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M. Pollock: Because of Race

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INTRODUCTION

Power concedes nothing without a demand. It never did
and never will.

—Frederick Douglass, 1857

FOR THIS BOOK, I have analyzed hundreds of arguments over racial discrimination in public schools that I encountered while working at the U.S. Department of Education's Office for Civil Rights (OCR) from 1999 to 2001. I participated in most of these arguments, as I investigated cases and talked on the phone to local educators, parents, and advocates, or discussed office policies and practices with my colleagues. I overheard a few arguments in a fluorescent-lit office hallway or over the wall of my cubicle; I encountered others on the pages of circulating government documents. All centered on a longstanding, still-raging debate within American education:¹ *Which opportunity denials experienced by students of color should be remedied?*

It is not surprising that the debate raged at OCR. Like other OCR employees, I was paid to determine which harms to children in their daily lives in public schools "count" in federal legal terms as harms demanding remedy. What surprised me at OCR, and during data analysis post facto, was to find just how often both educators and OCR people argued that fewer harms experienced by students of color should be remedied, rather than more.² I wrote this book to examine this response empirically, and to examine how debates over serving students of color exposed conflicting American analyses of opportunity denial and harm worth remedying.

OCR was created originally in 1967 to enforce Title VI of the 1964 Civil Rights Act, which outlawed discrimination "on the ground of race, color, or national origin" in federally funded programs, including K-12 and postsecondary schools. Title VI, designed to counter legally enforced segregation, stated simply that "discrimination" meant denying people opportunities because of race: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."³ Yet applying Title VI in education was anything but simple; it got more complex as time went on.⁴ By 2000, actually determining which policies, actions, and situations inside

schools and districts “denied benefits” or “excluded” participants “on the ground of race,” or “discriminated” against students of color in any other way, sparked fierce debate between local communities, local educators, OCR employees, and OCR administrators. These debates revealed the same key national tension soon to be debated in the Supreme Court: determining harm “because of race” to students in the nation’s schools and districts.

In June 2007, the Supreme Court decided by the narrowest of margins that two districts’ race-conscious voluntary desegregation policies denied white students opportunities to enroll in their schools of choice.⁵ Citing the Equal Protection Clause of the Fourteenth Amendment and *Brown v. Board of Education*, four of the justices turned the focus of analysis away from whether segregated schools still harmed students of color “because of race.” Instead, their plurality opinion held that these districts’ voluntary efforts to desegregate harmed white students “because of race.”⁶ The Court’s ruling capped off several decades of legal decisions restricting even voluntary efforts to increase opportunities for students of color in the nation’s school districts via desegregation.⁷ This time, while one justice’s concurring opinion left the door open for some forms of “race-conscious” desegregation, four of the justices held more bluntly than usual that such methods of increasing opportunity should no longer be allowed.⁸

In the work I participated in at OCR, we typically debated which policies and practices denied opportunities “because of race” to students of color, not white students; allegations of harms to students of color made up the majority of race complaints brought to the agency. Along with other employees in my region, I also typically debated the ongoing provision of opportunity to students inside schools and districts, rather than their one-time assignment to particular schools. Yet we, too, often spent our days embroiled in the same American arguments central to the Supreme Court case. We debated which opportunity denials experienced by students of color actually now demanded remedy, and which remedies for harm would now actually be pursued.

At the time of Title VI’s inception, civil rights law clearly contained at its core a concern to remedy the denial of opportunity to “subordinate groups”: people of color.⁹ The core form of racial discrimination that lawmakers conceptualized at the time was districts intentionally segregating black students from white students. Over time, Title VI was extended to cover more opportunity denials “on the ground of race” within and between schools. “Programs” came to mean any of the activities of schools, districts, or universities, or state or local agen-

cies, that were receiving any federal financial assistance.¹⁰ Around 2000, OCR's Web site informed the public that Title VI covers "aids, benefits, or services" in education that included "admissions, recruitment, financial aid, academic programs, student treatment and services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing, and employment."¹¹ The Department of Education's Title VI regulations, as printed in 1980 in the thick *Code of Federal Regulations* book on my desk when I was at OCR,¹² decreed that recipients of federal financial assistance in education could not, "directly or through contractual or other arrangements, on ground of race, color, or national origin,"

"deny" students services, financial aid, or benefits provided to others under the program;

"provide" services, aid, or benefits that are "different" from those provided to others, or that are provided "in a different manner";

"subject" students to "segregation or separate treatment" in the program;

"restrict" students in the "enjoyment of any advantage or privilege enjoyed by others" in the program;

"treat" students "differently" in determining admission or eligibility for benefits, aid, and services in the program;

"deny" a student "an opportunity to participate in the program . . . or afford him an opportunity to do so which is different from that afforded others under the program."¹³

Our Title VI regulations also stated directly that people in schools, districts, and universities, and people running federally funded educational programs, could not take actions regarding students that had indirectly discriminatory effects.¹⁴ OCR also interpreted "racially hostile environments" in schools and districts that were "created, encouraged, accepted, tolerated, or left uncorrected" by federal funding recipients to violate Title VI.

Title VI thus covered both policies and practices in the nation's schools and districts, whether those settings were segregated or desegregated. It covered not just student assignment but also the daily provision of resources and opportunities to learn in schools and districts, and social interactions between educators and the children and families they served. As this book shows, however, applying Title VI in real schools and districts prompted and revealed heated American debates over what it actually looks like today to deny opportunity "because of race" to students of color in the nation's schools—and who, if anyone, will or should step forward to remedy such denials. These debates raged daily within OCR, too, as colleagues confronted one another

over investigations of complaints or over office policy. Much OCR work also revealed that educators, parents, and advocates in schools and districts had been debating these same contemporary questions of harm and opportunity regarding students of color long before OCR became involved.

With twelve regional offices across the country and headquarters in Washington, D.C., OCR circa 2000 primarily investigated complaints of educational discrimination filed by ordinary Americans and advocacy organizations. Starting in the 1970s, OCR's mission expanded as civil rights laws outlawed discrimination in federally funded public schools and educational programs on the bases of sex, disability, and language,¹⁵ so we investigated complaints about discrimination on all these grounds as well as race. At the national level in 2000, OCR also provided some policy guidance to the nation's educational institutions, telling them how the agency currently interpreted civil rights law. OCR could also undertake uninvited "compliance reviews"¹⁶ of entire districts and universities to assess their adherence to civil rights laws, though it was rarely doing so by the time I worked at OCR. Those higher up, as I will show here, often called such work too "proactive." Still, as administrators allowed, OCR employees could also propose and even develop new policy projects to improve the analysis or remediation of particular forms of discrimination in children's educational lives. I worked on one such project, the Early Learning Project, which envisioned examining how schools and districts provided key learning opportunities to children in kindergarten through third grade. In our days in our cubicles and offices, however, we spent most of our time investigating discrimination complaints we received from ordinary Americans regarding students' and families' experiences of injustice inside schools and districts with various demographics.

All this work had very important implications. It focused attention on one crucial, hotly debated aspect of opportunity in contemporary America: opportunity provided daily to students inside schools and districts. Complaints, like some policy projects within the agency, prompted explicit arguments over which acts toward students inside schools and districts, and which educational situations, should now be called *discrimination*. In legal terms, such harm "on the ground of" group membership could then be deemed impermissible, and could be remedied.¹⁷ By requesting OCR's judgments as to which acts and situations in educational settings constituted racial "discrimination,"¹⁸ complainants and employees alike would find themselves shackled by OCR's politicized, legal definitions of the concept. Like the Supreme Court, we were more likely to deem as beyond remedy the harms experienced by students of color than we were to actively try to remedy

those harms. But Americans bringing Title VI complaints to OCR, and OCR employees responding actively to complaints or developing office policy regarding Title VI, provocatively insisted that American equality logic still required analyzing equal opportunity for students of color. More provocatively, many demanded a version of opportunity analysis crucial for our time: they demanded discussion of how racial inequality of opportunity and outcome in education are produced, in part, through the accretion of everyday experiences of opportunity denial to students of color inside schools and districts.

These analyses did not propose that policies or activities outside schools and districts were irrelevant to opportunity. Rather, they named the everyday provision of opportunity inside schools and districts as another crucial opportunity domain, and analyzed concretely how specific opportunities were provided or denied students of color. Other observers examining the cumulative denial of life opportunities to children of color today importantly urge analysis of “cumulative racial disadvantage” across policy domains, like health and housing as well as education, and even across generations.¹⁹ In forcing debate on everyday opportunity provision inside schools and districts, complainants to OCR and proactive employees within the agency focused their analysis on a third crucial form of contemporary harm: the accretion of unequal opportunity over children’s lifetimes through the aggregation of events within schools and districts themselves.²⁰

To those who filed K–12 complaints at OCR and to many OCR employees, the everyday experiences of children in schools and districts were crucial moments that provided or denied essential opportunity. They argued that when José was repeatedly searched, suspended, and ejected from school as punishment for “defiance,” it marred his chances of academic success, and that when a school’s black students were harassed and the school and district adults failed to act, those students were excluded from full participation in the school community. They also argued that if security guards gave the names of Latino hall wanderers to the police as potential “gang members,” this mattered for their educational and life trajectories, and that if the academic needs of entire districts’ populations of English-language learners went unassessed and unaddressed, this denied them equal access to the common curriculum and decreased their chances of school success. Similarly, the Early Learning Project contended that when schools or districts denied students of color early opportunities to learn to read or compute, those were essential moments of denying educational “benefits” that had fundamental consequences for the children’s futures.

Whether they were describing opportunities denied to individual children of color or examining the treatment of many children at once, all these analyses proposed that children be offered a form of what I call *everyday justice*: they demanded detailed attention to the moment-to-moment provision of opportunity in children's daily educational lives. They contended that specific opportunities provided on a daily basis by people in schools and districts would help constitute fair treatment; they argued that children of color should be offered everyday opportunities to learn and thrive that were equal to white children's opportunities. Particular complainants went even beyond the legal logic of Title VI in demanding everyday justice. They argued that children of color should be offered opportunities that would be ideal for any child, and that if children *experienced* denials of opportunity to learn and thrive in their everyday lives inside schools and districts, this denial deserved some remedy, even if no one intended this denial or the denial could not be proved legally to have occurred "because of race."

Most important, all these efforts focused on describing, in detail, specific opportunities that students of color needed daily from schools and districts in order to have an equal opportunity to succeed inside educational settings. Analysts examining the provision of opportunities by superintendents or teachers or security guards noted specific ways that these specific actors distributed opportunity unequally and insufficiently to children of color, or accepted harm to students of color in school settings of various demographics as normal and unproblematic. They argued that these particular acts by particular actors inside schools and districts contributed to unequal opportunity for students of color and unequal outcomes.

This book is about these specific demands for equal opportunity in everyday educational life and the resistance they encountered. For as I show here, both local educators and colleagues at OCR—and sometimes, I, too—routinely rebutted external or internal proposals for everyday justice with arguments that the everyday opportunity denials experienced by students and families of color did not "count" as impermissible harms, that additional opportunities for children of color were not required, or that harms could not be remedied using OCR's politicized legal tools. Hearing claims for everyday justice, both educators and OCR employees often contended that perhaps the denials claimed had not actually occurred "because of race," that such denials were not substantial enough to constitute unequal opportunity, or that local people should not be pressed to equalize opportunity for students of color in specific ways. Our work thus exposed an ongoing American battle between two opposing contemporary arguments:

specified demands for equal opportunity for students of color in schools and districts, and pervasive resistance to these very demands.

This book exclusively examines OCR's work with K–12 schools and districts, which formed three-quarters of the agency's work,²¹ the bulk of my own assigned cases, and the focus of the one policy effort I was involved in within the agency. The K–12 districts I encountered while at OCR were of varying size, diversity, and bureaucratic complexity, ranging from a one-school district in a rural area serving predominantly Latino and white students to an urban district with 700,000 students of color. Most of the complaints I saw regarding these districts were filed by parents and, in Title VI cases, by parents of color. A few were filed by advocacy organizations.

The Early Learning Project envisioned examining the distribution of learning opportunities both within entire districts and within individual schools. Complainants' demands described the needs of both individual students and many students across entire districts. Some OCR complaints were large-scale "class complaints" (similar to class action suits) asserting that entire protected categories of children in a school district—typically students of color, English-language learners, girls, or students with disabilities—were treated unequally or denied opportunities by district or school actions. Parents and advocates alleged, for example, that black students were being disproportionately placed in Special Education or expelled without sufficient cause. They argued that Latino students across a district lacked necessary educational resources, like computers, or specific learning opportunities, like the opportunity to take advanced science. They pointed out that English-language learners sitting confused in English-only math classrooms were missing out, daily, on crucial content instruction. Complainants often also demanded analysis of opportunity for individual students: many of the complaints I encountered at OCR suggested that the treatment of an individual child or a few children exemplified barriers against these kinds of children in the school and district. These complaints often turned on specific acts against particular children, for example, a Latino student disciplined for a disputed infraction, a deaf student denied a promised interpreter, or several girls barred from a sports team. Complainants even zoomed in on how even a single everyday interaction between adults and children contributes to cumulative patterns of educational harm. For example, parents asked local educators and then OCR employees to evaluate the immediate academic consequences for a Latino student when a dean suspended him for three days and white classmates went unpunished for similar "defiance." Parents were concerned about the lingering academic consequences,

for a black student, of a teacher's rough hand on his shoulder on one particular day.

Regardless of whether they were describing harm to many children or harm to individuals, the demands for everyday justice I encountered at OCR were demands that people inside schools and districts improve specific daily educational experiences of children. Even complainants denouncing aggregated achievement outcomes by many students of color, both in segregated districts and inside desegregated ones, often focused attention on specific opportunity denials by real people in schools and districts that contributed to such patterns inside the educational domain.²² Rather than speaking abstractly about unequal opportunity, many pinpointed the practices of teachers or administrators that contributed to grade retention or to students' dropping out; they critiqued the evaluation process through which counselors and teachers referred students for Special Education or Advanced Placement classes. Their analyses prompted us, within OCR, to question the teacher actions contributing to racially biased enrollment in Special Ed or the administrative decisions leading to the unavailability of college preparatory courses to students of color.

Complainants also demanded both short-term and long-term remedies. They asked people in schools and districts not just to do their part once to provide basic learning opportunities like up-to-date books, but also to do their part regularly to offer "high-standards" curricula, to provide English-language learners with ongoing adequate access to academics, and to make ongoing efforts to improve racially hostile relations between students, parents, and educators. Within OCR, we activated such everyday justice analysis ourselves whenever we suggested how we, as an agency, might investigate the past or ongoing distribution of specific opportunities in the everyday activities of districts and schools. At those moments, we made clear that while local educators would be the ones actually providing everyday opportunity, it was a federal responsibility under Title VI to help facilitate that provision and to ensure that such provision occurred equitably in the daily practices of the nation's schools and districts.

Advocates demanding everyday justice inside schools and districts, and OCR employees attempting to evaluate the provision or denial of everyday justice in local schools and districts, were identifying local educators as crucial daily providers of opportunity and proposing ways to equalize and improve the distribution of specific opportunities inside districts and schools, not blaming local educators in isolation for racial inequality in American education or American life. Fewer complainants approached OCR to allege that states were denying resources, and OCR almost never took on state actors directly;

such complaints have typically been the subject of state lawsuits.²³ But Title VI complainants or proactive OCR colleagues circa 2000 did not ignore the need for outside policymakers to provide dollars, or for the nation's universities to produce qualified teachers, or for students and parents themselves to make ongoing efforts toward student success. Nor did their analyses argue that issues of health or housing were irrelevant to students' well-being. Rather, they framed opportunity as something that *also* had to be provided daily, through actions and interactions, by specific people whose acts inside schools and districts directly affected children's everyday educational experiences. They therefore focused attention on the ongoing provision of opportunity in locations up close to children themselves, and on educators as particular opportunity providers, calling such locations crucial but not isolated sites of opportunity provision.

I contend here that when describing in detail some everyday experiences of harm and opportunity denial inside schools and districts, analysts both outside and inside OCR provided a component of opportunity analysis that is desperately needed today, one that has the potential to reverberate beyond specific locales and even beyond schools and districts alone. They suggested not just that children had to experience *specific forms* of equal opportunity daily, but also that *specific people* had to help provide these opportunities. Such analysis proposed specific opportunities for young people to learn and thrive and specific actors who would supply such opportunities to children, rather than simply demanding equal opportunity in general, denouncing opportunity generally as "racially" unfair, or calling abstractly for opportunities from "society" or "structures." This book proposes that, more broadly, this type of concrete, specific opportunity analysis holds much promise for pinpointing some essential ways of equalizing opportunity in an era when racial patterns like "achievement gaps" are produced by countless interactions across multiple domains and racial inequality is more often allowed than ordered and applauded explicitly by laws and policies. Everyday justice analysis provides one necessary ingredient for opportunity analysis today: detailed consideration of the provision of named opportunities by specific actors within complex systems.

This book also shows that in complex systems, anyone demanding particular opportunities from particular opportunity providers is likely to prompt resistance. In OCR work, everyday justice analysis typically prompted resistance from the very people in local school districts or inside the agency who were asked to help provide additional opportunities to children of color. This occurred because demands for everyday justice suddenly requested articulated opportunities rather than abstract or general opportunity; because they contended that

ordinary people in various locations participated in cumulative processes of opportunity denial; and because they proposed that daily opportunity denials experienced by students of color in schools and districts should actually be remedied. In essence, resistance to “forcing” educators to provide more opportunity to students of color evinced broader disputes over pinpointing, proving, and remedying the various activity that contributes to racial inequality today.

In OCR Title VI complaints, local educators hearing allegations of everyday injustice often resisted blame for any role in the negative educational experiences of students of color. Even before OCR’s intervention, educators expressed doubts that specific opportunities had been racially unequal, that specific people had denied opportunities, that specific harms had occurred “because of race,” or even that students of color had been harmed or disadvantaged in their educational lives at all. They often dismissed the harms experienced by students and families of color—suspensions, denial of information on “gifted” programs, or harassment, for example—as too “small” to really deny opportunity.²⁴ In fact, OCR staff often exhibited the same habits of resistance when we were asked to determine whether specific people had denied specific opportunities to students of color, or when we contemplated calling forcefully in a given policy or complaint resolution for actions to equalize specific opportunities for students of color in local settings. We, too, often rebutted claims that children of color had been denied necessary opportunities in given educational settings “because of race”; we, too, often refused to press anyone in particular to provide particular educational opportunities to children of color.

That both educators and OCR employees often refused to help offer these additional opportunities to children of color, even when they were specifically requested, revealed a reality about contemporary America that others have evaluated generally via surveys and interviews. While almost all Americans now agree with equal opportunity in principle, many of us—particularly those of us who are white—resist some opportunity provision to people of color in practice.²⁵ By examining such resistance arising in real-time, multiplayer interactions regarding children, I show the specific forms and human consequences of such resistance in the educational domain. In the debates I witnessed, few in the chain of those hearing demands for opportunity for students of color, whether educators or civil rights administrators, set forth matter-of-factly to provide students of color with additional opportunities when their advocates demanded them. Rather, we routinely rebutted these demands, saying that remedying specific harms experienced by children of color in their daily school lives was not required.

In the next four chapters, I explore four shared *rebuttals* to demands for everyday justice for students of color that I found pervasive among both local educators and federal employees in my work at OCR and have since found pervasive in contemporary debates about American education.²⁶ Each rebuttal resisted claims that particular acts or situations inside schools or districts harmed children of color impermissibly or intolerably. Each was offered even by people employed *to* offer children opportunity.

Rebuttal 1: Harms to Children of Color Cannot Be Proved

Rebuttal 2: Harms to Children of Color Should Not Be Discussed

Rebuttal 3: Harms to Children of Color Cannot Be Remedied

Rebuttal 4: Harms to Children of Color Are Too “Small” to Fix

In each chapter, I demonstrate that in debates over the harm experienced by students of color in schools and districts, the rebuttals typically won out: they stalled and even halted efforts to provide these students with additional opportunities to learn and thrive in the nation’s schools.

Both everyday justice demands and the rebuttals that greet them are central to what I call the *new civil rights era*. This is an era characterized both by a “fragmented” system of racially unequal opportunity that complicates opportunity analysis and also by key forms of resistance to efforts to equalize specific opportunities for actual people of color.

THE NEW CIVIL RIGHTS ERA

Sociologist Charles Payne argues that in comparison to the system of coordinated, purposeful racial inequality that characterized American schools decades ago, today’s system of racial inequality in education is “fragmented.”²⁷ That is, today’s racially unequal educational opportunity is a result of the ordinary acts of many people in many places, over time, rather than ordered explicitly from on high. Today, racial inequality of opportunity and outcome in education is still the result of past generations of explicit policy decreeing that “white” children were to have better schools than non-“white” children,²⁸ of the subsequent exacerbation of poverty along racial lines, of the nation’s failure to actively desegregate,²⁹ and of the intersections between opportunity denials in health and housing as well as education.³⁰ But racially unequal educational opportunity and outcome today also result from ordinary actions and inaction by well-intentioned people—in part, within schools and districts themselves. In this “fragmented” system, however, as this book shows, many Americans debating education

rebut claims that particular opportunities for students of color have been racially unequal or should be equalized. They often make this rebuttal even while stating their belief in the importance of racially equal opportunity.

Most researchers studying our national debates using surveys and interviews agree that explicit resistance to opportunity for non-white people today has been replaced by stated general commitments to racially equal opportunity as a basic American value. But researchers also agree that when the rubber hits the road, such generic commitments are often trumped by opposition to concrete efforts to equalize particular opportunities for people of color, either because people (particularly white people) contend that opportunities have not been racially unequal or because they believe that opportunity equalization to people of color as such is problematic.³¹ Many researchers have found persisting opposition to “racially conscious” equal opportunity policies like desegregation or affirmative action;³² a subset have examined real-time opposition to programs and practices within school settings that purposefully set out to equalize opportunities for young people of color as such.³³ While examining the test scores of children of color is now national policy,³⁴ research shows that many Americans, particularly white Americans, contend that analyzing educational opportunity with a “race lens,” or equalizing educational opportunity in racial terms, is itself racist.³⁵ Yet little research has shown, as I do, hundreds of Americans offering specific forms of such resistant “rhetoric” (Lamont 2000a) in real-time debates over education, without the prompts of surveys or interviews.

While most observers call our current climate the “post-civil rights era,”³⁶ I prefer the phrase *new civil rights era* to describe a “fragmented,” debate-ridden moment when many Americans, particularly white Americans (but also some Americans of color), resist or rebut demands for specific additional opportunities for people of color even while they support the idea of racially equal opportunity in general.³⁷ First and foremost, as Lakoff (2004) argues, simply using language means accepting its premises.³⁸ This book’s data suggest that speaking of a post-civil rights era falsely accepts the premise that the basic struggle for racial equality of opportunity has ended.

Second, I call this a *new civil rights era* because both demands for racial equality and rebuttals to those demands now come in new forms. First, as OCR complainants showed, demands for racial equality of opportunity in education are no longer limited to demands for equal opportunity policies but also include increasingly detailed demands for equal opportunity practices in everyday educational life.³⁹ In an era when racial inequality is no longer ordered by explicit law

or applauded explicitly by most Americans, however, responses to all such equal opportunity demands are more complicated, too. In past civil rights struggles, Americans seeking policies to redress unequal opportunities to people of color encountered many white Americans who argued bluntly that people of color did not deserve more opportunity. In the new civil rights era, the response to demands for specific equal opportunities in everyday life as well as policy is often not “no” but a qualified “yes, but. . . .”⁴⁰ Today, in debates over education, even well-meaning people rebut demands for additional opportunities for children of color by saying that while racially equal opportunity is indeed desirable, neither impermissible nor “racial” opportunity denials can now be proved to exist in any given situation, and particular opportunities accordingly cannot be demanded from particular opportunity providers. During my two years at OCR, I heard this central rebuttal to everyday justice claims countless times; each chapter in this book is a version of it.

Some readers might contend that these rebuttals simply countered OCR’s federal, legal interventions, and that educators and OCR people were not resisting opportunity provision itself. Indeed, OCR’s project of “enforcing” opportunity provision locally using legal tools raised particularly explicit rebuttals against pressing people to give children of color more educational opportunity. Yet educators had offered these rebuttals to complainants before OCR’s involvement, and I have heard these same debates many times since leaving OCR. I suggest that both we at OCR and local educators routinely rebutted demands for everyday justice for several pervasive contemporary reasons far bigger than OCR, and bigger even than schools alone: out of skepticism that opportunities were actually denied “because of race” (chapter 1); out of defensiveness about requiring others, or being required, to offer specific opportunities to children of color (chapter 2); out of resignation, or the sense that additional opportunities could not be provided to students of color at this historical juncture (chapter 3); and out of confusion over the scale and shape of racial inequality in educational opportunity today (chapter 4). Since our rebuttals often thwarted opportunity provision to children, I conclude by suggesting how Americans might better engage one another in analysis of harm and opportunity in contemporary schools. Indeed, the debates I saw at OCR taught some valuable, more general lessons about arguing toward opportunity for students of color in education today.

A book examining such fraught American debates will likely prompt more debates, so let me clarify a few key positions of my own. First, I am not arguing, in this book, that every claim of racial “discrimination” filed at OCR was to be immediately believed and that the ac-

cused perpetrators had to remedy each situation exactly to complainants' satisfaction. However, I am arguing that the claims of harm indicated real experiences of suffering and opportunity denial in schools and districts. I am also suggesting that in a K–12 educational context, it is essential to address, rather than dismiss, students and families of color's experiences of educational opportunity denial. In the Title VI complaints filed at OCR, some everyday experiences of injustice (like a lack of books or advanced classes) were easy to measure as harmful, while other everyday experiences, such as stigmatizing or humiliating interactions, could not be proved easily in legal terms to be illegal harms "because of race." Still, psychological research has shown that people experience injustice not only when they are denied concrete, "measurable" opportunities but also when they feel disrespected in interpersonal interactions, and when they are not listened to when they assert that injustice has occurred.⁴¹ Research also shows that untreated experiences of everyday injustice can reduce student performance and decrease people's allegiance to "the relationship in which the injustice occurred."⁴² In the demands for everyday justice filed at OCR, complainants described students and families of color experiencing injustice in all the forms debated in the fifty-year evolution of antidiscrimination law:⁴³ being excluded from activities, being treated as outsiders, feeling relegated to "second-class status," being ignored when complaining of unequal treatment, and being denied basic or advanced learning opportunities that other children received or that any child deserves. To complainants, all of these harms aggregated to denials of opportunity to succeed educationally. Accordingly, in this book, I often interchange the words "harm" and "opportunity denial" in describing the debates they prompted over the treatment of children. Further, all of the harms appeared to complainants to be "because of race." That is, it seemed that children of color were harmed in schools and districts, and that this harm was allowed, because the children were not white—and often because the people in charge of their children's education were.⁴⁴ This accusation prompted listeners to dismiss the very *experience* of harm: among educators, particularly white educators, and at times among OCR employees, there was a pervasive reticence to acknowledge or remedy either form of the harm that students and parents of color experienced in their everyday lives inside schools and districts. Particularly in debating endlessly whether opportunities had been denied or harm perpetrated "because of" the race of the children, we all often failed to help improve schools' and districts' actual opportunity provision to students and to improve educators' relationships with the communities they served. This is why I

contend, in the book's conclusion, that providing everyday justice requires both using and transcending legal analysis, which still forces our thinking into dead-end debates over harm's causation rather than its effects on children.⁴⁵

Second, while I am arguing that school and district employees provide crucial opportunity daily to the nation's children, I am not arguing here that such local educators are the only people involved in providing or denying children daily opportunities to succeed in school. (Or, more broadly, that educational opportunities are the only opportunities children need.) Outside actors, like judges who evaluate school assignment policies or state- or federal-level policymakers who make decisions about the distribution of dollars or the assessment of children, fundamentally enable or disable local educators' provision of opportunities to learn. A daily opportunity to learn chemistry is enabled by state legislators who provide the dollars schools use for chemistry labs. A daily opportunity to learn music is made less likely by federal legislators who pressure local educators to focus on test preparation.⁴⁶ The policy effort described in chapter 3 made clear that we inside OCR knew that the federal government could play a role in enabling the provision of equal opportunities to learn. Parents approaching OCR made it clear that their own actions affected children's educational fates. OCR complaints always demonstrated that students were reacting to educator actions on an ongoing basis. I am arguing, however, that as we detail which actors in complex systems need to provide which opportunities to children, focusing attention *also* on the daily provision of specific opportunities by actors inside schools and districts is essential today. Throughout this book, readers wondering whether the daily, often face-to-face injustices alleged here were really worth worrying about, or whether the local actors accused of injustice were fully those at fault for students' educational experiences, or whether federal actors were really supposed to be remedying the local details of daily opportunity provision are engaging and demonstrating the very new civil rights era debates that are central to this material.

Finally, in suggesting the importance of analyzing "everyday justice" in the nation's schools, I am not arguing for remedy for individuals as opposed to systemic remedy for many. Rather, I am literally arguing that equal opportunity analysis today must consider whether specific opportunities are provided or denied during children's actual school days. In my analysis, a district looking at the details of its language service for many English-language learners at once, or equalizing the availability of Advanced Placement courses to the district's students of color, would be pursuing "everyday justice," as would a school analyz-

ing the day-to-day adequacy of its K–3 learning opportunities or educators’ everyday practices of implementing a discipline policy.

This book, then, has two main purposes. The first is to examine the importance of also analyzing daily opportunity provision inside schools and districts in an era when racial inequality of opportunity and outcome in American society are created and condoned through many acts by many well-meaning actors at all levels of systems rather than simply ordered explicitly from on high. The second is to understand some contemporary processes through which such claims for everyday justice are resisted, so that we might see this resistance more clearly and so that in education, advocates and educators might generally seek opportunity for children more successfully. In the book’s conclusion, I propose that advocates for students of color today can make demands for everyday justice more commonplace. Opportunity analysis in education can move to pinpointing, regularly, all the acts by all the players inside and outside schools that contribute cumulatively to educational success or harm for children. Such analysis would then move beyond seemingly blaming “bad people” for isolated mistakes or appearing as unwarranted “advocacy” or externally imposed “prescription” to routinely ensuring the provision of necessary opportunities to children.

Instructively, our work at OCR to provide everyday justice to another population of children was far less controversial. Within the office, our efforts to provide specific necessary opportunities to white children with disabilities were relatively uninhibited by the four “rebuttals” that plagued race cases. I end the introduction with this contrast to get the reader ready to engage the core debates over harm “because of race” that plagued our work at OCR.

EVERYDAY JUSTICE EFFORT AT OCR CIRCA 2000

When the Office for Civil Rights was created in 1967, its primary mission was to secure equal opportunities for black students via desegregation. By the time I joined OCR, the office was primarily using civil rights tools to secure everyday justice for white students with disabilities. Within hours after I arrived on my first day, my desk was piled with brown legal folders documenting alleged harms against such children. Since the 1980s, in fact, complaints filed by predominantly white parents demanding specific services for children with disabilities have made up over half of OCR’s caseload, while racial discrimination cases have comprised less than a fifth. When I worked at OCR, disability

cases still averaged about 54 percent of the agency's caseload, while race cases averaged 20 percent.⁴⁷

Several factors explain OCR's shift toward efforts to provide everyday justice to white students with "disabilities."⁴⁸ Each exposes something about educators' and OCR's own regular habits of rebutting claims of harm to children of color in particular.

First, OCR provides comparatively little outreach to inform people of color of continuing civil rights protections for their children, demonstrating a habit of passivity in the Title VI arena that I demonstrate throughout this book. In contrast, disability law includes explicit prescriptions to inform parents of their disability-related civil rights. The Individuals with Disabilities Education Act (IDEA) provides for parent training and information centers that assist families requesting disability services. Nothing comparable has ever existed to educate American families about employing Title VI. Over time, white parents with more money and connections increasingly availed themselves of OCR's tools for demanding civil rights to specific academic opportunities for students with disabilities, and districts got used to receiving disability service demands. Large disability advocacy organizations informed these parents of OCR's legal tools for securing disability services. As OCR colleagues told me often, each success in providing disability services brought more such parents to the office to demand them. One day at OCR, I wrote in my notes that disability complaints about individual white children seemed to "DRIVE THE AGENDA." One of my coworkers' predominant concerns was the huge number of white parents demanding services for students diagnosed with attention deficit disorder (ADD); one colleague described the ADD cases glutting the office as "like a new industry."⁴⁹ White parents filing disability complaints at OCR circa 2000 routinely told me that some established advocacy group had sent them to the agency for help obtaining assessments and services, or even helped them fill out complaint forms. Some such parents e-mailed OCR with early questions that helped them formulate their complaints. In contrast, some parents of color who filed typewritten or handwritten Title VI complaints at OCR told me that they accidentally found OCR through the Yellow Pages. In my experience, relatively few individuals who were filing complaints of racial discrimination had formal assistance from private lawyers or even from formal advocacy groups.⁵⁰ The few parents and advocates who did file Title VI complaints often spoke of local parents who shared their concerns but did not file. Their stories suggested that the few Title VI complaints that reached the federal legal bureaucracy circa 2000 were just the "tip of the iceberg" of controversy about providing everyday justice to students of color in the nation's public schools.⁵¹ Title VI com-

plaints, thus, always struck local educators as aberrations; educators receiving Title VI complaints in districts often expressed surprise that OCR even existed to do such work or that civil rights law even extended to “cover” students of color’s everyday experiences inside schools. And by waiting for Americans to file complaints while not informing the public of its Title VI services, OCR demonstrated that it was unlikely to proactively tackle opportunity provision to students of color in the nation’s schools.

There is a second reason, also important to understand for this book’s purposes, why OCR circa 2000 disproportionately and successfully offered everyday justice to white children labeled “disabled” while often failing to do so for children of color generally. Disability rights law and regulation identified procedures for analyzing the effective provision of particular educational opportunities in children’s everyday lives.⁵² Title VI did not include these precise tools but rather told people not to “discriminate” “on the ground of race” in educational programs. This ambiguity exacerbated the endless American debates explored in this book. In comparison to the bureaucratic clarity of disability work, geared toward providing needed opportunities to children, federal law and regulation in the race realm made both proving and remedying harm to students of color nebulous and contentious.⁵³ Title VI work, which raised questions about the racial causation of harm to group members rather than relying on medicalized assessments of harm to individuals, always prompted the four key rebuttals I analyze here. When I worked at OCR in 1999–2001, cases involving racial discrimination were frequently subject to fundamental arguments *within* the agency over proving that children of color had been denied opportunities in ways the law disallowed.

This brings us to a final, most fundamental reason why OCR shifted away from efforts to improve everyday educational experiences for students of color and toward efforts to improve those of white students with disabilities. OCR employees were particularly unlikely to label as “discrimination” the opportunity denials experienced by children and families of color, either as individuals or as large groups. Instead, both in complaint investigation and when considering agencywide policy, OCR administrators, managers, and lower-level employees often rebutted Title VI proposals for everyday justice for students of color by asserting that we could not or would not find impermissible harm. Circa 2000, civil rights lawyers outside the agency told me that they advised potential Title VI complainants that OCR was unlikely to assist much with claims of racial discrimination. One such lawyer argued to me bluntly that he had to wonder whether OCR was “on our side or in our way.”⁵⁴

It is ironic, but also understandable, that rebuttals to everyday justice demands for students of color pervaded not just local schools and districts but also an agency like OCR circa 2000. Within OCR, these rebuttals were rooted both in contemporary legal thinking about what now constitutes permissible harm to people of color and in a long-standing but pervasive federal unwillingness to force local people to offer equal opportunity to people of color. Regarding the first issue, this book is in part about the limitations of legal definitions of harm in an era when the denial of educational opportunities is not explicitly mandated or applauded as it was in the Jim Crow era when civil rights tools were first developed.⁵⁵ Chapter 1 (*Rebuttal 1: Harms to Children of Color Cannot Be Proved*) shows that when investigating racial discrimination complaints at OCR, we engaged in raw, irresolvable analytic battles with educators and our colleagues over an American dilemma central to civil rights law: “proving” whether everyday acts in classrooms, schools, and districts hurt children of color impermissibly *because* they were children of color or, at times, whether these acts even hurt them at all. Working at OCR, I learned that civil rights laws leave harms to people of color unaddressed if no one can find particular forms of “evidence” of harm “because of race.” Indeed, it is because such evidence (especially of intentional harm) is now so hard to find in legal terms that some call the current moment the post-civil rights era.⁵⁶ I also realized that many educators who dismissed local demands to assist students of color were already arguing to local parents and advocates that harm “because of race” could not be proved. This rebuttal, they demonstrated, is deeply rooted in contemporary American life.⁵⁷

In chapters 2 and 3, I further explore contemporary debates over limiting both federal and local efforts to improve the educational experiences of children of color in the nation’s local schools. Chapter 2 (*Rebuttal 2: Harms to Children of Color Should Not Be Discussed*) explores local and federal resistance to OCR’s “prescribing” assistance to children of color in complaint resolution. Chapter 3 (*Rebuttal 3: Harms to Children of Color Cannot Be Remedied*) explores internal debates over the Early Learning Project, which attempted to analyze, at the federal level, daily opportunity provision to students of color in local schools and districts. In these two chapters, I explore how both OCR employees and local educators limited potential efforts to help provide everyday justice to these students by arguing that opportunity provision should not be too vigorous or too specific.

To some extent, OCR employees have always worried that if they make proactive and specific suggestions for equalizing opportunity for students of color, they risk appearing to Congress or local critics as

“feds” being too muscular or opinionated in “prescribing” changes for local districts, rather than leaving local decisions in local hands.⁵⁸ More broadly, federal intervention to proactively provide educational opportunities in localities has historically been limited in the United States, with states and localities expected to fund and regulate the bulk of opportunity provision. Having refused to press for desegregation after OCR’s earliest years, the federal government stepped into heavy regulation of localities only recently by imposing standardized testing.⁵⁹ Yet since the mid-twentieth century, federal civil rights laws and regulations have positioned the federal government to ensure that opportunities in schools and districts are not unfairly denied students “because of” protected group status.⁶⁰ In OCR work, both local and federal resistance to OCR’s actually using federal power to examine and enable local opportunity provision for students of color revealed as much about shared unwillingness to press for opportunities for students of color as it did about resistance to federal power generally. Though educators and administrators receiving disability complaints via OCR often resisted these claims initially,⁶¹ many eventually acquiesced to OCR’s confident federal demands to assess and assist children daily in specific ways as diagnosed.⁶² In contrast, both educators and even the most committed OCR employees routinely argued that we “feds” were out of order if we suggested too vigorously or specifically that equal opportunity be provided to children of color. Chapter 2 shows that as we “feds” resisted pressing in detail for equal opportunity during complaint resolution and as local educators resisted being so pressed, the result was that we all refused many chances to improve daily schooling experiences for children of color. In chapter 3, I show the force of such self-limitation within OCR by demonstrating how I myself, having arrived at OCR full of optimism about equalizing opportunity, learned to employ a “rhetoric of [negative] reaction” about the impropriety or impossibility of OCR policy pressing for any particular form of educational opportunity for K–3 children of color.⁶³

Finally, this book illustrates how today, in the new civil rights era, even people pressing openly *for* racial equality of opportunity argue against everyday justice remedies, often out of pessimism or confusion about the contemporary structure of opportunity denial. Chapter 4 (*Rebuttal 4: Harms to Children of Color Are Too “Small” to Fix*) examines how people inside and outside OCR, including some complainants themselves, dismissed even our successful efforts to provide everyday justice to children of color by arguing that such efforts to provide named opportunities in children’s and families’ everyday lives inside schools were too “small” to actually assist much. Observers of OCR work often dismissed the importance of everyday opportunity provision, either to

individuals or to entire districts' populations of students of color, by arguing either that everyday harms to students of color inside schools and districts were negligible or that providing daily opportunities inside schools would do little to counter structural or systemic inequality.

Working at OCR, I saw Americans of all political leanings offer rebuttals to demands for everyday justice for students of color by suggesting either angrily or pessimistically that providing specific opportunities for children of color in their daily educational lives was not warranted, possible, or important. Such arguments have consequences for the nation's children and for our schools.⁶⁴ During the two years I spent at OCR, we federal employees and many educators we encountered concluded, again and again, that in particular instances real people should not, could not, or would not be pushed to offer children of color the educational opportunities that they and their families desperately desired. Let us begin examining this American debate.