

27 June 2023

To: Michael Seth Gerton
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202
michael.gerton@ed.gov

Dear Mr. Gerton,

Thank you for following up on my complaint about racial discrimination in District of Columbia public schools.

Your request of 14 June 2023 (appended below) has four parts...

1. A detailed description of the discrimination.
2. Date(s) of discrimination.
3. Person(s) responsible.
4. Why you believe the alleged conduct or act(s) constituted discrimination.

I address them below.

Best wishes,

Jeff Schmidt

1. A detailed description of the discrimination

District of Columbia public schools have lower academic achievement goals for black students than for white students.

They plan to maintain the lower goals until the year 2041. That year is so far off that the lower academic goals apply to black children who haven't even been born yet. A black child born today will be out of high school before D.C. schools are required to educate black children as well as white children.[1]

The unequal academic expectations will victimize two generations of students: the 96,000 children now in D.C. public schools and, over the next two decades, a comparable number of children, most of whom are yet to be born.

D.C.'s academic achievement plan, with its timetable of essentially never for racial equality, appears designed to benefit D.C. politicians and education authorities, not children. The low goals make it as easy as possible for officials to say that schools are meeting their goals. That helps hide their failure to make students proficient in English and math and allows them to avoid serious consequences for that failure.

Note that private schools in D.C. comply with civil rights laws and do not have lower academic achievement goals for their black students. Black children who cannot afford private-school tuition deserve to attend public schools that are free of racial discrimination in academic achievement goals.

Saying that schools will start practicing racial equality in academic expectations in 2041 does amount to saying never, and everyone knows that. School accountability frameworks don't last that long. The "No Child Left Behind Act" lasted about 14 years before Congress scrapped it and replaced it with the "Every Student Succeeds Act."

D.C.'s scheme allows schools to teach only 31 percent of today's black 8th graders to do math at grade level by the time they are tested in high school two years from now.

However, according to the plan, schools had better pay close attention to their white students, for administrators will be in trouble unless their white students are proficient at almost double that rate (61 percent). The black and white goals for English are 41 percent and 83 percent proficient, respectively. [2]

D.C.'s academic achievement plan sets low goals for Latino students, too, and so in most places here the word "black" could be replaced by "black and Latino."

Harm

Allowing schools to have lower academic achievement goals for their minority students deprives minority children of their right to be treated and judged as individuals. A school with unequal academic goals tells a black student, in essence, "We don't expect as much from you, because many other black students have performed poorly." How else would you explain the school's prejudgment to a black child?

The superintendent of education, board of education and individual public schools have decided in advance that tens of thousands of black children, half of whom are yet to be born, will enter the classroom with a badge of inferiority -- their minority status. No matter how hard a minority child works, her public school will see her as being in a low-expectation group until 2041, and that will undermine her education. Countless education studies and experiments have confirmed the obvious fact that expectation affects outcome. It affects not only educators, but also students themselves. ("A sense of inferiority affects the motivation of a child to learn." -- *Brown v. Board of Education*, 1954)

D.C.'s practice of racial discrimination in setting academic achievement goals allows it to practice racial discrimination in instruction. Today, most instruction in

classrooms with predominately black students is below grade level. This is proven by the simple fact that black students are given passing grades (and diplomas) but badly fail externally written grade-level tests. The passing grades reflect student mastery of the material covered in class; the failure on the standardized test proves that the material covered in class was not at grade level.

If the Office of Civil Rights were to disallow D.C.'s racially discriminatory academic achievement goals, then D.C. school officials would have to make grade-level instruction available in every public-school classroom, not just in classrooms with a significant number of white students.

The harm done by the racial discrimination in academic achievement goals and by the racial discrimination in instruction is ongoing. Please note that my discrimination complaint is about each of these forms of racial discrimination.

ESSA

D.C. education authorities have misused the Every Student Succeeds Act to set ridiculously low academic achievement goals for black students, not to help black students but to minimize the chance that the authorities will face consequences for failing to educate black students. This maneuver amounts to gross racial discrimination, and the Office of Civil Rights must not condone it.

ESSA anticipates and forbids its misuse, and does so by requiring that academic achievement goals be "ambitious." [3] It would be scandalous if the Office of Civil Rights accepted as ambitious a plan that dooms black children who have not even been born yet to go through their entire K-12 education in schools that have lower academic achievement goals for them than for their white classmates.

ESSA does not trump civil rights laws, and the Office of Civil Rights must not allow D.C. authorities to use it as a cover for racial discrimination in public schools.

Alternative to academic racial profiling

If D.C. education officials really wanted to eliminate the racial achievement gap, then they would look for an alternative to their academic racial profiling, which undermines the necessary administrator incentives, teacher expectations and student morale.

That would go a long way toward settling this complaint.

The federal Every Student Succeeds Act does not require schools to have lower academic proficiency goals for minority children than for white children. If D.C. wants to set different proficiency goals for different students, then it should do so according to each student's current proficiency, which D.C. measures every year, not automatically according to the student's race. It is arguably reasonable to have a lower end-of-year proficiency expectation for a student who begins the year with extremely low proficiency -- but not simply because the student is black.

D.C. should shift to adaptive testing to pinpoint each student's proficiency as a grade level, such as "grade 4.6 in math" or "grade 9.2 in English."

D.C. could then easily come up with an education plan that is free of racial prejudice, simply by replacing grouping-by-race with grouping by actual measured proficiency. Each proficiency-level group would have its own year-end proficiency goals, which would be set to require greater growth by lower-proficiency groups. Within each proficiency group, students of all races would have exactly the same academic goals, and so there would not be racial profiling.

Achieving the proficiency-group goals would also raise the scores of racial groups by amounts that could be calculated and reported. Scores of low-performing students and racial groups would increase the most.

D.C. could set academic goals for minority students in each proficiency group -- the same as the goals for the white students in those groups. It could rate schools on how well they achieved those goals and on how equal were the gains of minority and white students within each proficiency group.

For obvious reasons, D.C. education officials wrote their odious academic racial profiling timetable in secret, without the knowledge or participation of parents. An alternative plan free of racial discrimination must be developed in full public view with public hearings and public participation.

2. Date(s) of discrimination

The discrimination is ongoing, as explained above. It is in effect every day, including 12 May 2023, the day I filed the complaint.

3. Person(s) responsible

Muriel Elizabeth Bowser, mayor of the District of Columbia, is responsible for the discriminatory practice, because D.C. has a system of mayoral control of the schools.

Christina Grant, D.C. State Superintendent of Education, is also responsible for the discriminatory practice, because the Office of the State Superintendent of Education drafted the policy and put it in place.

Eboni-Rose Thompson, president of the D.C. State Board of Education, is also responsible for the discriminatory practice, because the board approved it.

4. Why you believe the alleged conduct or act(s) constituted discrimination

Assigning a black student to a group with low academic expectations solely on the basis of the student's race, regardless of the student's academic performance, is racial discrimination.

And allowing most instruction in classrooms without a significant number of white students to be below grade level is also discrimination.

References

1. District of Columbia Consolidated State Plan dated 5 August 2022
<https://osse.dc.gov/sites/default/files/dc/sites/osse/page/content/attachments/DC%20ESSA%20Plan%20-%202022%20%28Clean%29.pdf>
2. See the plan's high-school math and English goals, appended below.
3. ESSA (2015): "Establish ambitious State-designed long-term goals"

Statewide Assessments High School, Percentage of students scoring at “Meet or Exceed expectations for the grade level or course”, Math

	All Students	Economically disadvantaged Students (At-Risk)	Students with Disabilities	English Learners	Black or African-American	Hispanic, of any race	White	Asian	American Indian, Alaskan Native	Native Hawaiian, other Pacific Islander	Two or more races
Yearly Percentage increase	3.2%	3.4%	3.5%	3.4%	3.4%	3.2%	1.5%	1.6%	3.2%	3.2%	2.0%
2014-15	8.8%	4.1%	0.7%	3.8%	4.6%	8.1%	49.1%	46.8%	8.8%	8.8%	36.0%
2015-16	12.0%	7.5%	4.2%	7.2%	8.0%	11.3%	50.6%	48.4%	12.0%	12.0%	38.0%
2016-17	15.2%	10.8%	7.7%	10.6%	11.3%	14.5%	52.1%	50.0%	15.2%	15.2%	40.1%
2017-18	18.3%	14.2%	11.2%	14.0%	14.7%	17.7%	53.6%	51.6%	18.3%	18.3%	42.1%
2018-19	21.5%	17.6%	14.8%	17.3%	18.0%	20.9%	55.1%	53.2%	21.5%	21.5%	44.2%
2019-20											
2020-21											
2021-22	24.7%	21.0%	18.3%	20.7%	21.4%	24.1%	56.6%	54.8%	24.7%	24.7%	46.2%
2022-23	27.9%	24.3%	21.8%	24.1%	24.7%	27.3%	58.1%	56.4%	27.9%	27.9%	48.3%
2023-24	31.0%	27.7%	25.3%	27.5%	28.1%	30.5%	59.6%	57.9%	31.0%	31.0%	50.3%
2024-25	34.2%	31.1%	28.8%	30.9%	31.4%	33.7%	61.1%	59.5%	34.2%	34.2%	52.3%
2025-26	37.4%	34.4%	32.3%	34.3%	34.8%	36.9%	62.6%	61.1%	37.4%	37.4%	54.4%
2026-27	40.6%	37.8%	35.8%	37.6%	38.1%	40.1%	64.1%	62.7%	40.6%	40.6%	56.4%
2027-28	43.7%	41.2%	39.3%	41.0%	41.5%	43.3%	65.6%	64.3%	43.7%	43.7%	58.5%
2028-29	46.9%	44.6%	42.9%	44.4%	44.8%	46.6%	67.1%	65.9%	46.9%	46.9%	60.5%
2029-30	50.1%	47.9%	46.4%	47.8%	48.2%	49.8%	68.5%	67.5%	50.1%	50.1%	62.5%
2030-31	53.3%	51.3%	49.9%	51.2%	51.5%	53.0%	70.0%	69.1%	53.3%	53.3%	64.6%
2031-32	56.4%	54.7%	53.4%	54.6%	54.9%	56.2%	71.5%	70.7%	56.4%	56.4%	66.6%
2032-33	59.6%	58.0%	56.9%	57.9%	58.2%	59.4%	73.0%	72.3%	59.6%	59.6%	68.7%
2033-34	62.8%	61.4%	60.4%	61.3%	61.6%	62.6%	74.5%	73.9%	62.8%	62.8%	70.7%
3034-35	66.0%	64.8%	63.9%	64.7%	64.9%	65.8%	76.0%	75.5%	66.0%	66.0%	72.7%
2035-36	69.1%	68.1%	67.4%	68.1%	68.3%	69.0%	77.5%	77.0%	69.1%	69.1%	74.8%
2036-37	72.3%	71.5%	71.0%	71.5%	71.6%	72.2%	79.0%	78.6%	72.3%	72.3%	76.8%
2037-38	75.5%	74.9%	74.5%	74.9%	75.0%	75.4%	80.5%	80.2%	75.5%	75.5%	78.9%
2038-39	78.7%	78.3%	78.0%	78.2%	78.3%	78.6%	82.0%	81.8%	78.7%	78.7%	80.9%
2039-40	81.8%	81.6%	81.5%	81.6%	81.7%	81.8%	83.5%	83.4%	81.8%	81.8%	83.0%
2040-41	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%

Statewide Assessments High School, Percentage of students scoring at “Meet or Exceed expectations for the grade level or course”, English Language Arts

	All Students	Economically disadvantaged Students (At-Risk)	Students with Disabilities	English Learners	Black or African-American	Hispanic, of any race	White	Asian	American Indian, Alaskan Native	Native Hawaiian, other Pacific Islander	Two or more races
Yearly Percentage increase	2.5%	2.9%	3.4%	3.4%	2.7%	2.5%	0.1%	1.5%	2.5%	2.5%	0.1%
2014-15	25.0%	16.5%	3.7%	4.6%	19.6%	25.5%	81.6%	47.9%	25.0%	25.0%	83.4%
2015-16	27.5%	19.4%	7.1%	8.0%	22.3%	28.0%	81.7%	49.4%	27.5%	27.5%	83.5%
2016-17	30.0%	22.2%	10.5%	11.3%	25.1%	30.5%	81.9%	51.0%	30.0%	30.0%	83.5%
2017-18	32.5%	25.1%	13.9%	14.7%	27.8%	32.9%	82.0%	52.5%	32.5%	32.5%	83.6%
2018-19	35.0%	27.9%	17.3%	18.0%	30.5%	35.4%	82.2%	54.1%	35.0%	35.0%	83.7%
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2022-23	40.0%	33.6%	24.0%	24.7%	36.0%	40.4%	82.5%	57.2%	40.0%	40.0%	83.8%
2023-24	42.5%	36.5%	27.4%	28.1%	38.7%	42.9%	82.6%	58.7%	42.5%	42.5%	83.9%
2024-25	45.0%	39.3%	30.8%	31.4%	41.4%	45.3%	82.7%	60.3%	45.0%	45.0%	83.9%
2025-26	47.5%	42.2%	34.2%	34.8%	44.1%	47.8%	82.9%	61.8%	47.5%	47.5%	84.0%
2026-27	50.0%	45.0%	37.6%	38.1%	46.9%	50.3%	83.0%	63.4%	50.0%	50.0%	84.1%
2027-28	52.5%	47.9%	41.0%	41.5%	49.6%	52.8%	83.2%	64.9%	52.5%	52.5%	84.1%
2028-29	55.0%	50.8%	44.4%	44.8%	52.3%	55.3%	83.3%	66.5%	55.0%	55.0%	84.2%
2029-30	57.5%	53.6%	47.7%	48.2%	55.0%	57.7%	83.4%	68.0%	57.5%	57.5%	84.3%
2030-31	60.0%	56.5%	51.1%	51.5%	57.8%	60.2%	83.6%	69.5%	60.0%	60.0%	84.3%
2031-32	62.5%	59.3%	54.5%	54.9%	60.5%	62.7%	83.7%	71.1%	62.5%	62.5%	84.4%
2032-33	65.0%	62.2%	57.9%	58.2%	63.2%	65.2%	83.9%	72.6%	65.0%	65.0%	84.5%
2033-34	67.5%	65.0%	61.3%	61.6%	65.9%	67.6%	84.0%	74.2%	67.5%	67.5%	84.5%
3034-35	70.0%	67.9%	64.7%	64.9%	68.7%	70.1%	84.1%	75.7%	70.0%	70.0%	84.6%
2035-36	72.5%	70.7%	68.1%	68.3%	71.4%	72.6%	84.3%	77.3%	72.5%	72.5%	84.7%
2036-37	75.0%	73.6%	71.5%	71.6%	74.1%	75.1%	84.4%	78.8%	75.0%	75.0%	84.7%
2037-38	77.5%	76.4%	74.8%	75.0%	76.8%	77.6%	84.6%	80.4%	77.5%	77.5%	84.8%
2038-39	80.0%	79.3%	78.2%	78.3%	79.6%	80.0%	84.7%	81.9%	80.0%	80.0%	84.9%
2039-40	82.5%	82.1%	81.6%	81.7%	82.3%	82.5%	84.9%	83.5%	82.5%	82.5%	84.9%
2040-41	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%	85.0%

From: Gerton, Michael <Michael.Gerton@ed.gov>
To: jeffschmidt@alumni.uci.edu
Sent: Wed, Jun 14, 2023 2:18 pm
Subject: OCR Case Nos. 11-23-1515; 11-23-4058; and 11-23-4059

Hello Mr. Schmidt,

My name is Michael Gerton, and I'm an attorney in the Office for Civil Rights (OCR) at the U.S. Department of Education. I will be handling the complaints you filed against District of Columbia Schools (OCR Case No. 11-23-1515), the Office of the State Superintendent of Education (OCR Case No. 11-23-4058), and the District of Columbia State Board of Education (OCR Case No. 11-23-4059). On a call or in response to this email, OCR will need some additional information in order to clarify the allegations in your complaints:

1. A detailed description of the discrimination.
2. Date(s) of discrimination.
3. Person(s) responsible.
4. Why you believe the alleged conduct or act(s) constituted discrimination.

Please provide the information requested above at your earliest convenience. If we do not receive the information requested above within 20 days of this email by phone or via email, your complaints will be dismissed. Let me know if you have any questions.

Thank you,
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