

## CIVIL RIGHTS IN BRIEF

# GATE-KEEPING

## Allowing All Children Access to Advanced Courses

### Background

Gate-keeping is a process of course selection and enrollment, beginning in middle school and extending through high school, that effectively limits student access to challenging curriculum. Gate-keeping is a problem because minority students often find themselves shut out of educational opportunities.

In many school districts, the effect of gate-keeping is that minority students are denied access to challenging courses significantly more often than white students. These disproportionate results often limit opportunities for minority students to learn the skills necessary to graduate or to gain admission to college. Gate-keeping that disproportionately harms minority students is often caused by a combination of systemic design flaws and racial steering.

**Schools and school districts have developed systems to determine student course placements.** Systemic design serves as a powerful gate-keeper. Every school that has different levels of classes uses some method to place students in these classes. Recommendations from teachers, parent choice, student choice, test scores, and grades may all factor into the school's placement decision. Some districts use a rigid tracking system where student levels are determined by set criteria, and students are only allowed to take courses on that track.

Gate-keeping differs from rigid tracking because placement decisions may initially be either a matter of student choice, or allow parental input, in a placement decision by the school. However, gate-keeping may also occur when prerequisite courses are not offered at all the schools in a district. Limited choices often prevent students in some middle schools from taking more challenging courses, both in their current school and, eventually, in their high school.

**Racial/Ethnic steering can be a contributing factor in gate-keeping.** Some guidance counselors encourage minority students to take classes below their level. As a result, some students are steered into classes that serve a gate-keeping function of which students and their parents are unaware. Students and parents are often not sufficiently warned of these grave consequences.

### Civil Rights Concerns

Gate-keeping may be unlawful when low percentages of minority students enroll in advanced courses. High minority failure rates on standardized tests may also be evidence of discrimination. Both of these situations would suggest that minority students are not being given an equal opportunity to learn.

## Spotting A Problem

Here are a few red flags to look for:

Are there courses that a student needs to take before she can enroll in Advanced Placement (A.P.) and other high level courses in high school? Is the school telling the parents and students about the importance of prerequisite courses when enrollment choices are made? Can anyone choose to enter these prerequisite courses?

Do minority parents and students know about the prerequisite classes for the advanced courses? If most do know, have these students been encouraged to take the prerequisite courses?

Have school guidance counselors encouraged minority students to enroll in the most challenging courses?

Were parents and students given equal information about advanced courses, or the consequences of taking low level courses, regardless of their race?

Where teachers decide who gains access, do they recommend that minority students be placed in advanced level courses at the same rate they make such recommendations for white students?

Do all students get adequate preparation to pass standardized assessments of achievement such as high school diploma tests? Do most of the students who do take only basic courses, rather than advanced courses, pass the test?

If the answer to any of these questions is “no,” there may be a serious problem. While unlawful discrimination has not occurred for certain, a “no” answer to these questions suggests that *further investigation* is needed.

## Legal Action

There are two types of discrimination claims that may arise from gate-keeping.

- **Different Treatment Claims.** The first type of claim can be made against *school authorities who treat students from certain racial or ethnic minority groups differently than non-minority students*. On a school-level, different treatment occurs if school authorities assign minority students to lower level courses more often than non-minorities with similar qualifications. This type of claim arises if a guidance counselor or teacher encourages minorities to enroll in less challenging courses than similarly qualified non-minorities. On a district-wide level, a claim of different treatment can also be made when a mostly minority school does not offer prerequisite courses while mostly white schools in the same district do. This form of discrimination is called “different treatment.”

- **Disparate Impact Claims.** The second type of claim arises when *a school uses a system that has a significantly greater negative impact on a particular minority group* than it has on white students. This means that if a school district has a race-neutral policy which hurts the members of one race more than others, it could be engaging in an illegal practice. For example, this latter claim could arise if minority students typically score lower on a standardized test than non-minority students and this test was the only factor considered in course assignment. This form of discrimination is called “disparate impact.”

Parents and advocates should *consider filing both “different treatment” and “disparate impact” claims* whenever they suspect a school district or school authority has engaged in gate-keeping practices that discriminate against minority

students.

## What You Can Do

If you want to report discrimination to the federal government, you can file a complaint with the United States Department of Education's Office for Civil Rights (OCR). OCR investigates possible violations of civil rights laws. OCR has a main office in Washington, D.C. and twelve regional offices across the country.

**Anyone** who believes there has been an act of discrimination on the basis of race, color, or national origin, against any person or group, in a program or activity that receives federal education financial assistance (virtually all public schools) can file a complaint. You do not need to be a parent or guardian of a child in a school to file a complaint. Any person or organization can file on behalf of another person or group. Filing a complaint with OCR is **free**.

Generally, OCR complaints must be filed within 180 days of the date of the alleged discrimination. However, gate-keeping complaints often involve ongoing school policies; before filing a complaint, *call OCR* to see if the time limit applies.

Complaints can be made **in writing** or **by telephone** to the regional OCR office that serves your state. You can find out how to contact your regional office by calling OCR's Customer Service Team. OCR also maintains a web site with this information:  
*OCR toll-free number:* 1-800-421-3481.  
*Website:* <http://www.ed.gov/offices/OCR>.

## Organize

There is **strength in numbers**. For each complaint filed, OCR must decide whether, and how thoroughly, to investigate. The stronger your complaint, the more likely that OCR will conduct a thorough investigation.

*The best way to trigger a full investigation is to join with others and gather as many similar complaints as you can.* The more parents with complaints about their children's lack of access to advanced courses, the stronger the complaint and the more likely that OCR will respond.

## Where to Go for More Information

1. **Filing with OCR:** U.S. Department of Education, Office for Civil Rights, Customer Service Team, Mary E. Switzer Building, 330 C Street, SW, Washington, DC 20202. E-mail: [OCR@ed.gov](mailto:OCR@ed.gov). The Washington office does not handle complaints, but will direct you to one of twelve regional enforcement offices. For more complete information, call 1-800-421-3481 or visit their web page: <http://www.ed.gov/offices/OCR/ocregion.html>
2. **Contact your local NAACP chapter:** NAACP, 4805 Mt. Hope Drive, Baltimore, MD 21215. Hotline: (410) 521-4939.
3. **The Civil Rights Project (CRP) at Harvard University:** For a more complete report on gate-keeping policies and related education concerns, visit CRP at: [www.law.harvard.edu/civilrights](http://www.law.harvard.edu/civilrights).