History of Disparate Impact in Education

David Hinojosa
Director of Educational Opportunities Project

ABA Civil Rights and Social Justice Section
February 27, 2020
Disparate Impact- Defined

Intentionally discriminating against a person (or persons) on the basis of a protected class (i.e., race, color, sex, national origin)

A neutral policy or practice that has the effect of discriminating against a person (or persons) on the basis of a protected class and lacks substantial, legitimate justification

Disparate Treatment

Disparate Impact
Pre-Civil Rights Act of 1964

13th, 14th and 15th Amendments and the Reconstruction Era

Jim Crow Laws
Title VI of the Civil Rights Act of 1964

Sec. 601. 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.

Sec. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity ... is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders ... which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance...

42 U.S.C.A. § 2000d (West)
Disparate Impact: The Cases


Utilizing Disparate Impact in Other Cases

Remedial Measures

EEOA

State Constitutions

State Laws

State Agency Enforcement

Section 1983?