



CIVIL RIGHTS

**U.S. Government Actions to Reduce Civil Rights
In Housing and Public Education**

ROLLBACK



OCTOBER 2019

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**6800 Jericho Turnpike
Suite 109W
Syosset, NY 11791-4401
www.eraseracismny.org
info@eraseracismny.org
(516) 921-4863**

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PREFACE

Civil rights in America are under attack from the federal government,

under President Trump's administration, in a way that has not been seen since before the early 1960s. It's a startling reality that requires a new level of monitoring, vigilance, and activism on the part of all Americans who care about civil rights.

This report provides an analysis of the federal government's latest efforts to roll back civil rights in the areas of housing and education. It has been created by ERASE Racism—with essential research by the Lawyers' Committee for Civil Rights Under Law.

The report's focus is national, because these rollbacks affect all Americans. It includes several spotlights that highlight implications for New York's Long Island, because that is where ERASE Racism is based and because the spotlights illustrate how federal changes affect specific communities.

The end of the report includes two Civil Rights Trackers—one for housing and one for education. They are designed to help concerned citizens keep track of numerous government activities that deserve to be addressed with our own relentless activism.

It's time for Americans to join together to defend and restore the essential civil rights that underpin our nation's stated commitment to equal rights under the law. It's time to join together on the path to justice. This report lights the way.

V. Elaine Gross
President
ERASE Racism

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The Civil Rights Trackers summarize the legal actions discussed in this report. Please visit www.eraseracismny.org for updates to these Trackers.

OVERVIEW

Over nearly two decades, ERASE Racism has advanced civil rights in housing and public school education—with notable successes on New York's Long Island, statewide, and through national coalitions. Under the Obama administration, the Department of Housing and Urban Development, the Department of Education, and the Department of Justice all took noteworthy steps to support and advance civil rights, as these agencies are mandated to do by law.

That began to change with the 2017 inauguration of President Trump, whose own statements and those of his administration have undercut the federal government's, mostly bi-partisan, commitment to civil rights. They have reflected, at best, disregard for the rights of people of color and, at times, have been directly confrontational. Efforts to fight back against the civil rights rollbacks from the current administration have not resulted in the success we need to stem the concrete harm experienced by communities of color.

In 2019, ERASE Racism commissioned the Lawyers' Committee for Civil Rights Under Law to research actions and proposals by the current administration that directly affect civil rights law. This report is the result of that research. A snapshot of its sobering findings includes the following:

- The U.S. Department of Housing and Urban Development has acted deliberately to gut critical components of the enforcement infrastructure for the Fair Housing Act of 1968. It has done so in several key ways, among others: suspending the policies, procedures, and tools instituted to effectively improve municipal planning efforts to further fair housing; and, proposing to nullify the Fair Housing Act's Discriminatory Effects Standard, also known as Disparate Impact, by shifting the burden of proof onto the plaintiff at every step of a Disparate Impact discrimination claim.
 - The U.S. Department of Education is systematically shifting policies to withdraw protections against racial discrimination and civil rights enforcement. It is doing so by, among other things, rescinding federal guidance related to the voluntary use of race in K-12 student assignment and college admissions; withdrawing federal support for voluntary affirmative action measures, which the U.S. Supreme Court has consistently ruled are constitutionally permissible; and, rescinding guidance related to disparities in school discipline and issuing a report that shifted responsibility for disparate treatment of students of color from schools to societal factors, despite federal studies pointing to different treatment for similar behaviors between white and "Minority" students. The Department is also advocating school choice (vouchers and charters), despite evidence of discriminatory and disparate treatment and outcome trends in these settings.
- Some of the federal government's proposed rollbacks in civil rights protection have been delayed and, in a few instances, successfully opposed. But the trend is clear. Civil rights are under attack. It is now necessary to watch out for the federal government: to monitor its proposals, educate the public about them, and work to counter those that are contrary to furthering civil rights.



HOUSING

Discrimination in Housing and Recent Changes

The Fair Housing Act of 1968 (FHA) was enacted to ensure equal and fair access to housing options for all people. It not only provides enforcement mechanisms to prevent discrimination in the rental or sale of housing based on race, color, national origin, religion, sex, disability and familial status. It also provides remedies for those who have been

discriminated against. Despite these important protections, Congress realized that simply prohibiting discrimination and redressing the injuries that occur when discrimination happens is not enough. Recent policy shifts are undermining the mandates of the FHA.

The Rise and Fall of the Duty to Affirmatively Further Fair Housing

The duty to Affirmatively Furthering Fair Housing (AFFH) is a critical component of the FHA. It seeks to prevent discrimination and dismantle existing segregation. To bolster the FHA, AFFH was included.

The AFFH duty falls on the shoulders of the Secretary of the US Department of Housing and Urban Development (HUD). This duty requires HUD to “administer the programs and activities relating to housing and urban development in a manner affirmatively to further” the goals and priorities of the Fair Housing Act.¹

HUD was to require any jurisdictions that receive funding from the department to show the proactive steps they were taking to redress longstanding racial segregation and other barriers

to fair housing.² Jurisdictions had to complete an Analysis of Impediments to Fair Housing (AI) in conjunction with their routine consolidated plans.³ The AI summarizes any impediments found, specific steps the jurisdiction plans to take in addressing them, and reporting mechanisms to monitor progress.⁴ Unfortunately, however, HUD has historically failed to adequately enforce this requirement, allowing jurisdictions to receive funding without submitting AIs.⁵ Those that did were not held to any standard of rigor or formatting. In 2015, HUD decided to take a firmer stance on the duty to affirmatively further fair housing. Jurisdictions were then required to submit an Assessment of Fair Housing (AFH), a document based on a standardized assessment tool.⁶ The jurisdiction had to examine access to housing based on race, national origin, English proficiency, and a variety of socioeconomic factors.⁷ It also required consideration of transportation, access to jobs, and disability. The result was a fully fleshed-out document to be used in the planning process to break down barriers to housing for certain groups.

However, in 2018, HUD issued a notice that it would be suspending the rule for three years.⁸ After a lawsuit was filed,⁹ HUD issued a notice that the assessment tool itself

The duty to Affirmatively Furthering Fair Housing (AFFH) is a critical component of the FHA. It seeks to prevent discrimination and dismantle existing segregation.

would be withdrawn,¹⁰ ending the obligation for jurisdictions to use it to submit completed AFHs. The withdrawal leaves jurisdictions free to revert to the previous dysfunctional system, allowing them to receive HUD funds if they have completed an AI, without having to engage in the more robust process. The plaintiffs filed a motion for reconsideration in the lawsuit challenging the

withdrawal of the assessment tool. On August 26, 2019, the U.S. District Court for the District of Columbia issued a decision denying the plaintiffs motion to amend the court's earlier decision holding that the plaintiffs did not have standing to sue as aggrieved organizations. If the plaintiffs opt to appeal, they have 60 days from the date of the decision to do so.¹¹

Long Island's Failure to Affirmatively Further Fair Housing

Long Island is among the nation's 10 most racially segregated metro regions, and the obligation to affirmatively further fair housing (AFFH) is an important legal tool in combating residential segregation. It requires counties and municipalities to promote integrated living patterns to overcome historic segregation.

Residential segregation on Long Island was advanced by policies explicitly ensuring that mass-scale affordable housing created in the mid-20th Century, like Levittown, was for whites only. In 1960, not one of the 82,000 residents of Levittown's 17,400 houses was African American. In 2017, blacks comprised only 1.73% of that population.

Nationally, between 1934 and 1962, the federal government backed \$120 billion in home loans; over 98% went to whites. The resulting structural racism is hard to dislodge, but the AFFH mandate helps.

In 2014, for instance, ERASE Racism filed a civil rights complaint alleging AFFH violations by Nassau County, including funding of municipalities with restrictive zoning and housing practices. HUD found the complaint had merit; it is pending.

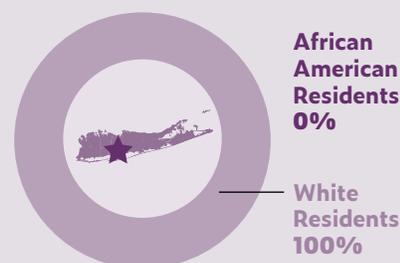
The AFFH mandate spotlighted other discrimination caused by local control, which stems from home rule, whereby the state transfers powers to localities, including land use. Local control is used on Long Island to exclude blacks through geographic preferences, exclusionary zoning requiring large lots for single-family homes, and the absence of affordable multi-family housing.

Residential Segregation Then and Now

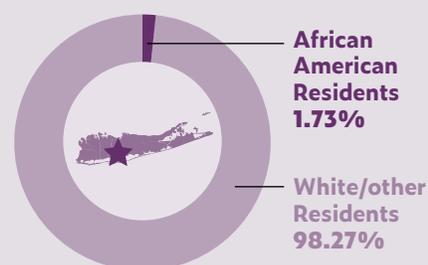
1934–1962 National
U.S. Government-backed Home Loans to White vs. Non-white Recipients:



1960 Levittown, NY
African American Population:



2017 Levittown, NY
African American Population:





HOUSING

Implementation of the Fair Housing Act's Discriminatory Effects Standard

In 2013, under the Obama administration, HUD issued a final rule clarifying the standard for evaluating disparate impact claims under the Fair Housing Act. The FHA prohibits unjustified policies or practices that have a disproportionate, adverse effect ("disparate impact") on protected class members. Courts have recognized the importance of disparate impact liability since 1974, but, prior to 2013, there was inconsistency between federal judicial circuits regarding the precise framework for assessing disparate impact claims.

In the rule, HUD set forth a three-part burden-shifting framework:

- A plaintiff has the burden of proving that an identified policy or practice causes or predictably will cause a discriminatory effect on a protected group, either by disproportionately harming that group or by perpetuating the segregation of that group.¹²
- A defendant then has the burden of proving that its challenged policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest.¹³

- Lastly, a plaintiff may still prevail by showing that another policy or practice could serve the defendant's interest with less discriminatory effect.¹⁴

In 2015, the US Supreme Court affirmed the viability of disparate impact claims under the FHA, but the Court did not set forth a clear standard for how courts and administrative agencies should evaluate those claims.¹⁵ After that decision, opponents of disparate impact, including trade associations representing large banks and insurance companies, began to argue that the burden-shifting framework in the HUD rule is inconsistent with the Supreme Court's decision.¹⁶

Despite the almost total absence of judicial decisions holding that the rule and the Supreme Court decision are inconsistent,¹⁷ HUD seems to agree with the banking and insurance industries. On June 20, 2018, HUD issued an Advance Notice of Proposed Rulemaking soliciting public comment about the purported need for changes to the rule.¹⁸ On February 1, 2019, HUD submitted a Notice of Proposed Rulemaking to the federal Office of

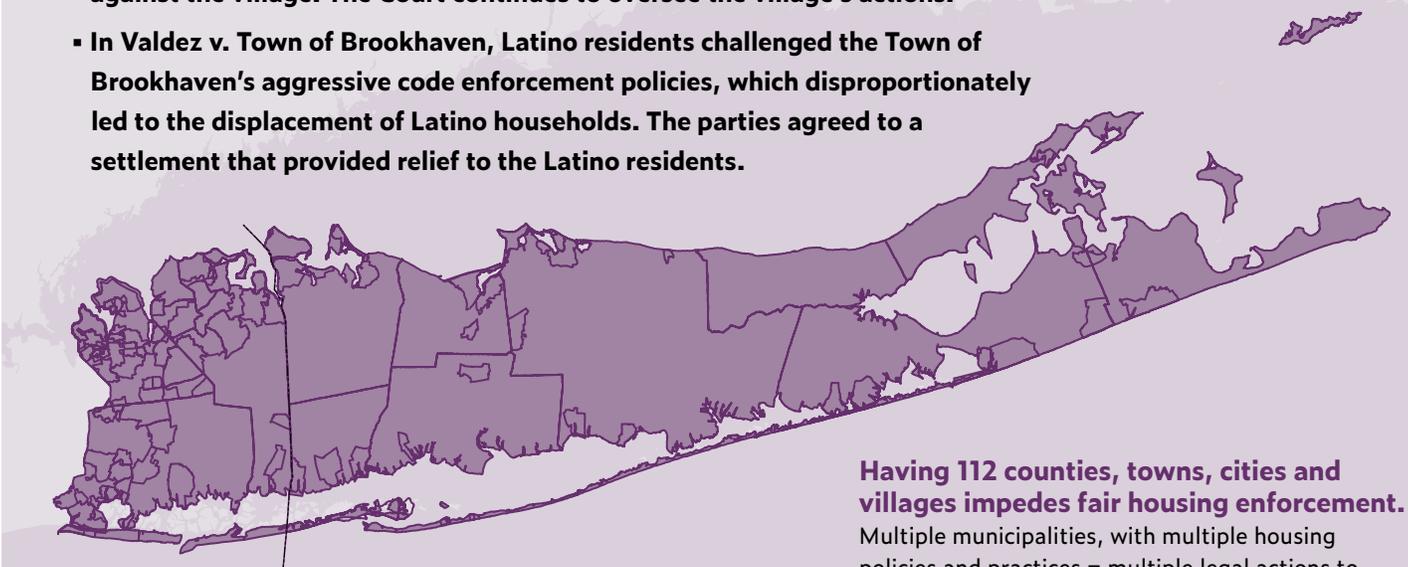
Management and Budget. On August 19, 2019, HUD published in the *Federal Register*/Vol.84, No. 160, Proposed Rule "HUD's Implementation of the Fair Housing Act's Disparate Impact Standard." As feared, this proposed rule, if enacted, would make enforcing the Fair Housing Act much more difficult. It would eviscerate housing discrimination lawsuits that challenge policies that result in discrimination or perpetuate segregation even if

...this proposed rule, if enacted, would make enforcing the Fair Housing Act much more difficult. It would eviscerate housing discrimination lawsuits that challenge policies that result in discrimination or perpetuate segregation even if the discrimination is not the policy's stated intent.

Disparate Impact on Long Island

The Fair Housing Act's disparate impact standard has been a critical tool for fighting against structural racism on Long Island, NY. Both the Civil Rights Division of the US Department of Justice and private, non-profit, civil rights organizations have a long history of using this vital tool on Long Island. Examples include:

- In *US v. Town of Oyster Bay*, the federal government sued the Town of Oyster Bay, which is predominantly white, for giving preference for admission to affordable housing to Town residents and their relatives. Pending.
- In *Mhany Management, Inc. v. Village of Garden City*, a nonprofit affordable housing developer and a grassroots community organizing group challenged exclusionary zoning that would have precluded the development of affordable housing in the Village of Garden City, which is predominantly white. In 2014, the U. S. District Court issued a judgement against the village. The Court continues to oversee the village's actions.
- In *Valdez v. Town of Brookhaven*, Latino residents challenged the Town of Brookhaven's aggressive code enforcement policies, which disproportionately led to the displacement of Latino households. The parties agreed to a settlement that provided relief to the Latino residents.



Having 112 counties, towns, cities and villages impedes fair housing enforcement.

Multiple municipalities, with multiple housing policies and practices = multiple legal actions to combat disparate impact.

discrimination is not the policy's stated intent.

The Proposed Rule adheres to the views of the banking and insurance industries, and, if finalized, HUD would effectively deny access to justice for many victims of discrimination by placing the burden of proof on the plaintiff at all steps and

requiring proof that a less discriminatory policy would be "as effective" as the challenged policy, among other harmful changes. The civil rights community is prepared to fight back against this proposal to weaken the FHA's disparate impact standard.



HOUSING

Implementation of HUD's Small Area Fair Market Rent Regulation

In the Housing Choice Voucher Program (also known as Section 8), low income renters pay 30% of their income in rent, and the rest of their rent is subsidized by HUD. In each metropolitan area, fair market rents are set to establish a range for how much the subsidy will be, and which houses and apartments will be eligible to rent. Previously, only one fair market rent was set for an entire metropolitan area. This meant that within a large metropolitan area, only certain neighborhoods were truly available to Housing Choice Voucher holders. Then, in 2016, HUD developed a pilot program to update the fair

Area Fair Market Rents (SAFMRs), was set to begin on January 1, 2018.

Small Area Fair Market Rents¹⁹ have the potential to be a hugely important tool for desegregating neighborhoods and giving low income people access to the services and amenities available in areas with high public and private investment.²⁰ However, in August of 2017, before the pilot program was set to officially begin, HUD announced the suspension of the SAFMR Rule for two years via individual letters to the Public Housing Authorities in the identified metropolitan areas.

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market rents for Housing Choice Vouchers. In 24 select metropolitan areas, fair market rents would be set according to the local housing prices in each zip code within a metro area. This meant that Housing Choice Voucher holders would be able to move to more expensive neighborhoods, with better access to transportation, employment, schools, and services. Metro areas beyond the 24 identified also had the option to adopt the new fair market rents on their own. The pilot program for these new fair market rents, known as Small

A fair housing organization, Open Communities Alliance, as well as two individuals who would have benefited from the rollout of the SAFMR program, sued HUD in order to enforce the regulation.²¹ The lawsuit claimed that:

- HUD should have followed the proper procedures required by law in modifying its regulations and programs, including giving notice to the public and allowing the public to comment on their actions;
- HUD did not give sufficient reasons for its delay of the SAFMR program for two years, and the reasons HUD did give were contradicted by HUD's own studies on the subject;
- HUD's decision to delay the SAFMR program violated the Fair Housing Act. The SAFMR program would have brought the government

more closely into compliance with the Fair Housing Act, including HUD's affirmative obligations to further racial desegregation and address areas of concentrated poverty. Therefore, any attempt to undo these programs,

which were a step in the right direction, was actually a step backwards. The lawsuit was successful in requiring HUD to adhere to its own regulations,²² and HUD is currently implementing SAFMRs for the 24 metro areas.

Small Area Fair Market Rents (SAFMRs) on Long Island

While Long Island was not part of HUD's original pilot program for SAFMRs, the full implementation of the regulation is critical, as it gathers data about the success of the pilot program and allows other metro areas to affirmatively adopt SAFMRs. Now that the lawsuit against HUD has concluded with HUD required to enforce the SAFMR rule, the program presents some great possibilities for accessing highly resourced neighborhoods and communities on Long Island. For the Nassau-Suffolk, NY HUD Metro FMR Area, the metro-wide rent ceiling for a two-bedroom residence is \$1,907. There are 177 zip codes on Long Island, and under the 2020 Small Area Fair Market rents, 60 of those zip codes would qualify for "Small Area FMRs", by zip codes that are \$200 or more above the current FMR for the region, (as calculated for a 2-bedroom apartment). [Data provided by PRRAC] Making these well-resourced communities accessible to housing voucher holders can help bring workers closer to their jobs, give children access to high-performing schools, and work to undo decades of entrenched residential segregation.





EDUCATION

Discrimination in Education and Recent Changes

The US Department of Education shares responsibility for enforcing numerous civil rights laws that prevent discrimination (e.g., Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the

Americans with Disabilities Act of 1990) and addressing complaints of discrimination with the Department of Justice.²³ The Department of Education's recent policy shifts have withdrawn protections against racial discrimination and civil rights enforcement for all students.

Voluntary Use of Race in Student Assignment and College Admissions and the Benefits of Diversity

In July of 2018, the Department of Education rescinded federal guidance issued under President Obama related to the voluntary use of race in K-12 student assignment and college admissions. In doing so, it withdrew its support for policies designed to promote the educational benefits of racial and ethnic diversity. Racially diverse schools offer educational and civic benefits by promoting cross-racial understanding, breaking down stereotypes, and improving critical thinking, communication, and problem-solving.²⁴ On average, students in socioeconomically and racially diverse schools have stronger academic outcomes, are more likely to enroll in college, and are less likely to drop out.²⁵ The prior federal guidance offered specific examples of permissible strategies to promote racially diverse and integrated learning environments. Moreover, it specifically recognized the flexibility that schools have to take "proactive steps" to achieve a "compelling interest" in the benefits of that diversity.²⁶

The consequence of revoking the Obama guidance, intended or not, is to invite confusion where none should exist. Over the past several decades, the Supreme Court has consistently reiterated that affirmative action and the voluntary use of race are constitutionally

permissible so long as they are "narrowly tailored" to achieve the benefits of diversity. The rescission has no impact on the underlying laws and legal precedent that govern the ability of schools and colleges to seek more integrated learning environments for their students.

The Department's actions occur when there is an urgent need to support schools in promoting greater diversity. America's public school system has steadily re-segregated to levels last seen in the 1960s, the decade following *Brown v. Board of Education* when states resisted the Supreme Court's command to integrate their schools.²⁷ Another recent analysis found that black and Hispanic students are more underrepresented at top colleges than 35 years ago.²⁸ In addition to these challenges, two recent lawsuits challenge the right of Harvard and the University of North Carolina at Chapel Hill (UNC) to consider race in admissions (*SFFA v. Harvard* and *SFFA v. UNC*). Scholars and advocates have warned that these lawsuits may result in a chilling effect, causing other colleges to voluntarily abandon legally sound race-conscious policies due to fears of costly litigation or prolonged investigation.²⁹

The Department's recent actions only heighten these concerns and any associated chilling effect. In the Harvard lawsuit, the Department

filed a Statement of Interest on behalf of the plaintiffs challenging Harvard's race-conscious policy, thereby signaling the Department's hostility towards such diversity efforts. The civil rights division has also committed new resources to investigating and litigating "race-based discrimination in college and university admissions."

This dramatic shift in policy has already resulted in scaling back affirmative action efforts. Texas Tech University Health Sciences Center recently agreed to abandon its race-conscious admissions policy until it addressed "compliance concerns" by documenting why other methods for promoting diversity were not sufficient. Many see this as part of a more aggressive strategy to pressure other institutions to eliminate affirmative action. Such a strategy risks reducing racial diversity across high-quality institutions. There is evidence that minority enrollment drops in competitive institutions after states ban affirmative action. Black enrollment at the University of Michigan dropped by nearly 10% in the three years following Proposition 2, and as of 2017 underrepresented minorities—black, Latino, Hawaiian and Native American—represented less than 13% of the undergraduate population. Universities in California saw similar declines after Proposition 209 passed in 1996 banning affirmative action.³⁰

Though the federal government is hostile to efforts to promote diversity, it does not change current law. As such, students, alumni, and civil rights organizations can still push their schools to pursue robust diversity and inclusion efforts. Students at both Harvard and UNC moved to participate in the trials defending

race-conscious admissions. These students are vociferously demanding that their campuses need more racial diversity, not less. They are also calling for their universities to address racial hostilities on campus, invest in ethnic studies and cultural spaces, and provide culturally sensitive counseling and curriculum.³¹ Alumni groups have likewise mobilized in support of diversity programs. For example, the Coalition for a Diverse Harvard activated alumni to vote for Board of Overseers candidates who would proactively help Harvard be a more diverse institution. Twelve of the 13 candidates endorsed by Diverse Harvard were elected.³² Students,

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educators, and advocates should still use various advocacy tools—such as town halls, alumni campaigns, and letter-writing—to assess higher education institutions' diversity and inclusion efforts and demand that their institution is bold in expanding racial equity through recruitment, admissions, retention, and beyond graduation.

A hostile federal climate also has not stopped students, parents, and community leaders from successfully organizing for greater integration in K-12 schools. For example, advocates in New York pushed the State to include in its Every Student Succeeds Act State Plan innovative features pertaining to diversity and integration, including the following: school diversity as an



EDUCATION

Voluntary Use of Race in Student Assignment and College Admissions and the Benefits of Diversity CONTINUED

an indicator of overall school quality; annual state and district-level equity reports, and efforts to increase the diversity of educators.³³ Student-led groups such as IntegrateNYC have also organized

explicit equity goal; allocation of Title I School Improvement Funds to promote school diversity; diversity as

successful campaigns for integration, resulting in the Mayor of New York City adopting virtually all of their policy recommendations and committing more resources for local integration efforts.³⁴ These advocacy efforts serve as a reminder that, while the Trump administration has made integration more challenging, community mobilization can still make meaningful gains in integration.

A Long Island Student’s Perspective: The Importance of Race-Conscious Policies for College Admissions

In the lawsuit *SFFA v. Harvard*, a racially diverse group of students were permitted to provide testimony to defend Harvard’s policy of considering race among many other factors to promote diversity. Caroline Zheng, who is Chinese American and a member of the Harvard Class of 2019, illustrated the importance of diverse learning environments by drawing from her childhood on Long Island. Caroline explained: “Coming from a predominantly white, upper-middle-class, Long Island high school, Harvard seemed incredibly diverse to me . . . I made many African American friends during my first year, who provided me with perspectives that I previously lacked, which forced me to confront my own prejudices and privilege.” Caroline’s story is a reminder that racial diversity on college campuses is vital to train students—our future leaders—to bridge racial divides and engage in cross-cultural understanding. Such engagement is too often impossible within our country’s segregated school system, including for students on Long Island. As underscored in a 2015 ERASE Racism report, Long Island continues to be one of the most racially segregated regions in the country.

AFFIRMATIVE ACTION



Avoiding Racial Disparities in School Discipline

The US Department of Education's Civil Rights Data Collection³⁵ and federal investigations³⁶ show that black students are far more likely to be punished in school than white students, even when engaging in identical or similar behavior. According to the Government Accountability Office (an independent watchdog agency), these discipline disparities may be explained by "[i]mplicit bias — stereotypes or unconscious association about people — on the part of teachers and staff [which] may cause them to judge students' behaviors differently based on the students' race and sex."³⁷ In short, implicit bias may cause school staff to punish minority students more and more harshly than white students. Indeed, one 2019 study found that racial disparities in discipline are associated with county-level estimates of racial bias.³⁸ The disparities in school discipline are stark: black students are three times more likely to be suspended and expelled than their white peers.³⁹ Black students are also more likely to be removed for subjective offenses (such as loitering or disrespect),⁴⁰ which are more likely to be impacted by educators' implicit biases.

The overreliance on exclusive disciplinary measures creates the potential for significant negative educational and long-term outcomes for students,⁴¹ perpetuating the "school to prison pipeline." Consequently, the Departments of Education and Justice issued joint guidance in 2014 to address the overuse and discriminatory use of suspension and expulsion. Furthermore, the guidance clarified that schools must treat all children fairly and provided recommendations

and resources for educators to promote safe, healthy, and inclusive environments.⁴²

After the guidance was released, more than 50 of the nation's largest school districts changed their disciplinary policies and more than half of the states revised their laws in an effort to reduce suspensions and expulsions. According to an analysis of federal data by Child Trends, suspensions did, in fact, decline.⁴³

The US Department of Education's Civil Rights Data Collection³⁵ and federal investigations³⁶ show that black students are far more likely to be punished in school than white students even when engaging in identical or similar behavior.

In December of 2018, the Federal Commission on School Safety issued a report claiming that the Obama-era guidance overly limited schools' ability to exclude students and thereby reduced safety. The Commission concluded that disparities in discipline could be attributed to "societal factors" other than race.⁴⁴

But a peer-reviewed study recently confirmed that racial disparities in US schools are *not* explained by "societal factors." On average, children of color received 1.6 times as many suspensions by the end of 8th grade as white children of similar behavioral, academic, and socioeconomic backgrounds. According to the researchers, their findings suggest "beyond a



EDUCATION

Avoiding Racial Disparities in School Discipline
CONTINUED

mere statistical disparity" that US schools discipline children in ways that are racially discriminatory.⁴⁵

While the Department's 2018 rescission of the discipline guidance⁴⁶ signals less federal oversight, this rescission does not affect the legal requirements and protections created by civil rights laws. Schools are still prohibited from discriminating against students.

Thus, state and local leaders are still empowered to advocate for abiding by the 2014 guidance's civil rights principles and practices. As an instructive example, California's Attorney General Xavier Becerra published a guidance letter in February 2019 clarifying that the rescinded 2014 School Discipline Guidance package still "provides valuable tools and information to California school administrators on how to achieve an equitable and safe classroom environment."⁴⁷

Becerra's letter reaffirms the California Department of Justice's commitment to enforcing civil rights principles articulated by the 2014 guidance, state law, and federal law. Parents and civil rights advocates can push their school boards

and state leaders to publicly adopt similar stances; they may also continue to enforce such laws by submitting complaints in federal and state courts and agencies.

The disparities in school discipline are stark: black students are three times more likely to be suspended and expelled than their white peers.

On Long Island— Strong Racial Disparities in School Discipline

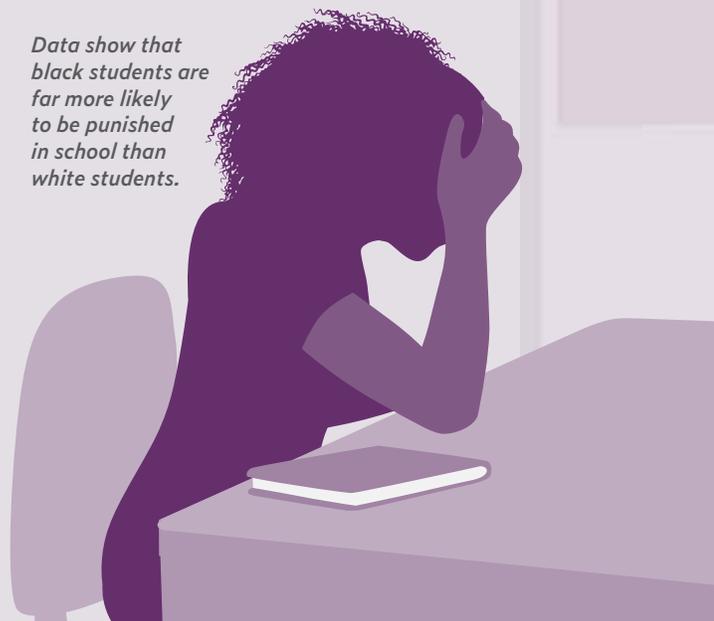
The U.S. Department of Education's Civil Rights Data Collection and federal investigations show that Black students are far more likely to be punished in school than white students even when engaging in identical or similar behavior.⁴⁸

How are we doing on Long Island? Based on data from 2016-17, we have a big issue.

- In Nassau County, black students represented only 11% of enrollment but were 35% of the students suspended.⁴⁹
- In Suffolk County, black students represented 8% of enrollment but represented 24% of the students suspended.⁵⁰

The Departments of Education and Justice issued joint guidance in 2014 to address the overuse and discriminatory use of suspension and expulsion. Despite the enormity of the problem and the work still to be done to address it, in 2018 this guidance was rescinded by the Trump administration.

Data show that black students are far more likely to be punished in school than white students.



School Discipline Racial Disparities Among Students on Long Island:
Enrollment and Suspension Rates for 2016-17



NASSAU COUNTY

2016-17



STUDENTS ENROLLED
11% BLACK



STUDENTS SUSPENDED
35% BLACK



SUFFOLK COUNTY

2016-17



STUDENTS ENROLLED
8% BLACK



STUDENTS SUSPENDED
24% BLACK



EDUCATION

Affirmative "School Choice" Agenda (Vouchers and Charters)

In addition to rolling back civil rights protections designed to address racial disparities and discrimination, the US Department of Education, under Secretary Betsy DeVos, has advocated for expanding "school-choice" by decreasing oversight and increasing funding of voucher and charter school programs.⁵¹ This affirmative "school-choice" agenda also carries serious implications for civil rights:

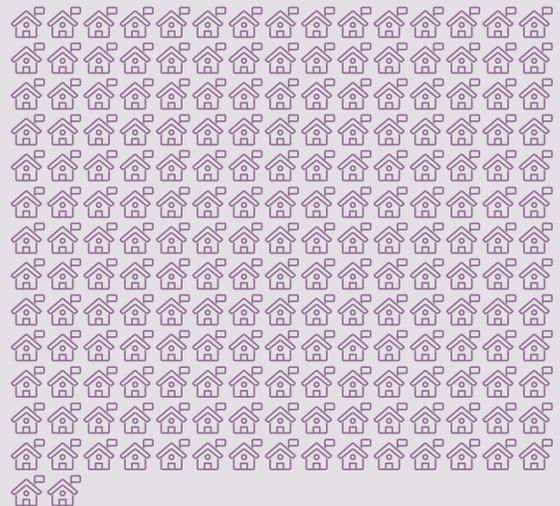
- Vouchers raise concerns about funding schools that engage in discrimination. An analysis of Florida's voucher program (the Hope Scholarship Program) by the Huffington Post revealed that 10% of the participating schools have "zero tolerance policies" for LGBTQ students.⁵² And nearly 20% of participating schools have dress-code policies that disproportionately punish students of color.⁵³
- The proliferation of charter schools has contributed to increasing school segregation. A 2019 national analysis of more than 4,500 K-12 public schools from 1998 to 2015 found that charter schools tend to increase segregation within districts.⁵⁴

Secretary DeVos's "school-choice" agenda encourages states to explore expanding voucher and charter programs. Given the aforementioned discriminatory and disparate trends of this sector, advocates are wary of such expansion. Grassroot campaigns have defeated efforts to expand voucher programs in states such as Arizona.⁵⁵ The Century Foundation has also provided policy recommendations at the federal, state, and local levels to ensure that charter schools provide greater equity and opportunity to students of all backgrounds.⁵⁶

Today, five charter schools are operated on Long Island and serve less than 1% of Long Island's public school students.⁵⁷



These numbers are notably lower than neighboring boroughs in New York City (which, in 2014, had 197 charter schools enrolling 78% of all charter school students statewide).⁵⁸



A 2017 report analyzing data across New York and nationally observed: charter schools can serve to "deepen segregation" or "lessen segregation by loosening the connection between neighborhood and school"—the demographic trends vary by local context and charter design.⁵⁹ More research is needed to fully assess how Long Island's charters impact levels of integration across the region and all students' access to a high-quality education.

Addressing Significant Disproportionality in Special Education

The Individuals with Disabilities Education Act (IDEA) ensures that children with disabilities will receive a free, appropriate, public education in the least restrictive environment. IDEA has important implications for achieving racial equity in education. Special education has been characterized by racialized outcomes in the placement, classification, and/or discipline of students with disabilities.⁶⁰ Students of color are both overrepresented in some special education classifications and underrepresented in others, raising distinct but equally troubling concerns.⁶¹ Nationally, black students are 40% more likely than their peers to be identified as having a disability and twice as likely to be identified with having an emotional disorder.⁶² Students of color with disabilities also experience the highest rates of school exclusion, arrest, and restraint.⁶³ Some researchers indicate that overrepresentation may be explained by the effect of cultural or linguistic differences that are “misinterpreted as symptoms of a learning disability.”⁶⁴ Students of color are also under-identified in certain disability categories—such as autism—which can lead to increased disciplinary action due to unmet behavioral, emotional, or social needs.⁶⁵ Black, Asian, and Pacific Islander students with disabilities are also less likely to be placed in general education classrooms than their white peers, raising concerns about the unjustified segregation of students.⁶⁶ These patterns raise concerns around “significant disproportionality” in special education. The “Equity in IDEA rule,” finalized in December 2016, was meant to address these widespread disparities in the treatment of students of color in special education.

Since 1997, IDEA required states to monitor “significant disproportionality,” but states were free to set their own approach.⁶⁷ This led to

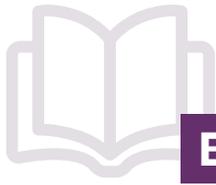
uneven and ineffective efforts to address the issue. In 2010, only 2% of districts across the country identified significant disproportionality, and in 2013 nearly half the states did not require any of their districts to address this issue.⁶⁸

In 2016, the US Department of Education passed the “Equity in IDEA rule” to require states to comply with reporting requirements related to racial disparities in the identification, placement, and discipline of children with disabilities. The rule sets a uniform national standard to measure “significant disproportionality” in order to ensure that students of color are not over-identified, segregated, or over-disciplined. It was set to take effect in July of 2018.⁶⁹

The new administration tried to delay those regulations for two years by citing questionable research and claiming that the causes and solutions for racial disparities in special education have not received sufficient study and that additional time was needed.⁷⁰ The Department cited questionable research to suggest that there was no legitimate problem with over-identifying students of color as having a disability.

Immediately after the proposed delay, the Council of Parent Attorneys and Advocates (COPAA) filed a lawsuit arguing that the Department had no reasonable justification to delay the rule. Plaintiffs argued that the significant disproportionality provision served as an early-warning system for possible problems,

Students of color with disabilities also experience the highest rates of school exclusion, arrest, and restraint.



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Addressing Significant Disproportionality in Special Education CONTINUED

analogous to a “check engine” light. The rule would not deny students of color necessary services or result in a special education quota for students of color. In March of 2019, a court agreed and ruled that there is no valid reason to delay the implementation of the rule.⁷¹ Despite this favorable decision, the Trump administration has still not taken steps to enforce the rule. In April 2019, the Leadership Conference along with dozens of other civil rights organizations wrote a letter urging the Department to “respond in a positive and proactive manner to implement” the rule, as ordered by the court.⁷² Instead, in May, the Department used a new delaying tactic: seeking comments on a change to the information-collection requirement. This latest effort to stall causes more confusion among states and prevents

successfully implementing an important process designed to prevent racial discrimination in education for students with disabilities.

While the Trump Administration has delayed enforcing such civil rights protections, state and local leaders can still take meaningful steps to address these racial disparities. For example, many states have decided that—even in the absence of federal enforcement—they will still monitor and address significant disproportionality as the rule requires. New York provides one such example—it is requiring districts to collect and submit data for analyzing significant disproportionality in special education. Parents, educators, and civil rights organizations can also engage in local advocacy to demand that their school boards analyze racial disparities in special education and dedicate resources to exploring the root of these differences and, once found, addressing them.

School Districts on Long Island Identified for Intervention

IDEA requires each state to create a State Performance Plan (SPP) that evaluates its efforts to implement IDEA’s requirements and purposes. New York’s SPP has 20 indicators of effective implementation, including indicators to evaluate “disproportionality” (indicators 4, 9, and 10).⁷³ In 2015-2016, New York identified 78 school districts with disproportionality, including several on Long Island (*Education Week* provides an interactive map of districts).⁷⁴ These school districts were required to set aside 15% of their federal special education money to address these disparities and perform ongoing monitoring.⁷⁵ While solutions will be tailored to local circumstances, New York’s Education Department articulated a three-tier framework for addressing disproportionality: (1) identify the root of the problem; (2) adopt school-wide approaches and pre-referral interventions; (3) engage in evaluation and monitoring.⁷⁶

NYED’s three-tier framework for addressing disproportionality:



1. IDENTIFY THE ROOT OF THE PROBLEM



2. ADOPT SCHOOL-WIDE APPROACHES AND PRE-REFERRAL INTERVENTIONS



3. ENGAGE IN EVALUATION AND MONITORING

Reluctance to Address Systemic Violations of Civil Rights in Schools

Beyond the substantive rollbacks of policies designed to protect students, the US Department of Education has revised its framework for investigating and enforcing civil rights, leaving students increasingly vulnerable. Shortly after President Trump took office, the Department changed internal policies at the Office for Civil Rights (OCR) by prioritizing the resolution of individual allegations of civil rights violations over systemic investigations of broader policies that reveal systemic discrimination. Agency investigators were no longer required to consider systemic bias when presented with single allegations of discrimination. These changes meant that individuals who filed multiple complaints, which might be similar in nature, could see their complaints dismissed without review.⁷⁷

The proposed changes to the Case Processing Manual were immediately challenged in federal court by the Council for Parent Attorneys and Advocates, the NAACP, and the National Federation of the Blind. The lawsuit raised concerns that the revised manual permits the dismissal of cases that form a pattern of discrimination, allows the dismissal of complaints against more than one group of defendants, and eliminates the appeal process to challenge a decision.⁷⁸ An investigation by ProPublica found more than 1,200 dismissals after the revised manual took effect.⁷⁹

In November of 2018, OCR walked back some of the proposed changes and indicated that it would conduct investigations into complaints dismissed under the eliminated provision. The updated manual also restored some of the rights to appeal. However, the manual retained language that focused investigations on individual allegations of discrimination and encouraged voluntary resolution of complaints between students and schools. Staff are instructed to avoid systemic probes unless facts surface during

an investigation that prompt a broader review.⁸⁰ While these proposed changes may have seemed small on their own, the Department's actions since then demonstrate a "steady march toward narrowing the agency's approach to racial discrimination and civil rights enforcement."⁸¹

ProPublica performed an audit of more than 40,000 civil rights complaints submitted to OCR. The findings indicate that President Trump's Department of Education is less likely to enforce civil rights protections. Under Obama, 51% of cases that took more than 180 days resulted in findings of civil rights violations, or corrective changes. Under the Trump administration, that rate has dropped to 35%. Moreover, 70% of complaints of discrimination against students with limited English were upheld under Obama, compared to 52% under Trump; for the educational needs of students with disabilities, that number has dropped from 45% to 34%; for sexual harassment, from 41% to 31%; and for racial harassment, from 31% to 21%.

Findings of civil rights violations, or corrective changes under Obama vs. Trump administrations:



CONCLUSION

Vigilance is key.

Civil rights gains of recent decades are too important to be rolled back un-noticed. ERASE Racism and others will continue to monitor developments and sound the alarm, as efforts unfold that would jeopardize the rights of all Americans to fair housing and integrated public schools.

We will also participate in the public comment process on regulatory changes and, when the opportunity presents itself under a new administration, participate in the comment process when efforts are made to repair the harm. It is the responsibility of every civil rights organization and every caring citizen to make our voices heard.

With respect to housing, ERASE Racism will continue to actively support and to organize our partners to support local and state policies that advance fair housing and racially integrated affordable housing. We will also organize local residents to support the creation of multifamily housing developments with affordable units in communities where they live. We will also seek opportunities when state law and/or programs can fill the void left by the exit of the federal government from civil rights protection and advancement.

In the 21st century, there should be no place for permitting discrimination, harassment, or other discriminatory means of denying housing based on color, race, national origin, religion, gender, disability, familial status, sexual orientation, or legal source of income. There should be no discrimination in: the sale or rental of housing; land use policies that affect the availability of housing types and affordability; government housing programs that affect whether or not housing is accessible to anyone, regardless of where they currently reside; and, banking and lending policies and practices.

With respect to education equity, ERASE Racism will continue to work with educators, parents, and students to raise our collective voices in support of racially integrated learning environments and to seek opportunities to demonstrate the benefits of diversity, in student populations and in staff composition.

Some policy priorities include decreasing disparities in student disciplinary actions and increasing restorative justice policies and practices; increasing educators of color; promoting culturally responsive-sustaining education; offering services to build anti-racist student leaders; and, providing lessons in implicit bias, structural racism, and culturally responsive education for educators.

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CIVIL RIGHTS TRACKER – HOUSING

A summary of the legal actions discussed previously in this report distilled into a Civil Rights Tracker.

Please visit www.eraseracismny.org for updates of this Tracker.



PROPOSED OR IMMINENT

1. In 2013, HUD issued a rule setting the standard for evaluating disparate impact claims under the Fair Housing Act. HUD issued a Notice of Proposed Rulemaking in 2019 that, if finalized, would establish a **standard for Disparate Impact claims** in HUD administrative proceedings that would be virtually impossible for civil rights advocates to satisfy.
2. In 2018, HUD issued an Advanced Notice of Proposed Rulemaking seeking input on possible changes that would likely **weaken the Department's 2015 Affirmatively Furthering Fair Housing rule**, which governs how state and local governments, as well as public housing authorities, comply with their civil rights obligations.
3. In 2019, HUD proposed a rule that would, over time, prohibit families that include both individuals who are citizens, or who have documented immigration status, and individuals who are undocumented **from residing in many types of federally subsidized housing**.
4. In 2019, HUD announced its intention to propose the **repeal of its Equal Access rule**, which prohibits discrimination against transgender individuals in federally funded homeless shelters.
5. In 2019, HUD proposed changes to its regulations governing Section 3 of the Housing and Urban Development Act of 1968, which promotes economic opportunity for low income residents in projects assisted with HUD funds. These changes would **weaken enforcement of Section 3 by taking oversight responsibility away from HUD's Office of Fair Housing and Equal Opportunity**.



IMPLEMENTED

6. In 2015, **jurisdictions receiving HUD funds were asked to submit Assessments of Fair Housing in order to continue receiving funds**. In 2018, this rule was suspended, and the assessment tool used to standardize these reports was withdrawn, preventing jurisdictions from using it to submit AFHs. A lawsuit was brought forward to reinstate this tool, and its decision is pending.
7. In 2017, HUD withdrew a proposed rule dating from the Obama administration that would have modernized regulations applicable to the demolition and disposition of public housing. **The abandoned proposed rule would have promoted civil rights in that process**.
8. In 2018, HUD withdrew a proposed rule dating from the Obama administration that **would have streamlined the process of creating consortia of public housing authorities**, thereby making it easier for Housing Choice Voucher holders to move to areas of opportunity.



BLOCKED

9. HUD attempted to delay the **Small Area Fair Market Rent (SAFMR) program**, originally set to begin on January 1, 2018, by two years. A lawsuit was successfully brought forward to require HUD to adhere to the original deadline.
10. In 2018, HUD proposed **increasing tenant rent obligations for households living in public housing or utilizing Housing Choice Vouchers**. For now, HUD has abandoned this plan in light of a public backlash that highlighted the Department's lack of statutory authority for the change.



CIVIL RIGHTS TRACKER – EDUCATION

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PROPOSED OR IMMINENT

11. In 2016, the US Department of Education issued **regulations to measure the identification, placement, and discipline of children with disabilities**, as black and American Indian or Alaska Native students are likely to be overrepresented in these counts. Though the Trump administration tried to delay this regulation, the New York State Education Department did require its districts to collect data regarding this disproportionality.



IMPLEMENTED

12. In July of 2018, the **Department of Justice rescinded federal guidance on the use of race in K-12 assignment and college admissions**. The Department further continued its challenges towards diversity efforts by filing a Statement of Interest on behalf of the plaintiff in *SFFA v. Harvard*.

13. Under the Obama administration, the Departments of Education and Justice cautioned against the **discriminatory use of disciplinary measures against black students**. In December of 2018, the Federal Commission on School Safety concluded that disparities in the use of disciplinary measures against black students could be attributed to “societal factors” other than race, and that the Obama-era guidance on such measures was restrictive.

14. Under the Trump administration, the Department of Education has prioritized the resolution of **individual allegations of civil rights violations rather than systemic discrimination**. The Department’s Office for Civil Rights revised this policy in November of 2018.



ERASE Racism is a regional civil rights organization based on Long Island, NY, that exposes and addresses the devastating impact of historical and ongoing structural racism, particularly in public school education and housing. It does so through research, policy advocacy, legal action, and educating and mobilizing the public—driving policy change at local, regional, and statewide levels and through national coalitions. It has been recognized locally and nationally for its cutting-edge work.

E·R·A·S·E



RACISM

6800 Jericho Turnpike
Suite 109W
Syosset, NY 11791-4401
www.eraseracismny.org
info@eraseracismny.org
(516) 921-4863