



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

Avoiding the Discriminatory Use of Artificial Intelligence

The U.S. Department of Education's (Department's) Office for Civil Rights (OCR) provides this resource to assist school communities with ensuring that artificial intelligence (AI) is used in a nondiscriminatory manner in the nation's elementary and secondary schools and institutions of higher education consistent with federal civil rights laws.ⁱ Within this resource, AI means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments.ⁱⁱ AI technologies have the potential to enhance opportunities and increase educational equity for all students. At the same time, the growing use of AI in schools, including for instructional and school safety purposes, and AI's ability to operate on a mass scale can create or contribute to discrimination.

The Department's Office of Educational Technology (OET) has released several resources which provide helpful information about the use of artificial intelligence in education settings that are available on OET's [website](#).

OCR enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department, including Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 (Section 504), which prohibits discrimination on the basis of disability.ⁱⁱⁱ OCR shares in the enforcement of Title II of the Americans with Disabilities Act of 1990 (Title II) with the U.S. Department of Justice. Title II prohibits discrimination on the basis of disability by state and local governments, regardless of whether or not those entities receive federal financial assistance.^{iv} Each of the statutes OCR enforces and their implementing regulations also prohibits retaliation.^v

The nondiscrimination provisions of these federal civil rights laws apply to discrimination resulting from the use of AI. This resource provides information regarding federal civil rights laws in OCR's jurisdiction and includes examples of types of incidents that could, depending on the facts and circumstances, present OCR with sufficient reason to open an investigation. Many of the examples included in this resource highlight conduct of schools and colleges that could also constitute discrimination without the use of AI technologies, but which may be compounded by its use. These examples are illustrative, non-exhaustive, and do not dictate the outcome of any particular matter OCR may investigate; rather, in each case, OCR engages in an individualized analysis of the particular facts at issue. OCR will open a case for investigation if the allegation(s) could state a violation of one of the laws or regulations that OCR enforces; this is an initial determination prior to investigation and not a finding or conclusion regarding

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

the allegations. If OCR opens an investigation, any determination about whether discrimination has occurred or is occurring would depend on particular facts and circumstances.

The contents of this guidance do not have the force and effect of law and do not bind the public or create new legal standards. This document is designed to provide clarity to the public regarding existing legal requirements under the civil rights laws that OCR enforces.

Anyone who believes that they or someone else has been discriminated against by a school or other recipient based on race, color, national origin, sex, disability, or age can file a complaint of discrimination with OCR using OCR's [Electronic Complaint Assessment System](#).

Race, Color, or National Origin Discrimination:

Title VI states “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”^{vi}

Examples 1 through 7 below include the kinds of incidents that could, depending upon facts and circumstances, constitute race, color, or national origin discrimination under Title VI.

Title VI's protection extends to students with a shared ancestry or ethnic characteristics, including students from different countries or regions in the world. Title VI's protection also extends to students who are English Learners (ELs) and parents and guardians who have limited English proficiency (LEP). Specifically, Title VI requires elementary and secondary schools to provide appropriate language assistance services to students who are ELs that enable them to become proficient in English and participate equally and meaningfully in the standard instructional program within a reasonable period of time.^{vii} Additionally, appropriate language assistance services must be educationally sound in theory and effective in practice.^{viii}

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Examples 1 and 2 below, which involve students who are ELs:

Example 1: A high school English teacher assigns the class a book report. After the students turn in their reports, the teacher grades them but decides to also run the reports through a free online service that inaccurately claims it can spot use of generative AI and prevent cheating and plagiarism. Unbeknownst to the teacher, the service has a low error rate for evaluating essays written by native English speakers for use of generative AI but has a high error rate when evaluating essays written by non-native English speakers. The detector flags as AI-generated the essays written by the class's only two students who are ELs, though they did not use AI or plagiarize. As a result, the teacher gives them both a failing grade and writes them up for academic dishonesty. A parent of one of the students appeals the student's grade and academic dishonesty charge. The principal tells the parent that she believes the AI-detection checker over the student's objections and that the school will continue to use the checker to ensure all papers are free from plagiarism. *OCR would likely have reason to open an investigation based on*

this complaint. Based on the facts, as alleged, the students who are ELs may not be able to participate equally and meaningfully in the standard instructional program of the school.

Example 2: An elementary school’s supplemental English language development program for students who are ELs relies almost exclusively on a computer-based program that markets itself as a personalized learning program. This program will supplement instruction for students who are ELs in listening, speaking, reading, and writing. Twice a week, students who are ELs use this computer program for thirty minutes while non-EL students receive direct literacy intervention instruction from a classroom teacher. While the teachers are trained to assist if a student who is an EL has technical difficulty (e.g., login issues), they are not trained in providing English language development instruction and are unprepared to do so. A teacher files a complaint with OCR alleging that none of the students who are ELs are improving in their English language skills after two years in the EL program. *OCR would likely have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the students who are ELs may not be able to participate equally and meaningfully in the standard instructional program of the school.

For more information regarding students who are ELs, please see:

- [English Learner Students and Limited English Proficient Parents](#) Dear Colleague Letter
- [Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs](#) Fact Sheet
- [Equal Educational Opportunities for English Learners](#) Website

Title VI requires that elementary and secondary schools ensure meaningful communication with parents and guardians who have LEP in a language they can understand. Elementary and secondary schools may take steps to provide effective language assistance to parents and guardians who have LEP by providing accurate written translations or oral interpretation.^{ix}

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Example 3 below, which involves parents who have LEP:

Example 3: Teachers at a middle school often rely on non-contracted, online third-party applications and websites to translate and interpret for parents who have LEP. Some of these applications leverage AI to translate or interpret. A parent complains to the school’s principal that they have been unable to communicate with their child’s teacher regarding the child’s academic and behavioral progress in class due to incoherent translations. The school does not investigate or attempt to resolve the parent’s concern. *OCR would likely have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the school may not be ensuring meaningful communication with parents who have LEP in a language the parents can understand.

For more information regarding parents and guardians who have LEP, please see:

- [English Learner Students and Limited English Proficient Parents](#) Dear Colleague Letter
- [Information for Limited English Proficient Parents and Guardians and for Schools and School Districts that Communicate with Them](#) Fact Sheet
- [Equal Educational Opportunities for English Learners](#) Website

Harassment creates a hostile environment under Title VI if school staff, a student, or another person engages in unwelcome conduct based on race, color, or national origin that, based on the totality of the 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. OCR could find a Title VI violation if: (1) a hostile environment based on race, color, or national origin existed; (2) the school had actual or constructive notice (in other words, the school knew or should have known) of the hostile environment; and (3) the school failed to take prompt and effective steps reasonably calculated to (i) end the harassment, (ii) eliminate any hostile environment and its effects, and (iii) prevent the harassment from recurring.^x

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Example 4 below, which involves harassment under Title VI:

Example 4: A school district purchases facial recognition technology from a third-party vendor that markets its product as essential for school safety. The school district is unaware that the facial recognition technology it purchased has difficulty accurately recognizing the faces of students of color and consistently misidentifies Black individuals. A school in the district compiles a persons of interest list that includes individuals arrested for drug usage in the area and individuals who have been issued trespass warnings, including previously expelled students. If the facial recognition system detects that a person of interest is on campus, it sends an alert to specified school personnel. The system mistakenly flags several Black students multiple times throughout the school year, causing each student to be stopped and questioned by the school's resource officer and administrators. The students complain to the principal that they are being falsely flagged and questioned. The students flagged are also pulled out of class on multiple occasions to verify that they are not on the persons of interest list. The school does not take any actions in response to the students' complaints or to resolve the students' missed class time. Other students begin calling Black students "criminals" based on their continued interactions with the resource officer. *OCR would likely have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the students may have experienced a hostile environment due to the multiple false flags, being pulled out of class and questioned, and the allegations regarding peer harassment.

For more information, please see:

- [Harassment](#) Website
- [Harassment based on Race, Color, or National Origin on School Campuses](#) Fact Sheet
- [Race and School Programming](#) Dear Colleague Letter

Under Title VI, discrimination can occur when a school implements or enforces a policy or practice in a manner that treats students differently based on race, color, or national origin. OCR frequently uses the following three step test to determine whether a school treated students differently based on race, color, or national origin in violation of Title VI:

1. Did the school treat a student or group of students of a particular race, color, or national origin differently from a similarly situated student or group of students of another race, color, or national origin? If no, then OCR would not find sufficient evidence to determine that the school has engaged in different treatment under this framework. If yes, then move to step two:
2. Can the school articulate a legitimate, nondiscriminatory reason for the different treatment? If no, OCR could find that the school has discriminated on the basis of race, color, or national origin. If yes, then move to step three:
3. Is the articulated reason for the different treatment a pretext for discrimination (i.e., not the true reason for the school's actions)? If yes, OCR could find that the school has engaged in discrimination based on race, color, or national origin.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Examples 5 and 6 below, which involve discrimination in student discipline:

Example 5: A school implements new risk assessment, AI-enabled software to determine appropriate discipline measures for students. The software gives students a risk score that estimates the likelihood of them committing a future severe infraction based on historic school discipline data. Significant disparities by race have persisted in the school's application of student discipline, and Black students are disciplined more frequently and more harshly than other similarly situated students of another race. As a result, the historic school discipline data that the software relies on reflects the school's discriminatory disciplinary practices. Whenever a student receives a disciplinary referral, the school uses the software to calculate the student's chance of reoffending and heavily relies on the risk score in determining the severity of punishment (for example, higher scores lead to more significant discipline). The AI software does not directly use the student's race as an input in calculating the risk score. Parents complain to the school after they notice that the software tends to give high scores to Black students and low scores to White students. The principal tells the parents they should trust the software because it does not have access to information about the student's race, so it is less biased to let a machine generate the risk score for discipline decisions than to let a school official do it. *OCR would likely have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the school may be treating Black students differently than similarly situated students of another race.

Example 6: A high school purchases AI-enabled software that uses predictive analytics to identify students with a higher likelihood of dropping out of school in order to monitor their progress. The software uses a number of inputs to make its determination including whether the student has a two-parent household, whether the student has a low attendance record, whether the student has a disciplinary record, and if the student is a member of a racial or ethnic minority group. As a result, the software flags a large portion of the school's Black and Hispanic/Latino student population. The software places red flags next to the identified students' names on classroom rosters. In preparation for college visitation week, the school's

assistant principal uses the outputs from the program to exclude red-flagged students based on his belief that they are unlikely to attend college and that it would be a waste of time. A Latino parent files a complaint against the school after their child is automatically excluded from college visitation events. *OCR would likely have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the school may be treating Black and Hispanic/Latino students differently than similarly situated students of other races.

For more information, please see:

- [Discriminatory Discipline Website](#)
- [Confronting Racial Discrimination in Student Discipline Resource](#)

Sex Discrimination:

OCR also enforces Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in federal funding recipients' education programs and activities. The Department's Title IX regulations were amended in 2020 ([2020 Notice of Final Rule](#); [2020 Title IX regulations](#)) and again in 2024 ([2024 Notice of Final Rule](#); [2024 Title IX regulations](#)). As of September 13, 2024, pursuant to Federal court orders, the Department is enjoined from enforcing the 2024 Title IX regulations in certain states and schools. Pending further court orders, the Department's Title IX regulations, as amended in 2020, remain in effect in those states and schools.^{xi}

For more information, please see:

- [Sex Discrimination: Overview](#)
- [Resources for LGBTQI+ Students](#)
- [Frequently Asked Questions About Sex Discrimination](#)

Examples 7 through 12 include the kinds of incidents that could, depending on facts and circumstances, constitute sex discrimination under Title IX.

Under the 2024 Title IX regulations, sex-based harassment creates a hostile environment if school staff, a student, or another person engages in unwelcome sex-based conduct that, based on the totality of the 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.^{xii}

Under the 2020 Title IX regulations, sexual harassment creates a hostile environment if school staff, a student, or another person engages in unwelcome sex-based conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

OCR would likely have reason to open an investigation of the allegations described in Examples 7 and 8 under the 2020 Title IX regulations or 2024 Title IX regulations.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Examples 7 and 8 below, which involve harassment under Title IX:

Example 7: A student uses a generative AI application to send repeated and continuous sexually explicit messages to a classmate's school email. That classmate's parents report the issue to administrators, asking the school to take actions to stop the messages. The principal states that because she does not have access to the tool the student is using to spam their classmate's email, she cannot investigate further or prevent the messages from being sent. *OCR would have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the student receiving the sexually explicit messages may have experienced prohibited harassment about which the school knew and failed to appropriately respond.

Example 8: A high school student discovers that a public anonymous social media account is posting images of a female student and other classmates that depict photographs of the students' faces with AI-created nude bodies (sometimes referred to as "deepfake nudes") and include sexually explicit comments and tags. Each new post by the account becomes a popular topic of discussion amongst students at the school. Another student brags to friends at the school about creating the account and then is reported to administrators. A third student reports the social media account to her parents who in turn file a complaint with the school. The school tells the parents that they are aware of the account due to multiple reports and have reported it to the police but that they cannot do anything further to ameliorate the situation until the police complete their investigation. *OCR would have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the students may have experienced prohibited harassment about which the school knew and failed to appropriately respond.

In addition to allegations of sex-based harassment that creates a hostile environment, under Title IX, OCR can investigate allegations that a school is implementing or enforcing a policy or practice in a manner that treats students differently based on sex. When determining whether a school treated students differently based on sex in violation of Title IX, OCR frequently uses a three-step test similar to the one described above in Examples 5 and 6.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Examples 9 through 11 below, which involve a school implementing or enforcing a policy or practice in a manner that treats students differently based on sex:

Example 9: A school uses AI software to make students' academic schedules. The software relies on historic data and students' demographics to determine course enrollments. Historically, male students were twice as likely to take computer science as compared to female students. The software creates schedules that place only one female student in the school's computer science class, which has thirty-five students. Other female students who want to take the computer science class ask the principal to re-do their schedules so they can take the course, but the principal declines, saying that it would be too time consuming to re-do their schedules. *OCR would have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the female students may have been treated differently than male students, who are otherwise similarly situated.

Example 10: A public college utilizes an AI-enabled software that uses predictive analytics to identify students who will be most successful in its engineering program, and then assigns each applicant a score. The score is weighted heavily in deciding whether to admit students to the program, with lower weights being given to a student essay and answers provided on an application, which, among other things, includes the students' demographic information. The software uses data from past engineering applicants' acceptances and their demographics as an input for its analysis. Nearly 90% of past students are men. Though approximately equal numbers of male and female students apply, approximately 80% of students admitted to the program are male students. Several female applicants complain to administrators. The college dean tells them that he has full faith in the software and believes it is more than fair that 20% of the students admitted are female, since that is twice the percentage of female engineers in the state. *OCR would have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the female students may have been treated differently than similarly situated male students.

Example 11: A school uses facial recognition technology to check students into the school. The technology repeatedly flags students as a security risk if they do not conform to the technology's assumptions as to what girls and boys should look like, based on the sex specified in their school records. Students who are falsely flagged must wait for a school administrator to override the software, resulting in embarrassment and missed class time. The principal is aware of the problem but decides to keep using the technology due to perceived security benefits. *OCR would have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the students may have been treated worse than similarly situated students.

Under Title IX, a recipient that operates or sponsors interscholastic athletics must provide equal athletic opportunity, regardless of sex.^{xiii}

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Example 12 below, which potentially involves an unequal provision of athletic opportunities:

Example 12: A high school begins utilizing an AI tool to assist with the scheduling for athletic practices and games. The AI tool uses historical data from previous school year schedules to generate proposed schedules for boys' and girls' teams. A female basketball player complains to the school's athletic director that the girls' basketball team always plays on Tuesday or Wednesday night while the boys' basketball team consistently plays on Friday nights and Saturdays and therefore does not need to prepare for class the days after their games. The student also shares that the boys' basketball team receives all of the earlier practice times, and the girls' basketball team ends up practicing at 8:00 PM on weeknights. Although the athletic director retains oversight for scheduling, she tells the student that the AI tool is responsible for scheduling this year and that she does not know how to change it. She does not respond further to the student's complaint. *OCR would have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the school may not be providing equal athletic opportunity to members of the girls' basketball team.

Disability Discrimination:

Section 504 of the Rehabilitation Act of 1973 (Section 504) states that no otherwise qualified individual with a disability shall, solely by reason of their disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.^{xiv}

For more information, please see:

- [Disability Discrimination Issues Website](#)
- [Students with Disabilities Preparing for Postsecondary Education Resource](#)
- [Frequently Asked Questions on Effective Communication for Students with Hearing, Vision, or Speech Disabilities in Public Elementary and Secondary Schools](#)

Examples 13 through 18 include the kinds of incidents that could, depending upon facts and circumstances, constitute disability discrimination under Section 504.

Section 504 requires colleges, universities, and other postsecondary institutions to provide equal opportunities to people with disabilities in all their operations, including equal opportunities to participate in and benefit from online programs and activities. Under Section 504, these recipients of Federal financial assistance must provide such academic adjustments, which can include reasonable modifications or auxiliary aids and services, as may be necessary to ensure that they do not discriminate on the basis of disability.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Example 13 below, which involves academic adjustments for a postsecondary student:

Example 13: An AI test proctoring software uses facial recognition technology and eye movement tracking to monitor students for behavior that indicates they might be cheating during exams. A student with a disability receives a failing grade for an exam after the software flags her behavior as suspicious and her professor accuses her of cheating. The student appeals the grade because her vision impairment causes eye movements that the software falsely flagged as suspicious. The student also requests that she receive an academic adjustment so that she does not have to take tests using this particular proctoring software. The university threatens to expel the student if she is flagged for the same behavior again and does not respond to the student's request. *OCR would have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the student may not have been provided with necessary academic adjustments.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Example 14 below, which involves academic adjustments in the form of auxiliary aids and services for a postsecondary student:

Example 14: A deaf student enrolls in a university's engineering program. The university provides the student with an AI-aided closed circuit captioning transcription application for class lectures. The student repeatedly informs the university with specific detail that the AI service provided to transcribe the lectures does not accurately capture the advanced engineering terminology essential to her education program. The university does not provide the student

alternative auxiliary aids and services to access the class lectures. *OCR would have reason to open an investigation based on this complaint.* Based on the facts, as alleged, the student may not have been provided with necessary academic adjustments.

For more information, please see:

- [Disability Discrimination Issues](#) Website
- [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#)
- [Protecting Students With Disabilities](#) FAQ

Section 504 requires public elementary and secondary schools to provide students with disabilities with a free appropriate public education (FAPE). Under Section 504, FAPE is the provision of regular or special education and related aids and services that: (1) are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met; and (2) are based on adherence to procedures governing educational setting, evaluation and placement, and procedural safeguards.^{xv} Parents and guardians have the right to challenge FAPE decisions using Section 504's procedural safeguards.^{xvi}

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Examples 15 and 16 below, which involve the provision of FAPE to elementary and secondary students:

Example 15: A school staff member utilizes an AI-driven adaptive assessment to determine admission to the school's gifted program. The assessment's questions get more difficult if a student answers quickly and correctly, and students' scores on the tests are determined, in part, by how quickly students answer difficult questions. During the assessment, a student with attention-deficit/hyperactivity disorder (ADHD) is distracted and takes longer to answer questions, causing the assessment to produce easier questions, and thus reflects his disability rather than his actual aptitude or achievement. Although the student has an Individualized Education Program (IEP) with test taking accommodations including increased time, the teacher does not believe the IEP applies to the gifted admissions assessment. The student is deemed ineligible for the gifted program. The student's parent files a complaint alleging that the student's final score is lower than it would have been if the teacher had not used the AI-driven adaptive assessment and if the student had been provided with his test taking accommodations. *OCR would have reason to open this complaint for investigation.* Based on the facts, as alleged, the student may have experienced disability discrimination in the admissions process and/or not have been provided with FAPE.

Example 16: A school district allows schools in the district to use a generative AI tool to write Section 504 Plans for students with disabilities. The school district does not have any policies regarding how to use the tool or how to ensure that the group of knowledgeable people responsible for evaluating a student review what the AI produces to determine whether it meets the individual needs of each student. One school begins using the tool to create Section 504 Plans for all students with diabetes. School staff do not review or modify the generated Section 504 Plans and begin implementing them, and they inform parents that they believe AI tools make more effective choices than people. A local group of parents of students with diabetes at that school files a complaint with the school district stating that their students' Section 504

Plans' provisions look almost identical and, in some cases, do not match the specific needs of their children. The school district states that they defer to the school's decision on how to utilize AI tools and does not investigate further. *OCR would have reason to open this complaint for investigation.* Based on the facts, as alleged, students may not have been provided with FAPE because their 504 plans may not have been designed to meet their individual educational needs.

For more information, please see:

- [Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline under Section 504 of the Rehabilitation Act of 1973 Dear Colleague Letter](#)
- [Supporting Students with Disabilities and Avoiding the Discriminatory Use of Student Discipline Under Section 504 of the Rehabilitation Act of 1973 Fact Sheet](#)
- [Parent and Educator Resource Guide to Section 504 in Public Elementary and Secondary Schools](#)

Section 504 requires schools to provide the services, supports, interventions, strategies, and modifications to school or district policies for students with disabilities to address any disability-based behavior, including behavior that could lead to discipline, and failure to do so may constitute a denial of FAPE. OCR's continued enforcement experience reflects that many students with disabilities also face discipline because they are not receiving those supports, services, interventions, strategies, and modifications to school or district policies that they need to manage their disability-based behavior. In addition to that discrimination, many students with disabilities are also subjected to discrimination based on their disability when being disciplined, such as when students with disabilities are unnecessarily disciplined more severely than students without disabilities for the same or similar behavior. When schools do discipline students with disabilities, they must do so in a nondiscriminatory manner.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Example 17 below, which involves discipline-related issues for a student with a disability:

Example 17: A middle school uses content moderation software to alert the school if any language that violates the student code of conduct is used on school-issued devices. A student with obsessive-compulsive disorder has a compulsion to say certain swear words if certain inciting incidents occur, and using some of the words would otherwise violate the student code of conduct. The student's Section 504 Plan addresses the techniques the student and staff are using to work on this compulsion as well as what happens when the student uses the identified words. The student uses his school-issued device to chat with a peer and uses some of the words identified in his Section 504 Plan that would otherwise violate the student code of conduct. The content moderation software flags this language and alerts school officials that problematic language has been detected on his school-issued device. Based only on the flag from the content moderation software, the principal immediately punishes the student without consulting or following the procedures in the 504 Plan. The parent of the student files a complaint against the school stating that the school's disciplinary response denied the student FAPE. *OCR would have reason to open this complaint for investigation.* Based on the facts, as alleged, the school did not follow the student's 504 Plan and, as a result, the student may not have been provided with FAPE.

Harassment creates a hostile environment under Section 504 if school staff, a student, or another person engages in unwelcome conduct based on disability that, based on the totality of the 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. OCR could find a Section 504 violation in its enforcement work if: (1) a hostile environment based on disability existed; (2) the school had actual or constructive notice (in other words, the school knew or should have known) of the hostile environment; and (3) the school failed to take prompt and effective steps reasonably calculated to (i) end the harassment; (ii) eliminate any hostile environment and its effects; and (iii) prevent the harassment from recurring.

OCR would likely have reason to open an investigation if a person filed a complaint based on the facts included in Example 18 below, which involves harassment under Section 504:

Example 18: An elementary school teacher uses an AI enabled application, which monitors noise and provides feedback to assist her in managing classroom noise. The application uses the class computer's built-in microphone to detect when students' voices are raised, and it displays a color meter ranging from green (quiet classroom) to red (loud classroom). The application tracks patterns for class noise and predicts the times of day that the teacher is likely to have more difficulty managing classroom noise. During the times of day that the application predicts will be the loudest, the teacher keeps the color meter projected for all the students to see and offers a pizza party if they only have a few instances where the meter reaches red. A student who is hard of hearing reports that they are being bullied by a few classmates because they believe the student's speaking voice consistently causes the meter to be red and the class does not receive a pizza party as a result. The school does not respond to the student's report, and the teacher tells the student that they need to learn to speak more quietly. *OCR would have reason to open this complaint for investigation.* Based on the facts, as alleged, the student may have experienced prohibited harassment about which the school knew and failed to appropriately respond.

Multiple Bases Discrimination:

Examples 19 through 21 include the kinds of incidents that could, depending upon facts and circumstances, constitute discrimination pertaining to multiple bases discussed above in this resource.

Example 19: A school district purchases an AI-driven application to streamline the universal screening process for speech and language disorders. The school district decides to only utilize the AI-driven application and not employ or seek opinions from Speech Language Pathologists, or other appropriate professionals. The application falsely flags students who are ELs as students with a speech disorder. The district refuses to evaluate students for speech and language disabilities, if a student was not identified through the universal screening, unless the student's parent obtains and submits a private diagnosis. The application also misses several students who have speech and language disorders. Although parents complain to the school about the inaccuracy of the AI-driven determinations, the school does not change its process. *OCR would have reason to open this complaint for investigation.* Based on the facts, as alleged, students who are ELs may not be able to equally and meaningfully participate in the standard instructional program. OCR would also investigate whether the school district's use of the AI-

driven application is erroneously impacting its obligations to identify and locate qualified students with disabilities, to evaluate them, and provide FAPE.

Example 20: A school district starts using an internal software program to generate student Individualized Education Programs (IEPs). The software is trained on past IEPs to recommend appropriate placements for current students. The software inputs include all available demographic information about students, including race. Historically, more Black students with disabilities in the district had IEPs that included more hours of special education instruction in a separate setting and educational placements that were more restrictive than other students. Most of the IEPs for Black students that are generated by the software recommend more special education services in separate settings and would result in placements in restrictive educational environments, but the IEPs that the software generates for white students with similar disability-related needs recommends more integrated instruction and would result placements in less restrictive educational environments. A special education teacher complains to the principal that the software is drafting inappropriate IEPs for many of the Black students with disabilities, but the principal says the software is just doing its job and they do not have the resources to review every IEP to ensure that it is appropriate for each student. *OCR would have reason to open this complaint for investigation.* Based on the facts, as alleged, the school may be treating Black students differently than similarly situated white students, and students with disabilities may not be receiving FAPE.

Example 21: A high school purchases AI software that electronically tracks how often students sign out for hall passes to estimate students' mental well-being. The software flags students who sign out an electronic hall pass more than three times a day as a factor related to mental well-being. If the algorithm determines that a student has a low mental well-being score, the student is pulled out of class to have mandatory meetings with the school counselor. During the school's first week using the software, the algorithm gives low mental well-being scores to students who are menstruating, pregnant students, and students with gastrological disabilities, since those students needed to use the bathroom more than their peers. The students tell the principal that they would like to return to their classes and that they do not believe meetings with the counselor are needed or helpful, but the principal indicates that whether the meetings are needed or not, he cannot ignore a potential issue with a student's mental well-being flagged by the software. As a result, the students miss substantial learning time because of the mandatory meetings with the school counselor. *OCR would have reason to open this complaint for investigation.* Based on the facts, as alleged, the school may be treating students who are menstruating or pregnant differently than students who are not menstruating or pregnant. The school may also be failing to implement provisions or discouraging students from taking advantage of necessary provisions, such as unlimited bathroom breaks, in the Section 504 Plan of a student with a gastrological disability.

For more information regarding students who are ELs, pregnancy and related conditions, and protections for students with GER or GERD:

- [English Learner Students and Limited English Proficient Parents](#) Dear Colleague Letter
- [Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs](#) Fact Sheet
- [Equal Access to Elementary and Secondary Education for Students Who Are English Learners with Disabilities](#) Fact Sheet
- [Equal Educational Opportunities for English Learners](#) Website
- [Discrimination Based on Pregnancy and Related Conditions](#)
- [Section 504 Protections for Students with GER or GERD](#)

Schools' use of AI and AI-driven technologies may also raise concerns pertaining to the Family Educational Rights and Privacy Act (FERPA), a statute not enforced by OCR. For more information on FERPA, please see the Department's [FERPA website](#).

Anyone who believes that they or someone else has been discriminated against by a school or other recipient based on race, color, national origin, sex, disability, or age can file a complaint of discrimination with OCR using OCR's [Electronic Complaint Assessment System](#). Complaint forms and other resources, available in languages other than English, are available on OCR's [Resources Available in Other Languages website](#).

All of the federal civil rights laws enforced by OCR prohibit retaliation. In general, retaliation occurs when a school intimidates, threatens, coerces, or discriminates against an individual for one of two reasons: (1) Because the individual has made a complaint or testified, assisted, or participated in any manner in an OCR investigation or proceeding, or (2) For the purpose of interfering with any right or privilege under federal civil rights law enforced by OCR.

For more information on the prohibitions against retaliation under federal civil rights laws, see OCR's website on [Retaliation](#).

To request technical assistance—including webinars, trainings, or presentations at conferences or other local events—concerning the legal obligations for schools and colleges under federal civil rights laws, you can contact OCR at 800-421-3481 (TDD: 800-877-8339), at OCR@ed.gov, or through the contact information for OCR's regional offices available on the [OCR Addresses Webpage](#). School boards and other related governmental agencies may also contact the regional [Equity Assistance Centers](#), which are funded by the Department and provide technical assistance and training, in the nondiscrimination assistance areas of race, sex, national origin, and religion to promote equitable education opportunities.^{xvii}

To request language access services or resources, which may include oral technical assistance or written translation of Department information, free of charge, contact OCR@ed.gov. If you need more information about interpretation or translation services, call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-437-0833). To request documents in alternate formats such as Braille or large print, contact the Department at 202-260-0852 or om_eeos@ed.gov.

ⁱ Within this resource, “school(s)” or “college(s)” is used generally to refer to elementary, secondary, and postsecondary educational institutions that are recipients of federal financial assistance from the Department.

ⁱⁱ Artificial intelligence systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action. See [E.O. 14110](#), Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, [88 Fed. Reg. 75191-75226](#) (October 30, 2023); [15 U.S.C. 9401\(3\)](#).

ⁱⁱⁱ 42 U.S.C. § 2000d, *et seq.*; 20 U.S.C. § 1681 *et seq.*; 29 U.S.C. § 794. OCR also enforces the Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*, and the Boy Scouts of America Equal Access Act, 20 U.S.C. § 7905. This letter does not specifically address those statutes.

^{iv} Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12131-12134, and DOJ’s implementing regulation for Title II, 28 C.F.R. pt. 35, prohibit disability discrimination by State and local governments, regardless of whether they receive Federal funds. 42 U.S.C. § 12131 *et seq.* OCR and the U.S. Department of Justice share in the enforcement of Title II in public elementary and secondary education systems and institutions, public institutions of higher education, vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries. 28 C.F.R. §§ 35.172–35.174, 35.190(b)(2). When discussing uses of AI that could discriminate against people with disabilities, this document focuses on Section 504. However, entities covered by both Section 504 and the ADA should consider their disability nondiscrimination obligations under both laws. Section 504 and Title II are generally interpreted consistently, though DOJ’s Title II regulation sometimes includes more specificity. For more information about Title II of the ADA, see DOJ’s ADA.gov website.

^v See 34 C.F.R. § 100.7(e) (Title VI); 34 C.F.R. § 106.71 (Title IX) (incorporating 34 C.F.R. §100.7(e) by reference); 34 C.F.R. § 104.61 (Section 504) (incorporating 34 C.F.R. §100.7(e) by reference); and 34 C.F.R. §108.9 (Boy Scouts Act) (incorporating 34 C.F.R. §100.7(e) by reference). Title II and the Age Act have similar regulatory language. See 28 C.F.R. § 35.134 (Title II); and 34 C.F.R. § 110.34 (Age Act).

^{vi} 42 U.S.C. § 2000d *et seq.*

^{vii} See *Lau v. Nichols*, 414 U.S. 563 (1974); *Castañeda v. Pickard*, 648 F.2d 989 (5th Cir. 1981); 42 U.S.C. § 2000d to d-7 (prohibiting race, color, and national origin discrimination in any program or activity receiving federal financial assistance); U.S. Dep’t of Educ., U.S. Dep’t of Just., *Ensuring English Learner Students Can Participate Meaningfully and Equally in Educational Programs*, <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-factsheet-el-students-201501.pdf>.

^{viii} *Id.*

^{ix} *Id.*

^x See [Racial Incidents and Harassment against Students at Educational Institutions: Investigative Guidance](#), 59 Fed. Reg. 11,448, 11,449 (Mar. 10, 1994); OCR’s [Guidance on Schools’ Obligations to Protect Students from Student-on-Student Harassment on Basis of Sex; Race, Color and National Origin; and Disability](#) at 2, 4, 6 (Oct. 2010); OCR’s [Dear Colleague Letter on Race and School Programming](#) (Aug. 2023); OCR’s [Dear Colleague Letter on Protecting Students from Discrimination, such as Harassment Based on Race, Color, or National Origin, including Shared Ancestry or Ethnic Characteristics](#) (May 2024); OCR’s [Fact Sheet on Harassment based on Race, Color, or National Origin on School Campuses](#) (July 2024).

^{xi} The Department amended its Title IX regulations effective August 1, 2024. 89 Fed. Red. 33474 (Apr. 29, 2024). The 2024 Title IX regulations apply to alleged sex discrimination that occurred on or after August 1, 2024. As of September 13, 2024, pursuant to Federal court orders, the Department is currently enjoined from enforcing the 2024 Title IX regulations in the states of Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming; the Department is also currently enjoined from enforcing the 2024 Title IX regulations at the schools on the list located at <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/docs/list-of-schools-enjoined-from-2024-t9-rule>. Per court order, this list of schools may be supplemented in the future. Pending further court orders, the Department’s Title IX regulations, as amended in 2020, remain in effect in those states and schools. Any updates on the status of the 2024 Title IX regulations will be posted at <https://www.ed.gov/laws-and-policy/civil-rights-laws/title-ix-and-sex-discrimination/sex-discrimination-overview-of>.

^{xii} See 34 C.F.R. 106.2; See also 89 Fed. Reg. 33,474, 33,515 (April 29, 2024).

^{xiii} 34 C.F.R. § 106.41(c).

^{xiv} 29 U.S.C. § 794.

^{xv} See 34 C.F.R. § 104.33. Under the Section 504 regulations, one way to meet Section 504 requirements for a free appropriate public education is to implement an individualized education program pursuant to the Individuals with Disabilities Education Act (IDEA). See 34 C.F.R. § 104.33(b)(2). OCR does not enforce IDEA, but rather enforces the Section 504 and Title II rights of IDEA students with disabilities. For more information on IDEA, please visit [Individuals with Disabilities Education Act \(IDEA\)](#).

^{xvi} See 34 C.F.R. § 104.36.

^{xvii} See 34 C.F.R. part 270; <https://oese.ed.gov/offices/office-of-formula-grants/program-and-grantee-support-services/training-and-advisory-services-equity-assistance-centers/>.