MEMORANDUM FOR THE STAFF DIRECTOR

THROUGH: DAVID MUSSATT, RPCU CHIEF

FROM: OHIO ADVISORY COMMITTEE

SUBJECT: OHIO ADVISORY COMMITTEE PROJECT PROPOSAL

Attached for your review and approval is an Ohio Advisory Committee project proposal on *Equal Access to Education in Ohio*. The Ohio Advisory Committee approved this proposal at a meeting of the Committee on [DATE] by a vote of [ ] yes and [ ] no, [ ] abstentions.

Attachments: Project Proposal
Project Proposal Checklist

This project proposal is:

_____ Approved

_____ Not approved

_____ Returned for revisions according to comments.

_____
Staff Director

_____
Date

A Project Proposal of the Ohio Advisory Committee to the United States Commission on Civil Rights

Topic: Civil Rights and Equal Access to Education in Ohio

February 2017

Jurisdiction

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and directed to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, national origin, or in the administration of justice. The Commission has established advisory committees in each of the 50 states and the District of Columbia. These Advisory Committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction.

The Ohio Advisory Committee (Committee) seeks to examine barriers to equal access to educational opportunity in the State of Ohio which may have a discriminatory impact on students on the basis of race, color, disability status, national origin, and/or sex. A number of federal laws prohibit such discrimination in educational institutions including:

- Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin, including in institutions of public education.[1]
- Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity.[2]
- The Equal Educational Opportunity Act of 1974 prohibits deliberate segregation in schools on the basis of race, color, and national origin.[3]
- The Individuals with Disabilities Education Act (IDEA) requires state and local education agencies to "provide a free and appropriate public education to children with disabilities."[4]

[1] Pub.L. 88–352, 78 Stat. U.S. *See Also:* Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: http://www.justice.gov/crt/about/edu/types.php (last accessed March 2, 2015)
[2] 20 U.S.C. A§ 1681 et. Seq.; *See also:* U.S. Department of Justice, Civil Rights Division: Overview of Title IX of the Education Amendments of 1972. Available at: https://www.justice.gov/crt/overview-title-ix-education-amendments-1972-20-usc-1681-et-seq (last accessed February 2, 2017)
[3] U.S. Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: http://www.justice.gov/crt/about/edu/types.php (last accessed March 2, 2015)

- The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities in any places of public accommodations, including private schools and daycare centers.[5]

- Section 1 of the 14th Amendment to the U.S. Constitution prohibits any state from denying "to any person within its jurisdiction the equal protection of the laws."[6]

The Committee seeks to study the extent to which these protections, as currently applied in practice, are sufficient to address continued concerns regarding equal access to high quality educational opportunity on the basis of race, color, sex, disability status, and national origin.

Background

While education laws in the U.S. vary significantly by state, all states have at least some compulsory education requirements (the age range in which students are required to attend school or the equivalent).[7] All states also require public schools to admit students within a defined age range free of charge (the age range for free education varies by state).[8] In Ohio, the state Constitution requires that the General Assembly "secure a thorough and efficient system of common schools throughout the state." Education is compulsory from ages 6-18,[9] and must be offered through the high school level for free from ages 5-22.[10] Federal law, as outlined above, requires that such education services be provided in a manner that is free from discrimination on the basis of race, color, sex, religion, national origin, or disability status.

Despite these protections, significant disparities persist in educational access and outcomes across the country, and Ohio is no exception.[11] According to an analysis of National Assessment of Educational Progress (NAEP) data conducted by the Educational Opportunity Monitoring Project at Stanford University, gaps in educational outcomes between white and black students,

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[4] § 20 U.S.C. 1400 et. Seq. *See Also:* U.S. Department of Justice, *Types of Educational Opportunities Discrimination*. Civil Rights Division, Educational Opportunities Section. Available at: http://www.justice.gov/crt/about/edu/types.php (last accessed March 2, 2015)
[5] U.S. Department of Education, Office of Civil Rights. Americans with Disabilities Act. Available at: http://www2.ed.gov/about/offices/list/ocr/docs/hq9805.html (last accessed March 2, 2015)
[6] Cornell University Law Institute, 14th Amendment. Available at: https://www.law.cornell.edu/constitution/amendmentxiv (last accessed March 2, 2015)
[7] Aragon, Stephanie. ECS 50-State Reviews: Free and Compulsory School Age Requirements. May 2015. Available at: http://www.ecs.org/clearinghouse/01/18/68/11868.pdf (last accessed February 2, 2017). [Hereafter cited as: *ECS 50-State Reviews, 2015*]
[8] *ECS 50-State Reviews, 2015*
[9] *ECS 50-State Reviews, 2015;* R.C. §3313.64; R.C. 3321.01
[10] *ECS 50-State Reviews, 2015;* R.C. §3313.64; R.C. 3321.01; Ohio Constitution, Article VI.02 (available at: https://www.legislature.ohio.gov/laws/ohio-constitution/section?const=6.02 (last accessed February 13, 2017)
[11] Center for Education Policy Analysis; The Educational Opportunity Monitoring Project. *Racial and Ethnic Achievement Gaps.* Stanford University. Available at: http://cepa.stanford.edu/educational-opportunity-monitoring-project/achievement-gaps/race/#first (Last accessed February 2, 2017) [Hereafter cited as: *Racial and Ethnic Achievement Gaps, Stanford University*]

as well as white and Hispanic students, have persisted since the NAEP first began collecting data in the 1970's.[12] Progress has been made—the report notes that "As of 2012, the white-black and white-Hispanic achievement gaps were 30-40% smaller than they were in the 1970s."[13] However, disparities in student academic achievement as measured by overall differences in math and reading scores remain large to the present day.[14] To illustrate, in 2013, white students in Ohio scored an average of 27.5 points higher on 8th grade math test than their black peers, and 17 points higher than their Hispanic peers.[15] In reading, white students out-performed their black peers by 26 points, and their Hispanic peers by 7 points.[16] Similarly, data from the National Center for Education Statistics reveals that high school graduation rates among black students in Ohio is just 63%, compared with 87% for white students—representing one of the largest gaps in the nation.[17]

Research suggests that this "achievement gap" as it is known, is due at least in part to racial differences in socioeconomic status.[18] Despite its high correlation however, socioeconomic status cannot account for all of the racial disparity evident in educational achievement data. The Educational Opportunity Monitoring Project reported, "…even in states where the racial socioeconomic disparities are near zero…achievement gaps are still present. This suggests that socioeconomic disparities are not the sole cause of racial achievement gaps."[19] In Ohio, the black-white achievement gap for 8th grade math scores is more than double the socioeconomic disparity index for black and white students,[20] and the Hispanic-white achievement gap is more than 1.8 times the socioeconomic disparity index for Hispanic and white students.[21] The authors conclude that such differences indicate that "Other factors—including potentially the availability and quality of early childhood education, the quality of public schools, patterns of residential and school segregation, and state educational and social policies—may play important roles in reducing or exacerbating racial achievement gaps."[22]

The disparate impact theory of discrimination states that a demonstration of overt discrimination or discriminatory intent is unnecessary to demonstrate the occurrence or *effect* of discrimination.

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[12] *Racial and Ethnic Achievement Gaps, Stanford University*
[13] *Racial and Ethnic Achievement Gaps, Stanford University*
[14] *Racial and Ethnic Achievement Gaps, Stanford University*
[15] *Racial and Ethnic Achievement Gaps, Stanford University. Note*: the average white student 8th grade math score in Ohio was 294.21; black students scored 266.72; and Hispanic students on average 277.04.
[16] *Racial and Ethnic Achievement Gaps, Stanford University. Note:* the average white student 8th grade reading score in Ohio was 273.1; black student average 247.04; Hispanic student average 265.8
[17] National Center for Education Statistics: Public High School Graduation Rates (last updated May 2016). Available at: https://nces.ed.gov/programs/coe/indicator_coi.asp (last accessed February 7, 2017)
[18] *Racial and Ethnic Achievement Gaps, Stanford University.*
[19] *Racial and Ethnic Achievement Gaps, Stanford University.*
[20] *Racial and Ethnic Achievement Gaps, Stanford University. Note:* the black-white gap in 8th grade math scores is 1.03 standard deviations, while the black-white socioeconomic disparity index is 0.47 standard deviations
[21] *Racial and Ethnic Achievement Gaps, Stanford University. Note:* the Hispanic-white gap in 8th grade math scores is 0.66 standard deviations, while the Hispanic-white socioeconomic disparity index is 0.36 standard deviations
[22] *Racial and Ethnic Achievement Gaps, Stanford University.*

Instead, the disparate impact theory refers to "facially neutral" policies, practices, or procedures that have the *impact* of discrimination, where such practice "lacks a substantial legitimate justification."[23] According to the U.S. Department of Justice, "Courts have often found Title VI disparate impact violations in cases where recipients utilize policies or practices that result in the provision of fewer services or benefits, or inferior services or benefits, to members of a protected group."[24]

Under this theory, the Committee proposes to study policy and related structural factors in Ohio which may exacerbate disparities in access to high quality education and related educational outcomes on the basis of race, color, sex, national origin, disability status, or religion. For example, in March of 2014, following the first comprehensive analysis of civil rights data from every public school in the country, the U.S. Department of Education's Office for Civil Rights found evidence of a number of such potential factors.[25] Key findings from this analysis included:[26]

- **Access to preschool.** About 40% of public school districts do not offer preschool, and where it is available, it is mostly part-day only. Of the school districts that operate public preschool programs, barely half are available to all students within the district.
- **Suspension of preschool children.** Black students represent 18% of preschool enrollment but 42% of students suspended once, and 48% of the students suspended more than once.
- **Access to advanced courses.** Eighty-one percent (81%) of Asian-American high school students and 71% of white high school students attend high schools where the full range of math and science courses are offered (Algebra I, geometry, Algebra II, calculus, biology, chemistry, physics). However, less than half of American Indian and Native-Alaskan high school students have access to the full range of math and science courses in their high school. Black students (57%), Latino students (67%), students with disabilities (63%), and English language learner students (65%) also have less access to the full range of courses.

[23] U.S. Department of Justice, Civil Rights Division. Title IX Legal Manual. Section IV(A)2: Disparate Impact. Available at: https://www.justice.gov/crt/title-ix#C (last accessed February 2, 2017) [*Hereafter* cited as: *Title IX Legal Manual, Section IV(A)2*]
[24] *Title IX Legal Manual, Section IV(A)2*
[25] U.S. Department of Education: Expansive Survey of America's Public Schools Reveals Troubling Racial Disparities. March 21, 2014. Available at: https://www.ed.gov/news/press-releases/expansive-survey-americas-public-schools-reveals-troubling-racial-disparities (last accessed February 7, 2017) [*Hereafter* cited as: *U.S. Department of Education, Racial Disparities 2014*]
[26] *U.S. Department of Education, Racial Disparities 2014*

- **Access to college counselors.** Nationwide, one in five high schools lacks a school counselor; in Florida and Minnesota, more than two in five students lack access to a school counselor.

- **Retention of English learners in high school.** English learners make up 5% of high school enrollment but 11% of high school students held back each year.

Additionally, in Ohio specifically, advocates have raised concern resulting in a series of legal challenges regarding:

- The state's allocation of **educational funding**, which relies heavily on local property taxes, effectively disadvantaging low-income districts without a sufficient property tax base to adequately support local schools (*DeRolph v. State of Ohio*).[27]

- The use of **school vouchers** resulting in significant public resources being allocated to religiously-affiliated schools (*Zelman v. Simmons-Harris*).[28]

In this project, the Committee will study these and other potential barriers preventing equal access to education on the basis of the identified federally protected categories. Such other potential barriers may include, but shall not be limited to:

- A review of **Title IX implementation** in Ohio, protecting against sex-based discrimination including matters of sexual assault, equal access to athletic and extra-curricular funding, and protections for transgender and gender-nonconforming students;

- **School segregation**, including disparities in student/teacher ratios, classroom size, and access to advanced placement and technical courses;

- The **availability of choice** in education providers and in educational paths, particularly in low-income communities;

- **Transportation** availability for students and families;

- The impact of **Collective Bargaining Agreements** on educational quality and outcomes.

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[27] DeRolph v. State, 97 Ohio St.3d 434, 2002-Ohio-6750. Available at: https://www.sconet.state.oh.us/rod/docs/pdf/0/2002/2002-ohio-6750.pdf (last accessed February 13, 2017) *See also: DeRolph v. State of Ohio*. More information available at: DeRolph History and Background: Ohio Legislative Black Caucus. http://olbcfoundation.org/pdf/Derolph%20History%20and%20Background.pdf (last accessed February 7, 2017); *and* Ohio History Central: DeRolph v. State of Ohio. Available at: http://www.ohiohistorycentral.org/w/DeRolph_v._State_of_Ohio (last accessed February 13, 2017)

[28] Supreme Court of the United States: ZELMAN, SUPERINTENDENT OF PUBLIC INSTRUCTION OF OHIO, et al. v. SIMMONS-HARRIS et al. Available at: https://www.law.cornell.edu/supct/html/00-1751.ZS.html (last accessed February 13, 2017). [Hereafter cited as: *Zelman v. Simmons-Harris (2002)*]

Scope

The scope of this project is limited to an examination of barriers to equal access to education for children in the State of Ohio on the basis of color, race, sex, religion, national origin, and/or disability status. The Committee will examine the extent to which specific school policies and practices may contribute to disparities in educational access and outcomes on the basis of these federally protected categories, as well as alternative policies and practices with the demonstrated potential to address such concerns.

Methodology

This project will include a gathering of data, documents, testimony, and opinions to enable the Ohio Advisory Committee to reach factual determinations. In this project, the Committee will gather direct testimonial evidence from citizens and experts as well as documentary evidence from such individuals. The Committee proposes to hold one, in person public meeting, centrally located in Ohio, during which the Committee will solicit testimony and comments from community members, students, families, education experts, advocates, and school and government officials regarding barriers to equal access to education that may disparately impact students on the basis of race, color, sex, national origin, religion, and/or disability status, and the civil rights implications thereof. The exact date and location of this meeting is to be determined by the Committee. The purpose of this meeting will be to hear information directly from Ohio residents—particularly those who may be/may have been impacted by challenges to accessing high-quality educational opportunities—as well as education officials, scholars, and other experts. The public meeting will be advertised and recorded by a court reporter. The meeting will include time for public comment in which any Ohio resident who wishes to share may do so. The Committee will also accept written statements submitted by residents who are unable to attend the public meeting in person. The Committee may hold additional public meetings via web-conference as needed to expand the testimony received.

To ensure balance, the bipartisan Committee, in consultation with USCCR staff, will draft the agenda for the public meetings at which the Committee will hear testimony from residents, scholars, and other experts.

Anticipated Outcomes

An anticipated outcome of the project is to ensure that the U.S. Commission on Civil Rights is advised of existing disparities in access to high-quality education on the basis of race, color, sex, religion, national origin, and/or disability status that may contribute to disparate educational outcomes in Ohio and across the country. The Committee hopes that such information will lead to a better understanding of this phenomenon, as well as to specific recommendations for addressing the problem. The Committee proposes to advise the Commission by issuing a report with its findings and recommendations at the conclusion of this project. The report may include recommendations to the Commission for federal policy and statutory changes.

Time Frames	
Committee and OSD approval of proposal	DATE
Advertising	DATE
Public Meeting in Ohio	DATE
Completion of research and closing of the official record	DATE
Draft Report submitted by legal review and editing	DATE
Approval of report by full committee and public release	DATE

Anticipated Costs	
Staff Travel	$
Public hearing	
Meeting room	$
Sound equipment rental	$
Transcription services	$
SAC travel to hearing	$
TOTAL	$

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SAC PROJECT PROPOSAL CHECKLIST

State: Ohio

Project Name: Civil Rights and Equal Access to Education in Ohio

Section I. Approval of Proposal by SAC

1. Was the report voted on by the SAC by mail, meeting, or a combination? _____

2. If the vote was taken by mail:

   What was the date the proposal was mailed:

   What was the response due date:

   Were follow-up calls made to the non-respondents?

   List those who failed to respond:

   List any special circumstances that apply to any of the non-respondents:

3. If the vote was taken during a meeting:

   Was the proposal mailed to members before the meeting: ____ Yes ____ No

   When was the proposal sent? _What was the date of the meeting?

   Did the SAC review and approve the project proposal (not just the topic)? _____ Yes ____ No

4. What was the vote on the project proposal?

Section II. Approval of Proposal by the Office of the Staff Director (to be completed by OSD)

1. Does the proposal identify actions (by staff and the SAC) that should result in balanced research and testimony? __

   Yes ___ No

2. Does the proposal identify sources to be used to research the topic and do they represent a variety of opinions on the issue? ___

   Yes __ No

3. Are milestones and estimated dates provided? ___

Yes __ No

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4. Is the schedule reasonable given other commitments to the scope of the project? ___ Yes __ No

5. Is the project within the Commission's jurisdiction? ___ Yes __ No

6. Is the project budget reasonable given its scope and the availability of funds? ___ Yes __ No

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