



MAGNET SCHOOLS ASSISTANCE PROGRAM

**FY 2023 MSAP PRE-APPLICATION
WEBINAR SERIES**

**WEBINAR 2: THURSDAY, MARCH 30, 2023 1:00 PM EASTERN
THE U.S. DEPARTMENT OF EDUCATION, OFFICE FOR CIVIL RIGHTS
SCHOOL INTEGRATION**

SCHOOL INTEGRATION

OFFICE FOR CIVIL RIGHTS

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OVERVIEW OF PRESENTATION

- OCR's Role in MSAP
 - MSAP Overview
 - Assurances of Nondiscrimination
 - OCR's Review Process
 - Common Civil Rights Questions Raised in MSAP Context
- Desegregation Plans
 - Required Plans
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- Minority Group Isolation (MGI)
- Enrollment Data
- Strategies for Reducing MGI





OCR's Role in MSAP

MSAP OVERVIEW

- MSAP is a discretionary grant program. The Department selects grantees for multiyear project periods and awards grants one budget period at a time.
- MSAP awards grant funds to school districts or consortia of school districts that seek to desegregate schools, under either a required or a voluntary desegregation plan, through the operation of magnet schools.
- A primary goal of MSAP is to reduce, eliminate, or prevent “minority group isolation” in schools with a substantial proportion of students from any minority group through the use of innovative magnet school programs.



MSAP OVERVIEW

- The Office of Elementary and Secondary Education (OESE) administers the MSAP grant program and has the primary role in managing programmatic and budgetary oversight of grantees.
- Each year, OCR determines whether each district will meet its MSAP assurances of non-discrimination. The MSAP statute specifies that this determination must be made by the Assistant Secretary for Civil Rights.

20 U.S.C. § 7231 d(c)



ASSURANCES OF NONDISCRIMINATION

Applicants must assure they will not engage in discrimination based upon:

- race, color, national origin,
- religion,
- sex,
- or disability

in employment, assignment of students to schools and courses of instruction, and designing or operating extracurricular activities.

34 C.F.R. § 280.20(b)(3), (4), and (5)



OCR'S REVIEW PROCESS

- OCR conducts a review of each applicant (and co-applicant if there is a partnership or consortium of districts that submitted a joint application) (see 34 C.F.R. §§ 75.127-29) in order to inform the Assistant Secretary for Civil Rights' determination of whether an applicant "will meet" its civil rights assurances.
- All applicants (and co-applicants) must sign current assurances.
- Under the MSAP statute, OCR's review is not limited to the MSAP project schools or proposed programs; it is district-wide.

OCR'S REVIEW PROCESS

- OCR reviews applications (and in continuation years, annual performance reports) for language that may raise civil rights concerns.
- Applicants may want to ask their districts' Title IX and Section 504 coordinators to review grant materials to ensure that the materials do not raise concerns under those civil rights laws or incorrectly state policies.
- OCR can ask for “any information that is necessary for the Assistant Secretary for Civil Rights to determine whether the assurances . . . will be met.” 34 C.F.R. § 280.20(d)



OCR'S REVIEW PROCESS

- OCR may contact an applicant by email to schedule a teleconference to discuss language that is unclear or could raise civil rights concerns.
- Relevant school district personnel, evaluators, legal counsel, etc., should be available to provide support for these reviews to facilitate timely responses to OCR's inquiries.
- Districts may consider having relevant personnel participate in contacts with OCR, such as legal counsel or school assignment administrators.
- OCR contacts OCR Regional Offices, the Equal Employment Opportunity Commission (EEOC), and the Department of Justice (DOJ) to inquire about any outstanding civil rights violations against or concerns about an applicant.
- MSAP project directors and other key grant writing personnel may wish to be in contact with district personnel who would be aware of ongoing OCR, DOJ, and/or EEOC investigations to expedite communication if needed.



OCR'S REVIEW PROCESS

- Existence of an ongoing investigation where no OCR/DOJ/EEOC decision has been made does not make a district ineligible, but a finding of a civil rights violation that the district has not agreed to remedy may lead OCR to decline to certify that an applicant “will meet” its non-discrimination assurances.
- An ongoing investigation or resolution agreement in monitoring, or questions that arise in the context of OCR’s MSAP review, may lead to requests for additional assurances or specific conditions to ensure compliance with MSAP assurances and the civil rights laws that OCR enforces.



COMMON CIVIL RIGHTS QUESTIONS RAISED IN MSAP CONTEXT

- Race and National Origin
 - Title VI of the Civil Rights Act of 1964 prohibits recipients of Federal financial assistance from discriminating based on race, color or national origin. 42 U.S.C. § 2000d to d-7.
 - The failure to make marketing information about school courses, programs, events, or applications available to students' parents or legal guardians who have limited English proficiency in a language they understand may raise civil rights concerns under Title VI. See generally *Lau v. Nichols*, 414 U.S. 563 (1974); 34 C.F.R. Part 100.
 - The use of racially discriminatory discipline practices.



COMMON CIVIL RIGHTS QUESTIONS RAISED IN MSAP CONTEXT

- Sex
 - Title IX of the Education Amendments of 1972 prohibits recipients of federal financial assistance from discriminating based on sex in federally funded education programs and activities, including discrimination in the form of sexual harassment.
 - Sex-targeted programming generally does not raise concerns under Title IX.
 - Sex-exclusive programming must be justified by an exception to Title IX's general prohibition on different treatment based on sex. Schools may offer single-sex classes or activities if they comply with the requirements outlined in 34 C.F.R. § 106.34(b). Schools may also host single-sex programs that are run by voluntary youth service organizations as long as the school ensures comparable educational opportunities overall.



COMMON CIVIL RIGHTS QUESTIONS RAISED IN MSAP CONTEXT

- Disability

- Section 504 of the Rehabilitation Act of 1973 prohibits recipients of Federal financial assistance from discriminating on the basis of disability. 29 U.S.C. § 794; 34 C.F.R. Part 104. Title II of the Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability by public entities, including public schools, whether or not they receive federal financial assistance. 42 U.S.C. §§ 12131-12134; 28 C.F.R. Part 35.
- School districts or schools must provide technology that is accessible to students with disabilities or must provide students with disabilities equally effective alternative access to the educational benefits or opportunities provided by the technology. 28 C.F.R. § 35.130(b)(1)(iv) and 34 C.F.R. § 104.4(b)(1)(iv).
- Students with disabilities must be provided an equal opportunity in the student selection process. 34 C.F.R. § 104.4(a), (b)(1)(i)-(iv).
- Marketing information, applications, and events for prospective parents and parents of current students must be accessible to parents with disabilities, including disabilities that affect vision, hearing and/or mobility. 28 C.F.R. § 35.160; 34 C.F.R. § 104.4.





Desegregation Plans

DESEGREGATION PLANS

- Each MSAP application must include a desegregation plan.
- Applicants indicate whether the desegregation plan is “required” or “voluntary.”
- Applicants include a description of the student selection process that will be used for MSAP schools.
- The student selection process should be described in complete and accurate detail, even if the district does not yet need to implement a plan for oversubscription.



REQUIRED DESEGREGATION PLANS:

- A required plan is a plan that is based on a state or federal court order; a mandate imposed by a state agency; or another plan entered into with an official of competent jurisdiction for the purposes of desegregating students or faculty.
- Districts must provide current documentation that they are operating under a required plan (including a consent decree or settlement) from the federal or state court, agency, or other official of competent jurisdiction and that the magnet schools proposed in the project are part of that plan.
 - Districts that have been declared unitary are no longer under a required plan. A district can be declared unitary only when the vestiges (or visible signs) of unlawful segregation have been eliminated to the extent practicable.

20 U.S.C. § 7231(c); 34 C.F.R. §§ 280.2, 280.4, 280.10 and 280.20



VOLUNTARY DESEGREGATION PLANS

- Most districts will submit a voluntary desegregation plan. A voluntary desegregation plan is not required by a federal or state court or other entity.
- A voluntary desegregation plan should include a complete and accurate narrative description of marketing, recruitment, and student assignment plans designed to further the district's desegregation goals.
- Districts must provide current documentation of school board approval of the plan in their applications. 34 C.F.R. § 280.20(f).
- The Department considers, on a case-by-case basis, whether a district's voluntary plan meets the statutory purpose of reducing, eliminating, or preventing minority group isolation of substantial proportions of minority group students in its magnet or feeder schools, considering the unique circumstances in each district and school. This consideration includes looking at the student enrollment numbers of the district and the targeted project schools disaggregated by race. 34 C.F.R. § 280.4.
- Applications must aim to reduce racial isolation of minority group students in magnet or feeder schools in which substantial proportions of minority group students are enrolled. 34 C.F.R. § 280.1(a).





Minority Group Isolation (MGI)

MINORITY GROUP ISOLATION

- Applicants need to clearly identify their definition of minority group isolation (MGI) and must specifically identify the racial/ethnic group(s) they will be targeting in schools with substantial proportions of minority group students.
- The Department will be looking carefully at applicants' MGI definitions and MGI performance measures.



MINORITY GROUP ISOLATION

- MGI refers to racial isolation of students from one or more *minority groups* in schools where there are substantial proportions of minority students. 34 C.F.R. § 280.4 defines minority group students as including American Indian, Alaska Native, Asian, Pacific Islander, Black, and Hispanic students.
- An MGI definition should capture *racial isolation* of minority group students. For example, if enrollment of Latino students is 90% at a school, Latino students would be considered racially isolated from other groups of students. If enrollment of Latino students is 10% at a school where 90% of the population is White, then Latino students would not be considered racially isolated because 90% of the students they attend school with are students of another race (this would be true even if the districtwide enrollment of Latino students was below 10%).



MINORITY GROUP ISOLATION – EXAMPLE 1

Example: District A has two schools where the Latino student enrollment is 75% and 73%. The Latino student enrollment of public schools in the district is 50% but the Latino population of school-aged children within district boundaries is only 35%. This is the result of many non-Latino families choosing to send their children to either private schools or public schools in neighboring districts. The two schools have experienced declining enrollment in the last five years as more non-Latino families continue to send their children elsewhere. District A's proposed plan is to turn these two schools into magnet schools to attract students who currently attend other schools within the district as well as those attending private schools and public schools outside of the district.



Analysis: The two schools in District A have an *overrepresentation* of Latino students compared to the overall district enrollment and compared to the population within district boundaries. Latino students at these two schools are arguably “isolated” from their peers of other races and do not attend schools that foster meaningful interaction among students of different racial and ethnic backgrounds. (20 U.S.C. § 7231(a)(4))

Based on the trend over the past five years, the minority group isolation of Latino students at these schools is likely to worsen.

MINORITY GROUP ISOLATION – EXAMPLE 2

Example: District B, where Black student enrollment is approximately 80% districtwide, and between 78% and 82% at the district's middle schools, proposes a project to reduce the MGI of Black middle school students by partnering with District C, where Black student enrollment is approximately 15% districtwide. Districts B and C propose one new inter-district magnet school serving middle school students, which will have a Science, Technology, Engineering, Arts, and Math theme that parents in both districts expressed interest in based on feedback received at several community meetings. The districts will use extensive targeted marketing to attract families to the new school. All students in Districts B and C may apply to attend the proposed magnet school and if there are more applicants than seats available, the districts will use a student selection plan that includes a weighted lottery.



Analysis: This project proposes a well-designed plan to reduce minority group isolation of Black students in two middle schools where there are substantial proportions of Black students. Even though Black enrollment in the two middle schools is similar to the district average, Black students are arguably “isolated” from their peers of other races because less than one-quarter of the students at these schools are of a different race; the Black students do not attend schools that foster meaningful interaction among students of different racial and ethnic backgrounds. (20 U.S.C. § 7231(a)(4)). To create diversity, District B partnered with District C to create a new magnet school with diverse learners and to reduce the racial isolation of Black students at the two feeder schools in District B.

NO MINORITY GROUP ISOLATION – EXAMPLE 3

Example: District D defines MGI as occurring whenever any racial group within a school is more than ten percentage points plus or minus the district average for that racial group. The district proposes four magnet schools and sets a goal for each school to have no more than 25% and no less than 5% enrollment of Asian students since the district average is 15%. Currently each school has Asian enrollment between 30% and 5%.

Analysis: The Department would have concerns with this approach. First, minority group isolation occurs when minority group students are overrepresented, not underrepresented so “no less than 5%” is not in line with the term “minority group isolation” as contemplated in the MSAP statute. Second, even at the school where the Asian students make up 25% of the enrollment, they are not isolated because 75% of their peers are of a different race. The district should consider either targeting different schools where Asian students may be experiencing minority group isolation and/or a different student population.



NO MINORITY GROUP ISOLATION – EXAMPLE 4

Example: District E proposes to use MSAP funds to create whole-school magnet programs at three existing schools. The districtwide demographics are 70% White, 15% Latino, and 15% Black. The application states that Black students are experiencing MGI because enrollment of Black students at each of the proposed magnet schools is between 17% and 20%, which exceeds districtwide enrollment of Black students. Enrollment of White students at each of the proposed magnet schools is between 70% and 75%. The application states that the district aims to attract new White and Latino families to the proposed MSAP schools to bring Black enrollment closer to the district average of 15%.

Analysis: The Department would have concerns with this approach. It does not appear that Black students are experiencing minority group isolation at the three proposed magnet schools. Minority group isolation occurs when enrollment of a group of students of a particular race is so high within a school that the school does not foster meaningful interaction among students of different racial and ethnic backgrounds. (20 U.S.C. § 7231(a)(4)). Because enrollment of Black students at all three schools is 20% or lower, at least 80% of students at each school have a different racial background. Moreover, because enrollment of White students at all three schools is 70% or higher, the project does not propose to reduce minority group isolation in magnet or feeder schools in which substantial proportions of minority group students are enrolled consistent with 34 C.F.R. § 280.1(a).



MGI PERFORMANCE MEASURES

- All applications (regardless of whether the desegregation plan is required or voluntary) include performance measures indicating the applicant's goals for reducing, preventing, or eliminating MGI.
- Performance measures typically include annual targets for each year of the project period for the targeted racial or ethnic group. For example, an applicant may aim to reduce enrollment of African American students from 90% (baseline) to 87% in year 1, 84% in year 2, 81% in year 3, 78% in year 4, and 75% in year 5.
- Performance measures should be consistent with projected enrollment data.





Enrollment Data

ENROLLMENT DATA

- All enrollment tables should be complete and accurate. An applicant should not submit suppressed data.
- The application requires submission of projected data for each project year. Projections should assume implementation of the MSAP project, be realistic and logical, and align with your performance measures for enrollment.



ENROLLMENT DATA: LOCAL EDUCATIONAL AGENCIES (LEAS)

- All applications must provide, in Table 2, districtwide enrollment data for all relevant LEAs for all grades that the MSAP-funded schools cover.
- This data must be disaggregated by grade and race/ethnicity.
- Example: If the MSAP-funded schools cover grades K-5 and 6-8 and accepts students from two different LEAs, then the required data would be K-8 data, disaggregated by grade and race/ethnicity, from both LEAs.



ENROLLMENT DATA: MSAP SCHOOL(S)

- All applications must provide, in Table 3, current and projected enrollment data for each of the MSAP-funded schools.
- These data must be disaggregated by grade and race/ethnicity.
- Again, projections should assume implementation of the MSAP project, be realistic and logical, and align with your performance measures for enrollment.



ENROLLMENT DATA: FEEDER SCHOOL(S)

- All applications must provide, in Table 4, current and projected enrollment data for each of the MSAP project feeder schools.
- These data must be disaggregated by race/ethnicity.
- Feeder school means a school from which students are drawn to attend a magnet school (i.e. the schools at the same grade level where students would otherwise attend if they did not choose to attend the magnet schools.)



ENROLLMENT DATA: EXAMPLE 1

Performance Measure: The percentage of Black students enrolled at Elementary School A will decrease to 88.9% by October 1, 2023 (Year 1); to 87.5% by October 1, 2024 (Year 2); to 86.6% by October 1, 2025 (Year 3); to 84.9% by October 1, 2026 (Year 4); and to 82.9% by October 1, 2027 (Year 5).

Table 3 (Year 4)

Grade	Black or African American		Latino		White	
	Count	Percentage	Count	Percentage	Count	Percentage
K	104	84.6%	5	4.1%	14	11.4%
1	120	88.9%	5	3.7%	10	7.4%
2	99	83.2%	11	9.2%	9	7.6%
3	104	82.5%	10	7.9%	12	9.5%
Total	427	84.9%	31	6.2%	45	8.9%

Table 3 (Year 5)

Grade	Black or African American		Latino		White	
	Count	Percentage	Count	Percentage	Count	Percentage
K	119	82.6%	8	5.6%	17	11.8%
1	112	82.4%	8	5.9%	16	11.8%
2	128	84.2%	13	8.6%	11	7.2%
3	105	82.0%	12	9.4%	11	8.6%
Total	464	82.9%	41	7.3%	55	9.8%



ENROLLMENT DATA: EXAMPLE 2

Performance Measure: The percentage of Black students enrolled at Elementary School A will decrease to 88.9% by October 1, 2023 (Year 1); to 87.5% by October 1, 2024 (Year 2); to 86.6% by October 1, 2025 (Year 3); to 84.9% by October 1, 2026 (Year 4); and to 82.9% by October 1, 2027 (Year 5).

Table 3 (Year 4)

Grade	Black or African American		Latino		White	
	Count	Percentage	Count	Percentage	Count	Percentage
K	110	94.0%	5	4.3%	2	1.7%
1	140	97.2%	3	2.1%	1	0.7%
2	150	94.3%	7	4.4%	2	1.3%
3	140	94.0%	6	4.0%	3	2.0%
Total	540	94.9%	21	3.7%	8	1.4%

Table 3 (Year 5)

Grade	Black or African American		Latino		White	
	Count	Percentage	Count	Percentage	Count	Percentage
K	50	53.2%	21	22.3%	23	24.5%
1	100	66.7%	28	18.7%	22	14.7%
2	101	66.4%	24	15.8%	27	17.8%
3	120	68.2%	28	15.9%	28	15.9%
Total	371	64.9%	101	17.7%	100	17.5%





Strategies for Reducing MGI

STRATEGIES FOR REDUCING MGI

- School districts may use numerous strategies to pursue diversity and avoid racial isolation "to foster meaningful interaction among students of different racial and ethnic backgrounds"

20 U.S.C. § 7231(a)(4)



STRATEGIES FOR REDUCING MGI

- School Zoning Examples:
 - A school district might draw an attendance zone for a magnet school in a way that considers the socioeconomic or racial composition of surrounding neighborhoods. All students in the zone would be treated the same without regard to individual characteristics.
 - Similarly, a school district might consider the socioeconomic and racial composition of the areas surrounding potential sites in deciding where to locate a new magnet program.



STRATEGIES FOR REDUCING MGI

- Student Selection Examples:
 - A school district might establish a preference in the student selection process for a new magnet school established at an underperforming school for students attending a higher performing school if doing so would reduce racial isolation in the magnet school.
 - A school district could design a student selection process for a magnet school that assigns preference to students based on their socioeconomic status in a way that is likely to decrease MGI at the magnet school.



STRATEGIES FOR REDUCING MGI

- Inter-District Enrollment Example:
 - A racially isolated school district could partner with an adjacent school district with a different racial composition to permit students from the neighboring district to access a magnet program, regardless of the race of the individual student.

AVAILABILITY OF TECHNICAL ASSISTANCE

- If your district has OCR-related questions or concerns regarding the MSAP process or reviews, please contact the staff-level coordinator, Ray Li, at ray.li@ed.gov.
- If your district is interested in TA regarding OCR's policy guidance or other civil rights compliance concerns, please contact us at OCR@ed.gov.



FINAL QUESTIONS?

Q & A



THANK YOU



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