



# FACT SHEET

## THE RIGHT TO BE FREE FROM RACISM AT SCHOOL

August 2024

Students deserve affirming and safe school environments that celebrate them for who they are and provide them with robust opportunities to learn. Schools have a legal obligation to ensure that students are not denied opportunities, treated differently, discriminated against, or harassed because of their race, color, or national origin. Schools must have policies and procedures to prevent and address bullying and harassment based on race and must ensure equal opportunities for students of color.

It is well documented that the incidence of school-based acts of racist hatred has been on the rise across the country and across Pennsylvania.<sup>1</sup> In fact, racism is the leading motivation behind reported acts of hatred at school.<sup>2</sup> We know that the vast majority of incidents of hate at school are never reported at all,<sup>3</sup> and reports do not begin to reflect the range of abuses that students of color experience daily.

Studies also show that Black and Brown students were disproportionately impacted by the pandemic.<sup>4</sup> In addition, we know that many students have been and continue to be subject to increased trauma caused by heightened anti-Black racism, anti-Asian racism, and police brutality following the murders of Breonna Taylor, George Floyd, Walter Wallace Jr., Amir Locke, Tyre Nichols, Sonya Massey, and many others. This hate often follows students into school and undercuts their ability to access their education.

Responding to school-based incidents of hate is not enough. Rather, schools must proactively train school staff to both recognize and eliminate implicit bias. We must collectively acknowledge and confront the fact that the education system in this country was built on a foundation of systemic anti-Black racism that continues today. School communities must focus on developing an affirming and equitable school climate for students of color and commit themselves to teaching accurate historical information to ensure that students understand how racism functions so they can develop the skills needed to support antiracist behaviors and attitudes.

### HOW IS RACIAL DISCRIMINATION DEFINED?

Racial discrimination is any conduct that treats a student differently and unfavorably because of the student's race, color, ancestry, national origin, personal characteristics associated with race (such as hair texture or wearing one's hair in a natural or protective style), or association with a person of a certain race or color. Racial discrimination includes any denial of equal educational opportunities based on race.<sup>5</sup>

## IS RACIAL DISCRIMINATION ILLEGAL?

Yes. Discrimination based on race is illegal under federal and state laws as well as the U.S. Constitution and Pennsylvania's Constitution.<sup>6</sup> Racism has no place in our schools. As part of public schools' duty to ensure equal treatment, schools (as recipients of federal funding) must provide programs, services, aids, and benefits in a nondiscriminatory manner and in an environment that is free from discriminatory harassment that limits educational opportunities.

## WHAT RIGHTS AND PROTECTIONS DO STUDENTS HAVE TO BE FREE OF RACISM AT SCHOOL?

- All students have the right to be free from discrimination or mistreatment at school and at school events because of their race, skin color, national origin, or immigration status.
- Students have the right to enroll and fully participate in school, regardless of their race, ethnicity, religion, immigration status, or English language skills.<sup>7</sup>
- Students have the right to attend school without having to present a green card, visa, Social Security number, or any proof of immigration status.<sup>8</sup>
- Students have an equal right to keep their education records private, including from police, federal agents, and immigration officials.<sup>9</sup>
- Students have the right to be free from harassment based on their race, religion, or national origin, and other protected identities they may hold.
- Students have the right to learn in an environment free from racist hate, such as slurs and hate symbols, and school officials have a legal duty to prevent and stop that type of toxic school environment.
- Students have the right to wear their hair in protective styles such as braids, locs, knots, afros, and or twists.<sup>10</sup>
- Students have the right to be free from racial discrimination regarding the texture of their hair.<sup>11</sup>

## WHAT ARE SOME EXAMPLES OF ILLEGAL RACIAL DISCRIMINATION IN SCHOOL?

Racial discrimination in school can take many forms. It can involve racist comments, racist behavior, or entire school policies and practices that perpetuate racism or allow it to continue uninterrupted. Racism does not happen in isolation. It impacts and harms school communities as a whole, even when it happens between students. Some examples include:

- Qualified students are denied admission or “counseled out” of a school or class for racially discriminatory reasons – e.g., school officials underestimate a student’s academic abilities because of their race, color, national origin, English language skills, or immigration status.
- Students are denied opportunities in school, in extracurriculars, or for scholarships because of their race, color, national origin, or immigration status.
- Classmates harass a peer based on race, ancestry, or national origin.
- School officials create a climate where students are treated with disrespect or hostility because of their race, ancestry, national origin, or immigration status.
- Black students and other students of color are disciplined more often and more harshly in school, when compared with white peers who engage in the same behavior just as frequently.<sup>12</sup>

- A school disciplines a Black girl more harshly than a white girl for the same incident.<sup>13</sup>
- School officials establish a rule that bans students from wearing protective hairstyles.
- School officials ban a Black mother from campus based on racist and sexist stereotypes when she tries to advocate for her child's safety in school.<sup>14</sup>

The U.S. Department of Justice's Civil Rights Division (DOJ) has also identified ways school districts can take steps to proactively improve the administration of school discipline.<sup>15</sup>

### WHAT ARE THE FEDERAL LAWS THAT PROTECT STUDENTS FROM RACIAL DISCRIMINATION?

- As the Supreme Court explained in *Brown v. Board of Education* in 1954, racial discrimination in schools violates the Equal Protection Clause of the 14th Amendment of the United States Constitution.<sup>16</sup> It also violates similar provisions of Pennsylvania's state Constitution<sup>17</sup> as well as the Pennsylvania Human Relations Act.<sup>18</sup>
- Racial discrimination also violates Title IV of the Civil Rights Act of 1964, which prohibits discrimination in schools on the basis of race, color, religion, sex, or national origin.<sup>19</sup> Racial discrimination is also prohibited by Title VI of the Civil Rights Act of 1964, which forbids schools that receive federal financial assistance – virtually all public schools – from discriminating against students based on race, color, or national origin.<sup>20</sup> Title VI allows students and parents or guardians to assert private lawsuits based on evidence of intentional discrimination, but only federal agencies can bring a complaint alleging that a policy or action has a disparate negative impact.<sup>21</sup> The Equal Educational Opportunities Act of 1974 also prohibits, among other conduct, deliberate segregation on the basis of race, color, and national origin.<sup>22</sup>
- Racial discrimination may also take place at the intersection of other identities that a student may hold, including sex, gender identity, or sexual orientation. For example, Black girls are often illegally denied educational opportunities both because they are Black AND because they are girls. A student could bring claims under Title VI and Title IX to address both types of discrimination (race and sex).<sup>23</sup>

### WHAT ARE THE STATE-LEVEL PROTECTIONS AGAINST RACIAL AND SEX-BASED DISCRIMINATION?

The Pennsylvania Human Relations Act (PHRA) is Pennsylvania's key anti-discrimination law.<sup>24</sup> The PHRA prohibits discrimination in schools on the basis of race and sex (including gender identity and sexual orientation). It also prohibits discrimination based on disability, national origin, ancestry, family status, and religion.<sup>25</sup> The PHRA applies to students in all public schools, including charter schools and cyber charters. The PHRA's regulations have been amended to more explicitly identify conduct that constitutes illegal racial and sex-based discrimination.<sup>26</sup> These amendments are consistent with how PHRC has interpreted other laws.<sup>27</sup>

The revised regulations make clear that prohibited racial discrimination includes discrimination on the basis of "traits historically associated with race including hair texture and protective hairstyles," such as locs, braids, twists, knots, afros, and including styles created using extensions or headbands/headwraps.<sup>28</sup> This means a school cannot punish or discipline a student for expressing their racial and cultural identity by wearing a protective hairstyle or for the way their hair grows from their head. This change is an important step forward towards ending the

criminalization of Black hairstyles<sup>29</sup> and eliminating rampant race-based hair discrimination,<sup>30</sup> which uniquely harms Black girls.<sup>31</sup>

The revised regulations also recognize that prohibitions against sex-based discrimination are “comprehensive.”<sup>32</sup> All gender identities and expressions, including those held by transgender students, are protected by the PHRA. Gender expression is broadly defined as the external “appearance of one’s gender identify, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.”<sup>33</sup>

The expanded definitions of both race and sex better ensure that Pennsylvania students can proudly express their identities and culture at school without fear of discrimination. Students who face illegal race and/or sex-based discrimination at school can file a complaint with the Pennsylvania Human Relations Commission (PHRC), which enforces the PHRA and can investigate and seek to resolve complaints of discrimination.<sup>34</sup> To learn more about filing a PHRC complaint, please see ELC’s [How to File a Complaint to the PHRC](#). To learn more about students’ rights to be free from racial and sex-based discrimination, see [The Rights of LGBTQ+ and Gender-Diverse Students](#).

## DO I HAVE A RIGHT TO SELF-EXPRESSION, SUCH AS WEARING MY HAIR AS AN EXPRESSION OF MY IDENTITY, CULTURE, AND HERITAGE?

Yes. Students have a right to self-expression. While courts have generally upheld the right of school officials to require school uniforms, schools cannot use such policies to prohibit freedom of expression or to treat certain students differently.<sup>35</sup> This includes the right to wear political clothing such as a Black Lives Matter shirt. School policies that prohibit hairstyles, such as natural hair, Afros, locs, braids, twists, knots, puffs, braided extensions, weaves, and wigs, have been determined racially and sexually discriminatory, and in violation of the right to expression.<sup>36</sup>

Affirming school dress codes are necessary to ensure students can thrive. However, the law in this area is still developing in terms of particular rights that students have to cultural expression through hair and dress at school. Review your school’s dress code and consider advocating for more affirming policies. ELC advocates against racist school grooming policies that target dress-based forms of cultural expression that go beyond one’s hairstyle, such as wearing a bonnet or scarf.

## WHAT IS THE CROWN ACT?

The [CROWN Act](#) (Creating a Respectful and Open World for Natural Hair Act of 2022) seeks to extend statutory protections to hairstyles and textures, such as locs, braids, twists, and knots, to prohibit race-based discrimination in public schools and workplaces.<sup>37</sup> This proposed legislation has passed the House of Representatives but has not yet passed the Senate. However, 26 states have adopted their own CROWN acts, and many others have legislation pending.<sup>38</sup> In 2023, the Pennsylvania House passed a [CROWN Act bill](#), which will be considered by the Senate. In addition, many local jurisdictions have adopted CROWN ordinances, including Philadelphia<sup>39</sup> and Pittsburgh.<sup>40</sup>

## WHAT IS ILLEGAL RACIAL HARASSMENT? HOW DOES IT DIFFER FROM BULLYING?

Racial harassment is racially discriminatory conduct that can include speech or other behavior. Some examples of harassment include racial slurs, offensive or derogatory remarks made about a student's actual or perceived race or color, racially discriminatory dress codes or grooming policies that often target Black students, or the display of racially offensive symbols. Harassment is illegal when it occurs so frequently that it creates a hostile or offensive environment OR when it is so severe that it causes harm to the student.<sup>41</sup> Even if a behavior happens one time, it can still be considered harassment, and the school may still be required to take action after it has been reported. For example, in some severe cases, the single use of a racial slur or display of a hate symbol can make an environment hostile and require a school to intervene.<sup>42</sup>

Sometimes, this behavior is incorrectly classified as bullying by school officials or in school policies. Under state law, every local educational agency must adopt an anti-bullying policy as part of its code of student conduct that delineates disciplinary consequences for bullying, identifies appropriate school staff to receive and investigate reports of alleged bullying, and may provide for prevention, intervention, and education programs.<sup>43</sup> However, harassment is a legally distinct category of behavior and requires a higher level of response because it involves an aspect of a student's identity that is protected by law, including the right to be free from race-based discrimination. It is important to consider whether bullying behavior is actually harassment. Behavior qualifies as harassment if the offensive conduct relates to race, color, national origin/ethnicity, and/or immigration status. Harassers can be students, school staff, or even someone visiting the school, such as a student or employee from another school.

## HOW DO I FILE A COMPLAINT TO ADDRESS RACIAL HARASSMENT?

Students have the right to be free from harassment based on race. Your school has a duty to protect you from racial discrimination.

If you are being harassed based on race, color, national origin, or immigration status, you should:

- Keep notes for yourself of when and how you are harassed and by whom;
- Tell an adult at the school about it – like a teacher, a principal, or a counselor;
- Report the harassment in writing to your principal or superintendent, using any process your school may have, such as an online complaint form; and
- Follow up with your school in writing if it fails to take action.

For options to complain to external agencies, see our guide [What Can I Do If My Child is Bullied or Harassed? A Parent's Guide to Advocacy in Pennsylvania Public Schools](#).

Complaints can be filed with the U.S. Department of Justice (DOJ) to challenge a school district's failure to address racial harassment and discrimination in school. You may file a DOJ complaint on your own or with the help of a lawyer, [using this link](#).<sup>44</sup> Alternatively, you may file a complaint with the U.S. Department of Education Office of Civil Rights (OCR) [here](#).<sup>45</sup> In general, a complaint submitted to OCR must be filed within 180 days of the last act of discrimination or harassment.<sup>46</sup> Both agencies have a duty to investigate complaints and issue corrective action to remedy

violations as necessary. For example, in response to complaints that the Colorado Springs' Falcon School District 49 was not adequately responding to incidents of racial harassment and discrimination in its schools, DOJ required the district to train teachers and students to prevent and address racial harassment and discrimination, track and analyze data relating to harassment and discrimination, and implement restorative justice techniques and positive behavior interventions in addressing harassing and/or discriminatory behavior.<sup>47</sup>

### CAN I ORGANIZE OR PARTICIPATE IN A BLACK STUDENT UNION AT SCHOOL?

Yes. You have the right to meet (“assemble”) with other students about nonschool issues if your school allows other groups to meet about nonschool issues. For example, if the school allows a chess club to meet, it must also allow a Gay Straight Alliance or Black student organization to meet.<sup>48</sup>

### DO SCHOOL POLICE HAVE A RIGHT TO SEARCH ME? WHAT CAN I DO ABOUT UNFAIR POLICING?

School police officers cannot search you or your bag or your body (including your hair) without a reasonable suspicion of wrongdoing.<sup>49</sup> They cannot search you just because of your race, color, ancestry, or national origin.

It is not normal or necessary to have police officers in schools. Many schools that serve primarily students of color have police officers but not enough teachers of color or guidance counselors.<sup>50</sup> This is systemic racism. Research has shown that school police do not make schools safer.<sup>51</sup> Instead, they cause harm by physically, sexually and verbally harassing students, escalating minor incidents, and introducing students to the lifelong harm caused by contact with the criminal legal system.<sup>52</sup> Police in schools unfairly target Black girls and cause unique harm to Black girls.<sup>53</sup> For these reasons, many students, communities, and civil rights groups are currently organizing for the removal of police from schools and investment instead into resources and supports that help to make school communities safer and more supportive. You can learn more about these efforts in Pennsylvania from groups such as the [ACLU of Pennsylvania](#).

### Adultification Bias

“Adultification bias” is a well-documented form of racial discrimination that results in adults viewing Black girls as being more mature, less innocent, and in need of less nurturing than their white female counterparts, beginning at a very young age. As a result of those racially biased assumptions, staff treat normal, age-appropriate behaviors of Black girls as intentional acts of defiance and punish them in harsh and unwarranted ways, including by engaging law enforcement. Adultification bias undercuts Black girls’ education and has lifelong negative consequences. To learn more about how adultification bias affects Black girls, see [Epstein, Blake, & González, \*Girlhood Interrupted: The Erasure of Black Girls’ Childhood\*, \(2017\)](#).



## CAN I FILE A COMPLAINT TO ADDRESS RACISM IN SCHOOL DISCIPLINE?

Many school discipline policies are racially discriminatory both in their design and in their enforcement. OCR complaints (*discussed above on p. 5*) can be helpful in challenging discriminatory school discipline. For example, in the U.S. Department of Education’s Office for Civil Rights (OCR) letter to Durham Public Schools in North Carolina, OCR resolved an investigation of a complaint that the district discriminated against Black students, students with disabilities, and Black students with disabilities with respect to student discipline.<sup>54</sup> During the investigation, district administrators and school principals committed to take appropriate corrective action to address concerns of disparate discipline and any areas of possible discrimination.<sup>55</sup> The U.S. Department of Justice’s Civil Rights Division (DOJ) has also recommended ways for schools to proactively improve the administration of school discipline to address and remedy discrimination.<sup>56</sup>

## HOW CAN SCHOOL COMMUNITIES ADDRESS RACIAL DISCRIMINATION AND CREATE A MORE AFFIRMING ANTIRACIST CLIMATE?

Members of Black, Brown, Asian, and Indigenous communities have been leading efforts to build affirming school environments and culturally responsive and celebratory curriculum for decades. They have also been working to create community-based educational initiatives to expand learning opportunities. Across Pennsylvania, many students, parents, educators, advocates, and community members are now focusing on making schools antiracist and free from prejudice. These efforts are critical to ensuring a safe, supportive, respectful, and affirming learning environment for children of color. For some examples and to learn about ways to create an antiracist school climate, read ELC’s [Promising Practices to Build Antiracist and Affirming Schools](#).

## DO I HAVE A RIGHT TO BE FREE FROM SEGREGATION BASED ON RACE?

The anti-Black racism that created and sustained slavery and segregation did not go away with *Brown v. Board of Education*. Anti-Black racism was and is reflected in massive resistance to integration, violence toward Black children and school funding inequities. Within this context, court-ordered integration in the 1970s and 1980s represented a period of relative progress as it allowed much more equitable access to resources and led to significant educational gains for many students of all backgrounds. But anti-Black racism persisted, and much of the progress of integration was lost as politicians created segregated districts that gave the most resources to the wealthiest, whitest students.<sup>57</sup>

Today, schools are still extremely racially segregated — as segregated as they were in the 1960s.<sup>58</sup> It does not have to be this way. Most people are in favor of integrating schools by reorganizing school districts to prioritize diversity and equity.<sup>59</sup> We can create schools that have more Black leaders and educators; that teach accurate, relevant and representative history; that value students, care and relationships over exclusionary discipline; and that prepare students for the contemporary world through equitable access to robust educational opportunities.

Racial segregation is harmful. Federal law prohibits deliberate segregation or assignment that results in a greater degree of segregation of students among schools based on race, color, sex, or national origin.<sup>60</sup> The Department of Justice continues to enforce many desegregation orders across

the country.<sup>61</sup> For example, in *Banks & United States v. St. James Parish School Board*, the District Court for the Eastern District of Louisiana approved a 2017 [consent order](#) that revised where students went to school, created specialized academic programs to desegregate schools, revamped the district's code of conduct to ensure fairness, and took steps to diversify school staff.<sup>62</sup> State and local legal protections can also be a promising avenue for actively challenging segregation and advancing meaningfully antiracist integration.<sup>63</sup>

## WHAT IS ELC DOING?

ELC is actively committed to pursuing a variety of legal and advocacy strategies to ensure that schools can become affirming, safe, and celebratory spaces for Black and Brown students and all students of color. We strive to center racial justice in our work and to reflect and honor the diversity and expertise of the communities we serve. Our intersectional approach recognizes that identity is complex, and oppression is multifaceted.

ELC has a specific [Black Girls Education Justice Initiative](#) in both our Philadelphia and our Pittsburgh offices. The basic principles guiding our Black Girls Education Justice Initiative include:

- 1) the belief that Black girls must be fully and holistically supported, affirmed, celebrated, and provided with every opportunity to thrive at school;
- 2) specific investment of time and resources to address the educational barriers that arise for Black girls at school due to the intersections of anti-Black racism, sexism, and other forces of oppression; and
- 3) the development and implementation of unique legal strategies to address these barriers.

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The Education Law Center-PA (ELC) is a nonprofit, legal advocacy organization with offices in Philadelphia and Pittsburgh, dedicated to ensuring that all children in Pennsylvania have access to a quality public education. Through legal representation, impact litigation, community engagement, and policy advocacy, ELC advances the rights of underserved children, including children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English learners, LGBTQ students, and children experiencing homelessness.

ELC's publications provide a general statement of the law. However, each situation is different. If questions remain about how the law applies to a particular situation, contact ELC's Helpline for information and advice – visit [www.elc-pa.org/contact](http://www.elc-pa.org/contact) or call 215-238-6970 (Eastern and Central PA) or 412-258-2120 (Western PA) – or contact another attorney of your choice.



- <sup>1</sup> DEPT. OF JUSTICE F.B.I., REPORTED HATE CRIMES BETWEEN 2018 TO 2022, (2024), <https://www.justice.gov/hatecrimes/reported-hate-crimes-schools/dl?inline=#:~:text=In%202021%2C%207.2%20percent%20of,offenses%20occurred%20at%20school%20locations>. (Finding School Hate Crimes Nearly Doubled Between 2018 And 2022, With Anti-black Hate Crimes By Far The Most Common); SOUTHERN POVERTY LAW CENTER, HATE AT SCHOOL (2019), [https://www.splcenter.org/sites/default/files/tt\\_2019\\_hate\\_at\\_school\\_report\\_final\\_0.pdf](https://www.splcenter.org/sites/default/files/tt_2019_hate_at_school_report_final_0.pdf) (describing "a surge of incidents involving racial slurs and symbols, bigotry and the harassment of minority children in the nation's schools.").
- <sup>2</sup> *Id.* at 5.
- <sup>3</sup> *Id.*
- <sup>4</sup> BLACK EDUCATION RESEARCH COLLECTIVE, TEACHERS COLLEGE, COLUMBIA UNIVERSITY, BLACK EDUCATION IN THE WAKE OF COVID-19 & SYSTEMIC RACISM (2021), <https://static1.squarespace.com/static/61b4d4c2fbc7800818a94159/t/62ae17eb4a995d7c1e121702/1655576560845/BE+RC+COVID+Report+2021.pdf> ("Focus group participants...spoke about how a legacy of systemic racism has led to exacerbated and intersecting impacts in terms of disproportionate exposure to COVID-19, loss of loved ones, mental health issues, financial burdens, education challenges, and police violence"); Emily Oster et al., *Disparities in Learning Mode Access Among K-12 Students During the COVID-19 Pandemic, by Race/Ethnicity, Geography, and Grade Level – United States, September 2020-April 2021*, 70 CDC MMWR, 953-958 (2021), [https://www.cdc.gov/mmwr/volumes/70/wr/mm7026e2.htm?s\\_cid=mm7026e2\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7026e2.htm?s_cid=mm7026e2_w); Maddie Hanna & Kristen A. Graham, Pa. and N.J. Racial Gap in Access to In-Person Learning Last Year Was Among the Worst in the Nation, *New Report Says*, THE PHILADELPHIA INQUIRER (July 2, 2021), <https://www.inquirer.com/news/cdc-report-racial-disparity-school-access-pennsylvania-new-jersey-20210702.html>.
- <sup>5</sup> *Types Of Educational Opportunities Discrimination*, U.S. DEPARTMENT OF JUSTICE CIVIL RIGHTS DIVISION, <https://www.justice.gov/crt/types-educational-opportunities-discrimination>, (last visited Aug. 20, 2024); see also 20 U.S.C. § 1703.
- <sup>6</sup> 42 U.S.C. 2000d et seq.; 43 PA. STAT. ANN. §§ 951–963; Pennsylvania Fair Educational Opportunities Act, 24 PA. STAT. ANN. §§ 5001–5010; U.S. Const. amend. XIV; Pa. Const. art. I, § 29.
- <sup>7</sup> Equal Educational Opportunities Act, 20 U.S.C. § 1703.
- <sup>8</sup> *Plyler v. Doe*, 457 U.S. 202 (1982).
- <sup>9</sup> The Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232(g); 34 C.F.R. § 99. (These laws prevent schools from releasing students' education records, including information about immigration status, except in exceptional circumstances. A school may only disclose information to ICE officials with the consent of a parent or student (if 18 or older) or if necessary to comply with a judicial order or a subpoena signed by a judge. If a school receives an administrative subpoena, school officials can still seek review by legal counsel and could potentially challenge the reasonableness of the subpoena).
- <sup>10</sup> Pennsylvania Human Relations Act, 43 Pa. Stat. Ann. § 953.; See Protected Classes Under the PHRA and PFEOA, Regulation #52-13, at 2 (adopted Dec. 8, 2022) (to be codified at 16 Pa. Code ch. 41.201-41.207), <https://www.irrc.state.pa.us/regulations/RegSrchsRslts.cfm?ID=3350>.
- <sup>11</sup> *Id.*
- <sup>12</sup> *E.g.*, OCR's investigation of a school district in California found a pattern of harsher and more frequent disciplinary actions across types of discipline, schools, and grade levels for Black students than their white peers, resulting in significantly greater lost learning time for Black students. See Catherine Lhamon, Assistant Sec'y for Civil Rights, Office for Civil Rights, U.S. Dep't of Educ., Dear Colleague Letter: Resource on Confronting Racial Discrimination in Student Discipline (May 26, 2023). See also U.S. Dep't of Educ., OCR, Letter to Elvin Momon, Superintendent, Victor Valley Union High School District (August 16, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09145003-a.pdf>; U.S. Dep't of Educ., OCR, Resolution Agreement with Victor Valley Union High School District (August 15, 2022), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/09145003-b.pdf>.
- <sup>13</sup> "DOJ found that the district issued harsher disciplinary penalties for Black students than their white peers for similar offenses, even when the students were close in age, had similar records of prior misconduct, and narrative descriptions of the events indicated that the conduct was comparable in severity." See *Id.* at 4. See also Notice of Findings Letter, United States and the Davis School District (Sept. 15, 2021), <https://www.justice.gov/crt/case-document/file/1443736/download>.
- <sup>14</sup> Parents have the right to participate in their child's education. However, many schools or districts have a policy or practice of banning parents from their child's school building indefinitely in response to a caregiver's alleged "threatening or unsafe behavior." ELC has seen caregivers retaliated against and banned for advocating on behalf of their children or challenging unfair and illegal conditions in their children's schools. Black female caregivers are the most impacted by this practice due to racist stereotypes that Black women are dangerous and criminal. To learn more,

check out this article by restorative justice scholar Thalia González and ELC attorney Paige Joki, [Discipline Outside the School House Doors: Anti-Black Racism and the Exclusion of Black Caregivers](#), and the related Dec. 2022 [podcast](#).

<sup>15</sup> See Catherine Lhamon, Assistant Sec’y for Civil Rights, Off. for Civil Rights, U.S. Dep’t of Educ., *Dear Colleague Letter: Resource on Confronting Racial Discrimination in Student Discipline* (May 26, 2023).

<sup>16</sup> 347 U.S. 483 (1954).

<sup>17</sup> The Pennsylvania Constitution builds on the 14th Amendment through Article I, Sections 26 and 28 and Article VIII, Section 1. These provisions have been interpreted to provide an equivalent or greater level of equality than the minimum guaranteed by the United States Constitution. See *Kramer v. W.C.A.B. (Rite Aid Corp.)*, 584 Pa. 309, 883 A.2d 518 (2005); *Love v. Borough of Stroudsburg*, 528 Pa. 320, 597 A.2d 1137 (1991); *Pocono Mountain Charter Sch. v. Pocono Mountain Sch. Dist.*, 908 F. Supp. 2d 597 (M.D. Pa. 2012).

<sup>18</sup> The Pennsylvania Human Relations Act (PHRA) prohibits discrimination because of a current student’s race, color, sex, religion, ancestry, national origin. See 43 PA. STAT. ANN. §§ 951–963; see also Pennsylvania Fair Educational Opportunities Act, 24 PA. STAT. ANN. §§ 5001–5010; 16 PA. CODE § 47.41 (delineating unlawful discriminatory practices).

<sup>19</sup> 42 U.S.C. § 2000c-6(a).

<sup>20</sup> 42 U.S.C. § 2000d.

<sup>21</sup> *Alexander v. Sandoval*, 532 U.S. 275 (2001).

<sup>22</sup> Equal Educational Opportunities Act, 20 U.S.C. § 1703.

<sup>23</sup> Title IX of the Education Amendments of 1972 is identical to Title VI but applies to sex-based discrimination. “Sex” has been interpreted to include discrimination on the basis of sex, gender and gender identity, and sexual orientation. See, e.g., *Bostock v. Clayton County*, 590 U.S. 644, 140 S.Ct. 1731 (2020) (holding that dismissal of an employee for being gay or transgender is sex-based discrimination under Title VII); *Grimm v. Gloucester Cnty. Sch. Bd.*, 972 F.3d 586 (4th Cir. 2020), as amended (Aug. 28, 2020) (finding bathroom policy that prevented transgender male student from using boys’ bathroom violated Title IX and Equal Protection Clause); PENNSYLVANIA HUMAN RELATIONS COMMISSION, GUIDANCE ON DISCRIMINATION ON THE BASIS OF SEX UNDER THE PENNSYLVANIA HUMAN RELATIONS ACT 3 (Aug. 2, 2018), <https://www.phrc.pa.gov/AboutUs/Documents/APPROVED%20Sex%20Discrimination%20Guidance%20PHRA.pdf> (noting that prohibitions contained in the PHRA against discrimination on the basis of sex prohibit discrimination on the basis of sex assigned at birth, sexual orientation, transgender identity, gender transition, gender identity, and gender expression).

<sup>24</sup> Pennsylvania Human Relations Act, 43 Pa. Stat. Ann. § 953.

<sup>25</sup> *Id.*; *id.* § 954(l).

<sup>26</sup> Protected Classes Under the PHRA and PFEPA, Regulation #52-13, at 2 (adopted Dec. 8, 2022) (to be codified at 16 Pa. Code ch. 41.201-41.207), <https://www.irrc.state.pa.us/regulations/RegSrchRslts.cfm?ID=3350>.

<sup>27</sup> Desiree Chang & Ronessa Edwards, Pennsylvania Human Relations Commission, Education and Enforcement Training Presentation (June 12, 2023).

<sup>28</sup> Protected Classes Under the PHRA and PFEPA, Regulation #52-13, at 2 (adopted Dec. 8, 2022) (to be codified at 16 Pa. Code ch. 41.201-41.207), <https://www.irrc.state.pa.us/regulations/RegSrchRslts.cfm?ID=3350>; Desiree Chang & Ronessa Edwards, Pennsylvania Human Relations Commission, Education and Enforcement Training Presentation (June 12, 2023).

<sup>29</sup> Angela Tapnio, Amina Ahmetovic, Ban Alqadhi, Bernadette Costa, and Salma Abdalla, *Black Beauty in Education: Media Implications and Future Actions*, 1 UNIV. OF TORONTO LANGUAGE STUDIES UNDERGRADUATE JOURNAL (Winter, 2022), <https://jps.library.utoronto.ca/index.php/utmlsas/article/view/39220>.

<sup>30</sup> See *Natural Hair Discrimination: Frequently Asked Questions*, NAACP Legal Defense & Education Fund, <https://www.naacpldf.org/natural-hair-discrimination/> (last visited June 14, 2023) (detailing the many ways that hair discrimination uniquely targets and criminalizes Black hair).

<sup>31</sup> See Rebecca Epstein et al., Georgetown Law Center on Poverty & Inequality, *Girlhood Interrupted: The Erasure of Black Girls’ Childhood* 5 (2017), <https://genderjusticeandopportunity.georgetown.edu/wpcontent/uploads/2020/06/girlhood-interrupted.pdf> (explaining that dress codes are one example of the ways policing of Black girls’ bodies harkens back to “paradigms of Black femininity that originated in the South during the period of slavery [and] have persisted into present-day culture”).

<sup>32</sup> Protected Classes Under the PHRA and PFEPA, Regulation #52-13, at 2 (adopted Dec. 8, 2022) (to be codified at 16 Pa. Code ch. 41.201-41.207), <https://www.irrc.state.pa.us/regulations/RegSrchRslts.cfm?ID=3350>.

<sup>33</sup> *Id.*

<sup>34</sup> Pennsylvania Human Relations Act, 43 Pa. Stat. Ann. § 957(f).

<sup>35</sup> See, e.g., *Barber v. Dearborn Public Schools*, 286 F. Supp. 2d 847 (E.D. Mich. 2003) (upholding the right of student to wear a T-shirt with a picture of the U.S. president and the words “International Terrorist”); *Newsom v. Albemarle County School Board*, 354 F.3d 249 (4th Cir. 2003) (upholding the right of student to wear T-shirt supporting the National Rifle Association with an image of guns); see also *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969) (protecting students’ right to wear black armbands as antiwar protest).

<sup>36</sup> See *Arnold v. Barbers Hill Indep. Sch. Distr.*, 479 F.Supp.3d 511, 519-31 (S.D. Tx. 2020) (granting injunction to prevent enforcement of school policy requiring a Black male student to cut his locs or be prohibited from participating in regular classes and school activities). See also *Arnold Family v. Barbers Hill Independent School District*, LEGAL DEFENSE FUND, <https://www.naacpldf.org/case-issue/arnold-family-v-barbers-hill-independent-school-district/>.

<sup>37</sup> For more on the CROWN Act, see <https://www.thecrownact.com/home>.

<sup>38</sup> A map of those states can be found here: *About*, THE CROWN ACT, <https://www.thecrownact.com/about>.

<sup>39</sup> See Phila. Code. § 9-1102. [https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia\\_pa/0-0-0-278569](https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-278569).

<sup>40</sup> See 6 Pgh. Code. § 659 (relating to unlawful practices).

<https://pittsburgh.legistar.com/LegislationDetail.aspx?ID=4657946&GUID=6A9AB631-2E7D-46EE-89A6--FC104157984D&Options=Advanced&Search=&FullText=1>.

<sup>41</sup> Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed. Reg. (Mar. 10, 1994), <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>.

<sup>42</sup> “In some cases, a racially hostile environment requiring appropriate responsive action may result from a single incident that is sufficiently severe. Such incidents may include, for example, injury to persons or property or conduct threatening injury to persons or property.” Racial Incidents and Harassment Against Students at Educational Institutions, 59 Fed. Reg. (Mar. 10, 1994), <https://www2.ed.gov/about/offices/list/ocr/docs/race394.html>; see also [Content Warning: graphic examples] OFFICE FOR CIVIL RIGHTS, U.S. DEPARTMENT OF EDUCATION, TITLE VI ENFORCEMENT HIGHLIGHTS (2012), <https://www2.ed.gov/documents/press-releases/title-vi-enforcement.pdf>.

<sup>43</sup> See 24 P.S. § 13-1303.1-A; 22 PA. CODE § 12.3(c) (relating to school rules).

<sup>44</sup> *Filing a Complaint*, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/crt/filing-complaint> (last visited Aug. 20, 2024).

<sup>45</sup> *OCR Complaint Forms*, U.S. DEPARTMENT OF EDUCATION,

<https://www2.ed.gov/about/offices/list/ocr/complaintintro.html>, (last visited Aug. 20, 2024).

<sup>46</sup> *Id.*

<sup>47</sup> See Settlement Agreement Between the United States of America and the Falcon School District 49, <https://www.justice.gov/sites/default/files/crt/legacy/2014/10/21/falcon49agree.pdf>.

<sup>48</sup> See, e.g., *Straights & Gays for Equality v. Osseo Area Sch. Dist. No. 279*, 540 F.3d 911 (8th Cir. 2008) (finding that the Equal Access Act prohibited school from denying meeting of non-curricular gay equality group when other noncurricular groups were permitted to meet); *Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211 (3d Cir. 2003) (finding that school could not deny a Bible Club permission to meet during non-instructional time when other non-curricular related clubs met).

<sup>49</sup> *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (finding the search of a student generally permissible if there are reasonable grounds for suspecting the search will turn up evidence the student is violating the law or school rules and the search is no more intrusive than necessary).

<sup>50</sup> RSCH. FOR ACTION, SCHOOL POLICING IN PENNSYLVANIA, PREVALENCE AND DISPARITIES 2-3 (2020), <https://files.eric.ed.gov/fulltext/ED608042.pdf>; RSCH. FOR ACTION, THE NEED FOR MORE TEACHERS OF COLOR 11 (2022), <https://www.researchforaction.org/research-resources/k-12/the-need-for-more-teachers-of-color/>; PA. SCH. COUNSELORS ASSOC., PENNSYLVANIA SCHOOL COUNSELOR STAFFING REPORT SY 2020-2021, 12 (Feb. 2022) (available at <https://www.paschoolcounselor.org/post/psca-staffing-report>).

<sup>51</sup> PA. ADVISORY COMM. TO THE U.S. COMM’N ON CIVIL RIGHTS, DISPARATE AND PUNITIVE IMPACT OF EXCLUSIONARY PRACTICES ON STUDENTS OF COLOR, STUDENTS WITH DISABILITIES AND LGBTQ STUDENTS IN PENNSYLVANIA PUBLIC SCHOOLS 9 (2021), <https://www.usccr.gov/files/2021/04-09-Pennsylvania-Public-Schools.pdf>.

<sup>52</sup> See TYLER WHITTENBERG AND BRITANY BEAUCHESNE, ADVANCEMENT PROJECT AND ALLIANCE FOR EDUCATIONAL JUSTICE, #ASSAULTATSPRINGVALLEY: AN ANALYSIS OF POLICE VIOLENCE AGAINST BLACK AND LATINE STUDENTS IN PUBLIC SCHOOLS (2023), <https://policefreeschools.org/resources/assaultatspringvalley-2023-analysis-of-police-violence/>.

<sup>53</sup> See NATIONAL WOMEN’S LAW CENTER AND SOUTHERN POVERTY LAW CENTER, KEEP HER SAFE: CENTERING BLACK GIRLS IN SCHOOL SAFETY (2024), <https://policefreeschools.org/resources/keep-her-safe/>.

<sup>54</sup> See U.S. DEP’T OF EDUC., OCR, LETTER TO DR. PASCAL MUBENGA, SUPERINTENDENT, DURHAM PUBLIC SCHOOLS (Feb. 12, 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11131175-a.pdf>; see also U.S. DEP’T OF EDUC., OCR, RESOLUTION AGREEMENT, DURHAM PUBLIC SCHOOLS (Feb. 1, 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/investigations/more/11131175-b.pdf>.

<sup>55</sup> *Id.*

<sup>56</sup> See CATHERINE LHAMON, ASSISTANT SEC’Y FOR CIVIL RIGHTS, OFFICE FOR CIVIL RIGHTS, U.S. DEP’T OF EDUC., DEAR COLLEAGUE LETTER: RESOURCE ON CONFRONTING RACIAL DISCRIMINATION IN STUDENT DISCIPLINE (May 26, 2023).

<sup>57</sup> See 23 BILLION, EdBUILD, <https://edbuild.org/content/23-billion> (exploring the role of school district boundaries in creating school funding inequities that send vastly more resources to whiter, wealthier districts); ERICA FRANKENBERG,

JONGYEON EE, JENNIFER B. AYSUCUE & GARY ORFIELD, THE CIVIL RIGHTS PROJECT AT UCLA, HARMING OUR COMMON FUTURE (2019), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/harming-our-common-future-americas-segregated-schools-65-years-after-brown/Brown-65-050919v4-final.pdf> (analyzing contemporary school segregation); Sequoia Carrillo & Pooja Salhotra, *The U.S. student population is more diverse, but schools are still highly segregated*, NPR (July 14, 2022), <https://www.npr.org/2022/07/14/1111060299/school-segregation-report> (discussing contemporary school segregation, including the role of school district secession); Alvin Chang, *We can draw school zones to make classrooms less segregated. This is how well your district does.*, VOX (Aug 27, 2018), <https://www.vox.com/2018/1/8/16822374/school-segregation-gerrymander-map> (exploring how within-district school catchment zones are gerrymandered in many places to increase racial segregation); Sean F. Reardon, *School Segregation and Racial Academic Achievement Gaps*, 2 RUSSELL SAGE FOUNDATION JOURNAL OF THE SOCIAL SCIENCES 34 (2016), <https://www.jstor.org/stable/10.7758/rsf.2016.2.5.03?seq=2> (analyzing the effect of racial and socioeconomic segregation on educational opportunity). The inadequacy and inequity of school funding in Pennsylvania violates the state constitution. *William Penn Sch. Dist. v. Pennsylvania Dep't of Educ.*, 294 A.3d 537 (Pa. Commw. Ct. 2023).

<sup>58</sup> GOVERNMENT ACCOUNTABILITY OFFICE, K-12 EDUCATION: STUDENT POPULATION HAS SIGNIFICANTLY DIVERSIFIED, BUT MANY SCHOOLS REMAIN DIVIDED ALONG RACIAL, ETHNIC, AND ECONOMIC LINES (2022), <https://www.gao.gov/products/gao-22-104737>; UCLA CIVIL RIGHTS PROJECT, BLACK SEGREGATION MATTERS (2020), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/black-segregation-matters-school-resegregation-and-black-educational-opportunity/BLACK-SEGREGATION-MATTERS-final-121820.pdf>.

<sup>59</sup> See BROWN'S PROMISE, BUILDING A CASE FOR INTEGRATED, WELL-RESOURCED SCHOOLS (2024) (citing Lake Research Partners survey of 1000 adults nationwide, conducted 10/27/23-11/3/23; YouGov survey of 1,051 voters, conducted 5/24/23-5/26-23), <https://drive.google.com/file/d/1vjBIPKsAiG4hMj0j-rECu37VHOLMf73J/view>.

<sup>60</sup> 20 U.S.C. § 1703(a)-(e).

<sup>61</sup> For DOJ Educational Opportunities Cases, see <https://www.justice.gov/crt/educational-opportunities-cases#race>.

<sup>62</sup> *Banks & United States v. St. James Parish School Board - Consent Order*, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/crt/case-document/banks-and-united-states-vs-st-james-parish-school-board-consent-order>.

<sup>63</sup> See, e.g., *IntegrateNYC, Inc. v. State*, No. 1230, 2024 WL 1916649 (N.Y. App. Div. May 2, 2024), [https://publiccounsel.org/wp-content/uploads/2021/12/2022\\_02719\\_IntegrateNYC\\_Inc\\_et\\_al\\_v\\_IntegrateNYC\\_Inc\\_et\\_al\\_DECISION\\_AND\\_ORDER\\_42.pdf](https://publiccounsel.org/wp-content/uploads/2021/12/2022_02719_IntegrateNYC_Inc_et_al_v_IntegrateNYC_Inc_et_al_DECISION_AND_ORDER_42.pdf); *Latino Action Network v. State*, No. L-1076-18 (N.J. Sup. Ct. Oct. 6, 2023), <https://newjerseymonitor.com/wp-content/uploads/2023/10/10-6-23-Latino-Action-Network-v.-NJ-decision.pdf>.