Not Yet Scheduled For Oral Argument

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-7012

JABARI STAFFORD,
Plaintiff-Appellant,

v.

GEORGE WASHINGTON UNIVERSITY,
Defendant-Appellee.

On Appeal from the United States District Court
for the District of Columbia, No. 1:18-cv-02789
Before the Honorable Christopher R. Cooper

RESPONSE BRIEF FOR DEFENDANT-APPELLEE THE GEORGE WASHINGTON UNIVERSITY

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Certificate as to Parties, Rulings, and Related Cases

Parties and Amici. The parties are Plaintiff-Appellant Jabari Stafford and Defendant-Appellee the George Washington University. Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Defendant-Appellee states that it is an educational institution and a non-profit corporation with no parent corporation, and that no publicly held company has a 10% or greater ownership interest in the George Washington University. The NAACP Legal Defense and Educational Fund, Inc. is *amicus* in support of Plaintiff-Appellant.

Rulings Under Review. The rulings under review are: (1) the January 4, 2022 Order of the district court (Hon. Christopher R. Cooper), granting the Motion for Summary Judgment of the George Washington University, which can be found at district court Dkt. 90; and (2) the accompanying January 4, 2022 Memorandum Opinion, which can be found at *Stafford v. George Washington University*, --- F. Supp. 3d ----, 2022 WL 35627 (D.D.C. Jan. 4, 2022), and at JA-2-820-63.

Related Cases. This case has not been before this Court, and counsel for the George Washington University is unaware of any related cases.

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GLOSSARY

Term	Definition
DCHRA	District of Columbia Human Rights Act, D.C. Code § 2-1401.01 *et seq.*
Plaintiff	Plaintiff-Appellant Jabari Stafford
Rehabilitation Act	The Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*
Section 1981	42 U.S.C. § 1981
Section 1983	42 U.S.C. § 1983
Section 1988	42 U.S.C. § 1988
Title VI	Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*
Title VII	Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*
Title IX	Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 *et seq.*
The University	Defendant-Appellee the George Washington University

INTRODUCTION

Jabari Stafford was academically suspended from the George Washington University (the "University") in 2018. Eleven months later, he brought suit under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, alleging that the University intentionally discriminated against him on the basis of his race (Black) by failing to address harassment he said he experienced at the hands of his former teammates and a coach on the men's tennis team. To prevail on his intentional discrimination claim under Title VI, Plaintiff must show not only that he experienced a hostile environment based on his race, but also that the recipient of federal funding—here, the University—had *actual knowledge* of that harassment and was *deliberately indifferent* to it. *Davis Next Friend LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 648 (1999). In particular, Plaintiff must produce evidence from which a reasonable jury could find that a University official with authority to address harassment and institute corrective measures (1) *knew* about the alleged harassment and (2) *acted clearly unreasonably* in response. *Id.*; *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 277 (1998).

As the district court correctly found, Plaintiff has not and cannot meet that high bar. Plaintiff has pointed to no acts of deliberate indifference by the University within the applicable one-year limitations period. JA-2-845. Although Title VI is silent as to its limitations period, the district court properly held that the limitations

period for Plaintiff's Title VI claim should be borrowed from the most-analogous state statute—the D.C. Human Rights Act ("DCHRA"), which has a one-year limitations period. *Id.* On appeal, Plaintiff attempts to overcome this time bar by misapplying the continuing violation doctrine and citing alleged incidents of harassment that he claims *did* fall within DCHRA's one-year limitations period. But these incidents either were not properly cited in his Local Rule 7(h) statement (and thus, he waived reliance on them), or they did not actually occur within one year of Plaintiff filing suit. Even if Plaintiff could point to alleged acts of *harassment* within the limitations period, his claim still founders, since he cannot point to alleged acts of *deliberate indifference by the University* within the period. JA-2-845 (citing *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 118 (2002)).

Perhaps sensing that application of the DCHRA's one-year statute of limitations is fatal to his claim, Plaintiff argues that the three-year limitations period applicable to D.C. personal-injury claims should apply instead, relying primarily on cases that have held that Reconstruction-era civil rights statutes borrow state-law personal-injury limitations periods. *See, e.g.*, *Wilson v. Garcia*, 471 U.S. 261 (1985); *Burnett v. Grattan*, 468 U.S. 42 (1984). But where a federal statute lacks a limitations period, courts must determine which *state* statute is most analogous to the federal statute and borrow that state statute's limitations period. *Wilson*, 471 U.S. at 267-68. That is not a close call here. Both Title VI and the DCHRA prohibit

discrimination by educational institutions on the basis of race, color, and national origin, and both are enforceable through private rights of action and administrative procedures. By contrast, there is nothing that ties the D.C. personal-injury statute (or its limitations period) to Title VI. In fact, *there is no specific personal-injury statute of limitations in D.C. at all*; Plaintiff relies on a catchall statute of limitations that happens to capture personal-injury claims among many other claims, which even Plaintiff must concede are not good analogs for Title VI.

Even if a three-year limitations period applied, Plaintiff's claim still could not withstand the University's Summary Judgment Motion. Plaintiff has not and cannot point to a single instance of a University official with authority to institute corrective action being notified of the racial harassment that he now claims to have experienced and acting clearly unreasonably in response.

To be clear: The University condemns harassment on the basis of race and all other protected characteristics. But the record here reveals that Plaintiff often did not raise concerns of harassment, and when he did, the University attempted to address them. In particular, the University told Plaintiff that if he believed he had been racially harassed, he should avail himself of the University's grievance procedures; Plaintiff chose not to do so. Title VI requires proof of deliberate indifference in the face of actual knowledge of harassment before imposing what can be significant financial liability on universities. Plaintiff has not met that

standard here.

STATUTES AND REGULATIONS AT ISSUE

Pertinent statutes and regulations are reproduced in the Addendum.

COUNTERSTATEMENT OF THE ISSUES

1. Whether the statute of limitations applicable to Title VI claims brought in D.C. should be borrowed from the DCHRA and is therefore one year, as the district court held.

2. Whether the district court's entry of summary judgment for the University under a one-year limitations period was proper, given that Plaintiff failed to identify any alleged acts of deliberate indifference by the University that occurred within one year prior to Plaintiff's filing suit.

3. Whether summary judgment for the University would be proper under a three-year limitations period, because Plaintiff failed to identify any alleged acts of deliberate indifference that occurred within three years prior to Plaintiff's filing suit.

COUNTERSTATEMENT OF THE CASE

A. Factual Background

1. Plaintiff Struggles Academically During High School And His Freshman Year At The University (2014-2015)

Plaintiff attended the University to be on a tennis team and jumpstart a tennis career. JA-3-972 at 424:17-19. His father Tom Stafford explained that becoming a professional tennis player is why tennis players attend college. JA-3-1017 at 159:17-

18. [redacted] JA-3-1086. Plaintiff was a poor student in high school, repeating the ninth grade, JA-3-869 at 9:22-10:2, and ultimately attending three schools in three years, JA-3-869 at 9:17-19.

After Plaintiff matriculated at the University in the fall of 2014, his academic struggles continued. In addition to performing poorly on tests and assignments, *see, e.g.*, JA-1-274, Plaintiff committed plagiarism during his first semester, leading to a failing grade, *see* JA-1-284.

Plaintiff received no athletics scholarship; rather, he "walked on" to the tennis team during his first semester. JA-3-871 at 20:2-4. Shortly thereafter, he allegedly experienced several incidents of racist behavior by his teammates, but did not report the behavior to anyone except head coach Greg Munoz. JA-3-878-79 at 48:2-49:21. Plaintiff also alleges Munoz made anti-American comments to Plaintiff and two of his teammates near the start of Plaintiff's freshman year. JA-3-871 at 18:17-19:11.

Munoz suspended Plaintiff from the tennis team in January 2015 due to anger-control issues, being late to practice, and being a poor teammate. JA-3-1097. Later that month, Plaintiff and his father met with Munoz and Assistant Athletics Director Nicole Early, the University's "sport administrator" for the tennis team, to discuss the suspension. JA-4-1270-71 at 21:23-22:3; JA-3-1097; JA-3-1141; JA-3-896 at 119:9-11. Munoz and Early informed Plaintiff that he needed to follow

Munoz's guidelines to be reinstated to the team. JA-3-897 at 122:19-123:2. In February 2015, Plaintiff was reinstated. JA-3-1141.

During the rest of the spring semester, Plaintiff still struggled academically. He received several 0-point scores on assignments, JA-1-295-96; failed to attend classes (and, when he did, would spend time sleeping or on his phone or computer), JA-1-294; and paid another student to do his homework, JA-1-302. Plaintiff earned a 1.48 GPA for the spring of 2015, with a 2.08 cumulative GPA. JA-1-382.

2. Plaintiff's Academic Difficulties Persist In His Sophomore Year (2015-2016)

Plaintiff also underperformed academically during his sophomore year. For example, he would sign class attendance sheets and then promptly leave the room, JA-3-920-21 at 216:1-218:6, and he plagiarized another assignment—this time, with his father's help, JA-3-907 at 161:4-7; JA-1-287, 371-72.

Near the start of Plaintiff's sophomore year, he spoke with Michael Tapscott (a Black man), Director of the University's Multicultural Student Services Center, because Plaintiff "was unhappy with his current role in the tennis program." JA-3-1220 at 20:24-21:1. Although Plaintiff told Tapscott that "derogatory comments" had been directed to him, those comments were not related to race. JA-3-1222 at 26:13-16. Tapscott relayed his and Plaintiff's conversation to Early and followed up with Plaintiff, but Plaintiff did not respond to Tapscott's outreach. *Id.* at 27:16-28:17. Around the same time, Plaintiff's father reached out to Tapscott and told him

"a little bit about what was going on with [Plaintiff] at the school." JA-3-1226 at 45:1-10; JA-3-991 at 56:3-5. Tapscott referred Plaintiff's father to Early. JA-3-1223-24 at 33:24-34:1.

In January 2016, Early emailed Senior Associate Athletics Director Ed Scott (a Black man) to let him know that she suspected Plaintiff's father would suggest Plaintiff was being discriminated against—not on the basis of any protected characteristic, but because a teammate who did not have Plaintiff's disciplinary history was allowed to return from winter break a day late, whereas Plaintiff was not. JA-2-696; JA-4-1375-76 at 126:12-127:6. After Scott finished pre-planned meetings at a convention, he and Early discussed how to prepare for a potential conversation with Plaintiff's father about Plaintiff not being permitted to return late from break, given his prior suspension. JA-2-696; JA-4-1379 at 130:11-19.

In February 2016, Torrie Browning (a Black woman) became the tennis team's interim head coach. JA-4-1396 at 147:11-12; JA-3-1000 at 92:11-15. In March 2016, Plaintiff met with Early and allegedly described "some of the things that were going on," including "the racial culture on the team" and "all the racism that [he] was experiencing," seemingly under the tenures of both Munoz and Browning. JA-3-915 at 196:13-18; JA-3-966 at 398:2. (Early remembers the meeting focusing solely on playing time. JA-4-1402 at 153:2-8.) According to Plaintiff, Early advised him to wait the year out because a new head coach would be

arriving in the fall. JA-3-915 at 196:15-18; JA-3-923 at 228:10-11. Plaintiff was "satisfied" with Early's recommendation. JA-3-915 at 196:19-21. Early then set up another meeting between Plaintiff, herself, Coach Browning, and Plaintiff's father to make sure Plaintiff felt comfortable with Browning until the new coach arrived. JA-3-918 at 205:20-206:1; JA-4-1402-03 at 153:15-154:3. Shortly thereafter, Plaintiff stopped attending tennis events. JA-3-923-24 at 227:13-229:7.

3. After Learning Plaintiff Was Not On The Tennis Team At The Start Of His Junior Year, Plaintiff And His Father Complain, And The University Responds (2016-2017)

In September 2016, after Plaintiff had been left off the tennis team roster for having failed to attend team events, Plaintiff's father left voicemails for Early and another University administrator. JA-3-1139-40. In the voicemail to Early, Plaintiff's father mentioned "racism that existed" on the tennis team; Plaintiff's father conceded he had never "allege[d] or … talk[ed] about" supposed racism prior to this voicemail. JA-3-1139. The voicemail he left for the second University administrator was forwarded to University Associate Provost for Diversity, Equity, and Community Engagement Helen Saulny (a Black woman), who emailed Plaintiff's father and said that if Plaintiff believed he had experienced racism, he should file a complaint using the University's Student Grievance Procedures. JA-1-399-400; JA-1-224 at 114:3-11; JA-2-532. Plaintiff did not do so. JA-3-897 at 123:9-15.

Days later, on September 12, Plaintiff emailed the new head coach, David Macpherson, asking to be let back onto the tennis team. JA-1-404-05. In his email, Plaintiff did not mention racial harassment of any kind; he also attempted to distance himself from his father's complaints, writing "[w]hatever little concerns my father addresses here and there are completely separate from how I go about things in my everyday life and also separate from my personality." *Id.* On September 29, Scott responded to Plaintiff's email to Coach Macpherson, offering Plaintiff an opportunity to try out to rejoin the tennis team, JA-1-408-09, and telling him (in response to his father's concerns) to file a complaint using the Student Grievance Procedures if he felt that he had been racially harassed, JA-1-409. Plaintiff did not do so. JA-3-897 at 123:9-15.

Saulny also arranged an in-person meeting between herself, Scott, Plaintiff, and Plaintiff's father on October 18, 2016, during which Plaintiff allegedly told Saulny and Scott "about every single little incident and issue that had been happening." JA-3-931 at 258:5-7. Plaintiff's father told Saulny that "racial epithets" had been used on the tennis team bus. JA-1-246 at 205:17. During the meeting, Saulny informed Plaintiff that if he had experienced racial harassment, he should file a complaint using the Student Grievance Procedures. JA-1-247 at 206:2-8; JA-3-931 at 260:7-14. Plaintiff did not do so. JA-3-897 at 123:9-15.

Coach Macpherson allowed Plaintiff to rejoin the tennis team in the spring of 2017. JA-1-45 ¶ 97. Plaintiff allegedly complained to Macpherson at some point during that semester that his teammates had a "conspiracy" to get him kicked off the team, but he "didn't link the conspiracy to [his] race." JA-3-932 at 262:22-263:1.

4. Plaintiff Is Academically Suspended During His Senior Year (2017-2018)

Plaintiff remained on the team during the fall of 2017 (his senior year). At some point during that semester, he alleges, one of his teammates used a racial epithet in the team van on the way to practice, and that other, unspecified teammates used "racial rhetoric." JA-3-935 at 274:8-275:2.

Plaintiff's academic performance his fall senior semester was, again, unsatisfactory. *See, e.g.*, JA-2-565-72; JA-1-383. The University academically suspended Plaintiff in January 2018. JA-2-574-75. Plaintiff appealed. JA-2-586-89. According to Plaintiff, when he was drafting the appeal, Plaintiff's academic advisor Ellen Woodbridge instructed him not to refer to racial harassment he allegedly faced on the tennis team, and that he left that out of his appeal as a result. JA-3-939 at 291:18-19. Instead, he lied and said he had been dealing with "marital problems between [his] parents," both of whom denied having any such problems. JA-2-589; JA-3-1185 at 94:14-16; JA-3-1026 at 196:18-197:4. The University denied Plaintiff's appeal; Plaintiff did not attempt to re-enroll at the University, opting instead to pursue professional tennis. JA-2-592.

[redacted]

See JA-3-1083-95, 1100-25. [redacted]

JA-3-1118.

B. Procedural History

On November 26, 2018, Plaintiff filed suit against the University and several current and former University employees, alleging six counts, including claims of discrimination, breach of contract, and negligence. Defendants moved to dismiss, and Plaintiff moved to amend his Complaint. *See* Dkts. 4, 11. The court dismissed Plaintiff's contract-based claims, his negligence claims, and all but one of his statutory discrimination claims. Specifically, the court allowed Plaintiff to amend his complaint to proceed with a single Title VI deliberate indifference claim against the University. *See* Dkt. 16 at 48.

In October 2019, the University discovered that Plaintiff had engaged in witness tampering via threats and attempted bribery. Dkt. 47-1 at 3. Based on this evidence, the University filed a motion for case-terminating sanctions. Dkt. 47. In April 2021, the court granted in part a renewed version of the University's motion, barring from use at summary judgment certain statements made from two witnesses

and ordering Plaintiff's counsel to personally pay $1,500 to the University. *See* Minute Order (Apr. 20, 2021); Dkt. 77.

On May 21, 2021, the University filed its Motion for Summary Judgment, making four primary arguments. Dkts. 78, 78-2. *First*, the University argued that a one-year statute of limitations applies, and that Plaintiff failed to present evidence of deliberate indifference that occurred on or after November 26, 2017—one year prior to the filing of this suit. *Second*, the University argued that with one exception, Plaintiff did not provide actual notice of alleged racial harassment to any "appropriate persons"—*i.e.*, to any University official "who at a minimum ha[d] authority to address the alleged discrimination [and harassment] and to institute corrective measures on the [University's] behalf." *Gebser*, 524 U.S. at 290. *Third*, the University argued that its response to the one documented instance in which Plaintiff arguably provided actual notice to appropriate persons was not "clearly unreasonable." *Davis*, 526 U.S. at 648. *Fourth*, the University argued that the racial harassment Plaintiff allegedly faced did not deprive him of an educational opportunity within the meaning of Title VI.

In his opposition brief, Plaintiff "d[id] not engage with the merits of applying the [DCHRA's] shorter limitations period, arguing only that the '[c]ourt ha[d] already held that a three-year statute of limitations applies.'" JA-2-834 (quoting Dkt. 81 at 13). During the hearing on the Motion, after the court had noted this

briefing deficiency, Plaintiff's counsel "refused to concede the statute of limitations issue, but likewise offered little affirmative argument as to why the [c]ourt should use a three-year limitations period." *Id.* (alteration and quotation marks omitted).

The court granted the University's Motion for Summary Judgment on January 4, 2022, holding that, because the DCHRA is the D.C. statute most analogous to Title VI, its one-year limitations period applies. JA-2-836-40. The court also held Plaintiff had waived reliance on alleged incidents of racist behavior in the team van during his senior year because those incidents were not included in his Rule 7(h) statement. JA-2-843-44. Because Plaintiff had failed to demonstrate a genuine dispute of material fact bearing on whether the University had been deliberately indifferent during the one-year limitations period, the statute of limitations could not be extended by the continuing violation doctrine. JA-2-844-45. Accordingly, the court concluded that no reasonable jury could find for Plaintiff.

The court also addressed how it would have evaluated the case under a three-year limitations period, explaining that it would have granted summary judgment to the University based on conduct alleged during Plaintiff's junior and senior years, but that it would have denied summary judgment based on conduct alleged during his freshman and sophomore years. JA-2-845-63. Plaintiff appealed.

STANDARD OF REVIEW

This Court reviews the district court's grant of summary judgment *de novo*. *Hairston v. Vance-Cooks*, 773 F.3d 266, 271 (D.C. Cir. 2014). This Court may affirm a grant of summary judgment "on any ground that is properly raised below, even if the district court did not rely on it." *Ogunjobi-Yobo v. Gonzales*, 171 F. App'x 863, 864 (D.C. Cir. 2005).

This Court reviews for abuse of discretion the district court's enforcement of the Local Rules, including a declination to consider facts or record citations in an opposition to a summary judgment motion that are not made in accordance with Local Civil Rule 7(h). *See, e.g.*, *Texas v. United States*, 798 F.3d 1108, 1113 (D.C. Cir. 2015); *Jackson v. Finnegan, Henderson, Farabow, Garrett & Dunner*, 101 F.3d 145, 150 (D.C. Cir. 1996).

SUMMARY OF THE ARGUMENT

I. The DCHRA's one-year limitations period applies here. Plaintiff waived any argument to the contrary by not engaging with the merits of the University's argument before the district court. In any event, the district court was correct that the DCHRA is the D.C. statute most analogous to Title VI and is therefore the most-appropriate source from which to borrow a statute of limitations. Both Title VI and the DCHRA are designed to target and eliminate discrimination on the basis of race, color, or national origin. By contrast, personal injury claims typically do not

seek to remedy discrimination. The DCHRA's one-year limitations period is not inconsistent with Title VI, and neither practical considerations nor undesirable consequences counsel against applying the DCHRA's statute of limitations to Title VI actions brought in D.C.

II. Plaintiff's claim fails under the DCHRA's one-year limitations period. Plaintiff concedes that no actionable deliberate indifference by the University occurred within one year of his filing suit, and Plaintiff's attempted reliance on the continuing violation doctrine does not make his stale claim timely. Plaintiff's reliance on allegations of harassment that he did not properly present to the district court in order to attempt to invoke the continuing violation doctrine is improper. Moreover, in the context of Title VI claims, the continuing violation doctrine requires that an act of deliberate indifference, and not merely an alleged act of harassment, take place during the limitations period. There was no such act here.

III. Even under a three-year statute of limitations, Plaintiff's claim fails. With respect to the majority of alleged instances of deliberate indifference by the University, no appropriate person had actual knowledge of the racial harassment that Plaintiff claims to have suffered. In the one documented instance of arguable actual knowledge by appropriate persons, the University responded reasonably by directing Plaintiff to file a complaint using the University's Student Grievance Procedures. Plaintiff chose not to do so. Courts routinely hold that, where a university informs

an alleged victim of harassment how to file a complaint but the student fails to do so, the university is not deliberately indifferent. And because there were no acts of deliberate indifference during a three-year limitations period, the continuing violation doctrine does not apply. In any event, even the acts cited by Plaintiff outside the three-year period do not amount to deliberate indifference.

ARGUMENT

I. The DCHRA's One-Year Limitations Period Applies To Title VI Claims in D.C.

Plaintiff has waived any argument that the DCHRA's one-year limitations period does not govern. Regardless, the district court was correct that the DCHRA—and not D.C.'s catchall statute of limitations applicable to personal-injury claims—is the D.C. statute most analogous to Title VI. And there are no purported inconsistencies between Title VI and the DCHRA, or supposed "practical considerations" or "undesirable consequences" of applying the DCHRA's one-year limitations period here.

A. Plaintiff Has Waived The Argument That The DCHRA's Statute Of Limitations Does Not Apply.

This Court can affirm on the ground that Plaintiff has waived any argument that the DCHRA's one-year limitations period does not apply, without reaching the merits of that question.

As the University noted, Dkt. 86 at 3-4, and as the district court explained, Plaintiff's opposition to summary judgment did "not engage with the merits of

applying the shorter limitations period, arguing only that the 'Court has already held that a three-year statute of limitations applies.'" JA-2-834. At oral argument, Plaintiff's counsel—in response to questions from the court—"refused to '[c]oncede' the statute of limitations issue," *id.*, but provided no substantive argument for why a three-year limitations period should apply, saying only that actions pursuant to 42 U.S.C. § 1983 "routinely involve issues about discrimination and harassment," JA-2-794 at 27:5-6 (thereby suggesting that the limitations period applicable to Section 1983 claims should also govern Plaintiff's Title VI claim). Plaintiff was "aware" that he could argue that the DCHRA's statute of limitations did not apply, yet "ch[ose] not to rely on [that argument]" in his briefing, or even substantively at oral argument. *Wood v. Milyard*, 566 U.S. 463, 466 (2012).

"[I]n reviewing motions for summary judgment, the appellate court considers only those matters presented to the district court, disregarding additional allegations raised for the first time on appeal." *Ramirez de Arellano v. Weinberger*, 745 F.2d 1500, 1537 (D.C. Cir. 1984) (en banc), *vacated on other grounds*, 471 U.S. 1113 (1985); *see also, e.g.*, *DIRECTV Inc. v. Seijas*, 508 F.3d 123, 125 n.1 (3d Cir. 2007); *Liberles v. Cook Cnty.*, 709 F.2d 1122, 1126 (7th Cir. 1983). Counsel's sparse assertion during the summary judgment hearing is not sufficient to overcome what was a clear waiver. *See, e.g.*, *Rodriguez-Pinto v. Tirado-Delgado*, 982 F.2d 34, 41 (1st Cir. 1993) ("[A]rguments made in a perfunctory manner below are deemed

waived on appeal."). Because Plaintiff did not materially contest the applicability of the DCHRA's limitations period to Title VI claims in briefing summary judgment, this Court need not answer that question.

B. The DCHRA Is The D.C. Statute Most Analogous To Title VI.

If the Court reaches the merits, it should affirm the district court's holding that the DCHRA's one-year statute of limitations applies to Title VI claims in the District of Columbia. "As is often the case in federal civil law, there is no federal statute of limitations expressly applicable to this suit." *DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 158 (1983). "In such situations," the Supreme Court has instructed, courts "apply the most closely analogous statute of limitations under state law," unless the "state rule[]" is "at odds with the purpose or operation of federal substantive law." *Id.* at 158, 161; *see also Wilson*, 471 U.S. at 266-68.

In determining which state statute is most analogous to a federal cause of action, courts "characterize the essence of the claim in the pending case" and find the state statute that best matches that "essence." *Wilson*, 471 U.S. at 268. They look to the statutes' purpose and goals, including by examining the conduct the statutes prohibit, the rights they protect, and the remedies available under them. *Congress v. District of Columbia*, 324 F. Supp. 3d 164, 172 (D.D.C. 2018); *see also Burnett*, 468 U.S. at 50 (noting importance to borrowing inquiry of goals of statutes at issue). The essence of a claim is a "question[] of statutory construction." *Wilson*,

471 U.S. at 268. Where multiple state statutes are analogous to the federal statute, "basic principle[s] of statutory construction" dictate that "a specific [state] statute closely applicable to the substance of the controversy at hand controls over a more generalized provision." *McCullough v. Branch Banking & Tr. Co.*, 35 F.3d 127, 132 (4th Cir. 1994) (quotation marks omitted) (finding North Carolina Handicapped Persons Protection Act more analogous to Rehabilitation Act than state's general wrongful discharge statute).

The essence of the DCHRA is highly similar to the essence of Title VI. As the district court observed:

> Title VI and the DCHRA have a "shared purpose and ambitious aims," *Jaiyeola* [*v. District of Columbia*], 40 A.3d [356,] 367 [(D.C. 2012)]: Title VI seeks to ensure that "[n]o person 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" in federally funded programs. 42 U.S.C. § 2000d …. The DCHRA likewise seeks to secure an end "to discrimination for any reason other than that of individual merit, including, but not limited to, discrimination by reason of race[.]" D.C. Code § 2-1401.01.

JA-2-837-38. Just as it is "beyond dispute that private individuals may sue to enforce" Title VI, *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001), the DCHRA expressly provides for a private cause of action, D.C. Code § 2-1403.16. Title VI's and the DCHRA's private rights of action also both allow an individual to "obtain both injunctive relief and damages." *Alexander*, 532 U.S. at 279; D.C. Code § 2-1403.16. Moreover, provisions of the DCHRA are "applied in the same manner

as the parallel federal antidiscrimination provisions"—including Title VI. *Boykin v. Gray*, 895 F. Supp. 2d 199, 219 (D.D.C. 2012) (quotation marks omitted).

Plaintiff suggests (at 46) that "D.C.'s general personal-injury law [is] an appropriate source for Title VI's limitations period," but never actually explains *how* a general personal-injury law is more analogous to Title VI than the DCHRA's specific prohibition of discrimination on the basis of race, color, or national origin. Nor could he. As the D.C. Court of Appeals has explained, "[p]ersonal injury claims … typically do not … seek to remedy discrimination at all," and "the three-year statute of limitations for such claims certainly was not chosen with discrimination claims in mind." *Jaiyeola*, 40 A.3d at 367. In fact, there is no such thing as a "general personal-injury law" in the District of Columbia. There is not even a specific statute of limitations for personal-injury claims. Rather, Plaintiff hangs his hat on the statute of limitations applicable to "actions … for which a limitation is not otherwise specially prescribed." D.C. Code § 12-301(8). A gap-filling, catchall statute of limitations with no substantive purpose is not more "closely applicable to the substance of the controversy at hand" than the DCHRA, which prohibits discrimination by D.C. educational institutions (and others) on the basis of race, color, and national origin. *McCullough*, 35 F.3d at 132 (quotation marks omitted).

Plaintiff nonetheless argues (at 45, 47-48) that because Title VI is a civil rights statute, the Court should "apply" a purported "default rule"—"borrow[ing] the state

statute of limitations attached to a state's general-personal injury law." There is no such rule. The Supreme Court has repeatedly instructed courts to borrow the limitations period from the most-analogous state law. *See, e.g.*, *Wilson*, 471 U.S. at 267-68; *Runyon v. McCrary*, 427 U.S. 160, 180-82 (1976); *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 462-64 (1975).

The Supreme Court and this Court have borrowed forum states' general personal-injury statutes of limitations when considering federal statutes that are not Title VI—such as Section 1983—but they have done so due to the particular federal laws they were considering. In *Wilson*, for example, the Court determined that a personal injury claim was the most-analogous cause of action to a Section 1983 claim. The Court cautioned that, because Section 1983 "provides a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and" other federal laws, "it can have no precise counterpart in state law." *Wilson*, 471 U.S. at 271-73 (quotation marks omitted). The breadth of Section 1983—under which a plaintiff can allege a "catalog" of constitutional claims, including "discharge or demotion without procedural due process," "deliberate indifference to the medical needs of prison inmates," and "the seizure of chattels without advance notice or the sufficient opportunity to be heard," *id.* at 273—is so expansive that applying any state statute of limitations other than the general personal-injury statute would require "useless litigation" over the

appropriate statute of limitations based "upon the particular facts or the precise legal theory" of the claim. *Id.* at 274-75. The Court in *Wilson* thus applied a statute of limitations specifically designed for personal-injury claims, and *rejected* application of a "catchall" statute of limitations to Section 1983 claims like that Plaintiff seeks to apply to Title VI claims here. *Id.* at 278. Title VI does not present the same concerns as Section 1983 because Title VI claims are far less expansive than those under Section 1983; Title VI seeks to eliminate race, color, and national-origin discrimination in federally funded programs and does not include a "catalog" of unrelated claims. *Wilson*, 471 U.S. at 273.

Similarly, neither *Goodman v. Lukens Steel Co.*, 482 U.S. 656 (1987), nor *Banks v. Chesapeake & Potomac Telephone Co.*, 802 F.2d 1416 (D.C. Cir. 1986), applied the supposed "default rule" that Plaintiff has invented. Both cases analyzed what state statute was most analogous to Section 1981, which provides that all persons "shall have the same right in every State … to make and enforce contracts." 42 U.S.C. § 1981(a). Section 1981 is part of the package of Reconstruction-era civil rights statutes, including Section 1983, that not only provide for "compensation of persons whose civil rights have been violated," but also seek "prevention of the abuse of state power," *Burnett*, 468 U.S. at 53, and thus, have no precise counterpart in state law, leaving the forum state's personal-injury statute of limitations as the best remaining choice. *See Goodman*, 482 U.S. at 661-62; *Banks*, 802 F.2d at 1421-

24. *Goodman* explained that "racial discrimination … is a fundamental injury to the individual rights of a person," 482 U.S. at 661, but it does not follow from that statement that any federal law targeting racial discrimination is most analogous to a State's general personal-injury statute. Again, personal-injury suits "typically do not … seek to remedy discrimination at all." *Jaiyeola*, 40 A.3d at 367.

Banks also is of limited utility here. Critical to this Court's decision in *Banks* was its conclusion that the DCHRA did "not apply to many forms of discrimination remediable under § 1981." *Banks*, 802 F.2d at 1424. The Court concluded that the DCHRA was not analogous to Section 1981 because it was *narrower* than Section 1981. *See id.* By contrast, the DCHRA applies to *all* forms of discrimination remediable under Title VI and is slightly *broader* than Title VI. The DCHRA is not limited to federally funded programs; targets discrimination on more bases than Title VI; and, unlike Title VI, permits individual liability. *See Purcell v. Thomas*, 928 A.2d 699, 714-16 (D.C. 2007); *Mwabira-Simera v. Howard Univ.*, 692 F. Supp. 2d 65, 70 (D.D.C. 2010). Title VI thus fits squarely within the DCHRA's ambit; the DCHRA is Title VI's "counterpart in state law," *Wilson*, 471 U.S. at 273, even if it is "not a perfect match," *Jaiyeola*, 40 A.3d at 367.[1]

[1] The DCHRA is a particularly good state analog to Title VI because (unlike many state anti-discrimination laws) it explicitly applies to educational institutions. D.C. Code § 2-1402.41.

Banks also turned in part on this Court's impression that the DCHRA's remedial scheme placed "emphasis on the need to minimize the diversion of state officials' attention by shortening limitations periods," which, the Court said, was inconsistent with the policies supporting Section 1981. 802 F.2d at 1423. But *Davis v. Potomac Electric Power Co.*, 449 A.2d 278 (D.C. 1982)—the D.C. case on which *Banks* relied for this proposition—did not so hold. Instead, *Davis* considered whether the DCHRA's express statute of limitations *for administrative actions* should *also* apply to *court actions*. In answering yes, the D.C. Court of Appeals explained that the D.C. Council would not have wanted different limitations periods in different forums; regardless of "the forum selected," discrimination claims "are apt to become stale quickly because the evidence necessary to support or refute such claims often consists of subjective estimations of the discriminatory 'climate'" and "business records and other forms of impermanent data." 449 A.2d at 280. That "impermanent nature of the evidence" plus a "desire to promote rapid compliance" with the DCHRA's anti-discrimination goals led the court to conclude that the limitations period for administrative actions applied to court actions, too. *Id.* at 281. Those "objectives" are consistent with Title VI; they "are the types of objectives that *all* statutes of limitations, federal and state, seek to promote." *Banks*, 802 F.2d at 1441-42 (Buckley, J., concurring).

Even if *Banks* had correctly identified the purpose of the DCHRA's statute of limitations in 1986, it would be inapposite today. Even if the D.C. Council initially included a limitations period for *administrative* actions because of concern for government officials' time and resources, in 1997 the Council amended the DCHRA to expressly provide a one-year statute of limitations for *court* actions. *See* 44 D.C. Reg. 4856, § 2(d) (Oct. 23, 1997), *available at* https://code.dccouncil.us/us/dc/council/laws/docs/12-39.pdf. That decision did not reflect concern about government resources. *Jaiyeola*, 40 A.3d at 368 (the DCHRA "has a statute of limitations intended specifically for claims of discrimination").[2]

The cases cited by Plaintiff (at 48-49) applying states' general personal-injury statutes of limitations to Title VI or Title IX claims are unpersuasive for at least four reasons. ***First***, most do not meaningfully engage with the substance of the statutes at issue and, instead, are dependent on citations to other cases that hold (without meaningful analysis) that the state's personal-injury law is the best fit.[3]

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[2] Plaintiff's argument (at 40) that the DCHRA's statute of limitations was "designed for an administrative scheme" is thus incorrect.

[3] *Monroe v. Colum. Coll. Chi.*, 990 F.3d 1098, 1100 (7th Cir. 2021); *Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993); *Rozar v. Mullis*, 85 F.3d 556, 561 (11th Cir. 1996); *Curto v. Edmundson*, 392 F.3d 502, 504 (2d Cir. 2004); *King-White v. Humble Indep. Sch. Dist.*, 803 F.3d 754, 759 (5th Cir. 2015); *Lillard v. Shelby Cnty. Bd. of Educ.*, 76 F.3d 716, 729 (6th Cir. 1996); *Cetin v. Purdue Univ.*, 94 F.3d 647 (Table), 1996 WL 453229, at *2 (7th Cir. 1996); *Varnell v. Dora Consol. Sch. Dist.*, 756 F.3d 1208, 1213 (10th Cir. 2014).

Second, most of the cases also largely ignore the Supreme Court's instruction to look for the most-analogous *state* law, instead likening Title VI or Title IX to Section 1983 or another federal statute, and then applying *Wilson*'s holding that states' personal-injury laws' limitations periods govern.[4] The *amicus* brief is premised entirely on this incorrect approach. *See* NAACP Br. 18. But that is not the law: A *direct* comparison of Title VI to an analogous state law is required, rather than a federal-to-federal-to-state chain of analogies.

Third, in at least three of the cases cited by Plaintiff, the parties on appeal did not dispute which statute of limitations was applicable.[5]

Fourth, all but two of the cases that Plaintiff cites failed to consider whether a specific state anti-discrimination statute was a better fit to Title VI or Title IX than a personal-injury law. In the two cases that *did* involve consideration of a state anti-discrimination statute, the courts still analogized Title VI to Reconstruction-era civil rights statutes and then applied *Wilson*, thereby following the incorrect federal-to-

[4] *Monroe*, 990 F.3d at 1100; *Frazier v. Garrison I.S.D.*, 980 F.2d 1514, 1521 (5th Cir. 1993); *Baker v. Bd. of Regents of Kan.*, 991 F.2d 628, 631 (10th Cir. 1993); *Rozar*, 85 F.3d at 561; *Curto*, 392 F.3d at 504; *Bougher v. Univ. of Pittsburgh*, 882 F.2d 74, 78 (3d Cir. 1989); *King-White*, 803 F.3d at 759; *Egerdahl v. Hibbing Cmty. Coll.*, 72 F.3d 615, 618 (8th Cir. 1995); *Stanley v. Trs. of Cal. State Univ.*, 433 F.3d 1129, 1134-35 (9th Cir. 2006); *Varnell*, 756 F.3d at 1213.

[5] *Frazier*, 980 F.2d at 1521; *Rozar*, 85 F.3d at 560; *Varnell*, 756 F.3d at 1213.

federal-to-state chain-of-analogy approach. *Egerdahl*, 72 F.3d at 618; *Bougher*, 882 F.2d at 78.[6]

The cases Plaintiff cites (at 49) that held personal-injury statutes of limitations govern Rehabilitation Act claims suffer from at least one of the same flaws as the Title VI and IX cases. In particular, they liken the Rehabilitation Act to Section 1983—rather than a state statute—and from there, apply *Wilson*, or they simply rely on other cases without meaningful analysis.[7] And *none* of them considered whether a specific state anti-discrimination statute with its own statute of limitations was the best fit for the Rehabilitation Act. In fact, the only Rehabilitation Act case Plaintiff cites that *did* consider a specific state anti-discrimination statute held that the Virginia Rights of Persons with Disabilities Act *was* the most-analogous state statute, and correctly applied its limitations period to a Rehabilitation Act claim. *See Wolsky v. Med. Coll. of Hampton Roads*, 1 F.3d 222, 224-25 (4th Cir. 1993).

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[6] *Bougher* is also distinguishable because, whereas the DCHRA limitations period specifically applies to court actions, the anti-discrimination statute's limitations period in *Bougher* applied only to "administrative proceedings" and was "not directly applicable to judicial proceedings." 882 F.2d at 77; *see also supra* at 25.

[7] *See Morse v. Univ. of Vt.*, 973 F.2d 122, 127 (2d Cir. 1992); *Hickey v. Irving Indep. Sch. Dist.*, 976 F.2d 980, 982-83 (5th Cir. 1992); *Hall v. Knott Cnty. Bd. of Educ.*, 941 F.2d 402, 408 (6th Cir. 1991); *Bush v. Commonwealth Edison Co.*, 990 F.2d 928, 933 (7th Cir. 1993); *Ballard v. Rubin*, 284 F.3d 957, 963 (8th Cir. 2002); *Baker*, 991 F.2d at 631; *Everett v. Cobb Cnty. Sch. Dist.*, 138 F.3d 1407, 1409 (11th Cir. 1998).

C. Purported Inconsistencies Between The DCHRA And Title VI Are Illusory Or Immaterial.

Unable to actually *show* that the catchall statute of limitations is more analogous to Title VI than the DCHRA, Plaintiff tries to back into that conclusion by pointing to purported inconsistencies between Title VI and the DCHRA.

Plaintiff argues (at 34) that the borrowing inquiry places "particular emphasis on procedural similarities and differences," and that "[p]rocedural comparisons take priority." To support that contention, Plaintiff points only to *Burnett*, in which the Supreme Court held that Maryland's three-year catchall statute of limitations was more analogous to several Reconstruction-era civil rights statutes than a Maryland statute (Article 49B) that exclusively governed "administrative proceedings which were informal, investigatory[,] and conciliatory in nature." 468 U.S. at 45 (quotation marks omitted). The critical differences between Article 49B and the Reconstruction-era civil rights statutes were that "the remedial authority of the agency [that enforced Article 49B] is limited, and because the state scheme does not create a private right of action." *Id.* at 53-54 (footnote omitted).

The DCHRA and Title VI do not exhibit the type of procedural differences that Article 49B and the Reconstruction-era civil rights statutes did. Plaintiff argues (at 36) that the D.C. Office of Human Rights and the D.C. Commission on Human Rights—the agencies involved with the DCHRA's administrative component—are "the primary guarantors of an individual's right to be free from discrimination." But

the DCHRA merely gives individuals the *option* to proceed administratively; it does not *require* that they do so. Instead, it "[a]ssure[s] the full availability of a judicial forum," *Burnett*, 468 U.S. at 50, by providing a private right of action that is independent from its administrative scheme.

Plaintiff also conveniently omits that an administrative avenue is available to enforce Title VI, which further deepens the similarity between that statute and the DCHRA. Plaintiff could have filed a complaint with the U.S. Department of Education's Office of Civil Rights, which, in turn, could have sought to terminate funding to the University or the men's tennis team or could have made a referral to the Department of Justice. 34 C.F.R. § 100.8; *see also* 42 U.S.C. § 2000d-1 (authorizing federal agencies to enforce Title VI by terminating funding or "by any other means authorized by law"). Plaintiff's assertion (at 38) that there are "*no* administrative procedures for individual discrimination claims" under Title VI is simply wrong. A complaint filed by Plaintiff with the Education Department could have been based on alleged "discrimination" against "himself or any specific class of individuals," 34 C.F.R. § 100.7(b), and "[c]ompensatory damages are also an available remedy in agency administrative compliance activities," U.S. Dep't of Justice, Title VI Legal Manual ("Title VI Legal Manual") at 6 (Apr. 22, 2021), *available at* https://www.justice.gov/crt/fcs/T6manual. Of course, Title VI's administrative scheme is not "identical" to the DCHRA's, *Wolsky*, 1 F.3d at 225, but

again, the borrowing inquiry does not require a "perfect match," *Jaiyeola*, 40 A.3d at 367.[8]

Plaintiff further contends (at 38) that, because the DCHRA includes mediation and conciliation requirements, it is inconsistent with Title VI because the latter prioritizes suit in court. But the DCHRA's mediation and conciliation requirements apply *only if* an aggrieved party opts to pursue his claim *administratively*, *compare* D.C. Code §§ 2-1403.04, 2-1403.06, *with id.* § 2-1403.16, which, if anything, incentivizes filing directly in court (in order to avoid the requirements altogether).

Amicus argues (at 13-17) that a longer limitations period is more consistent with the remedial goals of Title VI. But the key language *amicus* cites from *Wilson*—that borrowing the limitations period "for personal injuries … is supported … by the federal interest in ensuring that the borrowed period of limitations not discriminate against the federal civil rights remedy"—was not an expression of a general interest in a longer limitations period. *Wilson*, 471 U.S. at 276. Rather, it was to ensure that violations of individuals' constitutional rights by state officers be treated on par with the most analogous claims that also "sounded in tort." *Id.* at 277. And it certainly is not "discriminatory" against the Title VI remedy—which has a

[8] The limitations period for Title VI complaints filed with the Education Department is 180 days, unless extended, 34 C.F.R. § 100.7(b), which is half the DCHRA's one-year statute of limitations for both private and administrative claims.

180-day limitations period for administrative claims, *see supra* at 30 n.8—to apply a *one-year* limitations period for judicial claims in the District of Columbia.

A rule that courts must pick a less-analogous statute from which to borrow a limitations period just because the less-analogous statute has a longer period contradicts the Supreme Court test and disregards the Court's warning that "state policies of repose cannot be said to be disfavored in federal law." *Bd. of Regents of Univ. of N.Y. v. Tomanio*, 446 U.S. 478, 487-88 (1980). And of course, state statutes of limitations for personal-injury claims vary widely, and can be both short and long. *Compare* Ky. Rev. Stat. § 413.140(1)(a) (one year), *with* Me. Rev. Stat. tit. 14, § 752 (six years). A rule favoring personal-injury statutes of limitations for discrimination statutes in all cases thus would not even have *amicus*'s desired effect.

Nor is a one-year statute of limitations objectionable as a matter of policy. "[A] short statute of limitations is not uncommon among federal civil rights statutes." *McCullough*, 35 F.3d at 131; *see also, e.g.*, *Spiegler v. District of Columbia*, 866 F.2d 461, 466 (D.C. Cir. 1989) (borrowing 30-day statute of limitations). Plaintiff implicitly concedes as much by relying on cases such as *Taylor* and *Lillard*, which applied one-year statutes of limitations to Title VI and Title IX claims, respectively. *See Taylor*, 993 F.2d at 712; *Lillard*, 76 F.3d at 729. The application of the DCHRA's one-year statute of limitations instead of the D.C. catchall statute of limitations is not inconsistent with Title VI's remedial purpose.

D. So-Called "Practical Considerations" Do Not Require Deviation From The Most-Analogous State Statute.

Plaintiff maintains (at 47) that "practical considerations of administrability and uniformity are more important than substantive similarities or differences between federal and state statutes when conducting" the borrowing inquiry. He draws this purported rule principally from *Wilson*'s statement that "uniformity, certainty, and the minimization of unnecessary litigation all support the conclusion that Congress favored th[e] simple approach" of "select[ing], in each State, the one most appropriate statute of limitations for all § 1983 claims." 471 U.S. at 275. "If the choice of the statute of limitations were to depend upon the particular facts or the precise legal theory of each claim," the Court explained in *Wilson*, "counsel could almost always argue, with considerable force, that two or more periods of limitations should apply to each § 1983 claim." *Id.* at 273-74. That problem exists for Section 1983 claims because of the "numerous and diverse topics and subtopics" covered by Section 1983's general prohibition of the deprivation of individuals' federal rights by state actors. *Id.* at 273. *Wilson* thus was concerned with "adopting a uniform characterization of § 1983 claims," which would allow "uniformity" of the applicable statute of limitations "within each State." *Id.* at 275 & n.35.

Wilson's concern with uniformity does not compel borrowing a personal-injury statute of limitations for Title VI claims. Again, the uniformity concern from *Wilson* is not applicable here because Title VI does not engender "the wide diversity

of claims" that Section 1983 encompasses. 471 U.S. at 275. Even if that concern were present, it requires only that a single limitations period apply to all Title VI claims brought in D.C. There is no justification for disregarding the Court's instruction to analyze which state statute is the most analogous to Title VI.

Plaintiff also cites (at 47) *Owens v. Okure*, in which the Supreme Court held that, where a state has multiple personal-injury statutes—one or more for specific torts, and one for all other personal-injury causes of action—Section 1983 borrows the statute of limitations of the general personal-injury statute. 488 U.S. 235 (1989). As in *Wilson*, critical to the analysis in *Owens* was the breadth of Section 1983. New York's specific personal injury statute of limitations, which applied to eight intentional torts, was "particularly inapposite" because it failed to account for "the wide spectrum of claims which § 1983" spans, many of which "bear little if any resemblance to the common-law intentional tort." *Id.* at 249.

Here, by contrast, applying the DCHRA's statute of limitations to Title VI actions would lead to no problems of administrability or uncertainty. The DCHRA is broad enough to cover all claims that could be brought under Title VI. There is no confusion or unpredictability because, for any Title VI claim filed in D.C., the DCHRA's statute of limitations applies. And, unlike D.C.'s personal-injury law, the DCHRA is not so broad as to lose its essence as a statute designed specifically to eliminate discrimination—the precise aim of Title VI as well.

E. There Are No "Undesirable Consequences" From Applying The DCHRA's Statute Of Limitations.

Plaintiff's final argument about the applicable statute of limitations (at 42-45) is that borrowing the DCHRA's statute of limitations would create "undesirable" or "bizarre" results and "inject uncertainty into future litigation" from the potential application of certain aspects of the DCHRA to Title VI claims. Neither concern is serious.

Plaintiff first contends (at 42) that, because "accompanying tolling provisions are borrowed" along with the state statute of limitations, "the DCHRA's provision tolling the limitations period while an administrative complaint is pending" is problematic because whether a claim is time-barred could depend on factors such as whether a litigant "filed a similar complaint with a state administrative agency." But that is just a general objection to the longstanding rule that "'borrowing'" a limitations period "logically include[s] rules of tolling." *Tomanio*, 446 U.S. at 485. There is "[no]thing peculiar to a federal civil rights action that would justify special reluctance in applying state [tolling] law." *Johnson*, 421 U.S. at 464.

Plaintiff further suggests (at 43) that because DCHRA claims cannot be brought "against federally-funded entities created under an interstate compact" such as WMATA, its tolling provision would be inapplicable in Title VI cases brought against such entities. But this Court already has held that the DCHRA's tolling provision *can* apply in cases brought against WMATA. *See Alexander v. Wash.*

Metro. Area Transit Auth., 826 F.3d 544, 551-52 (D.C. Cir. 2016) (holding Rehabilitation Act claim timely under DCHRA's one-year limitations period because DCHRA tolling applied).[9]

Plaintiff next claims (at 43-44) that borrowing the DCHRA's limitations period "would raise a difficult and novel preemption question" regarding whether the Court also should borrow the DCHRA's prohibition on filing suit while an administrative complaint is pending. Plaintiff is borrowing trouble where none exists. The Supreme Court has instructed courts to look to state law to fill a narrow procedural gap in certain federal causes of action: the statute of limitations and "interrelated … provisions regarding tolling, revival, and questions of application." *Johnson*, 421 U.S. at 464. Courts need not and should not borrow every procedural mechanism of the most-analogous state statute, and there would be no basis (or need) to "borrow" from the DCHRA any requirement that a Title VI claim not be brought if an administrative claim is pending. There is no reason to deviate from the DCHRA as the most analogous state statute to Title VI.

[9] Plaintiff also complains (at 43) that, because tolling results in "differing periods," it violates the "uniformity and predictability" principle articulated in *Wilson*. As discussed above, that mischaracterizes *Wilson*. More fundamentally, accepting Plaintiff's argument would mean limitations periods can be borrowed only if there are no attendant tolling rules. That is not the law. *See, e.g.*, *Johnson*, 421 U.S. at 464.

II. Summary Judgment Was Proper Under A One-Year Statute Of Limitations.

A. Plaintiff Concedes That No Actionable Conduct Occurred During The One-Year Limitations Period.

An action for student-on-student or teacher-on-student harassment under Title VI may lie against a university only where the university "acts with deliberate indifference to known acts of harassment in its programs or activities." *Davis*, 526 U.S. at 633; *see also Gebser*, 524 U.S. at 290. In particular, liability under Title VI requires *both* actionable harassment by a student (or teacher), and deliberate indifference by the school, which is composed of (1) actual knowledge of the harassment by an appropriate person, (2) a response that was "clearly unreasonable in light of the known circumstances," (3) the deprivation of access to the educational opportunities or benefits offered by the school, and (4) causation. *Kollaritsch v. Mich. State Univ. Bd. of Trs.*, 944 F.3d 613, 619-22 (6th Cir. 2019) (quotation marks omitted). "The governing test … is not easily met." *Cavalier v. Catholic Univ. of Am.*, 513 F. Supp. 3d 30, 49 (D.D.C. 2021).

In his opening brief, Plaintiff does *not* argue that there is a genuine issue of material of fact bearing on whether those elements can be met based on facts dating from November 26, 2017 or later. *See* Pl. Br. 50-53. He thus has conceded by omission—and waived—any argument that the deliberate indifference test can be

met using facts falling within the one-year limitations period. *See Am. Wildlands v. Kempthorne*, 530 F.3d 991, 1001 (D.C. Cir. 2008).

B. The Continuing Violation Doctrine Cannot Save Plaintiff's Claim.

Plaintiff argues (at 50-53) that the continuing violation doctrine makes his stale claim timely under a one-year statute of limitations, but he is incorrect. The doctrine cannot apply unless an act of deliberate indifference—and not merely an act of harassment—occurs within the limitations period. Plaintiff has not pointed to any alleged act of deliberate indifference by the University that occurred within one year prior to his filing suit, nor could he. In any event, even if an alleged act of racial harassment during the limitations period were sufficient (it is not), Plaintiff cannot salvage his claim by pointing to alleged harassing conduct on appeal that was not identified in his summary judgment briefing.

1. Plaintiff Points To No Act Of Deliberate Indifference Within The One-Year Limitations Period.

For a Title VII claim, courts may consider acts of alleged harassment contributing to a hostile environment that pre-date the limitations period "so long as all acts which constitute the claim are part of the same unlawful … practice and *at least one act falls within the time period*." *Morgan*, 536 U.S. at 122 (emphasis added). For the continuing violation doctrine to apply to a *Title VI* deliberate indifference claim, however, a plaintiff must demonstrate not only that an act of *harassment* took place within the limitations period, but also that an act contributing

to employer or university liability—that is, an act of *deliberate indifference*—occurred within the period. *See id.* at 118.

Plaintiff's reliance (at 50) on *Morgan* and *Vickers v. Powell*, 493 F.3d 186 (D.C. Cir. 2007), to argue that he need only identify acts within the limitations period that "contribute[d] to an overall hostile-environment" is misplaced. Both *Morgan* and *Vickers* are Title VII cases, for which deliberate indifference is not a required element. And in both *Morgan* and *Vickers*, there were acts that led to the defendant's liability—namely, harassment by supervisors or managers, 536 U.S. at 120; 493 F.3d at 189-90—that occurred within the limitations period, which permitted the courts' consideration of pre-statute-of-limitations acts as well. But in the Title VI context, there is no *prima facie* claim without "school officials allowing … harassment to continue unchecked." Dkt. 16 at 25 n.6; *see also* Title VI Legal Manual at 28 ("When the [funding] recipient does not create the hostile environment … the hostile environment framework focuses on the recipient's obligation to respond adequately to the third party's discriminatory conduct."). Thus, for the continuing violation doctrine to apply in a Title VI case, there must be some basis for liability—*i.e.*, an act of deliberate indifference—that took place within the limitations period. *See* JA-2-845 (citing *Morgan*, 536 U.S. at 118).

Holding otherwise would obliterate the purpose of the statute of limitations and render it "a virtual nullity." *Stanley*, 433 F.3d at 1137. Suppose, for example,

that a kindergartner in a K-12 school told her principal about racial harassment by her classmates, the principal did nothing, and the kindergartner experienced the same harassment through twelfth grade, but never again raised the issue with an appropriate person. Under Plaintiff's theory, she would be able to sue the school while in college for an act of deliberate indifference that took place when she was in kindergarten. That is not the law.

Here, Plaintiff does not contend that *any* act of deliberate indifference occurred on or after November 26, 2017.[10] Rather, he argues (at 23, 50) that the continuing violation doctrine applies because he allegedly "was subjected to multiple instances of student-on-student harassment from his teammates within the one-year statute of limitations." That is insufficient in a Title VI case.

2. The Facts Plaintiff Cites On Appeal Are Not In The Summary Judgment Record And There Is No Indication They Are Timely.

Even if Plaintiff could take advantage of the continuing violation doctrine merely by pointing to alleged acts of racial harassment that took place during the limitations period (he cannot), he has failed to do so here. On appeal, Plaintiff has

[10] The only incident within the limitations period that even arguably could have been an act of deliberate indifference was the advice Plaintiff claims academic advisor Ellen Woodbridge gave him related to his academic suspension appeal. *See* JA-3-939 at 291:18-19. But Woodbridge was not an "appropriate person." *See* JA-2-842; *Gebser*, 524 U.S. at 290. Plaintiff did not argue otherwise below, and his opening brief on appeal admits as much by omission. *See* Pl. Br. 24 (listing alleged appropriate persons, but omitting Woodbridge).

identified (at 50-51) four alleged incidents that supposedly occurred within the one-year limitations period. But none are properly part of the summary judgment record.

Local Civil Rule 7(h) states that an opposition to summary judgment "shall be accompanied by a separate concise statement of genuine issues setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated, which shall include references to the parts of the record relied on to support the statement." That Rule "places the burden on the parties and their counsel, who are most familiar with the litigation and the record, to crystallize for the district court the material facts and relevant portions of the record." *Jackson*, 101 F.3d at 151. A party is then "prevent[ed] … from raising specific factual arguments that were absent from [his] briefing below even though [his] general claims were plainly before the court." *Burton v. Bd. of Regents of Univ. of Wis. Sys.*, 851 F.3d 690, 695 (7th Cir. 2017). Even where a party's "appellate counsel has done a far superior job of identifying and elaborating on the factual underpinnings of [his] case," courts do "not consider factual arguments that were not raised below [or] evidence that was not properly cited to the court below." *Packer v. Trs. of Ind. Univ. Sch. of Med.*, 800 F.3d 843, 848-49 (7th Cir. 2015).

The third and fourth incidents described by Plaintiff (at 51)—supposed, amorphous "race-fueled 'plots'" and unexplained "racism on [the] court"—were not raised anywhere in Plaintiff's summary judgment papers or at the summary

judgment hearing. The second incident—students' alleged use of racial epithets in a team van—was *not* included in Plaintiff's Rule 7(h) statement.[11] The first incident—use of a racial epithet by a student—was noted in Plaintiff's Rule 7(h) statement, but as occurring during his *junior* year—*i.e.*, between the fall of 2016 and the spring of 2017, which is outside the limitations period. Dkt. 82 at 6:31; *see also* JA-3-879 at 52:14 (Plaintiff admitting incident occurred during his junior year).

Plaintiff thus failed to raise any non-time-barred incidents of alleged racial harassment in his Rule 7(h) statement. "When counsel fails to [comply with Local Rule 7(h)], he may not be heard to complain that the district court has abused its discretion by failing to compensate for counsel's inadequate effort." *Twist v. Meese*, 854 F.2d 1421, 1425 (D.C. Cir. 1988). The district court did not abuse its discretion in refusing to consider these four alleged incidents; it had no obligation "to sift and sort through the record, that is, engage in time-consuming labor that is meant to be avoided through the parties' observance of Rule [7(h)]." *Jackson*, 101 F.3d at 153.

Perhaps recognizing that he cannot demonstrate that the district court abused its discretion, Plaintiff implies (at 52-53) that *the University* has forfeited any argument that Plaintiff failed to properly proffer as a fact the use of racial epithets

[11] Plaintiff now points (at 52) to one paragraph in his Rule 7(h) statement, Dkt. 82 at 5:27, that purportedly "cit[ed] to this part of the deposition" in which the incident was discussed. The paragraph which Plaintiff now cites concerned a wholly different fact, *compare* Pl. Br. 52, *with* Dkt. 82, and Rule 7(h) requires identification of both the fact *and* underlying record support.

in a team van. For that proposition, he cites only *Solomon v. Vilsack*, 763 F.3d 1, 13 (D.C. Cir. 2014), in which the defendant was found to have forfeited on appeal the argument that the plaintiff had failed to "plead[]" a claim. But the defendant there had not raised the pleading argument in his first summary judgment motion, first appeal, or second summary judgment motion—despite the argument being available at all times. By contrast, Plaintiff here waited until the summary judgment hearing to identify particular incidents that supposedly occurred during his senior year. Unlike in *Solomon*, then, the University did not have the opportunity to argue before now that Plaintiff had forfeited reliance on a fact not properly presented in the Rule 7(h) statement.

Even if the district court had abused its discretion in not considering these four alleged incidents, Plaintiff has pointed to no evidence that an appropriate person had actual knowledge of any of the incidents and acted clearly unreasonably in response. He says (at 11) that an assistant coach heard the use of racial epithets in the team van, but he does not argue that the assistant coach was an appropriate person under Title VI. He thus waived that argument. *Kempthorne*, 530 F.3d at 1001.

Plaintiff also has pointed to no evidence in the record that would allow a jury to conclude that these incidents in the van occurred on or after November 26, 2017, and it is exceedingly unlikely that they did. The tennis team had no matches between

November 5, 2017, and January 18, 2018.[12] November 26, 2017—one year prior to the filing of this suit—fell between Thanksgiving (November 23, 2017) and the start of final exams (December 13, 2017).[13] Plaintiff was suspended from the University in January 2018. It is highly unlikely that the tennis team held a practice, for which the players would have driven in the van, between November 26, 2017 and Plaintiff's suspension in January 2018. This is precisely the type of evidence that the University "would have had the opportunity to locate … or submit" if Plaintiff had properly raised this fact in his Rule 7(h) statement. JA-2-844.

III. Summary Judgment Is Warranted Under A Three-Year Statute Of Limitations.

The district court stated in dicta that, if a three-year limitations period applied, it would grant summary judgment to the University with respect to allegations arising from Plaintiff's junior and senior years, JA-2-860-63, but that it would allow Plaintiff to proceed to trial on his Title VI claim with respect to conduct occurring during his freshman and sophomore years, JA-2-854-60. The court was correct as to Plaintiff's junior and senior years, but wrong as to Plaintiff's freshman and

[12] *See* George Washington University, 2017-18 Men's Tennis Schedule, *available at* https://gwsports.com/sports/mens-tennis/schedule/2017-18.

[13] *See* George Washington University, Academic Calendar, *available at* https://www.gwu.edu/academic-calendar.

sophomore years.[14] The University addresses Plaintiff's allegations in reverse chronological order to explain what falls inside and outside the limitations period.[15]

1. Senior Year (2017-2018).

Plaintiff does not (and cannot) argue that during his senior year, an appropriate person had actual knowledge of and responded unreasonably to race-based harassment of Plaintiff. *See supra* at 37-43 & nn.12-13.

2. Junior Year (2016-2017).

Plaintiff identifies (at 28-30) two incidents of alleged deliberate indifference that took place during his junior year: (1) Saulny and Scott's response to the in-person meeting in which Plaintiff told them that some of his teammates had used racial epithets, and (2) Macpherson's reaction to Plaintiff telling him that his teammates were plotting against him, taunting him, and racially harassing him. Neither provides a basis for University liability.

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[14] "Parties who win in the district court may advance alternative bases for affirmance that are properly raised and supported by the record without filing a cross-appeal, even if the district court rejected the argument." *Shatsky v. Palestine Liberation Org.*, 955 F.3d 1016, 1028 (D.C. Cir. 2020) (quotation marks omitted).

[15] Plaintiff obfuscates the timeline and conflates different individuals' knowledge and actions on the ground that "the exact timeline does not affect Stafford's ability to prove his student-on-student harassment claim nor the timeliness of his claim." Pl. Br. 27 n.7. But it is Plaintiff's burden to demonstrate that a *specific* appropriate person had actual knowledge of racial harassment and *that* person acted clearly unreasonably in response to *that* knowledge. *See Davis*, 526 U.S. at 643-47. He has not done so.

First, Plaintiff admits (at 30) that Saulny and Scott's referring him to the Student Grievance Procedures was corrective action. He is right. And students are not entitled to the remedial action of their choice; rather, the law imposes liability only if a school responded clearly unreasonably. *See, e.g.*, *Doe v. Galster*, 768 F.3d 611, 621 (7th Cir. 2014); *KF ex rel. CF v. Monroe Woodbury Cent. Sch. Dist.*, 531 F. App'x 132, 134 (2d Cir. 2013). Courts routinely hold that a school has not acted clearly unreasonably when it informs a student how to make a complaint but the student declines to do so. *See, e.g.*, *Abramova v. Albert Einstein Coll. of Med. of Yeshiva Univ.*, 278 F. App'x 30, 31 (2d Cir. 2008); *Shank v. Carleton Coll.*, 993 F.3d 567, 574 (8th Cir. 2021); *DT v. Somers Cent. Sch. Dist.*, 348 F. App'x 697, 701 (2d Cir. 2009). In *Abramova*, for example, a community leader relayed to Yeshiva University a student's report of sexual harassment, and, in response, the university sent the student a letter, informing her of procedures through which she could raise allegations of harassment. 278 F. App'x at 31. She did not utilize those procedures. *Id.* The Second Circuit held that the university's response was "reasonable as a matter of law." *Id.* Here, too, the University's decision not to act further after Plaintiff declined to avail himself of the Student Grievance Procedures—to which Saulny and Scott referred him at least three times—was not clearly unreasonable.

This is especially so given that Plaintiff had disclaimed "[w]hatever little concerns" his father had raised with the University. JA-1-405.[16]

Second, Macpherson was not an appropriate person and did not have actual knowledge of racial harassment. "[A]n appropriate individual might be a University President," but "not a teacher, coach or employee." *Ross v. Corp. of Mercer Univ.*, 506 F. Supp. 2d 1325, 1352 n.43 (M.D. Ga. 2007); *see also Kesterson v. Kent State Univ.*, 967 F.3d 519, 529 (6th Cir. 2020) (holding head coach not appropriate person). Regardless, Plaintiff's alleged telephone complaint to Macpherson was too vague to have put him on notice of alleged racial harassment, as the district court found. *See* JA-2-862-63. Plaintiff claims to have said that his teammates were "plotting against" him, "taunting" him, and "racially discriminating against" him, JA-3-934 at 271:5-7, but as the district court observed, Plaintiff's "general allegations … don't even gesture at specific incidents of name-calling or

[16] Plaintiff's suggestion (at 30) that the University "tacitly admitted that it was deliberately indifferent" by initiating an investigation "in April 2018 into the tennis team" lacks merit. Outside counsel and the University's Title IX office—not Saulny or Scott—investigated alleged Title IX violations raised by another member of the tennis team (not Plaintiff) after Plaintiff was academically suspended. JA-2-701. The University's separate investigation of a separate complaint does not mean the University's response to *Plaintiff's* allegations was deliberately indifferent. Nor does Title VI require a university to investigate allegations of racial harassment where, as here, the student does not request an investigation through applicable procedures. JA-2-861-62.

misconduct," JA-2-863.[17] Accordingly, they are insufficient to create a genuine dispute of fact about whether Macpherson had actual knowledge of the racial harassment that Plaintiff now claims to have been suffering. *See, e.g.*, *Stiles ex rel. D.S. v. Grainger Cnty.*, 819 F.3d 834, 843 & n.5 (6th Cir. 2016); *Gabrielle M. v. Park Forest-Chicago Heights Sch. Dist. 163*, 315 F.3d 817, 822 (7th Cir. 2003); *Gordon v. Traverse City Area Pub. Schs.*, 686 F. App'x 315, 325 (6th Cir. 2017).

3. Sophomore Year (November 27, 2015-2016).

Plaintiff points (at 28) to alleged acts of deliberate indifference by two University employees during his sophomore year: Assistant Athletics Director Nicole Early and interim men's tennis team head coach Torrie Browning. They are insufficient to permit Plaintiff's Title VI claim to proceed to trial.

Plaintiff argues (at 28) that Early acted deliberately indifferently to known racial harassment twice: first, when she sent an email in January 2016 in which she told Scott that Plaintiff's father might claim Plaintiff was being discriminated against; and second, when she met with Plaintiff one-on-one in March 2016.

[17] The district court also considered a conversation between Plaintiff, Macpherson, and another teammate during the spring of 2017, in which Plaintiff allegedly told Macpherson that he "thought racism was at play" on the team. JA-2-862. But Plaintiff "did not offer any other details," *id.*, and Plaintiff admitted that he "didn't link … to [his] race" the alleged conspiracy by his teammates to get him kicked off the team. JA-3-932 at 262:22-253:1. Regardless, Plaintiff does not raise this incident on appeal, waiving reliance on it. *Kempthorne*, 530 F.3d at 1001.

No reasonable jury could conclude that either of these alleged incidents amounted to acts of deliberate indifference by Early. Early's January 2016 email to Scott at best shows that Early believed Plaintiff's father might claim "discrimination," not that she had *actual* knowledge of the race-based harassment that is required to state a *prima facie* claim of intentional discrimination under Title VI. Title VI does not prohibit inaction in the face of a *potential* discrimination *claim*. *Garrett v. Univ. of S. Fla. Bd. of Trs.*, 824 F. App'x 959, 964 (11th Cir. 2020). Plaintiff cites no specific acts of racial mistreatment about which Early allegedly knew in January 2016 and to which she could be deliberately indifferent.

Nor is the email itself an act of deliberate indifference. Plaintiff selectively quotes the exchange between Early and Scott, excising critical context. Early wanted to get Scott "up to speed" because she believed that Plaintiff's father was "likely to get involved" in "an internal tennis-related disciplinary issue with" Plaintiff. JA-2-696. Scott noted he was "in meetings" at that moment and could "call [her] later," but said that if it was an "emergency," he could "step out now." *Id.* In responding to *that* note from Scott, Early said it was "[d]efinitely not an emergency." *Id.* Far from demonstrating deliberate indifference, these emails show that Early was proactively raising a potential issue up the chain.

Plaintiff's allegation that he told Early in March 2016 about "all the racism" he was "experiencing" and "the racial culture on the team" (Early did not recall

Plaintiff raising such concerns, *see* JA-4-1402 at 153:2-8) was also insufficient to provide her with actual knowledge of racial harassment. In *Stiles*, for example, the Sixth Circuit granted summary judgment to a school where the student's affidavit listed incidents stretching over three years and then stated that he had reported "all these things" to two teachers and a police chief. 819 F.3d at 843 n.5. It was "difficult to discern" what specifically the plaintiff was claiming he had reported. *Id.* So, too, here. And if Plaintiff in fact reported only that he was experiencing "racism" and that there was a "racial culture on the team," that is the type of "vague communication[]" that is "insufficient to establish that the [university] possessed any knowledge that might have rendered its response deliberately indifferent." *I.L. v. Houston Indep. Sch. Dist.*, 776 F. App'x 839, 844 (5th Cir. 2019).

Even if Early did have actual knowledge, her response was not clearly unreasonable. It is undisputed that Plaintiff was "satisfied" with Early's response. JA-3-915 at 196:19-21. According to Plaintiff, Early met with Plaintiff twice and suggested he "wait the year out," because he would "have a clean slate" once a new coach arrived. JA-3-923 at 228:10-11; JA-3-915 at 196:18. Even if that response was not the most effective response to Plaintiff's concerns, it did not amount to "an intentional choice to sit by and do nothing." *I.G. ex rel. Grunspan v. Jefferson Cnty. Sch. Dist.*, 452 F. Supp. 3d 989, 1002 (D. Colo. 2020) (quotation marks omitted). Surely, it was not *clearly unreasonable* for Early not to do more when Plaintiff

himself was "satisfied" with the response, JA-2-915 at 196:21, and did not renew his complaint.

As for Browning, Plaintiff argues (at 28) that Browning's alleged silence after a teammate yelled a racial epithet in her and Plaintiff's presence was an act of deliberate indifference. But neither Plaintiff's summary judgment brief nor his Local Rule 7(h) statement refer to Browning having heard any such comment. Plaintiff thus waived reliance on the alleged incident. *See Burton*, 851 F.3d at 695.[18]

4. Freshman Year And Beginning Of Sophomore Year (2014-November 26, 2015).

Finally, Plaintiff identifies (at 27-29, 31-32) alleged incidents involving Michael Tapscott and Greg Munoz during his freshman year or beginning of his sophomore year, all of which took place prior to November 26, 2015, and thus, are untimely under even a three-year limitations period (because no act of deliberate indifference occurred after November 26, 2015—within a three-year period prior to this suit—that could trigger the continuing violation doctrine, *see supra* at 37-39).

In any event, these alleged incidents are not actionable on the merits. Plaintiff points (at 28-29) to two conversations with Tapscott, one with Plaintiff and one with his father. However, Plaintiff waived reliance on his conversation with Tapscott by not mentioning it in his summary judgment brief or including it in his Rule 7(h)

[18] Browning, as a coach, also was not an appropriate person. *See supra* at 46.

statement. *See Burton*, 851 F.3d at 695. Even if that discussion could be considered, at most, Plaintiff told Tapscott in 2015 about "derogatory comments directed towards him," which were "[*n*]*ot* specifically about race." JA-3-1222 at 26:13-16 (emphasis added). Similarly, Plaintiff's father telling Tapscott "a little bit about what was going on" with Plaintiff, JA-3-991 at 56:3-4, was insufficient to put Tapscott on notice of alleged racial harassment that Plaintiff supposedly was experiencing. *See Gabrielle M.*, 315 F.3d at 822. Even if Tapscott had actual knowledge of racial harassment experienced by Plaintiff, he did not act clearly unreasonably by (1) relaying to Early his conversation with Plaintiff (which was not about race), (2) following up with Plaintiff after their conversation, and (3) referring Plaintiff's father to Early. JA-3-1222-24 at 27:16-28:17, 33:24-34:1. Plaintiff did not argue otherwise in his opposition to summary judgment and thus has, once again, waived his argument to the contrary. *See Packer*, 800 F.3d at 849.

Nor was Tapscott an appropriate person under Title VI. He was the Director of the Multicultural Student Services Center. He had no supervisory position within the Athletics Department and had no "authority to address the alleged discrimination and to institute corrective measures on the [University's] behalf." *Gebser*, 524 U.S. at 290. In *Kesterson*, the Sixth Circuit held that the executive director of a university women's center was not an appropriate person under Title IX, explaining that if "a university employee's ability to mitigate hardship or refer complaints … make[s]

them an 'appropriate person,'" then "every employee would qualify and schools would face a form of vicarious liability that Title [VI] does not allow." 967 F.3d at 528.[19] The same is true here.

The alleged incidents involving Munoz (*see* Pl. Br. 27-28, 31-32) also fail for multiple reasons. First, no appropriate person had actual knowledge that Munoz was contributing to the harassment that Plaintiff says he suffered. For this critical element, Plaintiff points (at 32, citing JA-4-1278-80) to an email from Munoz to the tennis team on which Early was copied and in which, according to Plaintiff, Munoz "singl[ed] out only American students of color." But Early's deposition testimony, which is the only evidence Plaintiff cites for the argument that this email put Early on notice of harassment, refutes that contention. Munoz's purported offense was that he told Plaintiff and two other players to "read this and every e-mail three times and respond to this and every e-mail letting us know that you received it and understand." JA-4-1279. Early testified that she had not "seen this e-mail" before her deposition, which means that she did not have actual knowledge of whatever the email communicated. *Id.* Moreover, there is no basis for this innocuous email to have provided Early with actual knowledge of harassment that Plaintiff now claims he was experiencing.

[19] Plaintiff (at 24) is wrong that the University did not contest whether Tapscott was an appropriate person before the district court. It did. *See* Dkt. 86 at 12 n.5.

Plaintiff cites (at 32) his deposition testimony, in which he stated that he told Early that "with the whole environment that was controlled by Greg Munoz that, you know, because I was black, you know, I was looked at in a different light." JA-3-919 at 209:16-18. Again, this page of the deposition appears nowhere in Plaintiff's Rule 7(h) statement. Nor is the fact mentioned in Plaintiff's opposition to summary judgment. Plaintiff thus has waived reliance on it. *See Burton*, 851 F.3d at 695. Regardless, even if Plaintiff said he "was looked at in a different light," that statement standing alone would not have been sufficient to put Early on notice of racial discrimination or harassment. *See supra* at 48-49.

Finally, the district court correctly concluded that Munoz himself was not an appropriate person under Title VI and thus, Plaintiff's claim cannot rely "on a report of harassment to Munoz." JA-2-855. Throughout the litigation below, Plaintiff "consistently described Munoz as a ringleader in the mistreatment he faced." *Id.* And because liability under Title VI "rests on actual notice principles, … the knowledge of the wrongdoer himself is not pertinent to the analysis." *Gebser*, 524 U.S. at 291. Munoz also was a coach and for that reason alone not an appropriate person. *See supra* at 46.

CONCLUSION

This Court should affirm the district court's grant of summary judgment for the reasons above.

July 19, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), counsel for the University certifies that this brief complies with the type-volume limitation of Rule 32(a)(7)(B) because it contains 12,986 words, excluding the parts exempted by Rule 32(f) and Circuit Rule 32(e)(1). The brief also complies with Rule 32(a)(5) and (6) because it was prepared using Microsoft Word in 14-point Times New Roman font, a proportionally spaced typeface.

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I certify that on July 19, 2022, this brief was filed and served on all counsel of record via this Court's CM/ECF system.

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Not Yet Scheduled For Oral Argument

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-7012

JABARI STAFFORD,
Plaintiff-Appellant,

v.

GEORGE WASHINGTON UNIVERSITY,
Defendant-Appellee.

On Appeal from the United States District Court
for the District of Columbia, No. 1:18-cv-02789
Before the Honorable Christopher R. Cooper

STATUTORY AND REGULATORY ADDENDUM

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propriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) "Parent" and "complaint" defined

The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title IV, §407, July 2, 1964, 78 Stat. 248; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Subsec. (a)(2). Pub. L. 92–318 inserted "sex" after "religion,".

§ 2000c–7. Liability of United States for costs

In any action or proceeding under this subchapter the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title IV, §408, July 2, 1964, 78 Stat. 249.)

§ 2000c–8. Personal suits for relief against discrimination in public education

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

(Pub. L. 88–352, title IV, §409, July 2, 1964, 78 Stat. 249.)

§ 2000c–9. Classification and assignment

Nothing in this subchapter shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

(Pub. L. 88–352, title IV, §410, July 2, 1964, 78 Stat. 249; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

AMENDMENTS

1972—Pub. L. 92–318 inserted "sex" after "religion,".

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

§ 2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

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.

(Pub. L. 88–352, title VI, §601, July 2, 1964, 78 Stat. 252.)

COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF PROVISIONS

For provisions relating to the coordination of implementation and enforcement of the provisions of this subchapter by the Attorney General, see section 1–201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of this title.

EX. ORD. NO. 13160. NONDISCRIMINATION ON THE BASIS OF RACE, SEX, COLOR, NATIONAL ORIGIN, DISABILITY, RELIGION, AGE, SEXUAL ORIENTATION, AND STATUS AS A PARENT IN FEDERALLY CONDUCTED EDUCATION AND TRAINING PROGRAMS

Ex. Ord. No. 13160, June 23, 2000, 65 F.R. 39775, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 921–932 of title 20, United States Code; section 2164 of title 10, United States Code; section 2001 *et seq.*, of title 25, United States Code; section 7301 of title 5, United States Code; and section 301 of title 3, United States Code, and to achieve equal opportunity in Federally conducted education and training programs and activities, it is hereby ordered as follows:

SECTION 1. *Statement of policy on education programs and activities conducted by executive departments and agencies.*

1–101. The Federal Government must hold itself to at least the same principles of nondiscrimination in educational opportunities as it applies to the education programs and activities of State and local governments, and to private institutions receiving Federal financial assistance. Existing laws and regulations prohibit certain forms of discrimination in Federally conducted education and training programs and activities—including discrimination against people with disabilities, prohibited by the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.*, as amended, employment discrimination on the basis of race, color, national origin, sex, or religion, prohibited by Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e–17 [42 U.S.C. 2000e et seq.], as amended, discrimination on the basis of race, color, national origin, or religion in educational programs receiving Federal assistance, under Title VI of the Civil Rights Acts of 1964, 42 U.S.C. 2000d [et seq.], and sex-

based discrimination in education programs receiving Federal assistance under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq*. Through this Executive Order, discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, and status as a parent will be prohibited in Federally conducted education and training programs and activities.

1–102. No individual, on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination in, a Federally conducted education or training program or activity.

SEC. 2. *Definitions*.

2–201. ''Federally conducted education and training programs and activities'' includes programs and activities conducted, operated, or undertaken by an executive department or agency.

2–202. ''Education and training programs and activities'' include, but are not limited to, formal schools, extracurricular activities, academic programs, occupational training, scholarships and fellowships, student internships, training for industry members, summer enrichment camps, and teacher training programs.

2–203. The Attorney General is authorized to make a final determination as to whether a program falls within the scope of education and training programs and activities covered by this order, under subsection 2–202, or is excluded from coverage, under section 3.

2–204. ''Military education or training programs'' are those education and training programs conducted by the Department of Defense or, where the Coast Guard is concerned, the Department of Transportation, for the primary purpose of educating or training members of the armed forces or meeting a statutory requirement to educate or train Federal, State, or local civilian law enforcement officials pursuant to 10 U.S.C. Chapter 18.

2–205. ''Armed Forces'' means the Armed Forces of the United States.

2–206. ''Status as a parent'' refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is:

(a) a biological parent;
(b) an adoptive parent;
(c) a foster parent;
(d) a stepparent;
(e) a custodian of a legal ward;
(f) in loco parentis over such an individual; or
(g) actively seeking legal custody or adoption of such an individual.

SEC. 3. *Exemption from coverage*.

3–301. This order does not apply to members of the armed forces, military education or training programs, or authorized intelligence activities. Members of the armed forces, including students at military academies, will continue to be covered by regulations that currently bar specified forms of discrimination that are now enforced by the Department of Defense and the individual service branches. The Department of Defense shall develop procedures to protect the rights of and to provide redress to civilians not otherwise protected by existing Federal law from discrimination on the basis of race, sex, color, national origin, disability, religion, age, sexual orientation, or status as a parent and who participate in military education or training programs or activities conducted by the Department of Defense.

3–302. This order does not apply to, affect, interfere with, or modify the operation of any otherwise lawful affirmative action plan or program.

3–303. An individual shall not be deemed subjected to discrimination by reason of his or her exclusion from the benefits of a program established consistent with federal law or limited by Federal law to individuals of a particular race, sex, color, disability, national origin, age, religion, sexual orientation, or status as a parent different from his or her own.

3–304. This order does not apply to ceremonial or similar education or training programs or activities of schools conducted by the Department of the Interior, Bureau of Indian Affairs, that are culturally relevant to the children represented in the school. ''Culturally relevant'' refers to any class, program, or activity that is fundamental to a tribe's culture, customs, traditions, heritage, or religion.

3–305. This order does not apply to (a) selections based on national origin of foreign nationals to participate in covered education or training programs, if such programs primarily concern national security or foreign policy matters; or (b) selections or other decisions regarding participation in covered education or training programs made by entities outside the executive branch. It shall be the policy of the executive branch that education or training programs or activities shall not be available to entities that select persons for participation in violation of Federal or State law.

3–306. The prohibition on discrimination on the basis of age provided in this order does not apply to age-based admissions of participants to education or training programs, if such programs have traditionally been age-specific or must be age-limited for reasons related to health or national security.

SEC. 4. *Administrative enforcement*.

4–401. Any person who believes himself or herself to be aggrieved by a violation of this order or its implementing regulations, rules, policies, or guidance may, personally or through a representative, file a written complaint with the agency that such person believes is in violation of this order or its implementing regulations, rules, policies, or guidance. Pursuant to procedures to be established by the Attorney General, each executive department or agency shall conduct an investigation of any complaint by one of its employees alleging a violation of this Executive Order.

4–402. (a) If the office within an executive department or agency that is designated to investigate complaints for violations of this order or its implementing rules, regulations, policies, or guidance concludes that an employee has not complied with this order or any of its implementing rules, regulations, policies, or guidance, such office shall complete a report and refer a copy of the report and any relevant findings or supporting evidence to an appropriate agency official. The appropriate agency official shall review such material and determine what, if any, disciplinary action is appropriate.

(b) In addition, the designated investigating office may provide appropriate agency officials with a recommendation for any corrective and/or remedial action. The appropriate officials shall consider such recommendation and implement corrective and/or remedial action by the agency, when appropriate. Nothing in this order authorizes monetary relief to the complainant as a form of remedial or corrective action by an executive department or agency.

4–403. Any action to discipline an employee who violates this order or its implementing rules, regulations, policies, or guidance, including removal from employment, where appropriate, shall be taken in compliance with otherwise applicable procedures, including the Civil Service Reform Act of 1978, Public Law No. 95–454, 92 Stat. 1111 [see Tables for classification].

SEC. 5. *Implementation and Agency Responsibilities*.

5–501. The Attorney General shall publish in the Federal Register such rules, regulations, policies, or guidance, as the Attorney General deems appropriate, to be followed by all executive departments and agencies. The Attorney General shall address:

a. which programs and activities fall within the scope of education and training programs and activities covered by this order, under subsection 2–202, or excluded from coverage, under section 3 of this order;
b. examples of discriminatory conduct;
c. applicable legal principles;
d. enforcement procedures with respect to complaints against employees;
e. remedies;
f. requirements for agency annual and tri-annual reports as set forth in section 6 of this order; and

g. such other matters as deemed appropriate.

5–502. Within 90 days of the publication of final rules, regulations, policies, or guidance by the Attorney General, each executive department and agency shall establish a procedure to receive and address complaints regarding its Federally conducted education and training programs and activities. Each executive department and agency shall take all necessary steps to effectuate any subsequent rules, regulations, policies, or guidance issued by the Attorney General within 90 days of issuance.

5–503. The head of each executive department and agency shall be responsible for ensuring compliance within this order.

5–504. Each executive department and agency shall cooperate with the Attorney General and provide such information and assistance as the Attorney General may require in the performance of the Attorney General's functions under this order.

5–505. Upon request and to the extent practicable, the Attorney General shall provide technical advice and assistance to executive departments and agencies to assist in full compliance with this order.

SEC. 6. *Reporting Requirements.*

6–601. Consistent with the regulations, rules, policies, or guidance issued by the Attorney General, each executive department and agency shall submit to the Attorney General a report that summarizes the number and nature of complaints filed with the agency and the disposition of such complaints. For the first 3 years after the date of this order, such reports shall be submitted annually within 90 days of the end of the preceding year's activities. Subsequent reports shall be submitted every 3 years and within 90 days of the end of each 3-year period.

SEC. 7. *General Provisions.*

7–701. Nothing in this order shall limit the authority of the Attorney General to provide for the coordinated enforcement of nondiscrimination requirements in Federal assistance programs under Executive Order 12250 [42 U.S.C. 2000d–1 note].

SEC. 8. *Judicial Review.*

8–801. This order is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees. This order is not intended, however, to preclude judicial review of final decisions in accordance with the Administrative Procedure Act, 5 U.S.C. 701, *et seq.*

WILLIAM J. CLINTON.

EX. ORD. NO. 13899. COMBATING ANTI-SEMITISM

Ex. Ord. No. 13899, Dec. 11, 2019, 84 F.R. 68779, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy.* My Administration is committed to combating the rise of anti-Semitism and anti-Semitic incidents in the United States and around the world. Anti-Semitic incidents have increased since 2013, and students, in particular, continue to face anti-Semitic harassment in schools and on university and college campuses.

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d *et seq.*, prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance. While Title VI does not cover discrimination based on religion, individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a member of a group that shares common religious practices. Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin.

It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.

SEC. 2. *Ensuring Robust Enforcement of Title VI.* (a) In enforcing Title VI, and identifying evidence of discrimination based on race, color, or national origin, all executive departments and agencies (agencies) charged with enforcing Title VI shall consider the following:

(i) the non-legally binding working definition of anti-Semitism adopted on May 26, 2016, by the International Holocaust Remembrance Alliance (IHRA), which states, ''Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities''; and

(ii) the ''Contemporary Examples of Anti-Semitism'' identified by the IHRA, to the extent that any examples might be useful as evidence of discriminatory intent.

(b) In considering the materials described in subsections (a)(i) and (a)(ii) of this section, agencies shall not diminish or infringe upon any right protected under Federal law or under the First Amendment. As with all other Title VI complaints, the inquiry into whether a particular act constitutes discrimination prohibited by Title VI will require a detailed analysis of the allegations.

SEC. 3. *Additional Authorities Prohibiting Anti-Semitic Discrimination.* Within 120 days of the date of this order [Dec. 11, 2019], the head of each agency charged with enforcing Title VI shall submit a report to the President, through the Assistant to the President for Domestic Policy, identifying additional nondiscrimination authorities within its enforcement authority with respect to which the IHRA definition of anti-Semitism could be considered.

SEC. 4. *Rule of Construction.* Nothing in this order shall be construed to alter the evidentiary requirements pursuant to which an agency makes a determination that conduct, including harassment, amounts to actionable discrimination, or to diminish or infringe upon the rights protected under any other provision of law.

SEC. 5. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP.

§ 2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or or-

ders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: *Provided, however*, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, § 602, July 2, 1964, 78 Stat. 252.)

DELEGATION OF FUNCTIONS

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General, see section 1–101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out below.

EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

EXECUTIVE ORDER NO. 11247

Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, which related to enforcement of coordination of nondiscrimination in federally assisted programs, was superseded by Ex. Ord. No. 11764, eff. Jan. 21, 1974, 39 F.R. 2575, formerly set out below.

EXECUTIVE ORDER NO. 11764

Ex. Ord. No. 11764, Jan. 21, 1974, 39 F.R. 2575, which related to coordination of enforcement of provisions of this subchapter, was revoked by section 1–501 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72996, set out below.

EX. ORD. NO. 12250. LEADERSHIP AND COORDINATION OF IMPLEMENTATION AND ENFORCEMENT OF NONDISCRIMINATION LAWS

Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. DELEGATION OF FUNCTION

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. COORDINATION OF NONDISCRIMINATION PROVISIONS

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1–202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1–203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1–204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1–205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1–206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1–207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1–3. IMPLEMENTATION BY THE ATTORNEY GENERAL

1–301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the

implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1–302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1–303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1–304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1–305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1–4. AGENCY IMPLEMENTATION

1–401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1–402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1–403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1–5. GENERAL PROVISIONS

1–501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 [this subchapter] shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1–502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794], shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1–503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1–504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

JIMMY CARTER.

EX. ORD. NO. 13166. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Ex. Ord. No. 13166, Aug. 11, 2000, 65 F.R. 50121, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to improve access to federally conducted and federally assisted programs and activities for persons who, as a result of national origin, are limited in their English proficiency (LEP), it is hereby ordered as follows:

SECTION 1. *Goals.*

The Federal Government provides and funds an array of services that can be made accessible to otherwise eligible persons who are not proficient in the English language. The Federal Government is committed to improving the accessibility of these services to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. To this end, each Federal agency shall examine the services it provides and develop and implement a system by which LEP persons can meaningfully access those services consistent with, and without unduly burdening, the fundamental mission of the agency. Each Federal agency shall also work to ensure that recipients of Federal financial assistance (recipients) provide meaningful access to their LEP applicants and beneficiaries. To assist the agencies with this endeavor, the Department of Justice has today issued a general guidance document (LEP Guidance), which sets forth the compliance standards that recipients must follow to ensure that the programs and activities they normally provide in English are accessible to LEP persons and thus do not discriminate on the basis of national origin in violation of title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as amended, and its implementing regulations. As described in the LEP Guidance, recipients must take reasonable steps to ensure meaningful access to their programs and activities by LEP persons.

SEC. 2. *Federally Conducted Programs and Activities.*

Each Federal agency shall prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons. Each plan shall be consistent with the standards set forth in the LEP Guidance, and shall include the steps the agency will take to ensure that eligible LEP persons can meaningfully access the agency's programs and activities. Agencies shall develop and begin to implement these plans within 120 days of the date of this order, and shall send copies of their plans to the Department of Justice, which shall serve as the central repository of the agencies' plans.

SEC. 3. *Federally Assisted Programs and Activities.*

Each agency providing Federal financial assistance shall draft title VI guidance specifically tailored to its recipients that is consistent with the LEP Guidance issued by the Department of Justice. This agency-specific guidance shall detail how the general standards established in the LEP Guidance will be applied to the agency's recipients. The agency-specific guidance shall take into account the types of services provided by the recipients, the individuals served by the recipients, and other factors set out in the LEP Guidance. Agencies that already have developed title VI guidance that the Department of Justice determines is consistent with the LEP Guidance shall examine their existing guidance, as well as their programs and activities, to determine if additional guidance is necessary to comply with this order. The Department of Justice shall consult with the agencies in creating their guidance and, within 120 days of the date of this order, each agency shall submit its specific guidance to the Department of Justice for review and approval. Following approval by the Department of Justice, each agency shall publish its guidance document in the Federal Register for public comment.

SEC. 4. *Consultations.*

In carrying out this order, agencies shall ensure that stakeholders, such as LEP persons and their representative organizations, recipients, and other appropriate individuals or entities, have an adequate opportunity to provide input. Agencies will evaluate the particular needs of the LEP persons they and their recipients serve and the burdens of compliance on the agency and its recipients. This input from stakeholders will assist the agencies in developing an approach to ensuring meaningful access by LEP persons that is practical and

effective, fiscally responsible, responsive to the particular circumstances of each agency, and can be readily implemented.

SEC. 5. *Judicial Review.*

This order is intended only to improve the internal management of the executive branch and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers or employees, or any person.

WILLIAM J. CLINTON.

§ 2000d–2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, § 603, July 2, 1964, 78 Stat. 253.)

CODIFICATION

''Chapter 7 of title 5'' and ''that chapter'' substituted in text for ''section 10 of the Administrative Procedure Act'' and ''that section'', respectively, on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

§ 2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, § 604, July 2, 1964, 78 Stat. 253.)

§ 2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 88–352, title VI, § 605, July 2, 1964, 78 Stat. 253.)

§ 2000d–4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term ''program or activity'' and the term ''program'' mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(Pub. L. 88–352, title VI, § 606, as added Pub. L. 100–259, § 6, Mar. 22, 1988, 102 Stat. 31; amended Pub. L. 103–382, title III, § 391(q), Oct. 20, 1994, 108 Stat. 4024; Pub. L. 107–110, title X, § 1076(y), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 114–95, title IX, § 9215(r), Dec. 10, 2015, 129 Stat. 2171.)

AMENDMENTS

2015—Par. (2)(B). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

2002—Par. (2)(B). Pub. L. 107–110 substituted ''7801'' for ''8801''.

1994—Par. (2)(B). Pub. L. 103–382 substituted ''section 8801 of title 20'' for ''section 198(a)(10) of the Elementary and Secondary Education Act of 1965''.

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

EXCLUSION FROM COVERAGE

This section not to be construed to extend application of Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.]

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this regulation and its applicability to the program for which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

(Approved by the Office of Management and Budget under control number 1870–0500)

(Authority: Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1)

[45 FR 30918, May 9, 1980, as amended at 53 FR 49143, Dec. 6, 1988; 65 FR 68053, Nov. 13, 2000]

§ 100.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part.

(b) *Complaints.* Any person who believes himself or any specific class of individuals to be subjected to discrimination prohibited by this part may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee will make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part.

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in § 100.8.

(2) If an investigation does not warrant action pursuant to paragraph (1) of this paragraph (d) the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

(Authority: Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1)

§ 100.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this regulation, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking,

and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with §100.4.* If an applicant fails or refuses to furnish an assurance required under §100.4 or otherwise fails or refuses to comply with a requirement imposed by or pursuant to that section Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part, (3) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person. During this period of at least 10 days additional efforts shall be made to persuade the recipient or other person to comply with the regulation and to take such corrective action as may be appropriate.

(Authority: Sec. 601, 602, Civil Rights Act of 1964; 78 Stat. 252; 42 U.S.C. 2000d, 2000d–1. Sec. 182, 80 Stat. 1209; 42 U.S.C. 2000d–5)

§100.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by §100.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and §100.8(c) of this regulation and consent to the making of a decision on the basis of such information as may be filed as the record.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the responsible Department official unless he determines that

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§ 2 1401.01. Intent of Council.

It is the intent of the Council of the District of Columbia, in enacting this unit, to secure an end in the District of Columbia to discrimination for any reason other than that of individual merit, including, but not limited to, discrimination by reason of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, sealed eviction record, status as a victim of an intrafamily offense, place of residence or business, and status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking.

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§ 2 1402.41. Prohibitions.

It is an unlawful discriminatory practice, subject to the exemptions in § 2-1401.03(b), for an educational institution:

(1) To deny, restrict, or to abridge or condition the use of, or access to, any of its facilities, services, programs, or benefits of any program or activity to any person otherwise qualified, wholly or partially, for a discriminatory reason, based upon the actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, political affiliation, source of income, or disability of any individual; or

(2) To make or use a written or oral inquiry, or form of application for admission, that elicits or attempts to elicit information, or to make or keep a record, concerning the race, color, religion, or national origin of an applicant for admission, except as permitted by regulations of the Office.

(3) Repealed.

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§ 2 1403.04. Filing of complaints and mediation.

(a) Any person or organization, whether or not an aggrieved party, may file with the Office a complaint of a violation of the provisions of this chapter, including a complaint of general discrimination, unrelated to a specific person or instance. The complaint shall state the name and address of the person alleged to have committed the violation, hereinafter called the respondent, and shall set forth the substance thereof, and such other information as may be required by the Office. The Director, sua sponte, may investigate individual instances and patterns of conduct prohibited by the provisions of this chapter and may initiate complaints in connection therewith. Any complaint under this chapter shall be filed with the Office within 1 year of the occurrence of the unlawful discriminatory practice, or the discovery thereof, except as may be modified in accordance with § 2-1403.03.

(b) Complaints filed with the Office under the provisions of this chapter may be voluntarily withdrawn at the request of the complainant at any time prior to the completion of the Office's investigation and findings as specified in § 2-1403.05, except that the circumstances accompanying said withdrawal may be fully investigated by the Office.

(c) A mediation program shall be established and all complaints shall be mediated before the Office commences a full investigation. During the mediation the parties shall discuss the issues of the complaint in an effort to reach an agreement that satisfies the interests of all concerned parties. The Office shall grant the parties up to 45 days within which to mediate a complaint. If an agreement is reached during the mediation process, the terms of the agreement shall control resolution of the complaint. If an agreement is not reached, the Office shall proceed with an investigation of the complaint.

(d) Complaints filed with the Office alleging unlawful discrimination in residential real estate transactions or violations of FHA, shall be served on the complainant and respondent within 5 days of filing, with a notice identifying the alleged discriminatory practice and advising the parties of their procedural rights and obligations under this

chapter and FHA. The Office shall refer the complaint for mediation, but shall begin investigating the complaint within 30 days of its filing if the parties fail to reach an agreement.

(Dec. 13, 1977, D.C. Law 2-38, title III, § 304, 24 DCR 6038; Oct. 23, 1997, D.C. Law 12-39, § 2(a), 44 DCR 4856; Apr. 20, 1999, D.C. Law 12-242,§ 2(h), 46 DCR 952.)

Prior Codifications

1981 Ed., § 1-2544.

1973 Ed., § 6-2284.

PUBLICATION INFORMATION

Current through

June 30, 2022

Last codified D.C. Law:

Law 24-143 effective June 30, 2022

Last codified Emergency Law:

Act 24-446 effective June 28, 2022

Last codified Federal Law:

Public Law 115-334 approved Dec. 20, 2018

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§ 2 1403.06. Conciliation.

(a) If, in the judgment of the Office, the circumstances so warrant, it may, at any time after the filing of the complaint, endeavor to eliminate such unlawful discriminatory practice by conference, conciliation, or persuasion.

(b) If the Office determines that there exists probable cause to believe that the respondent has engaged or is engaging in an unlawful practice, the parties shall attempt to conciliate the complaint. The Office shall grant the parties up to 60 days within which to reach a conciliation agreement. If the parties fail to execute a conciliation agreement within the time allowed by the Office, the Office shall certify the case to the Commission for a public hearing. The terms of a conciliation agreement may require a respondent to refrain, in the future, from committing specified discriminatory practices, and to take such affirmative action as, in the judgment of the Office, will effectuate the purposes of this chapter; and may include consent, by the respondent, to the entry in court of a consent decree, embodying the terms of the conciliation agreement.

(c) Upon agreement of all parties to a complaint and upon notice to all parties thereto, a conciliation agreement shall be deemed an order of the Commission, and shall be enforceable as such. Except for the terms of the conciliation agreement, employees of the Office shall not make public, without the written consent of the respondent, information concerning conciliation efforts.

(d) Repealed.

(e) The Office shall make public, unless the complainant and respondent agree otherwise and the Director determines that disclosure is not required to further the purpose of this chapter, conciliation agreements alleging unlawful discrimination in residential real estate transactions or violations of the FHA.

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§ 2 1403.16. Private cause of action.

(a) Any person claiming to be aggrieved by an unlawful discriminatory practice shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate, unless such person has filed a complaint hereunder; provided, that where the Office has dismissed such complaint on the grounds of administrative convenience, or where the complainant has withdrawn a complaint, such person shall maintain all rights to bring suit as if no complaint had been filed. No person who maintains, in a court of competent jurisdiction, any action based upon an act which would be an unlawful discriminatory practice under this chapter may file the same complaint with the Office. A private cause of action pursuant to this chapter shall be filed in a court of competent jurisdiction within one year of the unlawful discriminatory act, or the discovery thereof, except that the limitation shall be within 2 years of the unlawful discriminatory act, or the discovery thereof, for complaints of unlawful discrimination in real estate transactions brought pursuant to this chapter or the FHA. The timely filing of a complaint with the Office, or under the administrative procedures established by the Mayor pursuant to § 2-1403.03, shall toll the running of the statute of limitations while the complaint is pending.

(b) The court may grant any relief it deems appropriate, including, the relief provided in §§ 2-1403.07 and 2-1403.13(a).

(c) The notice requirement of § 12-309 shall not apply to any action brought against the District of Columbia under this section.

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§ 12 301. Limitation of time for bringing actions.

[(a)] Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

(1) for the recovery of lands, tenements, or hereditaments— 15 years;

(2) for the recovery of personal property or damages for its unlawful detention— 3 years;

(3) for the recovery of damages for an injury to real or personal property— 3 years;

(4) for libel, slander, assault, battery, mayhem, wounding, malicious prosecution, false arrest or false imprisonment— 1 year;

(5) for a statutory penalty or forfeiture— 1 year;

(6) on an executor's or administrator's bond— 5 years; on any other bond or single bill, covenant, or other instrument under seal— 12 years;

(7) on a simple contract, express or implied— 3 years;

(8) for which a limitation is not otherwise specially prescribed— 3 years;

(9) for a violation of § 7-1201.01(11)— 1 year;

(10) for the recovery of damages for an injury to real property from toxic substances including products containing asbestos— 5 years from the date the injury is discovered or with reasonable diligence should have been discovered;

(11) for the recovery of damages arising out of sexual abuse that occurred while the victim was less than 35 years of age— the date the victim attains the age of 40 years, or 5 years from when the victim knew, or reasonably should have known, of any act constituting sexual abuse, whichever is later;

(12) for the recovery of damages arising out of sexual abuse that occurred while the victim was 35 years of age or older—5 years, or 5 years from when the victim knew, or reasonably should have known, of any act constituting sexual abuse, whichever is later.

[(b)] This section does not apply to actions for breach or contracts for sale governed by § 28:2-725, nor to actions brought by the District of Columbia government.