

SAFEGUARDING THE CIVIL RIGHTS OF **CHILDREN & FAMILIES**

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A group of diverse children, seen from behind, are running down a set of concrete stairs. They are all wearing backpacks of various colors and patterns. The children are of different ethnicities and ages, ranging from young children to teenagers. The background shows a building with large windows and a metal railing on the right side of the stairs. The overall scene is bright and energetic.

**CHILDREN'S EQUITY
PROJECT**

CONTRIBUTING AUTHORS

Shantel Meek, PhD

Children's Equity Project, Arizona State University

Mario Cardona, JD

Children's Equity Project, Arizona State University

Xigrid Soto-Boykin, PhD

Children's Equity Project, Arizona State University

Eric Bucher, EdD

Children's Equity Project, Arizona State University

Evandra Catherine, PhD

Children's Equity Project, Arizona State University

Brittany Alexander, PhD

Children's Equity Project, Arizona State University

Conor Williams, PhD

Children's Equity Project, The Century Foundation

Iheoma Iruka, PhD

Equity Research Action Coalition, UNC Chapel Hill

Roy L. Austin Jr., JD

former Deputy Assistant to the President,
Domestic Policy Council, Office of Urban Affairs,
Justice and Opportunity

Rosemarie Allen, PhD

Children's Equity Project, Arizona State University
Metro State University Denver

Communication support and graphic design from:

Eric Martinez

Children's Equity Project, Arizona State University

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A core purpose of federal civil rights laws are to ensure equal protection under the law and equal opportunity for all Americans, especially those who have been historically excluded from such rights in practice or in policy. Federal law codifies these rights to ensure consistency in their protection, regardless of state or zip code.

Civil rights protections constitute a foundational element of American democracy. These ensure individuals' personal freedoms and fair treatment by public institutions. They are grounded in centuries-old promises stretching back to the country's founding—and have been more fully realized through the efforts of heroic activists, litigators, and political leaders. These protections make modern American democracy possible by providing equal protection before the law and equal opportunities for all Americans—particularly those who have historically been marginalized by the U.S. government and/or society.

When these protections are enforced, they move us closer to ensuring that Black children are no longer consigned to segregated, under resourced, ineffective schools. They move us closer to a reality where children of immigrants can access public schools without imperiling their families' chance of gaining a green card. They move us closer to ensuring children with disabilities can fully access schools and learning opportunities in the least restrictive environment.

And yet, respect for—and enforcement of—civil rights protections for historically marginalized community members cannot be reliably counted upon in 21st-century America. **Further erosion of federal civil rights protections and resources risks returning the country to an era similar to the one that existed prior to the Civil Rights Movement. Under this uncertain federal context, people who care about and rely on equal protections and civil rights will have to rely on states to preserve the infrastructure built over the past half century to ensure all children gain access to opportunity.**

States and localities can take action to safeguard the civil rights of children, families, and all residents. State and local policy levers that have not historically focused on the rights and well-being of children and families can—and should—be expanded.

The U.S. Department of Justice was established, in part, to oversee Reconstruction after the Civil War and enforce civil rights protections for formerly enslaved people. Although it was a period of important civil rights advancements, it presaged a period of major regression during the Jim Crow era. Starting in the mid-1870s, many states codified racial segregation in laws that lasted until the 1960s. Civil Rights Movement began moving our nation forward toward the equal rights promised in founding American documents and the 13th, 14th, and 15th Amendments. The movement's gains were ultimately codified in the Civil Rights Act of 1964 and additional pieces of legislation, such as the Equal Education Opportunity Act of 1974 and the Individuals with Disabilities Education Act (IDEA), among others.¹ These laws prohibit discrimination across an array of domains, housing, employment, and education, on the basis of race, national origin, age, disability, sex, and others.



The Department of Education Organization Act was signed into law in 1979, establishing the U.S. Department of Education (ED). The law required the new ED to also create the Office for Civil Rights (OCR) which would help “strengthen the Federal commitment to ensuring access to equal educational opportunity” for every individual as intended by the law.² The OCR exists to ensure that students’ constitutional rights are protected and that no student is denied educational opportunity. For more than four decades, OCR has enforced anti-discrimination provisions relating to the distribution of federal funding from ED, protected the civil rights of students from protected classes, and provided technical assistance to institutions receiving federal funds.

In fiscal year 2024, OCR received 22,687 complaints, the highest on record, of which 52% related to potential discrimination on the basis of sex, 37% related to potential discrimination based on disability, and 19% related to potential racial discrimination.³ OCR primarily oversees compliance with civil rights laws through its resolution agreement process: 1) OCR receives a complaint, 2) evaluates it, 3) investigates, and 4) works directly with the recipient of federal funds to provide corrective action if necessary.

ED’s Office of Elementary and Secondary Education also has funded and overseen Equity Assistance Centers which provide training and technical assistance to state educational agencies, school districts, and school boards to ensure the desegregation of public schools. The Equity Assistance Centers focus on topics such as addressing harassment and bullying, reducing bias and prejudice, advancing anti-discrimination policy and practice, and analyzing and interpreting data to identify disparities. Unfortunately, the US Department of Education recently terminated the EACs, leaving a consequential gap in support offered to states and districts to uphold children’s civil rights, disproportionately impacting Black, Latino, Indigenous, disabled, multilingual, female, and LGBTQIA+ students.

Current data confirm that longstanding historical patterns have not yet been undone: these children continue to face unequal opportunity and access to resources. These gaps produce frustratingly predictable disparities in children’s health, development, and education outcomes. In this moment, it is critical to increase civil rights protections for children—not roll them back.

This Report

States have many policy levers to build civil rights infrastructure to codify children’s civil and human rights. This begins with adding explicit protections to state constitutions and statutes, but can continue through legislation appropriating funding to defend civil rights and vigorous civil rights oversight and enforcement by state-level offices (such as attorneys general or other state executive-level civil rights offices). This report reviews these and other state and local levers to protect the civil rights of children.



1

Protect & Expand Civil Rights in State Constitutions

The United States is the only nation that has not ratified the United Nations Convention on the Rights of the Child which would, for example, establish a federal commitment to codifying early care and education as a civil and human right for our youngest learners and their families. A 2023 NASEM consensus report, *Closing the Opportunity Gap for Young Children*, referenced the opportunities of ratifying the Convention accompanied by a robust legislative agenda to protect and support the well-being of children in the United States.⁴

Given persistent federal inaction to protect children’s human and civil rights, states can act to modify their own constitutions to do so. The Tenth Amendment reserves rights not explicitly included in the U.S. Constitution to the states and its people.⁵ For example, in 2022, 70% of voters in **New Mexico** approved a legislatively-referred constitutional amendment which provided annual distributions to early childhood education from the land grant permanent funds.⁶ In essence, this created a right to early childhood education resources for children and families in the state and devoted funding to provide these services.⁷

CONVENTION ON THE RIGHTS OF THE CHILD

The Convention is a treaty that acknowledges children under the age of 18 as human beings with fundamental rights.⁸ Some key provisions include:

CIVIL & LEGAL RIGHTS

- Establishing childhood as a special protected period in which children deserve the dignity to grow, learn, and thrive and the support to do so.
- Respecting the responsibilities, rights, and duties of parents.
- Providing the opportunity for children to be heard in any judicial and administrative proceedings that affect the child.

EDUCATION & DEVELOPMENT

- Promoting play.
- Protecting the right to culture, language, and religion and allowing for the development of cultural and linguistic identity, particularly for children from marginalized communities (e.g., ethnic, religious, or linguistic minorities; Indigenous children).
- Providing children with disabilities with access to free education, health care, rehabilitation, and recreational services in ways that are fully socially integrated.

HEALTH & WELL-BEING

- Ensuring that no child is separated from their parents against their will.
- Protecting children from all forms of discrimination, punishment, physical or mental violence, injury, abuse, neglect, maltreatment, and exploitation.

As of 2025, every country except the United States has ratified the Convention.⁹ The Convention has been operationalized through policy—and supported by the public and elected officials—across many countries.¹⁰

- **New Zealand** developed the Mana Mokopuna - Children and Young People's Commission in 2022, following more than two decades of law establishing an independent Children's Commissioner at the federal government level.¹¹ The Commission has a statutory role in advocating for the well-being of young children and youth, promoting the implementation of the Convention in policy, monitoring the government's application of the Convention, and producing public reports.¹²
- The **South African** Constitution guarantees children various rights, including access to basic nutrition, shelter, health care, and social services. They are also protected from maltreatment, neglect, and abuse. Additionally, children cannot be required to work in ways that are unsuitable for their age or that may harm their physical and mental health, development, or well-being. Additionally, children, and all citizens, have the constitutional right to receive an education in the official languages of their choice in public schools where practical, and to live in an environment that is not harmful to their health or well-being—with requirements for environmental legislation.¹³

2 Modify State Statutes to Codify Children's Civil Rights

Some states have expanded discrimination protections to specific areas of everyday life and to address specific populations. Approximately half of the states guarantee their residents freedom from discrimination on the basis of sexual orientation, gender identity and/or gender expression beyond the federal government's interpretation of "sex" in the Civil Rights Act and corresponding amendments. About one-third protect the right to access discrimination-free educational environments. Three states explicitly provide protection from discrimination on the basis of citizenship and immigration status.¹⁴ Further, some states have also enshrined protections for other classes of individuals. For example, Washington state lawmakers passed and the governor signed into law Substitute House Bill 1905 in 2024 which expanded the protected classes under the state's equal pay law to include sexual orientation, citizenship or immigration status.¹⁵

States can pass statutes that enforces discrimination-free educational environments for children who have been historically marginalized, excluded, and discriminated against, and who, due to those experiences, are part of protected classes.

3

Appropriate Funds Based on Need via State Legislation

Recent proposed cuts in federal funding will impact key services that support child nutrition, health, development, and education for the most vulnerable families through programs like Head Start, the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and K–12 Title I funding.

States already fund services directly for children and families, though the level of support varies widely. For example, as of 2022, 14 states and D.C. invested general state funds into Head Start and similar programs through expanded access to Head Start slots, grants to providers who agree to meet the comprehensive national performance standards, and Early Head Start–Child Care Partnerships (EHS–CCPs),⁶ which infused funding into local child care programs to provide quality services for infants, toddlers, and their families.⁷

During this period of funding volatility, states can ensure children are safe, healthy, well, and learning by filling gaps in federal funding strategically focused on key services children rely on.

- **States should make preparations around the potential loss of federal funding, or changes in funding distribution (e.g., block-granting) so that programs supporting impacted children continue operating as seamlessly as possible.**
- **States should use data to prioritize funding for children with the greatest needs and who are at the highest risk of losing basic needs like housing, food, or learning opportunities, and for those who already lack access to basic needs; states should further fund health, learning, and developmental supports for children who are furthest from opportunity.**

States can build off of proven approaches, like Head Start’s model that serves children in low-income households in nearly every zip code in the nation with learning, health, and developmental support, in close partnerships with families and communities.

4

Expand the Scope of Attorneys General or Other State Civil Rights Offices to Protect Children’s Civil Rights

State attorneys general (AG) take an oath to uphold the Constitution and play an important role in enforcing resident children’s and families’ civil rights. What’s more, all states have state-level civil rights offices, commissions, or divisions, which may or may not be in state AG offices.⁸ These offices generally handle issues of discrimination related to employment and labor, housing, and public accommodations. In some cases, attorneys general also have staff embedded within state administrative agencies who serve as counsel for those agencies on civil and administrative matters. In some cases, counties, municipalities, and school districts also have officers tasked with upholding civil rights and equal opportunity. States can expand the purview of these offices by naming a division on children and families explicitly charged to protect children’s civil rights.

States should consider expanding the purview of states attorney generals by establishing a division to focus on children and families, and importantly, that interprets civil rights law as originally intended by Congress - attending especially to historically marginalized groups. As noted above, states can use existing infrastructure or build new infrastructure to receive, investigate, and address children's civil rights complaints in the state; provide guidance to local governments, districts, and schools; and provide training on civil rights obligations consistent with state and federal anti-discrimination laws. States and municipalities should fully fund these offices or divisions to ensure they have the necessary resources.

5

Use existing independent offices, like Inspectors General, or establish similar independent offices to protect the rights of children.

Under normal circumstances, the federal government monitors states to ensure they are upholding the civil rights of their residents, namely those in protected classes who have experienced the brunt of state-sanctioned discrimination, historically and contemporarily. If this critical function of independent oversight ceases, it will be problematic for states to monitor themselves, with no accountability or transparency.

States could establish or identify an independent body that can support civil rights enforcement. They might nominate inspectors general, which are independent roles in many state agencies who primarily investigate issues of fraud, waste, and abuse of power. These roles could be expanded to also provide independent civil rights oversight over state administrative agencies. Another option, particularly for larger states, may be to **establish an independent civil rights state commission that includes a focus on children and families, and monitors compliance with civil rights laws, including including the Civil Rights Act, the Equal Education Opportunity Act, IDEA, the Americans with Disabilities Act (ADA), and others.** These independent bodies can also advise elected officials (e.g., governors, state legislatures, city and town councils) and the public on issues of children's and families' civil and human rights and recommend key policy changes.

States can also establish a state-level structure that supports and builds capacity for compliance with federal and state civil rights laws, similar to the adjudication process for civil rights complaints led by the ED Office for Civil Rights and previously supported through federally-funded Equity Assistance Centers.

6

Utilize All Available Policy Levers to Protect Children from Discrimination

Policymakers should utilize state laws and local policies to ensure that children and their families are protected from discrimination on the basis of race, language, disability, and sex. State actions can include civil rights monitoring and enforcement; training, technical assistance and support; and creating an open line to receive complaints from families and other relevant parties.

Protecting Children from Discrimination on the Basis of National Origin:

It bears repeating that, despite activity at the federal level to reduce the effectiveness of federal agencies, eliminate programs, and decrease spending, the Supreme Court has recognized that students have certain rights and protections. For example, the Constitution guarantees all children the right to equal access to public K-12 education settings pursuant to the ruling in *Plyler v. Doe*. In that case, the Court held that prohibiting undocumented students' access to public education violated the Equal Protection clause of the Constitution. Similarly, the Court established in *Lau v. Nichols*, discussed further below, that schools must provide language assistance to English Learners, consistent with protections offered under the Civil Rights Act of 1964. These rights and protections are the law of the land.

Title IV of the Civil Rights Act of 1964 prohibits discrimination in public schools, requiring desegregation by national origin, race, color, religion, and sex.¹⁹ Title VI of the Civil Rights Act also prohibits discrimination based on race, color, and national origin in programs that receive federal funds, including schools.

In the 1974 landmark case *Lau v. Nichols*, the court ruled that providing the same education to English-speaking students and non-English speaking students without additional support for non-English speaking students to learn English was a violation of the Civil Rights Act. Congress also passed the Equal Education Opportunities Act (EEOA) of 1974, which prohibits discrimination based on race, color, sex, or national origin in schools.²⁰ It also prohibits denying equal education opportunities based on language barriers. Under EEOA, schools are required to remove barriers that prevent children from equal participation; accommodate students regardless of nationality; provide adequate resources for students who do not speak English; and provide legal action for students facing discrimination.

Title IV and VI of the Civil Rights Act and the EEOA are relevant for children who are English Learners (ELs) in PK-12 public schools. These ELs make up 11% of the total student population.²¹ California, Texas, New Mexico, and Nevada have the largest proportions of ELs,²² but this population of students has been rapidly increasing in the midwest and southeast part of the country, particularly in North and South Carolina, Tennessee, Arkansas, and Georgia.

CASTAÑEDA V. PICKARD AND THE CASTAÑEDA STANDARDS

In the *Castañeda v. Pickard* case of 1981, Mexican American parents sued the Raymondville Independent School District of Texas.²³ These parents felt their children were being discriminated against due to their national origin as they were segregated and prevented from participating fully in the learning environment because they did not speak English. The court ruled in favor of the parents, stating that the school district was violating the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974.

This case established a **three-part Castañeda test** for the proper education of English Learners. For a program serving ELs to be adequate, they need to meet the following three **Castañeda standards**:

- **Program needs to be based on a sound educational theory.** The program needs to be based on a recognized and research-based approach to language acquisition that is supported by experts (it should be noted decades of research support that dual language education is the most effective model for ELs²⁴).
- **Program needs to be effectively implemented with sufficient resources and personnel.** The program needs to be executive with qualified and trained staff, appropriate resources, and materials that align with the model.
- **Program needs to be evaluated to determine its effectiveness in overcoming language barriers.** The school district needs to frequently assess whether the program is successfully supporting ELs in reducing language barriers and acquiring English proficiency within a reasonable timeframe.

The Office for Civil Rights (OCR) at ED and the Civil Rights Division at the U.S. Department of Justice (DOJ) share the authority to enforce Title IV and VI of the Civil Rights Act in the context of education for ELs. The DOJ is responsible for enforcing the EEOA. Together, these federal agencies determine if state educational agencies (SEAs) and local educational agencies (LEAs) are meeting the required Castañeda standards.²⁵ Based on Castañeda standards, LEAs must provide ELs with an educational model that is theoretically sound and research-supported to help them succeed; use practices that are aligned with the selected model; and evaluate the effectiveness of the education model in overcoming children’s language barriers after a reasonable period of time. Under the Castañeda standards, SEAs have the responsibility to provide LEAs with appropriate guidance, monitoring, and oversight.

Regarding the first prong of the Castañeda standard’s focus on selecting programs that are theoretically sound and research-based, it is important to note that dual language education, where children receive part of their instruction in English and the other in a partner language (ideally their home language), is the gold standard for ELs.²⁶ Decades of research support that ELs who receive dual language education learn English faster, have higher reading and math scores, and better retain their home language, than those who only receive instruction in English.²⁷

Unfortunately, OCR and DOJ report a number of areas that frequently result in SEAs’ and LEAs noncompliance and violation of ELs’ civil rights. Prominent cases²⁸ relate to the:

- Identification and assessment of ELs in a timely and valid fashion (e.g., Mercer County School District, 2012);
- Provision of ELs with an educational model that is theoretically sound and effective (e.g., Boston Public Schools, 2010);
- Availability of qualified teachers with certification and training to work with ELs (e.g., Clay County School Districts, 2014);
- Inclusion of ELs and their meaningful participation in the core curriculum, afterschool programs, advanced courses and special programs, graduation requirements, and student clubs (e.g., San Bernardino City Unified School District, 2022);
- Segregation of ELs from English-speaking peers (e.g., *Methelus v. School Board of Collier County*, 2016);
- Identification and services for children who are ELs with suspected or identified disabilities (e.g., *Horry County Schools*, 2017);
- Monitoring of ELs’ English acquisition and exiting of English-learning programs (e.g., *Coolidge Unified School District*, 2021);
- Communication with parents with Limited English Proficiency (e.g., *Congress of Hispanic Educators & United States v. Denver School District No.1*, 1991).



CASE EXAMPLE: COLTON JOINT UNIFIED SCHOOL DISTRICT

In 2021, the U.S. Department of Justice investigated and settled a matter involving the Colton Joint Unified School District in California. The DOJ investigated whether the district's programming for English Learners in secondary grades was appropriate under Section 1703(f) of the Equal Education Opportunities Act of 1974. After a multi-year investigation, the U.S. DOJ and U.S. Attorney's Office for the Central District of California, found that: (1) many secondary grade EL students were denied access to appropriate English language learning services and were prematurely exited from EL programming; (2) core content teachers did not receive proper training to support EL students; (3) ELs were not evaluated for special education in their native language and there was not a process for determining if ELs with disabilities needed instruction in their native language; (4) the screening tool used to identify children for the gifted and talented program unfairly denied access to ELs; (5) the district did not adequately monitor and evaluate the effectiveness of the EL program and did not collect data to monitor students' progress or determine the effects of the EL instruction.

In 2022, the DOJ entered an out-of-court settlement with the district to ensure each English Learner receives proper English language instruction, teachers working with these students are qualified to meet their needs across content areas, and they have equal opportunity to participate in the district's special programs, including gifted and talented programs.²⁹

Researchers note that as of February 2025, there were 124 open OCR cases and the DOJ has investigated and settled several EL-focused cases.³⁰ These high numbers of cases highlight the continued need to monitor SEAs and LEAs to make sure they are upholding the civil rights of ELs on the basis of their national origin.

Federal reporting has contributed to ensuring that SEAs and LEAs are providing ELs with language instruction and curriculum that is at grade-level while also providing instruction that reduces participation barriers due to language and helps them acquire English in a timely manner. If federal oversight is reduced, there is a risk that ELs' civil rights will not be uniformly protected across states and school districts.

To mitigate this risk, SEAs and LEAs can establish protective structures to ensure that Titles IV and VI of the Civil Rights Act and the EEOA are fully implemented with respect to ELs. This should include requiring LEAs and ensuring accountability for:

- implementing a cohesive approach to identifying ELs in a timely fashion, using valid measures.
- providing EL programming that meets the Castañeda standards and that accurately interprets the science on language instruction education programs, including dual language education;
- Having qualified teachers to provide their EL program through guidance, monitoring, and evaluation;

While federal oversight of federal civil rights laws in education may waver in the near term, states can commit to continuing to collect LEA and school-level data for monitoring and accountability as mandated under the Elementary and Secondary Education Act. This will include:

- ensuring states are measuring and publishing ELs' outcomes on standardized state assessments;
- ensuring states are measuring and publishing the proportion of ELs who are English proficient and those who are making adequate progress by type of EL program;
- graduation rates and college attendance by EL program type;
- the percent of EL high schoolers enrolled in math, science, and technology classes and advanced courses and specialized programs.

SEAs should also monitor school districts' EL identification and exit procedures and data; assess and address segregation of EL students; and whether ELs with disabilities are receiving both IDEA or Section 504 and EL services. When noncompliance is identified, they should ensure this is rectified in a timely manner.

LEAs can also do their part to ensure that they are protecting the civil rights of children who are ELs and not discriminating against them by national origin, including:

- Have written processes and policies to accurately identify potential ELs in a timely, valid, and reliable manner;
- gather home language survey data at the time of student enrollment;
- assess students who do speak primarily a language other than English at home using a valid assessment of English language proficiency.
- provide English learning services to ELs once they are identified based on their current English language proficiency and needs, with a process for adapting services as they become more English proficient.
- ensure that the educational models selected to support ELs' English acquisition meet the Castañeda standards and prioritize dual language education, based on the latest science.
- ensure that school administrators are trained to evaluate the adequacy of professional development for teachers working with EL students, and to identify whether EL teachers are implementing the EL model effectively.
- ensure that EL students are not being segregated and missing out on grade level content.
- ensure that ELs with suspected or identified disabilities are receiving both their disability-focused and English language learning services.
- ensure that parents who do not speak English receive all written and verbal communication in the language(s) they speak.

Protecting Children from Discrimination on the Basis of Race:

Data continue to indicate that even the youngest children have unequal opportunities on the basis of race, and as a result, experience poorer outcomes across an array of domains.³¹ These disparities begin at birth, with Black mothers and babies experiencing maternal and infant mortality rates three times higher than those of White mothers and babies, even when Black families' income and education levels are higher.³² They continue throughout childhood with the percentage of American Indian and Alaska Native children and Black children under age five living in poverty at a rate nearly three times the percentage of White children living in poverty.³³

These challenges persist in U.S. PreK–12 systems. For example, Black and Latino children are underrepresented in state-funded pre-K programs and are less likely to be enrolled in high-quality settings.³⁴ School districts with the highest percentages of students of color receive 16% less state and local funding than those with the fewest students of color.³⁵ Black and Latino students are less likely to be in gifted and talented education (GATE), even when they have the same test scores and grades as their peers.³⁶ Latino students remain the most educationally segregated racial/ethnic group in the nation in public schools.³⁷ Black and Latino students with disabilities are less likely to spend time in general education classrooms with non-disabled peers, compared to White students with disabilities.³⁸

States and local governments should constantly monitor data to identify discrimination and unequal opportunity—and take appropriate action to prevent and remedy these. Leaders should be vigilant and prepared to act quickly to ensure that all children, especially children who have historically been the subjects of discrimination on the basis of race—Black, Latino, Asian, and Indigenous children—have seamless access to the resources and experiences they need to thrive.

The DOJ Civil Rights Division oversees violations of the EEOA³⁹ and as part of that work, has argued a wide range of cases on discrimination on the basis of race. These cases have focused on ensuring students' have equal opportunity, addressing issues⁴⁰ like:

- Unfair access to gifted and talented education programs (e.g. *McFadden v. Board of Education for Illinois School District U-46*, 2013)
- School feeder patterns that caused or reinforced segregation on the basis of race (e.g. *Anderson & United States v. Madison County School District*, 1999; *Andrews and United States v. Monroe City School Board*, 1965; *Banks & United States v. St. James Parish School Board*, 2017)
- Disproportionate exclusionary discipline (e.g. *Banks & United States v. St. James Parish School Board*, 2017; *Barnhardt & United States v. Meridian Municipal School District*, 1969)
- Misidentification of Black children in certain disability categories including emotional disturbance and intellectual disability (e.g., *Lee & United States v. Macon*, 1963).

CASE EXAMPLE: BENNETT & UNITED STATES V. MADISON COUNTY BOARD OF EDUCATION

The *Benett & United States v. Madison County Board of Education* (2011) case focused on the violation of Title VI of the Civil Rights Act, which prohibits discrimination on the basis of race, color, or national origin in programs that receive funding from the federal government. In this case, Black students, represented by Benett, sued the Madison County Board of Education in Alabama. The plaintiffs claimed that the Board failed to adequately integrate public schools, which led to segregation and violation of their civil rights.

The court ruled in favor of the students, concluding that the Madison County Board of Education was not in compliance with Title VI. The court determined the Board was discriminating against the Black students and it required the Board to take remedial action to integrate its public schools. This case was important because it reinforced that federal funds cannot be used to implement discriminatory practices in education.

Unfortunately, data consistently indicate that these issues continue to plague children's school experiences across the United States. It is unlikely that these challenges will end without enforcement. With the work in this division at the federal level frozen or reversed altogether, it is critical that states and localities protect students' rights.

At the state level, this could mean state departments of education and attorney general offices proactively monitoring civil rights education data, investigating areas of concern, and establishing open lines for families to submit civil rights complaints. At the local level, this could include establishing district level civil rights officers, creating a system where families can submit complaints to district civil rights officers, and monitoring district wide and school level data to pinpoint concerns and engage in corrective action.

Protecting Children from Discrimination on the Basis of Disability:

An estimated 7.5 million students ages 3 through 21—representing approximately 15% of all public school students—and more than 975,000 infants, toddlers, and preschoolers under age 5 received services under IDEA in 2024.⁴¹ Multiple federal civil rights laws codify the rights of adults and children with disabilities in society, including the Titles II and IX of the Americans with Disabilities Act (ADA), IDEA, Section 504 of the Rehabilitation Act, among others. Before Congress passed IDEA in 1975, only about one of every five children with disabilities attended public schools.⁴² State authorities often segregated children with disabilities in institutions which often had conditions that were abusive, inhumane, and harmful to their safety, health, and development.⁴³ Today, under IDEA, children with disabilities have a civil right to free appropriate public education (FAPE) in the least restrictive environment (LRE) and are protected from discrimination in their educational program. Children with disabilities' right to a free appropriate public education is provided through an Individualized Education Program (IEP).

CASE EXAMPLE: WICHITA PUBLIC SCHOOLS

In July 2024, the U.S. Department of Justice entered a settlement agreement with Wichita Public Schools in Kansas. The DOJ investigated the legality of Wichita Public Schools' use of seclusion and restraint on students with disabilities in specialized schools. The DOJ determined that the school district was in violation of Title II of the American with Disabilities Act and Section 504 of the Rehabilitation Act.

Under this settlement agreement, the district, among other steps, will eliminate the use of seclusion; provide adequate interventions and supports to children with disabilities; create a behavior intervention protocol to ensure nondiscriminatory administration of discipline and avoid exclusion from the school environment; prohibit school security officers²³ from intervening in minor behavior concerns; ensure that all professionals working with students with disabilities are properly trained; provide counseling and compensatory training strategies for students with disabilities who have been repeatedly secluded; and monitor the district's seclusion and restraining practices to ensure compliance with the settlement agreement.⁴⁴

The OCR at ED and the U.S. Department of Justice's Civil Rights Division issue guidance, monitor, and enforce children's civil rights complaints on the basis of disability. But implementation remains imperfect and systemic accountability is a continuing need in order to protect the civil rights of children with disabilities. There are numerous OCR and DOJ cases related to the civil rights of children with disabilities. These cases have included a range of topics,⁴⁵ including:

- Segregation of children with emotional disturbances from peers without disabilities (e.g., Alabama Trauma/Foster Care, 2022);
- Seclusion and restraint of children with disabilities (e.g., Cedar Rapids School District, 2022);
- District's failure to have policies and procedures to respond appropriately to peers' harassment of students with disabilities (e.g., Fulton County Schools, 2024);
- Reduced access to college courses for students with disabilities (e.g., Illinois Central College, 2022);
- Overrepresentation of Black students in the emotional disturbance diagnostic category (e.g., Lee & United States v. Macon, 2000);
- Proper identification and provision of special education services for students suspected of having disabilities (e.g., Newark Public Schools, 2003);
- Failure to review procedural safeguards with parents (e.g., Rogich v. Clark County School District, 2021)

Historically, federal monitoring has ensured that state and local education agencies fulfill the requirements of federal law, managed corrective action plans and accountability, and provided training and technical assistance to support full implementation.

States and localities should step up in ensuring full implementation of IDEA. For example, SEAs can expand their role in monitoring local educational agencies and programs to ensure compliance with IDEA requirements, particularly those related to identification, placement, and discipline. SEAs can also ensure that local educational agencies provide families with their procedural safeguards and uphold their due process rights. In addition, an entity or individual independent of the SEA, such as SEAs' inspectors general or an independent civil rights commission, should ensure the SEA complies with the provisions in IDEA and other relevant laws that impact the lives of children with disabilities and their families and ensure accountability and corrective action. In particular, states should examine, monitor, enforce, and support LEAs in:

- Disproportionality in identification, placement, and discipline
- Inclusion of young children with disabilities
- Proportionate access to services, including early intervention services
- Language access to early intervention and special education services, IEP process, and other procedures for children with disabilities and their families
- Family due process for issues related identification, evaluation, placement, or the provision of a free appropriate public education
- IEPs that guarantee the child makes significant progress and are customized to the child's unique needs.

Protecting Children from Discrimination on the Basis of Sex:

Many American laws have established discrimination protections on the basis of sex, including Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the Pregnancy Discrimination Act of 1978, Title IX of the Education Amendments of 1972, and the Civil Rights Act of 1991, among others.⁴⁶ In the educational context, Title IX is the primary policy governing protection on the basis of sex. Title IX was enacted as part of the Education Amendments of 1972 and applies protections from sex-based discrimination to educational settings both in school and part of extracurricular activities. In practice, much of Title IX operates at the higher education level, focusing on sexual violence and misconduct affecting students and gender equality in sports, however, it also offers protections in K-12 settings.

Many of these laws have focused on persistent gaps in opportunity faced by girls and women, compared to males, in the workplace, in schools, and in society more broadly. For example, there is a persistent pay gap that remains even today, with women earning 83 cents for every dollar a man earns.⁴⁷ This gap is even worse for women of color with Black women receiving 67 cents, Native American women receiving 41-75 cents depending on the Tribe, and Latinas receiving 58 cents for every dollar a white man earns.⁴⁸ Gaps are also seen in the types of job categories primarily done by women, including the early care and education workforce, which is 98% women and earns median wage of \$13.07 per hour, compared to \$22.92 across U.S. workforce occupations.⁴⁹

Girls are also disproportionately the targets of harassment and bullying. According to the most recent national data from the 2020–21 Civil Rights Data Collection (CRDC), there were 17,000 allegations of harassment or bullying based on sex and 8,200 cases based on sexual orientation, affecting nearly 15,000 individuals.⁵⁰ Girls were the primary targets of sex-based harassment and bullying, making up 63% of students who reported being harassed or bullied based on sex and only 22% of those disciplined for perpetrating sex-based harassment or bullying, relative to boys.⁵¹ There are also well documented opportunity gaps that girls experience – particularly Black girls and other girls of color – in access to gifted and talented education.⁵² Data from the Office of Civil Rights finds that Black girls make up 15% of enrollment, but only 9% of gifted and talented enrollment, Hispanic/Latino girls made up 28.6% of enrollment, but only 19.4% of gifted and talented enrollment.⁵³

In the 2020 Supreme Court case, *Bostock v. Clayton County*, the Court affirmed that sex discrimination protections also extend to sexual orientation and gender identity under Title VII the Civil Rights Act of 1964.⁵⁴ This ruling found that in the employment context it is not possible to discriminate against someone based on sexual orientation or gender identity without also discriminating based on sex.⁵⁵ Transgender youth make up only 3% of youth 13 to 17-years-old.⁵⁶ In the first nationally representative study of transgender students, transgender youth were more likely to report skipping school due to feeling unsafe at school and 40% of transgender and questioning youth were bullied in school. In this context, approximately 26% of transgender and questioning youth reported attempting suicide in the last year, five times more than male and more than two times higher than female cisgender students.⁵⁷ It is critical to note that evidence does not suggest trans youth are more likely to experience mental health issues, but rather that unsafe environmental factors such as bullying and lack of support may be critical exacerbating factors.⁵⁸

Given this tumultuous environment, states and localities could take steps such as passing legislation or engaging in executive actions to protect residents from discrimination based on sex consistent with applicable law. For example, 14 states and D.C. have laws protecting supportive healthcare for transgender youth. In 2023, **Arizona** Governor Katie Hobbs signed an executive order to protect LGBTQIA+ individuals by disallowing public funding from being used for harmful and ineffective youth conversion therapy and directing the state employee health care plan to cover medically necessary gender affirming healthcare.⁵⁹

States and localities should invest in mental health support and resources through trusted community-based organizations for LGBTQIA+ individuals. Additionally, states, municipalities, and school districts should examine school-level civil rights data on bullying and harassment based on sex and sexual orientation to identify areas of intervention consistent with applicable law.



CONCLUSION

Undoubtedly, there has been progress in civil and human rights over the course of American history. These hard fought victories, primarily led by Black Americans, other people of color, disabled Americans, and LGBTQIA+ Americans have included equal protection under the law, access to the ballot box, and the right to an education for every child who lives in the United States—regardless of race, language, gender, documentation, or disability. These advancements, though far from perfect in implementation, have been critical in our nation’s development and prosperity, and importantly, have helped shape our democracy and moved the nation closer to living up to its stated ideals. But periods of progress have been followed by pendulum swings characterized by civil rights erosion. In these moments, it is critical that states and localities step up to protect children’s civil and human rights using every available tool they have under the law.



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