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Catherine E. Lhamon
Assistant Secretary for Civil Rights
Rikku Singla
Deputy Assistant Secretary for Policy
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue SW
Washington DC 20202

CC: Kristen Clarke
Assistant Attorney General for Civil Rights
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington DC 20530

**Re: Urgent Need for Federal Civil Rights Guidance on
Closing Neighborhood Public Schools**

Assistant Secretary Lhamon and Deputy Assistant Secretary Singla:

Thank you for hosting the listening session with U.S. Department of Education Office for Civil Rights (“OCR”) staff on May 23, 2024. Our organizations, as well as our community partners and allies representing school staff unions, were grateful for the opportunity to discuss the urgent issue of public school closures, the discriminatory intent and harmful impact of these closures, and the pressing need for clear federal guidance on this issue.¹

On the heels of honoring the 70th anniversary of *Brown v. Board of Education*, it is important to note the historical racial context of public school closures. During the massive resistance to the *Brown* decision, school districts closed many public schools in majority Black communities and 100,000 Black educators lost their jobs.² In some cases, entire school districts closed rather than integrate their schools.³ As we shared last week, we are on the brink of a new wave of neighborhood public school closures precipitated by the COVID-19 pandemic, slashed public

¹ Organizations who joined the listening session include Advancement Project, the Southern Poverty Law Center, Journey for Justice Alliance (national), 412 Justice (Pittsburgh, PA), Supporters of Washington STEM School (Jefferson Parish, LA), American Muslims for Accessibility, Advocacy, and Nurturing Acceptance (New Orleans, LA), Step Up Louisiana (New Orleans, LA), Our Schools San Antonio and the San Antonio Alliance of Teachers and Support Personnel (San Antonio, TX), Communities One Project (St. Louis, MO), and Parents for Public Schools San Francisco and San Francisco Education Alliance (San Francisco, CA).

² See, e.g., Evie Blad and Ileana Najarro, *Race is a Big Factor in School Closures. What You Need to Know*. EDUCATION WEEK (Nov. 28, 2023) <https://www.edweek.org/leadership/race-is-a-big-factor-in-school-closures-what-you-need-to-know/2023/11>.

³ See, e.g., The Southern Manifesto and “Massive Resistance” to *Brown*, NAACP LDF, <https://www.naacpldf.org/brown-vs-board/southern-manifesto-massive-resistance-brown/>.

education budgets, and the continued expansion of school privatization across the country.⁴ Unfortunately, the latest national research, consistent with our observations, shows that majority Black schools are intentionally and disproportionately slated for closure.⁵ Research has for a long time shown that school districts target for closure schools in neighborhoods of color and Black and Latine students disproportionately experience school closures and the well-established harms that result.⁶

Given the repeated civil rights violations and well-established harms resulting from school closures for Black and Latine children, students with disabilities, and English Learners (“ELs”)—including unlawful racial discrimination and denial of legally entitled services—we urge OCR to exercise its civil rights enforcement authority to issue a guidance, Dear Colleague Letter, or fact sheet to clarify the requirements of the implementing regulations of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act (“Section 504”), and Title II of the Americans With Disabilities Act (“Title II”), as well as other relevant laws, as these requirements relate to decisions to take the harmful step of closing schools. Similar to OCR’s recent fact sheet on “Ensuring Meaningful Participation In Advanced Coursework And Specialized Programs For Students Who Are English Learners,”⁷ or “Race and School Programming,”⁸ such a document (“the document”) could provide guidance on the elements of a Title VI violation as it relates to school closures and then provide “Examples of the kinds of practices that could, depending on facts and circumstances, raise Title VI discrimination concerns.”⁹

Sections I and II of this letter explain our interest in the civil rights implications of school closures and the historical and policy context that has led to their resurgence today. Section III summarizes the legal framework used in California to protect the civil rights of people who are members of protected groups as school districts propose or make decisions to close public schools. Section IV provides a basic outline of an advisory document that OCR could release on the potential civil rights implications of school closures, naming specifically what the document should include and

⁴ See, e.g., Mark Lieberman, *Pressure to Close Schools Is Ramping Up. What Districts Need to Know*, EDUCATION WEEK (Jan. 24, 2024) <https://www.edweek.org/leadership/pressure-to-close-schools-is-ramping-up-what-districts-need-to-know/2024/01>.

⁵ Carrie Spector, *Majority-Black schools outpace others in school closures nationwide, Stanford analysis shows*, STANFORD GRADUATE SCHOOL OF EDUCATION (October 19, 2023) <https://ed.stanford.edu/news/majority-black-schools-outpace-others-school-closures-nationwide-stanford-analysis-shows> (2023 study of school closures nationwide found that “majority-Black schools, which make up roughly 10 percent of the overall U.S. public school population, were more than three times as likely to close as non-majority Black schools.”).

⁶ See, e.g., CHUNPING HAN ET AL., LIGHTS OFF: PRACTICE AND IMPACT OF CLOSING LOW-PERFORMING SCHOOLS, CENTER FOR RESEARCH ON EDUCATION OUTCOMES at 4 (2017), https://credo.stanford.edu/wp-content/uploads/2021/08/closure_final_volume_i.pdf (finding that “low-performing schools with a larger share of black and Hispanic students were more likely to be closed than similarly performing schools with a smaller share of disadvantaged minority students”).

⁷ See U.S. Dep’t Educ. OCR, *Ensuring Meaningful Participation In Advanced Coursework And Specialized Programs For Students Who Are English Learners* (June 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-ap-participation-el.pdf>.

⁸ See U.S. Dep’t Educ. OCR, *Race and School Programming* (Aug. 2023), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20230824.pdf>.

⁹ *Id.*



what it should not include. Finally, Section V reiterates the urgency of action on this issue and provides our contact information.

I. Who We Are

Advancement Project (“AP”) is a national racial justice organization committed to supporting communities fighting to keep their neighborhood public schools and working to ensure that our nation’s children are cared for and provided the robust, liberatory education that they deserve. For 25 years, AP has documented and pioneered efforts to end the school-to-prison pipeline and fought for true education justice in our public schools.

The Southern Poverty Law Center (“SPLC”) is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people.

II. Introduction

A new wave of closures is upon us, set off by several converging forces of divestment in neighborhood public schools: 1) the COVID-19 pandemic, which led to decreased public school enrollment;¹⁰ 2) recent U.S. Supreme Court decisions that enabled states to pass universal voucher laws that drain public education budgets; 3) gentrification, in which school districts, local governments, and developers act in concert to push low-income people out of their homes, neighborhoods, and schools, leading to decreased enrollment in historically under-resourced schools; and 4) the expiration of federal pandemic relief (ESSER) funding, which many low-wealth school districts have been relying on to balance budgets.

We at Advancement Project are informally tracking these school closures and have identified at least 65 school districts with schools slated to close before the start of the 2024–25 school year.¹¹ We have further identified at least 21 school districts undergoing “facilities utilization audits,” or “boundary studies” that typically signal plans to close multiple schools.

The phenomenon of mass school closures in Black and Latine communities is not new. As noted, school closures were part of the massive, racially-motivated resistance to *Brown*. More recently, the prior wave of school closures (“NCLB wave”), following the passage of No Child Left Behind and Race to the Top, culminated in 2012 and 2013, when 20 schools were closed in Washington, D.C., 50 schools were closed in Chicago, and 25 schools were closed in Philadelphia. A robust body of research from the NCLB wave shows that school closures are demonstrably *inequitable*—they overwhelmingly target majority Black, majority low-income schools, are harmful to students’

¹⁰ See Linda Jacobsen, *As the Pandemic Set In, Charter Schools Saw Their Highest Enrollment Growth Since 2015, 42-State Analysis Shows*, THE 74MILLION (Sept. 22, 2021), https://www.the74million.org/as-the-pandemic-set-in-charter-schools-saw-their-highest-enrollment-growth-since-2015-42-state-analysis-shows/?utm_source=The+74+Million+Newsletter&utm_campaign=df6abfd69d-EMAIL_CAMPAIGN_2022_07_27_07_47_COPY_01&utm_medium=email&utm_term=0_077b986842-df6abfd69d-177344268.

¹¹ Advancement Project staff have compiled this estimate from news alerts. As not all school closure decisions make the news, this estimate is certainly conservative.

academic outcomes and emotional well-being, and cause upheaval and strain on families.¹² Moreover, research following the NCLB wave of school closures also demonstrates that school closures lacked legitimate justification, as they rarely saved school districts money or resolved long-term financial woes.¹³

III. California as a Starting Point

California’s equity audit requirement and its Attorney General’s Guidance and investigation of proposed school closures in Oakland provide a baseline model for how OCR could approach a guidance or fact sheet on school closures. We emphasize that this model should only be considered a starting point and urge OCR to use its enforcement authority to issue stronger guidance using our outlined approach in Section IV.

California Civil Rights Laws and Education Code Section 41329—legislation introduced in response to organizing against Oakland Unified School Districts’ racially discriminatory proposal to close schools in early 2022—requires that a “school district under financial distress” conduct an “equity impact analysis” “before approving the closure or consolidation of a school of the school district.”¹⁴ The law spells out considerations that must be included in the equity audit:

- (A) The condition of a school facility.
- (B) The operating cost of a school and the associated savings resulting from a closure or consolidation.
- (C) The capacity of a school to accommodate excess pupils.
- (D) Special programs available at the schools being considered for closure or consolidation and whether those programs will be provided at the same current level at the schools to which pupils will be diverted.
- (E) Environmental factors, including, but not limited to, traffic and proximity to freeway access.
- (F) Balance of pupil demographics, including race or ethnicity, pupils with disabilities, English learners, foster youth, and homeless youth, in the schools being considered for closure or consolidation, and the resulting demographic balance of pupils after placement in other schools, in order to determine if the decision to close or consolidate will have a disproportionate impact on any particular demographic group.
- (G) Transportation needs of pupils.
- (H) Aesthetics and the opportunity for blight and negative impact on the surrounding community.
- (I) Impact on feeder school attendance patterns with the closure of any particular school and whether the closure will attenuate attendance at other schools or specialized programs as a result.

¹² See, e.g., Terrance Green, *4 Things Everyone Should Know about School Closures*, UT NEWS (Oct. 14, 2019), <https://news.utexas.edu/2019/10/14/4-things-everyone-should-know-about-school-closures/>.

¹³ See, e.g., *id.*

¹⁴ § 41329(a)(1).

The law further sets forth requirements for robust community input and feedback and school district officials’ communication to community members.¹⁵

On February 8, 2022, Oakland Unified School District (“OUSD”) proposed closing seven schools. Students, parents, and educators advocated for their schools to stay open—some even engaged in hunger strikes.¹⁶ On April 11, 2022, parents and students of schools slated for closure, represented by the ACLU of Northern California, sent a 40-page complaint to California’s Attorney General, alleging that OUSD’s proposal was out of compliance with state nondiscrimination and other state law, and resulted in a racially disparate impact on Black and Latine families.¹⁷ The complaint also provided important historical context to the school closure proposal, applicable to legal challenges to school closure decisions across the country from the NCLB-era to today.¹⁸ As would be relevant to a federal inquiry into potential civil rights violations, the complaint noted “[t]he well-documented pattern of OUSD’s anti-Black racist policies and practices demonstrate that its actions here are intentional.”¹⁹

As the complaint explained, under the metrics that school district officials most commonly use to determine which schools should be closed, the education reforms that rose in popularity in the early 2000s have stacked the deck against schools serving the highest shares of marginalized families and, as is relevant here, legally protected groups:

One of the most prominent reforms, and one that is a precipitating factor for the current economic situation the District finds itself in, is the Small Schools Initiative. . . . Through this policy, the District aimed to create ten new small, autonomous schools with between 250–500 students over a three year period. . . . Following the passage of the Small Schools Initiative agenda, the District opened nine schools over the course of three years—more than it had opened in the previous twenty years.

...

¹⁵ See § 41329(a)(2) *et seq.*

¹⁶ See Ashley McBride, *A year after Oakland educators went on hunger strike, was the protest successful?*, THE OAKLANDSIDE (Feb. 22, 2023), <https://oaklandside.org/2023/02/22/a-year-after-oakland-educators-went-on-hunger-strike-was-the-protest-successful/#:~:text=For%2018%20days%2C%20Andre%20San,of%20its%20nearly%2080%20schools.>

¹⁷ See ACLU of Northern California, *Oakland Unified School District’s school closure plan violates constitutional and statutory civil rights protections for Black students and laws guaranteeing public transparency in the operation of government agencies* (Apr. 11, 2022), https://www.aclunc.org/sites/default/files/2022.04.11_J4OS_Complaint_to_AG%20Bonta_re_OUSD_Closures.pdf.

¹⁸ See, e.g., *Mezon v. Providence Public School Department*, 24-CV-161 (JJM) (D.R.I. 2024) (complaint available at: <https://rhodeislandcurrent.com/wp-content/uploads/2024/04/Complaint-Mezon-et-al-v-Providence-School-Dept-et-al-3.pdf>); *Carly Shaeffer et al v. Atul Gupta et al.*, (petition filed in September 2023 available here: <https://wset.com/resources/pdf/9423b487-823f-4d0d-8764-ff43b0b94fe8-APPEALOFSCCHOOLBOARDDECISION.pdf>); Southern Poverty Law Center, *Title VI Complaint Re: Jefferson Parish* (April 24, 2023), https://www.splcenter.org/sites/default/files/20230424_ltr_to_ocr_doe_final.pdf.

¹⁹ *Supra* note 17.

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While the Small Schools Initiative was being implemented and receiving substantial financial support from philanthropic organizations, the District proceeded with a parallel reform introduced in 2004: Results Based Budgeting (“RBB”). . . . The impact of RBB, also known as Student Centered Funding, is that schools with lower enrollment receive less funding, which starts a downward spiral of under-resourcing schools, causing more families to leave, which causes even greater under-resourcing and lost enrollment.

The combination of the Small Schools Initiative and RBB created the perfect storm. From 2000 to 2009, the District opened 49 new schools. This proliferation was in addition to the dramatic increase of 38 new independent charter schools within the District.

. . .
In the course of the great charter school expansion, the District’s non-charter student population dropped by 45 percent. A 2018 report by In the Public Interest, *Breaking Point: The Cost of Charter Schools for Public School Districts*, estimated that “charter schools cost Oakland Unified \$57.3 million per year. That’s \$1,500 less in funding for each student that attends a neighborhood school.”

. . . The rapid increase of small schools paired with additional fiscal mismanagement and an invasive expansion of extractive charter schools exacerbated these failures by first creating small schools for the purpose of greater equity, and then watching them wither on the vine as economic pushout decimated families and as others were convinced to test the magical cure offered by charter reformers. Despite the rhetoric of equity, the implementation of RBB and the expansion of the Small Schools Initiative created the very environment which now “justifies” the shuttering of schools that serve a high concentration of Black and Brown students.

By tying school resources to enrollment in a city experiencing historic economic pushout of Black residents, the District created and implemented a tool that starved those schools of the resources needed to function. . . . Now, the District is shuttering the schools, further destabilizing the communities these initiatives were supposedly designed to serve.²⁰

In September 2022, § 41329 took effect as a safeguard against racist school closure decisions. On April 11, 2023, California’s Attorney General issued a Guidance Regarding Laws Governing School Closures and Best Practices for Implementation in California (“the Guidance” or “the

²⁰ *Id.* at 8–11.

California Guidance”).²¹ The Guidance outlines the harmful impacts that school closures have on children and families and their place in the historical context of discrimination and segregation in California’s schools²² and then advises school district officials of their legal obligations vis-à-vis school closures—those mandated by § 41329, by the California Constitution’s requirement that such policies alleviate racial segregation, and by California’s prohibitions on certain policies that result in racially disparate impacts.²³ For each requirement mandated by § 41329, the Guidance provides recommendations and examples for how a school district might comply.²⁴

In a letter dated January 29, 2024 (“the Letter” or “the Letter to OUSD”), California’s Department of Justice shared its findings from its investigation of the Oakland families’ allegations against OUSD.²⁵ The investigation concluded that the proposed closure plan not only failed to comply with § 41329, it also “would have disproportionately impacted Black and low-income elementary school students and also high-needs students with disabilities in special day classes.”²⁶ The Letter advised OUSD that if it were to attempt to close schools again, it must comply with § 41329’s requirements, but also warned that the metrics it proposed to determine which schools to close might “lead to an outcome that mirrors the February 8, 2022 Closure Decision, thereby disproportionately impacting Black students, low-income students, and potentially also students with disabilities,” which would violate California’s Equal Protection Clause and anti-discrimination mandates.²⁷

IV. Proposed Approach for OCR: Title VI Guidance, Dear Colleague Letter, or Fact Sheet

Given the fiscal crises in which many school districts find themselves and the compelling evidence that districts are disproportionately and intentionally opting to close schools serving majority-Black students, we believe that there is a compelling need for OCR to advise school district leaders on the well-established harms of school closures, the potential Title VI and other civil rights violations that they raise, and the flawed reasoning behind many common justifications, including that they have not been shown to increase equitable access to a high quality education and rarely result in meaningful, if any, cost-savings. The California Guidance and Letter to OUSD provide a useful starting point for how such a document could be structured and what it might include. We urge that the document proceed with the following sections, and outline what each section should include below.

²¹ See Cal. Off. Att. Gen., Guidance Regarding Laws Governing School Closures and Best Practices for Implementation in California (Apr. 11, 2023), <https://oag.ca.gov/system/files/media/letter-school-districts-school-closures-04112023.pdf>.

²² *Id.* at 1–2.

²³ *Id.* at 2.

²⁴ *Id.* at 13–17.

²⁵ See Cal. DOJ, Oakland Unified School District’s Legal Duty to Follow Assembly Bill 1912, Prevent Disproportionate Harm, and Alleviate Segregation as it Plans Whether to Close, Merge, or Consolidate Schools in School Year 2025-2026 (Jan. 29, 2024), https://oag.ca.gov/system/files/attachments/press-docs/CalDOJ.LettertoOaklandUnifedRePotentialClosures.1.29.24.final_.pdf.

²⁶ *Id.* at 2.

²⁷ *Id.* at 3.

a. Section I: The Harms of School Closures

The research on school closures and lived experiences of the students and families whose neighborhood schools were closed overwhelmingly shows that school closures are harmful to students and their families, not beneficial. These harms include:

- Harms to Children
 - *Socio-emotional*: Students suffer the stress of adapting to a new school and classroom and the anxiety and distress of creating new social relationships with new peers and new teachers.²⁸ These harms are exacerbated for EL students, Limited English Proficient families, and students with disabilities and their families.
 - *Academic*: Research on school closures has overwhelmingly concluded that it has a neutral or negative impact on students’ educational outcomes.²⁹ These negative outcomes are exacerbated for EL children and their families.
- Harms to Families
 - *Transportation*: Families are forced to grapple with transportation difficulties, including longer bus rides, accessibility barriers,³⁰ and exposure to violence.³¹
 - *Access to school*: Visiting school and interacting with teachers and staff becomes more difficult for families when their neighborhood school has closed and their new school is far away from home,³² and where the new school does not have the support in place to serve ELs and their families, as required by Title VI.

²⁸ See Becky Vevea, *Chicago closed 50 schools 10 years ago. What’s happened since then?*, CHALKBEAT (Jul. 25, 2023), <https://chicago.chalkbeat.org/2023/7/25/23806124/chicago-school-closings-2013-henson-elementary>; Sarah Karp, *After 10 years, Chicago school closings have left big holes, and promises unkept*, WBEZ CHICAGO (Jun. 1, 2023), <https://www.npr.org/2023/06/01/1178727834/after-10-years-chicago-school-closings-have-left-big-holes-and-promises-unkept>.

²⁹ For instance, a 2017 study of the impact of school closures in 26 states concluded that students whose schools had been closed who “attended better schools tended to make greater academic gains than did their peers from not-closed low-performing schools in the same sector, while those ending up in worse or equivalent schools had weaker academic growth than their peers in comparable low performing settings” but noted that “the academic benefit of closure is systematically constrained, as the supply of superior alternatives for closure students is limited and there are systemic access challenges such as parent information and district placement practices.” CHUNPING HAN ET AL., LIGHTS OFF: PRACTICE AND IMPACT OF CLOSING LOW-PERFORMING SCHOOLS, CENTER FOR RESEARCH ON EDUCATION OUTCOMES (2017), https://credo.stanford.edu/wp-content/uploads/2021/08/closure_final_volume_i.pdf.

³⁰ A 2022 study found “significant difference in absentee records” between students who rode the bus for more than 30 minutes to get to school and students whose bus rides were shorter. See Williamena Kwapo, *Study Links Longer School Bus Rides to Chronic Absenteeism*, EDUCATION WEEK (Jun 16, 2022), <https://www.edweek.org/leadership/study-links-longer-school-bus-rides-to-chronic-absenteeism/2022/06>.

³¹ See, e.g., CHICAGOLAND RESEARCHERS AND ADVOCATES FOR TRANSFORMATIVE EDUCATION, CREATE RESEARCH BRIEF ON SCHOOL CLOSURES (2013), <https://www.academia.edu/3095217/ResearchBriefonSchoolClosuresbyCREATE>.

³² See Monique Alexander & Vanessa A. Massaro, *School deserts: Visualizing the death of the neighborhood school*, 18 POLICY FUTURES IN EDUC., 787-805, <https://doi.org/10.1177/1478210320951063> (“Students who are not local to their school face a range of challenges in attending school and participating in extracurricular activities. It also becomes more difficult for parents to participate in school activities and build community around their children.”) (citing prior research).

- *Loss of pride and belonging*: Families lose a sense of pride and belonging if their closed school had previously been open for decades, with generations of families attending it.³³
- Harms to Communities
 - *Blight*: School closures can blight the neighborhood and decrease its desirability as a place to live.³⁴
 - *Loss of a community center, pillar, and gathering place*: School closures cause communities to lose a school that is walkable and a social center of the neighborhood and often leave neighborhoods without any school at all.³⁵
- Harms to Democratic Participation and Self-Determination
 - Communities that lose neighborhood schools lose access to a local polling location, a place to hold community meetings, and a place to get involved in a Parent Teacher Association.
 - After conducting a large-scale study of families impacted by school closures in Chicago and Philadelphia, sociologist Sally A. Nuamah concluded that “Public schools are critical pillars in enabling disenfranchised communities to feel fully human”³⁶ and experiencing school closures plays a fundamental role “in upholding or undermining the democratic citizenship of Black Americans.”³⁷

b. Section II: Racially Discriminatory School Closures & Other Civil Rights Concerns

The disparate impact of school closures has been well-documented. During the NCLB-era, schools with higher shares of Black and Latine students were more likely to be closed than those with lower shares.³⁸ A forthcoming article in the *Harvard Educational Review* confirms that over time

³³ See EVE L. EWING, GHOSTS IN THE SCHOOLYARD: RACISM AND SCHOOL CLOSINGS ON CHICAGO’S SOUTH SIDE at 127 (2018) (School closures are “much more than the loss of an interchangeable building. It can be a harbinger of things to come, the culmination of multiple generations of racism and injustice and a blatant disregard of the fundamental reality within which a community understands itself.”).

³⁴ See Kathleen Megan, *National Studies Show School Closings Often Don’t Save Much Money or Improve Student Performance*, HARFORD COURANT (Jan. 22, 2018), <https://www.courant.com/education/hc-school-closing-outcomes-20180120-story.html>.

³⁵ For instance, in San Antonio, schools closed in 2023 left some neighborhoods without any public schools. See *Across Texas, communities fight to defend public education*, LIBERATION (Oct. 14, 2023), <https://www.liberationnews.org/across-texas-communities-fight-to-defend-public-education/> (“Some neighborhoods will be left with no public schools, which may result in pushing students to charter schools.”).

³⁶ NUAMAH, *supra* at 130.

³⁷ *Id.* at 137.

³⁸ See JOURNEY FOR JUSTICE ALLIANCE, DEATH BY A THOUSAND CUTS at 1(2014), <https://search.issuelab.org/resources/18323/18323.pdf>; CHUNPING HAN ET AL., LIGHTS OFF: PRACTICE AND IMPACT OF CLOSING LOW-PERFORMING SCHOOLS, CENTER FOR RESEARCH ON EDUCATION OUTCOMES at 4 (2017), https://credo.stanford.edu/wp-content/uploads/2021/08/closure_final_volume_i.pdf (study found that “low-performing schools with a larger share of black and Hispanic students were more likely to be closed than similarly performing schools with a smaller share of disadvantaged minority students”); *Subtracting Schools from Communities*, URBAN INST. (Mar. 23, 2017), <https://www.urban.org/features/subtracting-schools-communities> (“Though black students are about 31 percent of the population in continually open urban schools, they make up 61 percent of the population in closed urban schools.”).

and nationwide, school closures have disproportionately happened to majority-Black schools.³⁹ The study’s authors found this disproportionality even when controlling for the most common justifications that school districts use to close schools—“enrollment declines” and “academic performance.”⁴⁰ Indeed, “controlling for those factors, [and even controlling for neighborhood poverty,] majority-Black schools were about 25 percent more likely to close than similarly situated schools with other demographic makeups.”⁴¹ It is important to note that the decision by school districts—most of which are led by majority-white members—to close schools that serve Black, Latine, and other neighborhoods of color, is quite intentional and deliberate, and often made without regard to the concerns of Black and Latine students and families. Decisionmakers are fully aware of the well-documented, harmful impact of school closures on Black and Latine communities, but readily ignore the harm to communities of color.

Communities facing school closures have long fought back and organized to keep their schools. In response to Chicago Public Schools’ (“CPS”) mass school closures in 2013—all in Black communities—the community of Walter H. Dyett High School in Bronzeville fought back.⁴² Teachers, students, parents, and community members “staged sit-ins” and then a hunger strike until CPS was pressured to reopen Dyett.⁴³ Advancement Project, the SPLC, and other legal organizations have repeatedly raised the alarm of the discriminatory intent and disparate impact of school closures. On behalf of local members of the Journey for Justice Alliance, Advancement Project filed Title VI complaints in Chicago, Newark, and New Orleans, based on the racially disparate impact of mass school closures.⁴⁴

More recent examples include:

Oakland, CA: The complaint challenging the OUSD school closures referenced above documented how, in 2021, the OUSD school board directed the Superintendent “to work with the [Black Student and Families Thriving Task Force] to develop an equity impact analysis of any proposed closures, mergers, or consolidations of District schools, prior to any vote on school changes pursuant to the Blueprint for Quality Schools” as part of its Reparations for Black Students Resolution. Yet in January 2022, when OUSD passed its school closure resolution, it exempted the district from this requirement, “demonstrating

³⁹ See Carrie Spector, *Majority-Black schools outpace others in school closures nationwide, Stanford analysis shows*, STANFORD GRADUATE SCHOOL OF EDUCATION (October 19, 2023) <https://ed.stanford.edu/news/majority-black-schools-outpace-others-school-closures-nationwide-stanford-analysis-shows>.

⁴⁰ Evie Blad & Ileana Najarro, *Race Is a Big Factor in School Closures. What You Need to Know*, EDUCATION WEEK (Nov. 28, 2023), <https://www.edweek.org/leadership/race-is-a-big-factor-in-school-closures-what-you-need-to-know/2023/11>.

⁴¹ *Id.*

⁴² SALLY A. NUAMAH, CLOSED FOR DEMOCRACY: HOW MASS SCHOOL CLOSURE UNDERMINES THE CITIZENSHIP OF BLACK AMERICANS at 85 (2023).

⁴³ See Valerie Strauss, *Fight in Chicago: The all-too familiar story of school closures in America’s cities*, WASHINGTON POST (Sept. 5, 2015), <https://www.washingtonpost.com/news/answer-sheet/wp/2015/09/05/fight-in-chicago-the-all-too-familiar-story-of-school-closures-in-americas-cities/>.

⁴⁴ See Journey for Justice Alliance & Advancement Project, https://advancementproject.org/wp-content/uploads/1970/01/e82f35251df1ac9eb8_3em6bhj2y.pdf (Newark); https://advancementproject.org/wp-content/uploads/1970/01/1136194b63ee20f701_z2m6b5wlu.pdf (Chicago); https://advancementproject.org/wp-content/uploads/1970/01/5923184bdf061fabb2_e4m6b5ret.pdf (New Orleans).



knowledge and intent to discriminate and fatally undermining this March 2021 equity mandate” when it proposed closing schools.⁴⁵

Denver, CO: In 2022, after the superintendent of Denver Public Schools proposed closing 19 schools—all in communities of color—Movimiento Poder, a parent and student-led organization focused on the needs of the community of southwest Denver, organized in opposition to the closure of community schools. Thanks to Movimiento Poder’s organizing, the Board first reduced the number of schools and then voted against the proposal.⁴⁶ In a letter to the Denver school board in advance of the vote, Movimiento Poder and Advancement Project documented that the district singled out declining Latine birthrates as the most pressing concern—rather than focusing on enrollment challenges in the district as a whole and how to address those. As they explained:

The Colorado constitution also requires that no ‘distinction or classification of pupils be made on account of race or color’ (a principle mirrored federally under the equal protection clause and Title VI of the Civil Rights Act), but that is precisely the case when schools overwhelmingly serving students of color are targeted for closure. It is telling that Supt. Marrero acknowledged how ‘glaring’ it was that the schools originally proposed for closures predominately impacted Black and Latinx students—one could assume that Palmer Elementary, the only school of the 10 schools that had a majority of white students—was added to the list precisely to avoid accusations of racial impropriety.

Jefferson Parish, LA: In April 2023, SPLC filed a Title VI complaint following the abrupt decision by the Jefferson Parish School Board in Louisiana—a district under Desegregation Order and a resulting settlement until 2014—to close the historically Black Washington Elementary School, based on disparate impact and also failure to provide language access to non-English speaking families during the process.⁴⁷ This abrupt decision—rendered in less than a month—intentionally deprived Black and Latine communities sufficient time to organize to speak against closing this historic school.

⁴⁵ *Supra* note 17.

⁴⁶ Despite this, the Board held a new vote the following day and voted to close three schools. See Melanie Asmar, Denver board votes to close three small schools one day after recommendation made public, Chalkbeat (Mar. 9, 2023), <https://www.chalkbeat.org/colorado/2023/3/9/23632625/school-closure-vote-denver-board-fairview-msla-denver-discovery-school/>.

⁴⁷ Title VI Complaint against Jefferson Parish School Board (Apr. 24, 2023), https://www.splcenter.org/sites/default/files/20230424_ltr_to_ocr_doe_final.pdf. See also Southern Poverty Law Center, *Groups Fight to Preserve Legacy of Historic Louisiana School*, <https://www.youtube.com/watch?v=aRP8Qt0fmo0&t=1s>.

Recent lawsuits challenging school closures have also raised other potential civil rights violations, including the denial of equal educational opportunities to EL students and families⁴⁸ and violations of judicially-mandated consent decrees.⁴⁹

In this Section, OCR should provide guidance to school district leaders on the analyses it uses to determine if racial discrimination has occurred. This can include an analysis to determine if the district has engaged in a racially discriminatory application of facially neutral policies, and may evaluate factors including racial impact, the historical background of the decision, the specific sequence of events leading up to the challenged decision, departures from normal procedures, and legislative or administrative history.⁵⁰ OCR may also examine safeguards to prevent intentional discrimination, including ensuring that concerns raised by all families, regardless of race, are adequately heard and addressed—not flagrantly ignored—by relevant decisionmakers and school board members; identifying any prior history of intentional discrimination in which the district has engaged, including current and previous litigation alleging intent to discriminate based on race; any history of racially discriminatory public comments attributable to past or present serving district officials; any departure from established procedures during the closure process; and a required analysis of the effects of any previous schools closures on Black and Latine in the district.

OCR should also guide districts to conduct a data analysis to uncover any racially disparate impact of a proposed plan to close schools, whether the closures are educationally necessary, and whether there are less discriminatory alternatives. Further, disparate impact evidence—for example, statistics demonstrating a clear pattern of discriminatory effect—can be probative of discriminatory intent.

In particular, OCR’s document should focus on:

- 1) Denial of Opportunity: the document could summarize the well-established harms that school closures have on students and families.
- 2) Racial Discrimination: the document could summarize national research on the vastly disproportionate impact of school closures on Black students and other students of color, particularly Latine students and ELs, and depending on the context, the factors OCR may consider to determine if the school district operated with a racially discriminatory purpose in deciding to close schools.
- 3) Legitimate Justifications: given the extensive documented harms of school closures, they do not serve an educationally legitimate purpose. However, given that, as explained more fully below, school districts typically provide ostensibly neutral justifications for school closure decisions, the document should further review common justifications that would be considered pretextual.

⁴⁸ See, e.g., *Mezon v. Providence Public School Department*, 24-CV-161 (JJM) (D.R.I 2024) (complaint available at: <https://rhodeislandcurrent.com/wp-content/uploads/2024/04/Complaint-Mezon-et-al-v-Providence-School-Dept-et-al-3.pdf>).

⁴⁹ See, e.g., *Carly Shaeffer et al v. Atul Gupta et al.*, (petition filed in September 2023 available at: <https://wset.com/resources/pdf/9423b487-823f-4d0d-8764-ff43b0b94fe8-APPEALOFSCCHOOLBOARDDECISION.pdf>).

⁵⁰ See, e.g., *Village of Arlington Heights v. Metro Housing Development Corp.*, 429 U.S. 252, 266-68 (1977).

- 4) **Less Discriminatory Alternatives:** the document should provide school districts with less discriminatory alternatives to closing schools and provide alternative measures to address budget shortfalls and uneven resources and enrollment in school districts.

In addition to analyzing intentional or disparate impact discrimination based on race, the OCR document should weigh potential Title VI violations based on national origin—particularly as it pertains to districts’ obligations to ensure meaningful communication with EL students and families⁵¹ when making decisions to close schools—as well as potential violations of Section 504 or Title II for students with disabilities.

c. Section III: Analysis of and Guidance on Common Justifications for Closures

In this section, OCR should provide districts with useful analysis to counteract the common and flawed justifications for school closures, including that they are necessary, equitable, and cost-efficient—in short, to properly assess whether potential closures are educationally sound—in addition to warning districts of the ways that they risk violating anti-discrimination laws.

i. Guidance to Include in this Section

Advise districts and state departments of education to conduct an analysis of whether a closure or consolidation would have a disproportionate impact on any particular demographic group. This should include disproportionate impacts on groups protected by the laws OCR enforces, e.g., racial sub-groups, EL children, children with disabilities, and also may include children living in poverty. Additionally, states should provide supplemental funds to schools experiencing declining enrollment, require districts to conduct equity audits before closing schools, and train superintendents and school boards on this document. In districts that have experienced previous school closures, require an analysis of the impact on Black and Latine communities of those closures. If there is evidence of discriminatory impact, there should be a presumption against closing schools in Black and Latine neighborhoods unless there are exigent or exceptional circumstances.

Advise districts and state departments of education to conduct an analysis of whether there are less discriminatory alternatives to a closure or consolidation. Such an analysis should interrogate a school district’s justifications for closing certain schools and assess whether there are other, less discriminatory alternatives. For instance, if a school district argues that school closures are necessary because of budget constraints, it should be required to provide a robust budget analysis, including precise projected savings from closing a given school compared against other expenses that could be cut.

Advise districts and state departments of education to conduct an analysis of whether school closures are educationally necessary. As school closures demonstrably harm children and families, they should rarely, if ever, be considered educationally necessary. In terms of academic performance, studies have repeatedly shown that students’ outcomes were harmed by school

⁵¹ See OCR, Dear Colleague Letter, ensuring that students with limited English proficiency can meaningfully participate in their educational programs and services (Jan. 7, 2015) at 37–38, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

closures if those students transitioned to a similarly situated and resourced school. Although there has been some research showing that students gain academically if they move to a higher performing school, students whose schools are closed overwhelmingly are moved into similarly performing schools.⁵²

Advise districts to consider transportation impacts on families. The California DOJ’s Letter to OUSD pointed out that the district had failed to “publicly present an analysis focused on the impacts on transportation routes and access to schools for district families” and advised that OUSD “conduct this analysis prior to making any determinations to ensure that Black and low-income students are not bearing a disproportionate school transportation burden,” citing data showing that “in the last decade, many of the schools closed were in neighborhoods serving a significant number of Black and low-income families, and closure decisions were made without any public analysis of transportation impacts, including the costs borne by families and travel time to schools.”⁵³ OCR should include a similar guidance relying on nationwide data. OCR should additionally advise school districts to consider the district’s resources available to provide adequate transportation services to students who will be forced to travel to new schools.

Advise districts against considering a school facility’s condition. The California DOJ’s Letter advised OUSD against considering the condition of a school’s facility when deciding to close schools.⁵⁴ As the letter pointed out, prioritizing “maintaining schools with the best facilities conditions . . . without further analysis of historical resource decisions may penalize schools for district actions that resulted in unequal school infrastructure conditions.”⁵⁵ The letter provided some historical examples of publicly documented “decisions to modernize infrastructure and increase capacity at certain predominately white schools at the expense of predominately Black schools, leading to predominantly Black schools becoming under-enrolled, with a lower demand rate.”⁵⁶ OCR should provide district leaders with a similar guidance, advising school districts against closing schools where they have recently elected to upgrade facilities at other more resourced schools.

Advise districts against including restricted funds in any fiscal impact analyses. The California DOJ’s letter criticized OUSD staff for considering Title I funds and IDEA funds, which follow students and may not be used to supplant existing state or district contributions, in calculations of projected cost savings that would result from a school closure.⁵⁷ OCR should provide district leaders with a similar guidance and analysis.

⁵² See, e.g., Matt Barnum, *17 studies that tell us something about how school closures affect students*, CHALKBEAT (Feb. 5, 2019), [https://news.utexas.edu/2019/10/14/4-things-everyone-should-know-about-school-closures/](https://www.chalkbeat.org/2019/2/5/21106771/17-studies-that-tell-us-something-about-how-school-closures-affect-students/#:~:text=Three%20years%20after%20schools%20are,schools%20just%20avoid%20mandatory%20closure;Terrance Green, 4 Things Everyone Should Know about School Closures, UT NEWS (Oct. 14, 2019), <a href=).

⁵³ Cal. DOJ Letter to OUSD at 3.

⁵⁴ See *id.* at 4.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 5.

Advise districts against considering school utilization or capacity. The California DOJ’s letter criticized OUSD staff for calculating school capacity in such a way as to penalize schools that serve “the district’s highest needs special education students.”⁵⁸ The district’s method was to measure “underutilized classrooms,” which “failed to account for the high number of special day classes” catered towards students with disabilities.⁵⁹ Special day classes have low class size caps in order to appropriately serve students but “appear[ed] in OUSD’s calculation as low total enrollment or classroom underutilization.”⁶⁰ OCR should similarly provide district leaders guidance on how to calculate school capacity in a way that does not discriminate against schools serving higher proportions of students with disabilities.

Additionally, many community schools rely on or require extra space in school buildings to deliver social services and enrichment activities to students and families. In older school buildings, this must be done in empty classrooms. OCR should provide guidance to school districts on how to calculate school capacity in a way that does not penalize community schools or schools providing such services or enrichment.

Finally, OCR should advise districts to employ robust community input processes to determine student capacity at each school. Such a process should empower students, families, staff, and community members to request improvements to facilities in disrepair, resources, space, and equipment for expanded educational and extracurricular activities, and access to educational, technology, and health services.⁶¹

Advise districts against using metrics that unjustly penalize schools serving disproportionate shares of students with disabilities. The California DOJ’s letter criticized OUSD staff’s recommending metrics of considering enrollment and “demand rate.”⁶² Both metrics, as OUSD proposed to use them, would disadvantage schools serving larger shares of students with disabilities—measuring enrollment would do so because certain class sizes are kept small in order to comply with the IDEA and measuring “demand” for schools would also disadvantage schools because the district school choice process for children with individualized education plans (“IEPs”) in OUSD occurs outside of the timeframe for other students.⁶³ We recommend that OCR provide district leaders with a similar guidance and analysis regarding ways that similar metrics could discriminate against schools serving higher shares of children with IEPs.

Advise districts to consider any special programs available at schools and their ability to respond to the needs of students. The California DOJ’s letter recommended that OUSD staff consider “special programs available at the schools being considered for closure,” by conducting

⁵⁸ *Id.* at 5.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *See, e.g.*, National Center for Education Statistics, Forum Guide to Facility Information Management at 3 (2018), <https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=NFES2018156> (illustrating how to employ a community input process to assess state of and community needs for school facilities).

⁶² *Id.* at 6.

⁶³ *Id.*

“qualitative evaluations of how schools serve certain populations of students.”⁶⁴ For instance, the California DOJ pointed out that two schools proposed for closure had “far lower rate[s] of suspensions for Black students and students with disabilities than other OUSD schools.”⁶⁵ OCR should provide district leaders with a similar guidance, in addition to providing other examples of programs that districts could consider in such an evaluation. For instance, neighborhood schools that follow a community school model or provide wraparound services, particularly for communities experiencing high levels of poverty, should be preserved to meet the needs of their communities and closing them would not be educationally necessary.

Advise districts against using metrics that unjustly penalize schools serving disproportionate shares of students experiencing racialized disinvestment. The California DOJ’s letter criticized OUSD staff’s recommending metrics of considering each school’s proportion of students who live in the neighborhood zoned for that school versus students who travel from outside the zone to attend the school—“Live/Go” data—because it would further “reinforce residential segregation patterns.”⁶⁶ OCR should provide district leaders with a similar guidance and analysis and further recommend that OCR advise districts against penalizing neighborhood schools with high rates of families who do not attend the schools because they are under-resourced. Such a priority would punish school communities for the district’s historic disinvestment in Black and other communities of color.

d. Guidance to Avoid in this Section

We believe that the requirement of an equity analysis and robust community input process, though important, would not, on its own, remedy the issue of majority Black and Latine schools being targeted for closure. We have seen instances where school districts conducted equity analyses of potential closures and community input processes, yet still disproportionately or exclusively closed schools that were majority students of color. For instance, a consultant hired by San Antonio Independent School District conducted an “equity analysis” and concluded that there could be no equity concerns because “the demographics of the closing campuses closely mirror the districtwide demographic data” (even though Black students and students with disabilities were overrepresented in schools proposed for closure) based on the rationale that the school district was majority Latine.⁶⁷ Even where Black or other students of color are not overrepresented in schools slated for closure compared to the rest of the district—for instance in districts that are made up almost entirely of Black and/or other children of color—the location of arbitrarily (and often racially) constructed school district boundary lines do not negate the fact that school closures are impacting Black families and other families of color more than others.

Moreover, as the Oakland complainants explained in their letter to the California Attorney General, the metrics that school districts use to justify closures—most commonly enrollment and “utilization”—although often flawed and inaccurate, are in any case stacked against schools that serve historically marginalized Black and Latine communities. This pattern was on display during the NCLB wave of school closures as well, when school district officials primarily relied on school

⁶⁴ *Id.* at 8.

⁶⁵ *Id.*

⁶⁶ *Id.* at 6.

⁶⁷ See Rightsizing Internal Equity Report (Sept. 18, 2023), https://www.saisd.net/page/study_sb_capacity_data.

report card grades—which correlate strongly with family socioeconomic status—and “under-enrollment” to justify closing schools in historically marginalized Black and Latine communities.

Do not advise districts to hire consultants, or advise districts to do so carefully. California’s letter to OUSD recommends that:

OUUSD engage an independent expert to assist in the school redesign process and the planning and implementation of any closure, merger, or consolidation that may occur to ensure full compliance with the law and robust community and school-site participation and input.⁶⁸

In our work supporting families opposed to closures of their schools and tracking school closures across the country, we have observed that most large school districts employ so-called independent experts to conduct a facilities audit. Because we have not yet identified a single instance where a consultant was hired to conduct such an audit and did not recommend closing schools, we do not consider these experts to be independent. We therefore recommend advising school districts who wish to hire consultants or experts with facilities or budget planning to elect firms who take more holistic approaches to the needs and priorities of students in the district. For instance, hiring an independent expert to perform a community-based equity audit to ensure that a district’s policy (and in particular, a policy that may result in closing schools) is equitable and does not exacerbate existing inequalities, is often appropriate.⁶⁹

Do not advise districts that school closures are permissible so long as there is an equity audit or community input process. It is important to underscore that communities, particularly those who have been historically marginalized, deserve and should be entitled to the neighborhood public schools that most communities take for granted. Inauthentic and contrived community input processes occur all too frequently to justify closing schools even when members of those very communities fight against it. OCR should warn school districts of this.

V. Conclusion

In the spirit of Title VI, Section 504, and other federal nondiscrimination laws OCR enforces,⁷⁰ federal dollars should not be used to subsidize school districts implementing school closures that will intentionally or disparately impact Black and Latine communities, and/or schools serving significant populations of English language learners and students with disabilities.

Typically, school districts present recommendations to school boards and hold community listening sessions during the school year in preparation for proposed school closures the following

⁶⁸ *Id.* at 1.

⁶⁹ For a model framework for a community-based equity audit, see Terrance L. Green, *Community-Based Equity Audits: A Practical Approach for Educational Leaders to Support Equitable Community-School Improvements*, 53 EDUCATIONAL ADMINISTRATION QUARTERLY 3 (2016), <https://journals.sagepub.com/doi/10.1177/0013161X16672513>.

⁷⁰ Joint guidance with the U.S. Department of Justice should also cover the Equal Educational Opportunities Act of 1974.

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year. Further, these decisions are often made on timelines that the OCR complaint resolution process cannot timely address. It is therefore imperative that OCR issue this document as soon as possible, and before the start of the fall 2024 school year, so that school district leaders can have it available as a resource to make informed decisions about how to equitably respond to budget constraints and declines in enrollment and how to consider and analyze any suggestions or proposals to close schools.

Please reach out to Laura Petty at lpetty@advancementproject.org with any questions.

Sincerely,

Katherine Dunn
Program Director

Lauren Winkler
Senior Staff Attorney

Jessica Alcantara
Senior Staff Attorney

Ashley Dalton
Staff Attorney

Laura Petty
Staff Attorney

Jaclyn Cole
Litigation Advocate

Advancement Project

Southern Poverty Law Center