



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

The Office for Civil Rights in the U.S. Department of Education issues this guidance in order to provide State educational agencies and local educational agencies with information to ensure that when students are provided the option to participate in Advanced Placement and other challenging academic courses and programs, access to, admission into, and the administration of such courses are provided on a nondiscriminatory basis consistent with Title VI of the Civil Rights Act of 1964 and its implementing regulations at 34 C.F.R. Part 100.

This guidance represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

If you are interested in commenting on this guidance, please email us your comment at OCR@ed.gov or write to us at the following address: Assistant Secretary for Civil Rights, 400 Maryland Avenue, SW, Potomac Center Plaza, Washington, D.C. 20202-1100.

Dear Colleague:

MAY 22 2008

I am writing to clarify how Federal civil rights laws apply to local educational agencies (LEAs) that provide students the option to participate in Advanced Placement (AP) courses.¹ As you work to ensure that our Nation's students are academically prepared to compete successfully in the expanding global economy, it is advantageous for students to be exposed to, and complete, a rigorous secondary school curriculum. LEAs² across the country are increasingly providing students the opportunity to enroll in AP courses, which are an important component of this rigorous curriculum. Notwithstanding the educational advantages of AP course completion, however, a third of American public high schools--many serving disadvantaged or minority students--do not currently offer AP courses.³

As you know, the Office for Civil Rights (OCR) in the United States Department of Education (the Department) is responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations at 34 C.F.R. Part 100. Title VI and its regulations prohibit discrimination based on race, color, or national origin by recipients of Federal financial assistance.

¹ Although this letter focuses on access to AP courses in high schools, if discrimination based on race, color, or national origin occurs in other programs that provide rigorous academic curricula--for example, International Baccalaureate (IB) programs--the same Title VI provisions would apply. Additionally, the same Title VI provisions would apply to all other secondary schools that offer such courses.

² This letter focuses on AP courses provided by LEAs. However, when State educational agencies (SEAs) are involved in the provision of, determining admission to, or the administration of AP courses, the same Title VI provisions would apply.

³ Planty, M., Provasnik, S., and Daniel, B. (2007). *High School Coursetaking: Findings from The Condition of Education 2007* (NCES 2007-065). U.S. Department of Education. Washington, DC: National Center for Education Statistics; U.S. Department of Education, *Strategic Plan for Fiscal Years 2007-12*, Washington, D.C., 2007; The College Board, Press Release: Increase in Advanced Placement Student Success Achieved in All 50 States (2006); The College Board, *Advanced Placement Report to the Nation 2006*, 10 (2006).

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Our mission is to ensure equal access to education and to promote educational excellence throughout the nation.

The Title VI regulations state, in relevant part:

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 otherwise subjected to discrimination under any program to which this part applies.

34 C.F.R. § 100.3 (a).

To promote educational excellence for all students and to ensure nondiscrimination in secondary school curricula, the Department will vigorously enforce the nondiscrimination requirements of Title VI as they relate to the provision of AP courses. Although the Department recognizes the importance of rigorous high school curricula, including AP courses, for all students, the nondiscrimination statutes enforced by OCR (specifically, for purposes of this letter, Title VI) do not themselves require that an LEA offer AP courses. However, if an LEA offers AP courses to its students, Title VI requires that AP courses be made available on a nondiscriminatory basis, without regard to a student's race, color, or national origin. If the Department determines that a recipient discriminated against students based on their race, color, or national origin in the provision of AP courses at high schools, in the admission to AP courses at high schools that offer these courses, or in the administration of AP courses, the Department will make a finding that the recipient has violated Title VI.⁴ These violations may result in enforcement action if not corrected voluntarily. A more detailed discussion of the application of the Title VI regulations to AP courses is provided further below.

Importance of AP Courses

The Department of Education's Strategic Plan 2007-2012 (the Strategic Plan) identifies as one of its key priorities "encourag[ing] more rigorous and advanced coursework to improve the academic performance of our middle and high school students." To further the goals of *No Child Left Behind*, the Strategic Plan emphasizes the importance of AP coursework. The Department currently administers AP-related grant programs authorized by Title I, Part G of the *Elementary and Secondary Education Act of 1965*, as amended by *No Child Left Behind*, 20 U.S.C. §§ 6531-6537, including the Advanced Placement Incentive Program at 20 U.S.C. § 6535, that provide supplemental funds to State educational agencies, LEAs, and national nonprofit educational entities to expand access to AP programs for low-income individuals.

The impact of AP access has been studied in recent years by the Department and the College Board, among other entities. An academically intense high school curriculum that includes AP or other rigorous courses is highly predictive of college completion.⁵ Students who complete at

⁴ If a district is operating under a court desegregation order, the terms and conditions of the court's desegregation order effectively establish the standard for racial nondiscrimination for the district. Where such a court order addresses AP courses, OCR, therefore, must defer to the court regarding the race discrimination aspects of AP courses.

⁵ Adelman, C. *The Toolbox Revisited: Paths to Degree Completion From High School Through College*. Washington, D.C.: U.S. Department of Education, 2006.

least one AP examination are more likely than their peers to complete a bachelor's degree in four years or less.⁶ Students who enroll in AP courses also have higher college grade point averages and four-year graduation rates than students who do not enroll in AP courses.⁷

Participation in AP Courses

Completion of high school with the skills to succeed in college is increasingly critical to the success of our Nation's youth, and national data show increasing student participation in AP courses. AP courses allow students to take college-level curricula while in high school. Currently, 37 AP courses are offered in 22 academic subject areas. According to the College Board, 15,505 secondary schools in the United States (U.S.) offered AP courses during the 2006-2007 school year, and between 2002 and 2007, the total number of high school graduates who took an AP exam increased from 473,330, or 18.1% of high school graduates, to 698,182, or 24.9% of high school graduates.⁸ Importantly, the College Board has also found that the number of AP exams taken by minority students is increasing as well. Since 1995, the number of AP exams taken by Native American students has doubled, the number of AP exams taken by African American students has tripled, and the number of AP exams taken by Latino students has quadrupled.⁹

However, although AP participation rates among minority students are increasing, minority students are often underrepresented in such courses. For example, according to the Department's most recent Civil Rights Data Collection (CRDC), during the 2005-2006 school year, African American students represented 13.4% of graduating seniors in U.S. public schools, but represented only 7.9% of students enrolled in AP courses. Similarly during the 2005-2006 school year, American Indian and Alaska Native students represented 1.1% of graduating seniors in U.S. public schools, but represented only 0.5% of students enrolled in AP courses.¹⁰ In terms of the students who took AP exams during the 2006-2007 school year, according to the College Board, African American students represented 14.0% of graduating seniors in U.S. public schools, yet they comprised 7.4% of AP exam takers. During the 2006-2007 school year, Native American and Alaska Native students represented 1.1% of graduating seniors in U.S. public schools, but they comprised 0.6% of AP exam takers.¹¹

⁶ Wayne Camara, *The College Board, College Persistence, Graduation, and Remediation* (2003).

⁷ The College Board, *Advanced Placement Report to the Nation 2007, 12-13* (2007) (citing Linda Hargrove, Donn Godin, & Barbara Dodd).

⁸ The College Board, *AP Report to the Nation 2008, 2, 47* (2008).

⁹ The College Board, *AP Participation by Underserved Students at U.S. Public Schools, 1995-2005* (2006).

¹⁰ United States Department of Education, Office for Civil Rights, *2006 Civil Rights Data Collection*, available at www.ed.gov/ocr. These numbers are national projections for the 2006 CRDC. The projections are based on a rolling stratified sample of districts and schools, and on reported data from approximately 6,000 districts that responded to the survey.

¹¹ The College Board, *AP Report to the Nation 2008, 9* (2008).

Generally, statistical data alone are not sufficient to support a finding of a violation, but may be sufficient to warrant an investigation when presented in conjunction with other facts. These facts may include--but are not limited to--the recipient's policies and procedures for determining admission to AP courses and the recipient's actual practices in this regard. Specific applications of the Title VI regulations to the provision of, admission into, and administration of AP courses are discussed below.

Providing AP Courses at High Schools

In relation to the provision of AP courses, discrimination prohibited by Title VI and its regulations includes denying, on the basis of race, color, or national origin, an individual any service, financial aid, or other benefit provided under the program. 34 C.F.R. § 100.3 (b) (i). For example, if an LEA decides to provide AP courses, in determining which high schools will offer these courses, LEAs may not implement an AP program in a manner that denies students the opportunity to participate based on the student's race, color, or national origin. Therefore, LEAs may not refuse to provide AP courses at a school based on the race, color, or national origin of the students enrolled in that school.

Admission to AP courses

For admission to AP courses, discrimination prohibited by Title VI and its regulations includes denying, on the basis of race, color, or national origin, "an individual an opportunity to participate in the program through the provision of services or otherwise or afford[ing] him an opportunity to do so which is different from that afforded others under the program." The regulations also prohibit treating an individual differently from others, on the basis of race, color, or national origin, with respect to admission, enrollment, eligibility, membership, or other requirements or conditions that individuals must meet in order to participate. 34 C.F.R. § 100.3 (b) (v-vi).

High schools use various methods to enroll students in AP courses. For example, some high schools allow students to "self-select" AP courses. For these schools, guidance policies or practices should not guide or "steer" students either into, or out of, AP programs based on a student's race, color, or national origin. Other high schools use or consider factors such as course prerequisites, prior academic performance, or teacher or counselor recommendations in determining or influencing which students may enroll in AP courses. Regardless of the factors considered, such AP admission processes must not treat students differently based on a student's race, color, or national origin. Each LEA is responsible for ensuring that Title VI is not violated in the LEA's schools and programs, including ensuring non-discrimination in AP courses.

Administration of AP courses

In the area of administration of AP courses, Title VI and its regulations prohibit restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others under the program on the basis of race, color, or national origin. 34 C.F.R. § 100.3 (b) (iv). Thus, as in other courses, students in AP courses must not be discriminated against based on their race, color, or national origin, in any aspect of AP course administration. For example, students in AP courses must not be subject to illegal discrimination in the allocation of books, laboratory

equipment, or other course-related resources, in the qualifications or credentials of their AP course teachers, in determining grades for the course, or in other aspects of the administration of AP courses. Title VI and its regulations also prohibit subjecting a student to segregation or separate treatment in any matter related to the student's receipt of any service, financial aid, or other benefit under the program. 34 C.F.R. § 100.3 (b) (iii). Thus, students enrolled in AP courses may not be subject to segregation or separate treatment on the basis of race, color, or national origin.

The regulations also prohibit providing, on the basis of race, color, or national origin, any service, financial aid, or other benefit to an individual that is different, or is provided in a different manner, from that provided to others under the program. 34 C.F.R. § 100.3 (b) (ii). For example, in order to take the AP examination at the end of an AP course, students must pay a fee. Because this fee could potentially discourage students from participating in the AP program, many SEAs and LEAs voluntarily provide AP examination fee subsidies to students. Funds for some of these "subsidy" programs are supplemented by grants awarded through the U.S. Department of Education's AP Test Fee Program authorized at 20 U.S.C. § 6534. In most such "subsidy" programs, AP fee subsidies are provided based on the financial need of the student. Although Title VI does not require LEAs to provide such fee subsidies, if fee subsidies are provided, they must be provided in a manner that does not discriminate based on race, color, or national origin.

Providing educational opportunities to all students is critical to the prosperity of our Nation. To ensure that students have the skills necessary to compete in the highly competitive global economy, I urge you to evaluate whether your LEA--at the district and individual school level--is providing equal educational opportunities to all students, including in the provision of AP courses. I encourage you to use the information provided in this letter to continue to evaluate whether your LEA is in compliance with these anti-discrimination requirements. Upon request, OCR provides technical assistance to help LEAs to voluntarily comply with the civil rights laws enforced by OCR. If you, or your agency, school district, or school, need additional information or assistance on these or other matters, please do not hesitate to contact the OCR enforcement office that serves your state or territory. The contact information for each office is available at: <http://wdcrobcolp01.ed.gov/CFAPPS/OCR/contactus.cfm>.

Thank you for your cooperation and assistance in this important matter.

Sincerely,



Stephanie J. Monroe
Assistant Secretary