to impinge upon rights protected under the First Amendment or to require recipients to enact or enforce codes that punish the exercise of such rights.

from discrimination. Additional resources are available on the Shared Ancestry or Ethnic Characteristics page of OCR's website.[6]

Jewish students, Israeli students, Muslim students, Arab students, Palestinian students, and all other students who reside within our school communities have the right to learn in our nation's schools free from discrimination. Please be vigilant in protecting your students' rights under Title VI, understanding that we in OCR are and will be.

If you have questions or would like additional information or technical assistance, please visit our website at www.ed.gov/ocr or contact OCR at (800) 421-3481 (TDD: 800-877-8339) or at ocr@ed.gov.

Thank you for your commitment to providing to our nation's students an educational environment free from discrimination.

Sincerely,

/s/
Catherine E. Lhamon
Assistant Secretary for Civil Rights

[6] For an example of a recently resolved complaint about antisemitic harassment, please see, Letter from OCR Boston to Suresh V. Garimella, University of Vermont (April 3, 2023) and Resolution Agreement - The University of Vermont and State Agricultural College (April 3, 2023). For information about other resolved complaints alleging discrimination based on shared ancestry or ethnic characteristics, visit https://ocrcas.ed.gov/ocr-search?sort_order=ASC&sort_by=field_recipient_name&keywords=shared+ancestry*.

Resources:

- U.S. Department of Education Office for Civil Rights, Addressing Discrimination Against Jewish Students Dear Colleague Letter (May 2023).
- U.S. Department of Education Office for Civil Rights, Fact Sheet: Protecting Students from Discrimination Based on Shared Ancestry or Ethnic Characteristics (January 2023).
- U.S. Department of Education Office for Civil Rights, Questions and Answers on Executive Order 13899 (Combating Anti-Semitism) and OCR's Enforcement of Title VI of the Civil Rights Act of 1964 (January 2021).
- U.S. Department of Education Office for Civil Rights, Know Your Rights: Title VI and Religion Fact Sheet (January 2017).
- U.S. Department of Education Office for Civil Rights, Combating Discrimination Against Jewish Students Fact Sheet (January 2017).
- U.S. Department of Education Office for Civil Rights, Combating Discrimination Against Asian American, Native Hawaiian, and Pacific Islander (AANHPI) and Muslim, Arab, Sikh, and South Asian (MASSA) Students (June 2016).
- U.S. Department of Justice Civil Rights Division Letter to U.S. Department of Education Office for Civil Rights, Title VI and Coverage of Religiously Identifiable Groups (September 2010).
- U.S. Department of Education Office for Civil Rights, Title VI and Title IX Religious Discrimination in Schools and Colleges Dear Colleague Letter (September 2004).
- U.S. Department of Education Office for Civil Rights, First Amendment Dear Colleague Letter (July 2003).

Anyone who believes that a school has discriminated against a student based on race, color, or national origin can file a complaint of discrimination with OCR. To file a complaint, visit https://www2.ed.gov/about/offices/list/ocr/complaintintro.html.

Other than statutory and regulatory requirements included in the document, the contents of this guidance do not have the force and effect of law and are not meant to bind the public. This document is intended only to provide clarity to the public regarding agency policies and/or existing requirements under federal civil rights laws.