

State of the Law

Title VI of the Civil Rights Act of 1964 prohibits race discrimination in federally funded schools, among other contexts. Title IX of the Education Amendments of 1972, modeled on Title VI, prohibits sex discrimination in the same schools. These two statutes offer important protections for students who experience race or sex discrimination.

Before *Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562 (2022), courts regularly awarded plaintiffs damages in Title IX and Title VI cases for the emotional harm they had suffered. In *Cummings*, however, the Supreme Court held that damages for emotional harm are not recoverable under two Spending Clause statutes: Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act. Spending Clause statutes are laws that require recipients of federal funding to comply with the statute as a condition of that funding. In *Cummings*, the Supreme Court reasoned that Spending Clause statutes operate like contracts, so only damages typically available in breach of contract actions are available in suits brought under these statutes. Because, the Court held, emotional distress damages are not typically available in breach of contract actions, they were not available under Section 504 and Section 1557.

Title VI and Title IX are also Spending Clause statutes. Since *Cummings*, some courts have held that emotional distress damages are not available under those statutes either. However, student-plaintiffs may still be able to establish other types of damages under these and other laws.

Other Forms of Damages that Remain Available Under Title VI and Title IX

After *Cummings*, other forms of damages remain available to students under Title VI and Title IX, depending on the facts of the case. These include:

- **Lost educational opportunities:** Students who missed school because of the school's discrimination may be able to claim damages based on the educational opportunities that they missed.¹
- **Future lost wages:** Students whose career paths were negatively affected by their school's discrimination may have damages based on their lost future income.² Experts may be able to help students quantify these damages.
- **Tuition:** Students who withdrew or were unable to complete a semester due to their school's discrimination may be able to recover tuition expenses.³ In addition, if, as a result of the school's discrimination, a student transferred from a public school to a private school, or to a more expensive private school than they had previously attended, the student may be able to recover lost or additional tuition.

¹E.g., *Doe v. Fairfax Cnty. Sch. Bd.*, No. 1:18-cv-614, 2023 WL 424265, at *4-5 (E.D. Va. Jan. 25, 2023); see also, e.g., *Chaitram v. Penn Medicine-Princeton Med. Ctr.*, No. 21-17583, 2022 WL 16821692, at *2 (D.N.J. Nov. 8, 2022) (holding a plaintiff may, post-*Cummings*, recover "compensatory damages under a loss of opportunity theory" for claims brought under Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act); *Montgomery v. D.C.*, No. CV 18-1928, 2022 WL 1618741, at *25 (D.D.C. May 23, 2022) (similar, for claims under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act).

²E.g., *A.T. v. Oley Valley Sch. Dist.*, No. 17-4983, 2023 WL 1453143, at *4 (E.D. Pa. Feb. 1, 2023).

³See, e.g., *Doe v. Town of North Andover*, No. 1:20-cv-10310, 2023 WL 3481494, at *12 (D. Mass. May 16, 2023) (explaining a plaintiff who transferred because of unremedied sexual harassment may recover lost tuition and school expenses); *Alexander v. Thomas Univ., Inc.*, No. 7:21-CV-86, 2023 WL 2307612, at *6 (M.D. Ga. Mar. 1, 2023) (similar, under the Rehabilitation Act).

ESTABLISHING STUDENTS' DAMAGES IN TITLE VI AND TITLE IX CASES AFTER *CUMMINGS*



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- **Physical injuries:** Students who experienced physical injuries because of their school's discrimination may claim damages for those injuries, including for medical expenses they incurred as a result of those injuries.⁴

Related Claims That Allow Emotional Distress Damages

Students may be able to bring claims under other statutes that allow emotional distress damages. For example, state anti-discrimination laws or tort laws may permit a plaintiff who has experienced sex- or race-discrimination at school to recover damages for emotional harm.

In cases against public entities, students may also be able to bring claims for constitutional violations, including deprivations of equal protection and due process, through 42 U.S.C. § 1983. Emotional distress damages remain available for constitutional claims brought under § 1983. *Carey v. Phipps*, 435 U.S. 247, 264 (1978).



If you are an attorney facing a Cummings-related issue in one of your Title VI or Title IX cases on behalf of a student, please reach out to Public Justice's Students' Civil Rights Project, which may be able to offer further resources or assistance. You can reach the Students' Civil Rights Project via email at SCRCP@publicjustice.net.

⁴E.g., *Doe v. City of Pawtucket*, No. 17-365, 2022 WL 4551963, at *3-4 (D.R.I. Sept. 29, 2022); *Pennington v. Flora Cmty. Unit Sch. Dist.* No. 35, No. 3:20-CV-11, 2023 WL 348320, at *2 (S.D. Ill. Jan. 20, 2023); see also 11 Corbin on Contracts § 59.1 (noting that damages are available for personal injury in breach of contract actions); UCC § 2-715(2)(b) (same, in commercial contracts).