



ISSN 1069-5672 VOL L, NO. 7 August 202

# Focus: Supporting Diverse Students

School Voucher Schemes Continue to Grow in the South	.3
Immigrant Students' Rights to Attend Public Schools	5
Students' Racial Diversity Should be Celebrated	.6
Court Reverses Anti-Immigrant Tuition Challenge	.7

# Federal Departments of Education and Justice Release Discipline Resources for Schools

by Morgan Craven, J.D.

In 2014, the U.S. Departments of Education and Justice under President Obama issued guidance documents designed to help school districts across the country address race-based discrimination in school discipline. The problem the documents were meant to tackle was clear: students of color, particularly Black students, are disproportionately punished and policed in U.S. schools, even though they are not more likely to break school rules (IDRA, 2023).

The Obama-era guidance did not create new law; rather it advised school districts on how to comply with existing civil rights laws and regulations, including Title VI and Title IV of the *Civil Rights Act* of 1964 which prohibit discrimination on the basis of race, color, and national origin. The guidance – informed by extensive literature reviews; input from advocates, lawyers and experts; and conversations with students, parents and educators – provided recommendations to reduce discriminatory discipline practices in schools and included resources for creating safe, supportive school environments for all students.

Importantly, the guidance also advised school districts on how the departments planned to investigate potential violations of students' civil rights. Those investigations could take into account the "disparate impact" of a discipline policy, allowing the departments to find discrimination occurred if students of color

were disproportionately punished, even if the language of the discipline policy itself appeared to be racially neutral.

To determine if a school district had run afoul of its duty to protect all students, the departments could examine data showing a disparate impact of the policy on students of color, investigate whether the disciplinary practice met important educational goals despite that impact, and evaluate whether alternatives to the punishment were considered by the school administrators.

These guidance documents were critical to identifying and remedying harms that are crystal clear to anyone taking even the most basic look at discipline data in school districts across the country. For example, in 2017-18, Black students made up 15% of public school enrollment in the United States but accounted for 38% of students who received one or more out-of-school suspensions (OCR, 2021). Black girls were the only group of girls that faced punishment disparities – they were suspended at rates nearly twice that of their enrollment (OCR, 2021).

These students – some as young as preschool age – are unfairly missing learning opportunities that their peers are getting, due to discipline policies and practices in their schools. (cont. on Page 2)



Save the Date

August 2023 idra newsletter 1

(Federal Departments of Education and Justice Release Discipline Resources for Schools, continued from Page 1)

The Obama-era guidance documents were an important statement, issued by the federal government in an attempt to address the deep harms of punitive discipline practices in schools, alert schools of the responsibilities they have to protect all students, and advise school officials of the types of violations that would be investigated and addressed by the enforcement divisions of the Departments of Education and Justice.

However, President Trump's administration rescinded the Obama guidance in 2018 (Binkley, 2018). Relying on select research, interviews and focus groups from a federal panel investigating school safety, the administration issued a report targeting many of the discipline recommendations and investigation guidelines advanced by the Obama administration. Using unsupported connections between school violence and discipline, the report argued, incorrectly, that reducing punitive and exclusionary discipline practices would only serve to increase school violence (Federal Commission on School Safety, 2018).

We know the opposite is true: addressing root causes of challenging behaviors in meaning-ful and proactive ways, equipping school staff with skills and systems to welcome all students into their classrooms, and moving away from punitive discipline practices that push young people out of the classroom, helps students and strengthens school communities (Craven, 2022).

President Trump's report also challenged the use of disparate impact evaluations in school discipline investigations, claiming the legal analysis should never have been applied in that context (Federal Commission on School Safety, 2018).

Since the election of President Biden, IDRA and other advocates across the country have been calling for the Departments of Education and Justice to issue new discipline guidance that brings back some of the important resources from, and addresses gaps identified in, the Obama-era guidance.

In 2022, the Department of Education issued guidance specifically focused on addressing discipline policies and practices that discriminate against students with disabilities (2022). While this guidance was important, advocates and families across the country pointed out

that it was not complete, as it did not specifically focus on race-based discrimination in school discipline.

In May 2023, the Departments of Education and Justice issued a "resource" and a series of fact sheets – not official guidance documents – on the impact of discipline on students of color and strategies for schools to address exclusionary discipline and promote stronger school climates (U.S. Department of Education, 2023).

The Resource on Confronting Racial Discrimination in Student Discipline includes a "Dear Colleague" letter describing the potential negative outcomes of racial discrimination in school discipline; the impacts of the pandemic on student mental and behavioral health, and how COVID-19 emergency relief funds can be used to implement safe and inclusive practices and strategies (OCR & CRD, 2023).

The resource also includes summaries of several federal investigations into school discipline policies and practices conducted by the Department of Education's Office for Civil Rights and the Department of Justice's Civil Rights Division. These summaries are not explicit descriptions of the guidelines the departments use in their investigations. Instead, they provide examples of how the departments have applied the law to specific fact patterns in school discipline cases and give examples of remedies obtained following investigations.

The resource touches on how the departments view data of racial disparities in discipline as one tool in the overall analysis of whether a violation of the law occurred. Specifically, the resource notes that "while racial disparities in student discipline alone do not violate the law, ensuring compliance with federal nondiscrimination, obligations can involve examining the underlying causes of such disparities" (OCR & CRD, 2023).

It is important to note that this "resource" is not the same as official agency guidance documents, like those issued in 2014. Official guidance documents "include interpretative rules – which advise the public of an agency's interpretation of the statutes and regulations it administers – and general statements of policy, which advise the public about an agency's intended use of its discretionary authority" (Bowers, 2021).

### All Pianos Have Keys & Other Stories – Series Re-release

As we celebrate IDRA's 50<sup>th</sup> anniversary this year, we are rereleasing chapters from our founder's popular memoir, *All Pianos Have Keys and Other Stories*, that is now out of print. Watch our social media accounts and the webpage below for each new release.



Stories released to date:

- All Pianos Have Keys
- · Silence of the Lambs
- The Epidemic that Never Was
- · Jesus Christ Was Not Bilingual
- · The Shape of the World
- · One Minute of Silence
- Bilingual Onions
- · My Side of the Story
- · A Measure of Progress
- · The Dining Room Table
- · My School: Budget Monitoring At Its Best
- The Road to Indio
- King Antonio's Exile

https://idra.news/AIIPianosHaveKeys

Unlike summary resources or fact sheets, official guidance documents can provide to schools, students, parents and advocates a stronger, more clear understanding of the most current research and best practices and the expectations they should have for schools to protect the rights of historically-marginalized students.

And, importantly, guidance documents can provide a clearer statement of the standards and guidelines the federal government intends to use in investigations to determine when discrimination has occurred and how to provide a meaningful remedy.

This clarity can empower families and other advocates in local communities and states to proactively demand an end to discriminatory punitive discipline and policing practices, including by filing complaints with the federal government.

(cont. on Page 4)

2 idra newsletter \_\_\_\_\_\_August 2023

# School Voucher Schemes Continue to Grow in the South

by Terrence Wilson, J.D.

Some policymakers have consistently sought new opportunities to privatize public education since the first voucher program was established in Wisconsin in 1991. This year so far, they have capitalized on frustrations of parents and families with their schools, particularly exacerbated during the COVID-19 pandemic, to advance voucher schemes rather than focusing on actually improving schools using evidence-based strategies and frameworks like IDRA's Quality Schools Action Framework (Robledo Montecel & Goodman, 2010).

Additionally, these leaders have exploited cultural grievances about what students are learning about race, gender and sexuality to justify the so-called need for school vouchers.

Voucher schemes are poor ideas for a number of well-researched and documented reasons. These reasons include, but are not limited to, the drain on public school systems that educate the majority of schoolchildren, the ways that vouchers can support schools that discriminate, the evidence showing that vouchers do not improve academic outcomes, the way these programs subsidize affluent families already attending private schools, and the lack of financial and academic accountability in schools receiving vouchers (IDRA, 2023a).

Voucher programs also have a historical root in segregation and exacerbate current patterns of school segregation (Duggins-Clay, 2023). This article outlines this year's movement on school vouchers across the U.S. South and highlights common themes from jurisdictions that have resisted voucher expansion thus far.

Overall, voucher programs come in three forms: conventional vouchers where students' families receive a voucher from the state that can be used to pay private school tuition; taxcredit scholarship programs where individuals and corporations can get tax rebates for donat-

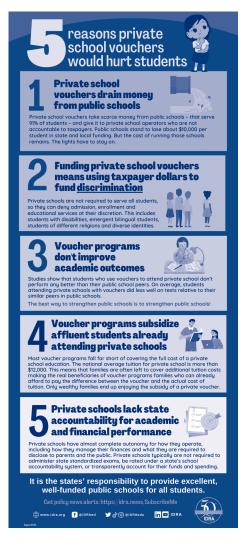
ing to organizations that give scholarships to students to attend private school; and education savings accounts where the state deposits funds into an account that can be used for various different educational expenses for a select few students.

In 2023, many states sought to either create new voucher programs or expand their current programs. Today, every state in the U.S. South except Texas has some form of voucher program.

Several states enacted some combination of new voucher programs or expansion of current programs through increasing funding caps or expanding eligibility. Current voucher programs were expanded while new voucher programs failed in Alabama and Louisiana. Voucher proponents in Florida and Louisiana were able to increase both eligibility and the funding allocated to their existing programs. South Carolina created a new voucher program without expanding any others, and Arkansas both created a new voucher program and expanded eligibility for its existing voucher.

However, there were several states this year that resisted creating new vouchers or expanding their current voucher systems: Georgia, Mississippi, North Carolina (still in session) and Texas. Common arguments that were persuasive in these states included concerns about costs to the public school system and limited usefulness of vouchers for students broadly, particularly in rural areas with few private schools. Regarding costs, voucher program costs vary widely with at least one estimate as high as \$4 billion in Florida and another at \$1.1 trillion in Texas.

Additionally, advocates were able to develop maps and other data to show the limited usefulness of vouchers. For example, IDRA created a map for Georgia legislators showing (cont. on Page 4)



https://idra.news/5ReasonsVouchersHurt

August 2023 idra newsletter

(School Voucher Schemes Continue to Grow in the South, continued from Page 3)

that private schools are often concentrated in wealthier, urban areas of states and do not serve rural students well (IDRA, 2023b).

Advocates also successfully highlighted other problems with these programs, including the likelihood to increase discrimination and segregation and the limited evidence that vouchers actually improve student performance (Long, 2023).

Several lessons can be learned from efforts to resist vouchers in 2023. When looking to highlight the problems that vouchers create, IDRA recommends that advocates:

- Highlight the often-exorbitant costs of these programs, particularly if they do not have caps or limited eligibility requirements.
- Challenge the assumptions underlying cost estimates, particularly if they only focus on students leaving public school and going to private school. In reality, current private school families will take advantage of these vouchers if they are available.
- Illustrate the limited reach of vouchers in terms of geography as many private schools do not operate in rural areas.
- Underscore the research showing that vouchers are ineffective at raising academic achievement for those students who receive them.

- Point out the loss of special education services and student protections that public schools provide while private schools are exempt.
- Show how the accountability systems for schools receiving vouchers are often lacking as there are several examples of fraudulent use of youchers.
- Explain the historical roots of vouchers in segregation and highlight how they exacerbate current racial disparities in education.

By focusing on these arguments, advocates for public schools may be able to slow and hopefully reverse the crusade for privatization of schools. For more in-depth information about the voucher proposals proposed in each state, see our new eBook at: https://idra.news/DollarsDiverted.

#### Resources

Duggins-Clay, P. (February 7, 2023). School Segregation through Vouchers – What Policymakers Can Learn from a History of State Efforts to Use Vouchers to Avoid Integration. IDRA Knowledge is Power.

IDRA. (2023a). 5 Reasons Private School Vouchers Would Hurt Students, Infographic.

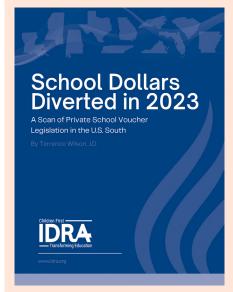
IDRA. (2023b). Georgia Private Schools – IDRA Map.

Long, D. (June-July 2023). Lawmakers Refuse to Adopt School Vouchers, For Now. IDRA Newsletter.

Robledo Montecel, M., & Goodman, C.L. (2010). Courage to Connect: Quality Schools Action Framework. IDRA.

Terrence Wilson, J.D., is IDRA's regional policy and community engagement director. Comments and questions may be directed to him via email at terrence.wilson@idra.org.

### Get an Overview of State-Level Legislation this Year



https://idra.news/DollarsDiverted

(Federal Departments of Education and Justice Release Discipline Resources for Schools, continued from Page 2)

In addition to continuing to advocate the release of robust federal discipline guidance, it is critical for all who are invested in the success of students to continue to push for:

- An end to harmful punitive school discipline and school-based policing practices in state, local, and federal policies.
- A truthful narrative of school safety that emphasizes supporting students and building trusting relationships over school hardening, surveillance and policing measures.
- Investments in the people and practices including mental and behavioral health professionals and networks of support – that create safe and welcoming schools where all students can succeed.

- Robust data collection that shows outcomes and opportunities for all students, including those with intersecting identities.
- Federal investigations into discriminatory school discipline and policing practices that harm young people, including students of color, students with disabilities, girls and LGBTQ+ students.

Practices that knock students off the pathway to college are never acceptable, and when those practices also discriminate against certain students, we must all be clear in denouncing them.

#### Resources

Binkley, C. (December 21, 2018). Trump officials cancel Obamaera policy on school discipline. AP News.

Bowers, K.R. (April 19, 2021). Agency Use of Guidance Documents. Congressional Research Service.

Craven, M. (June 15, 2022). What Safe Schools Should Look Like for Every Student A Guide to Building Safe and Welcoming

- Schools and Rejecting Policies that Hurt Students, Issue Brief. IDRA.
- Federal Commission on School Safety. (December 18, 2018). Final Report of the Federal Commission on School Safety.
- IDRA. (February 2023). A Black Student Centered Policy Agenda
- OCR. (June 2021). An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-18 School Year. Office for Civil Rights, U.S. Department of Education, Civil Rights Data Collection.
- OCR & CRD. (May 2023). Resource on Confronting Racial Discrimination in Student Discipline. Office for Civil Rights, U.S. Department of Education and Civil Rights Division, U.S. Department of Justice.
- U.S. Department of Education. (July 19, 2022). New Guidance Helps Schools Support Students with Disabilities and Avoid Discriminatory Use of Discipline, news release.
- U.S. Department of Education. (May 26, 2023). U.S. Departments of Education and Justice Release Resource on Confronting Racial Discrimination in Student Discipline, news release.

Morgan Craven, J.D., is the IDRA national director of policy, advocacy and community engagement. Comments and questions may be directed to her via email at morgan. craven@idra.org.

4 idra newsletter August 2023

# Immigrant Students' Rights to Attend Public Schools

As schools kick off this school year, IDRA is releasing this new infographic as a reminder that public schools, by law, must serve all children.

Schools should not discourage students without certain documents from attending school. In fact, students are *required* to attend school under the state's compulsory education laws.

And schools should assure parents that the *Family Educational Rights and Privacy Act* restricts schools from sharing information with the U.S. Immigration and Customs Enforcement agency (ICE).

IDRA's focus is to strengthen schools to work for all children, families and communities. Help us make this goal a reality for every child; we simply cannot afford the alternatives.

Denying undocumented students or children of undocumented parents access to an education is unconstitutional and against the law.

This infographic in full color and bilingual is available on IDRA's website along with many other resources for schools and advocates. We encourage you to share them across your networks.

https://idra.news/ImmigEd

### Other Tools Online...

- Book in English & Spanish
- Bilingual flier to share



# Welcoming Immigrant Students in School 6.6

Immigrant students are guaranteed access to free public education by the U.S. Constitution.

Certain procedures must be followed when registering undocumented immigrant children (and those whose parents are undocumented) in school to avoid violation of their civil rights as outlined in the *Plyler vs. Doe* decision.



Public schools cannot deny admission to a student on the

admission to a student on the basis of undocumented status.



Public schools cannot require students or parents to disclose their immigration status.



Public schools cannot ask students or parents questions intended to expose their undocumented status.



Public schools cannot require social security numbers from students or parents.



Public schools cannot demand that parents produce driver's licenses or other identification documents that are not required.



Public schools cannot engage in any practices that "chill" or hinder the right of access to school. All children are <u>required</u> under state laws to attend school until they reach a mandated age.



School personnel have no legal obligation to enforce U.S. immigration laws.



U.S. Immigration and Customs Enforcement (ICE) agents are to refrain from enforcement actions at certain sensitive locations, which include schools, as detailed in ICE's own policies.



The Family Education Rights and Privacy Act prohibits schools from providing any outside agency (including ICE) with any information from a child's school file that would expose the student's undocumented status.



The only exception is if an agency gets a court order (subpoena) that parents can then challenge

### What schools can do...



Focus on teaching <u>all</u> students.



Pro-actively show parents that their children are welcome.



Ensure teachers and staff are properly trained about protecting the rights of children and on culturally competency.



Communicate with parents in their language.



Share information about resources for students, families and educators (in English and other languages at the school).



Review all of your enrollment and registration documents (including forms, websites, and communications with parents) to be clear that the provision of the child's social security number, birth certificate, etc., is voluntary, and that not providing such information will not bar a child's enrollment.



Adults without social security numbers who are applying for a free lunch and/or breakfast program for a student need only state on the application that they do not have a social security number.



Get more info and resources, including IDRA's School Opening Alert Flier & eBook https://idra.news/IDRAigwWelcome

www.idra.org

facebook.com/IDRAed

IDRA Transforming Followski

August 2010 Intercultural Development Research Association - 5815 Callaghan Road Suite 101 - San Antonio Texas 78228 - 210-444-1710

### Students' Racial Diversity Should be Celebrated, Not Minimized or Erased

# Supreme Court Ignores History & Precedent in Finding UNC and Harvard Affirmative Action Programs Unconstitutional

IDRA condemns the July 28, 2023, U.S. Supreme Court decision, which makes it more difficult for colleges to consider all aspects of a student's identity, qualifications and experiences – including their racial and ethnic background – in the admissions process.

In a 6-3 majority opinion by Chief Justice John Roberts, the Supreme Court continues its pursuit of an extremist anti-civil rights agenda. In Students for Fair Admissions v. University of North Carolina and Students for Fair Admissions Inc. v. President & Fellows of Harvard College, the Court held that Harvard University and the University of North Carolina's limited use of race in their admissions processes violate the Equal Protection Clause of the Fourteenth Amendment.

"In the face of today's legal blow that dishonors those who fought for the 14th Amendment, IDRA reaffirms its 50-year commitment to support students of color by working to eradicate inequities in K-12 education that create unfair barriers to college," said Celina Moreno, J.D., IDRA President and CEO.

As Justice Sotomayor explains in her dissent: In crafting a "superficial rule of colorblindness as a constitutional principle," the Court turned a blind eye to the well-documented and continuing impacts of the systemic discrimination experienced by students of color in our nation's public schools. "From this Nation's birth, the freedom to learn was neither colorblind nor equal," Justice Sotomayor wrote.

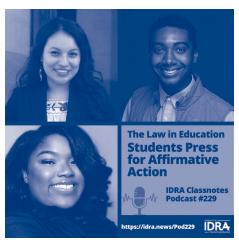
Nearly 70 years after *Brown v. Board of Education*, public schools remain highly segregated by race and economic status, contributing to deeply unequal opportunities and outcomes.

"The ruling ignores history and firm legal precedent, perverting the purpose of the Equal Pro-

tection Clause and the legacy of *Brown*," said Paige Duggins-Clay, J.D., IDRA's Chief Legal Analyst. "We will continue to fight against the erasure and suppression of the identity, history, and lived experience of students and communities of color."

Today's decision makes more urgent the need to strengthen our collective efforts to achieve equal educational opportunity in our nation's public schools and ensure every young person has a fair chance to access and succeed in college. To that end, IDRA will continue our work to:

 ensure all students can bring their whole, authentic selves to their classrooms and are supported by teachers and counselors to uplift their identities and experiences in their college applications;
 (cont. on Page 7)



### **Affirmative Action Resources**

Resource Page: IDRA Affirmative Action – The Law in Education webpage

**Amicus Brief News:** IDRA Signs onto Amicus Brief Spotlighting Student Voices Urging the Court Not to Censor their Racial and Ethnic Identity in College Applications

Podcast Episode: The Law in Education – Students Press for Affirmative Action – In this podcast episode in our series on the law in education, IDRA's then education law intern, Makiah Lyons, facilitates a deep and dynamic conversation with two students and alumni from Harvard and UNC who served as intervenors and amici in the case. While the focus of the litigation has been on the university defendants, students and alumni across the country have been fighting to defend diversity in higher education – and beyond. (October 2022)

Podcast Episode: The Law in Education – U.S. Supreme Court Update – The 2021-22 session of the U.S. Supreme Court left on imprint on education through a number or rulings, including some that were not technically education cases. Paige Duggins-Clay, J.D., IDRA's chief legal analyst, discusses what happened in the last term and what the court's most recent decisions might mean for the future of educational equity. (December 2022)

https://idra.news/AffirmativeAction

idra newsletter August 2023

# Court Sides with UNT by Reversing **Anti-Immigrant Tuition Challenge**

### Fifth Circuit Court Decision Reverses District Court Order in Young Conservatives of Texas v. Neal Smatresk et al.

On July 10, 2023, the U.S. Court of Appeals for the Fifth Circuit released its decision in Young Conservatives of Texas v. Neal Smatresk et al. In a unanimous opinion, the Court reversed a federal district court's decision barring the University of North Texas (UNT) from collecting nonresident tuition from out-of-state students. The Court rejected the Young Conservatives of Texas (YCT) assertion that a 1996 federal immigration law preempted the challenged Texas tuition statute.

"The Fifth Circuit properly rejected the invitation to uphold the Young Conservatives of Texas' thinly veiled anti-immigrant attack on the Texas Dream Act in this case," said Paige Duggins-Clay, J.D., IDRA Chief Legal Analyst. "Since Gov. Rick Perry signed the Texas Dream Act in 2001, a broad coalition of Texas business, community, university, and student leaders have come together to support it in recognition that Texas high school graduates, regardless of immigration status, deserve an equal opportunity to go to college and that they contribute significantly to our state's economy. IDRA was proud to represent those groups in this case and will continue our 50-year legacy of ensuring that all students have access to excellent educational opportunities."

Although the now-reversed district court's order did not eliminate access to in-state tuition for immigrant students, the injunction prohibited UNT from collecting out-of-state tuition for non-resident citizens at UNT as long as the Texas Dream Act (which provides a path for undocumented students to become eligible for in-state tuition) is in effect. The lower court's ruling cost UNT millions and threatened to compromise the integrity of the Texas higher education funding system (IDRA, 2022).

"The unanimous Fifth Circuit Court's decision upholds the rule of law," said Miriam Feldblum, executive director of the Presidents' Alliance. "Beyond the ruling itself, we will continue to focus on preserving in-state tuition access for undocumented students. The state's affirmative state policies that allow Texas Dreamers - who have grown up in the state and graduated high school there - to access in-state tuition and financial aid positively impact Texas' economic growth, workforce development, retention of talent, entrepreneurship, innovation, and its competitive advantage."

While the Court's opinion did not address the constitutionality of other unchallenged provisions of Texas' tuition statute, we must remain vigilant in our collective efforts to protect immigrant students' access to college. Strong legal foundations exist that allow states to affirmatively extend in-state tuition to undocumented students on a variety of non-residency requirements. The Texas state law extends in-state tuition eligibility to undocumented students if they meet a number of requirements, including graduating from a Texas high school (or an equivalent). Currently, 23 states and D.C., including Arizona, California, Florida, and Utah, have also extended in-state eligibility to their states' undocumented students (Presidents' Alliance on Higher Education and Immigration,

### Resources

IDRA. (August 5, 2022). IDRA Files Amicus Brief in Fifth Circuit on Behalf of Student, Business and Higher Education Organizations in a Reckless Case Challenging Texas Tuition Laws. Presidents' Alliance on Higher Education and Immigration. (2023). Texas State Data. Higher Ed Immigration Portal.

IDRA joint statement with Presidents' Alliance on Higher Education and Immigration.

(Students' Racial Diversity Should be Celebrated..., continued from Page 6)

- increase access to counseling programs and coursework that prepare all students for col-
- · support strong educational programs that prepare emergent bilingual students to succeed academically and pursue higher educa-
- · dismantle unfair discipline systems that target students of color, remove them from
- their classrooms, and knock them off pathways to college; and
- · ensure fair funding systems so that all students can attend excellent, well-resourced schools.

Every young person is valuable, has a rich story to tell and has diverse gifts to contribute to their schools, communities, and the world.

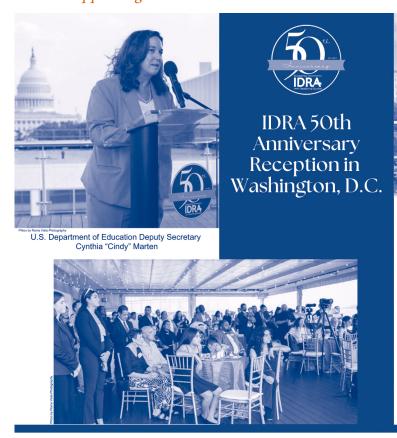


Intercultural Development Research Association 5815 Callaghan Road, Suite 101 San Antonio, Texas 78228 Non-Profit Organization

U.S. POSTAGE PAID

Permit No. 3192 San Antonio, TX 78228

### Focus: Supporting Diverse Students \_





IDRA Board Chair Juventino "Tino" Guerra; Congressman Joaquin Castro;
IDRA National Director of Policy, Advocacy and Community Engagement Morgan Craven;
IDRA President & CEO Celina Moreno; Congressman Greg Casar



IDRA President & CEO Celina Moreno (and baby Yazmín Moreno Del Toro); Congresswoman Teresa Leger Fernández; Deputy Secretary Cynthia "Cindy" Marten; Assistant Deputy Secretary Montserrat Garibay