Covered Employment: Section 42.104(c)(2)

DOJ's Title VI "Coordination" Regulations, 28 C.F.R. 42.402(f), requires every agency Title VI regulation to address certain elements, including:

> (f) *Covered employment* means employment practices covered by title VI. Such practices are those which: (1) Exist in a program where a primary objective of the federal financial assistance is to provide employment, or (2) Cause discrimination on the basis of race, color or national origin with respect to beneficiaries or potential beneficiaries of the assisted program.

Case law confirms the validity of Section 42.104(c)(2), which appears in all other agency Title VI regulations:

> HEW took (and its successors take) the correct view that Title VI authorizes remedial action if employment practices tend to exclude from participation, deny benefits to, or otherwise subject the primary beneficiaries of a federal program to discrimination in violation of 42 U.S.C. § 2000d.

Ahern v. Bd. of Educ. of City of Chicago, 133 F.3d 975, 977 (7th Cir. 1998)

> We agree with the court below that Title VI enforcement procedures apply to the Board's teacher hiring and assignment practices and that HEW therefore had jurisdiction to investigate and seek compliance.
>
> Appellants rely upon section 604 of the Civil Rights Act of 1964, 42 U.S.C. s 2000d-3, the section which authorizes administrative action under Title VI with respect to employment practices only when a primary objective of federal funding is to provide employment. Their argument is similar to the one advanced in 1978 by appellants in *Caulfield I,* 583 F.2d at 610-11. There the argument was made to oppose the collecting of statistics regarding the ethnic and racial composition of the teaching staff. We found, however, that OCR's charging letter to the Board of November 9, 1976, "specifically noted that its concern with discriminatory employment practices was motivated by the unfortunate effect that these practices exercise on minority schoolchildren." *Id*. at 611. Accordingly, we held that OCR's investigation was within the bounds of 42 U.S.C. s 2000d, which outlaws discrimination in federally funded programs, and not 42 U.S.C. s 2000d-3, because "the objective of OCR's investigation was to alleviate discrimination against minority schoolchildren and not against minority teachers as such." 583 F.2d at 611.
>
> We see no reason to depart from our holding in that case. Indeed, we are bound by it, but even if we were not, we would agree with the Fifth Circuit decision in *United States v. Jefferson County Board of Education*, 372 F.2d 836, 882-86 (5th Cir. 1966) (Wisdom, J.), *aff'd en banc*, 380 F.2d 385 (5th Cir.) (per curiam), cert. denied, 389 U.S. 840 (1967), that section 2000d-3 does not bar an action requiring desegregation of school faculty

> and that faculty integration is essential to student integration. *See also Marable v. Alabama Mental Health Board*, 297 F.Supp. 291, 297-98 (M.D.Ala.1969) (three-judge court) (Johnson, J.).

Caulfield v. Bd. of Ed. of City of New York, 632 F.2d 999, 1005 (2d Cir. 1980) (footnote omitted, some paragraph breaks added)

> Section 604 and the Attorney General's letter are not inconsistent, since under Section 601 it is the school children, not the teachers (employees), who are the primary beneficiaries of federal assistance to public schools. Faculty integration is essential to student desegregation. To the extent that teacher discrimination jeopardizes the success of desegregation, it is unlawful wholly aside from its effect upon individual teachers. *** Congress did not, of course, intend to provide a forum for the relief of individual teachers who might be discriminatorily discharged; Congress was interested in a general requirement essential to success of the program as a whole.

United States v. Jefferson Cty. Bd. of Educ., 372 F.2d 836, 883 (5th Cir. 1966), adopted by en banc court, 380 F.2d 385 (5th Cir. 1967)