



July 08, 2025

United States Senate
Washington, D.C. 20510

RE: Opposition to the Nomination of Kimberly Richey for Assistant Secretary for Civil Rights, U.S. Department of Education

Dear Senator:

On behalf of the Lawyers' Committee for Civil Rights Under Law, we urge you to oppose the nomination of Kimberly Richey to serve as Assistant Secretary for Civil Rights in the U.S. Department of Education.

The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to mobilize the nation's leading lawyers as agents for change in the Civil Rights Movement. Today, the Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have the voice, opportunity, and power to make the promises of our democracy real. Our civil rights mission and our historical work of ensuring equal educational opportunity in schools and colleges for all students make us uniquely qualified to offer our recommendation on the nomination for the next leader of the U.S. Department of Education's Office for Civil Rights (OCR).

The importance of OCR cannot be understated. Education is one of the most powerful engines of opportunity in America. But for much of this nation's history, Black students and students of color were locked out of opportunities for education and the promises it offered. Amid massive resistance to *Brown v. Board of Education* by state legislatures and school districts and in response to a global movement for civil rights, Congress passed vital legislation that ushered in decades of progress towards justice and equal opportunities in school communities and on college campuses across the country. OCR serves as a bulwark from backsliding to the Jim Crow-era by enforcing these nondiscrimination statutes in the nation's schools where civil rights violations—left unchecked—can inflict generational harm.

Today, despite this progress, OCR's work to address inequities and discrimination remains critical. Black students and other historically marginalized students continue to face a phalanx of barriers to equal opportunities: the resegregation of the nation's public schools; a regressing legal landscape making higher education less accessible; stubborn racially disproportionate school discipline; the perpetual underfunding of historically Black colleges; the inequitable distribution



of resources; and a growing cacophony of hate and extremism hell bent on turning back the clock on racial justice.¹

During her prior service in the Department during the first Trump administration, Ms. Richey participated in the rollback of critical protections for LGBTQ+ students, students of color, and students with disabilities. Her leadership contributed to the rescission of critical guidance on school discipline, which had provided helpful direction to states and school districts on reducing exclusionary practices that disproportionately affect Black and Brown students.²

More recently, she authored a report that sharply criticized OCR's school discipline guidance and its use of disparate impact to investigate and remedy racial disparities.³ In doing so, she minimized the deleterious impact of exclusionary discipline, particularly for students of color and students with disabilities who have disproportionately experienced its consequences. Even more concerning, she suggested that school officials take a colorblind approach to remedying racial discrimination in school discipline, a perspective with no basis in law or reality. It is a familiar shell game for policymakers who cloak themselves in the virtues of equality, while opposing legal race-conscious means to address pernicious racial inequalities.

First, let us be clear: racial disproportionality in school discipline is not simply fodder for academic journals or legal debates. Black students are 3.5 times more likely to be suspended or expelled than their white peers for the same behaviors.⁴ Students with disabilities, Indigenous students, and LGBTQ+ students are also disproportionately targeted by exclusionary discipline policies that remove them from the classroom and funnel them into the school-to-prison pipeline.⁵ These “gulf-sized, race-based gaps” are well-documented, persistent, and devastating.⁶

¹ Journal of Blacks in Higher Education. (2025, January 7). School Segregation is Widening Racial Achievement Gaps in U.S. Public Schools. The Journal of Blacks in Higher Education. <https://jbhe.com/2025/01/school-segregation-is-widening-racial-achievement-gaps-in-u-s-public-schools/>; Totenberg, N. (2023, June 29). Supreme Court guts affirmative action, effectively ending race-conscious admissions. NPR. <https://www.npr.org/2023/06/29/1181138066/affirmative-action-supreme-court-decision>; Liu, J. (2023, January 30). Disciplinary referrals, teachers, and the sources of racial disciplinary disproportionalities. Brookings. <https://www.brookings.edu/articles/disciplinary-referrals-teachers-and-the-sources-of-racial-disciplinary-disproportionalities/>; Knott, K. (2023, September 20). States underfunded Black land grants by \$13B over 30 years. Inside Higher Ed. <https://www.insidehighered.com/news/government/2023/09/20/states-underfunded-black-land-grants-13b-over-30-years>; Mervosh, S. (2019, February 27). How Much Wealthier Are White School Districts Than Nonwhite Ones? \$23 Billion, Report Says. New York Times. <https://www.nytimes.com/2019/02/27/education/school-districts-funding-white-minorities.html>; Southern Poverty Law Center. (2025, May 22). SPLC report finds Hard-Right Groups influencing our democracy. <https://www.splcenter.org/presscenter/splc-releases-2024-year-hate-extremism-report/>.

² Walsh, M. (2018, July 17). Trump rescinds Obama-Era guidance on diversity at schools. Education Week. <https://www.edweek.org/policy-politics/trump-rescinds-obama-era-guidance-on-diversity-at-schools/2018/07>.

³ Richey, K. (2021). Enforcing Disciplinary Leniency: How the Office for Civil Rights Dictated School Discipline Policy and How It Could Again. American Enterprise Institute. <https://files.eric.ed.gov/fulltext/ED616646.pdf>.

⁴ Darling-Hammond, S., & Ho, E. (2024). No Matter How You Slice It, Black Students Are Punished More: The Persistence and Pervasiveness of Discipline Disparities. AERA Open, 10. <https://doi.org/10.1177/23328584241293411>.

⁵ Leung-Gagné, M., McCombs, J., Scott, C., & Losen, D (2022). Pushed Out: Trends and Disparities in Out-of-School Suspension. Learning Policy Institute. <https://files.eric.ed.gov/fulltext/ED626581.pdf>

⁶ U.S. Government Accountability Office. (2018). GAO-18-258: K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities (GAO Publication No. 18-258). <https://www.gao.gov/assets/gao-18-258.pdf>



Second, disparate impact is a long-established and lawful means of identifying and addressing discrimination. The Supreme Court first recognized disparate impact as a form of discrimination in 1971 and has since repeatedly upheld cases brought under the legal standard. It has been utilized for decades to enforce civil rights protections for individuals who are harmed by policies that appear neutral on their face but in effect erect barriers to opportunity for people from certain groups. In education, disparate impact has long been an important tool for civil rights enforcement relating to disproportionate discipline, access to resources, over and under representation of students of color in special education, and many other areas. Ms. Richey's seeming categorical rejection of this essential framework signals an intent to double down on the Trump administration's attempts to weaken the very means OCR uses to fulfill its mandate.⁷

Furthermore, while her views on disparate impact alone should be disqualifying, her willingness to join this Administration's crusade to make participating in school intolerable for LGBTQ+ students and especially transgender students is extremely disconcerting.⁸ Having litigated *SFFA v. Harvard*, we are wise to schemes that co-opt the language of fairness in service of exclusion. We support the full inclusion and protection of transgender youth, including access to school facilities and extracurricular activities because all students deserve safe, healthy, and diverse learning environments.⁹

Lastly, we would be remiss if we did not acknowledge that Ms. Richey's nomination is pending amid the Trump administration's systematic disregard for civil rights across American society, not just in education. From lawless deportations and family separations at the border, to the impoundment of Congressionally authorized funds to the unprecedented deployment of military force against peaceful protesters exercising their First Amendment rights, the Administration has repeatedly demonstrated a willingness to ignore foundational legal protections in pursuit of its ideological goals.¹⁰ Moreover, in just a few short months into its term, this Administration's attempts to weaponize what remains of the civil rights enforcement infrastructure to undermine

⁷ Green, E. (2025, May 9). Trump Seeks to Strip Away Legal Tool Key to Civil Rights Enforcement. New York Times. <https://www.nytimes.com/2025/05/09/us/politics/trump-civil-rights.html>

⁸ Alonso, J. (2025, June 6). Senate Dems Grill Trump's pick to lead civil rights Office. Inside Higher Ed | <https://www.insidehighered.com/news/diversity/sex-gender/2025/06/06/senate-dems-grill-trumps-pick-lead-civil-rights-office>

⁹ Lawyers' Committee for Civil Rights Under Law. (2021, June 2). Full Inclusion of Transgender Students in Schools is a Civil Right, Open Letter Demands Rejection of Bigotry. <https://www.lawyerscommittee.org/full-inclusion-of-transgender-students-in-schools-is-a-civil-right-open-letter-demands-rejection-of-bigotry/>.

¹⁰ Serwer, A. (2025, April 8). A 'Path of perfect lawlessness.' The Atlantic. <https://www.theatlantic.com/ideas/archive/2025/04/deportations-trump-supreme-court/682329/>; Romm, T. (2025, May 25). Trump Administration Wrongly Impounded Infrastructure Aid, Watchdog Finds. New York Times. <https://www.nytimes.com/2025/05/22/us/politics/trump-federal-funds-gao.html>; Jouvenal, J. and Horten, A. (2025, June 8). Trump charts new territory in bypassing Newsom to deploy National Guard. Washington Post. <https://www.washingtonpost.com/national-security/2025/06/08/trump-national-guard-la-protests-law/>; Sanger, D., Cooper, H., Schmitt, E., Rosenhall, L. (2025, June 9). Trump Administration More Than Doubles Federal Deployments to Los Angeles. New York Times. <https://www.nytimes.com/2025/06/09/us/politics/trump-pentagon-marines-protests.html>.



efforts to promote diversity, equity and inclusion have wreaked havoc in classrooms and campus communities across the country.¹¹

This is not the time to defund OCR, shutter its regional offices, or pawn off its responsibilities to the states. Nor is it time to confirm a nominee to lead OCR who has demonstrated indifference to racial disparities and aversion to key tools and strategies of civil rights enforcement. Nominating Ms. Richey to lead the Office for Civil Rights offers little assurance to those of us who want to restore vigorous enforcement of nondiscrimination statutes and advance racial equity.

It is essential that OCR be led by someone with a steadfast commitment to protecting the civil rights of all students – a real champion for equal opportunity. Ms. Richey's record, her publications, and her confirmation hearing cast serious doubt on her ability to adequately serve in this role.

Thank you for considering our opposition to the nomination of Kimberly Richey for Assistant Secretary for Civil Rights in the U.S. Department of Education. We urge the Senate to reject her nomination. We welcome the opportunity to discuss her nomination with your office further; if you have any questions or concerns, please contact Ernest Bihm, Program Manager, Educational Opportunities Project at ebihm@lawyerscommittee.org or Shatorah Roberson, Senior Policy Counsel at sroberson@lawyerscommittee.org.

Sincerely,

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¹¹ Schmidt, M. and Bender, M. (2025, May 22). Trump Administration Says It Is Halting Harvard's Ability to Enroll International Students. New York Times. <https://www.nytimes.com/2025/05/22/us/politics/trump-harvard-international-students.html>; Oweremohle, S. (2025, May 8). Trump's diversity purge freezes hundreds of millions in medical research at universities across the country. CNN. <https://amp.cnn.com/cnn/2025/05/08/politics/universities-medical-research-funding-frozen-trump-diversity-purge>; Mehta, J. (2025, April 17). With federal funding on the line, school leaders weigh Trump DEI order. NPR. <https://www.npr.org/2025/04/17/nx-s1-5361196/trump-dei-school-leaders-response>.