



January 10, 2019

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The Honorable Betsy DeVos
Secretary
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

The Honorable Ken Marcus
Assistant Secretary for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

The Honorable Matthew Whitaker
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Eric Dreiband
Assistant Attorney General for Civil Rights
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Secretary DeVos, Acting Attorney General Whitaker, Assistant Secretary Marcus, and Assistant Attorney General Dreiband,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 119 undersigned organizations, **we write to express our strong opposition to the rescission of the January 8, 2014 joint school discipline guidance package, including the “Joint Dear Colleague on the Nondiscriminatory Administration of School Discipline,” and urge you to immediately recommit the Department of Education and the Department of Justice to vigorous enforcement of our civil rights laws and to a meaningful response to racial discrimination in school discipline.**

Ensuring that all our children are safe and welcomed in schools is incredibly important to our organizations, our partners and the communities we represent. Students, parents, educators and civil rights advocates asked the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) for years to get involved and address the overuse and discriminatory use of suspension and expulsion. The 2014 Dear Colleague letter clarifies that ED and DOJ expect schools and districts to treat all children fairly and provides practical tools and guidelines for educators to create safe, healthy, and inclusive environments for all students. The guidance documents were created to help schools serve students more effectively by explaining the harms of pushing children out of school; reminding them that racial discrimination is illegal, including discrimination in school discipline; and providing recommendations and resources to reduce disparities in exclusionary school discipline and improve school climate. Rescinding the guidance sends the opposite message: that the Departments do not care that schools are discriminating against children of color by disproportionately excluding them from school and that the Departments will not fulfill their role in helping educators create and maintain safe schools that afford all students equal educational opportunities. Because of this message, a commitment from both departments to their duty to uphold the law is urgently needed.

The federal government's role in ensuring schools are free from discrimination has been articulated and confirmed by the U.S. Supreme Court in the 1954 *Brown v. Board of Education* decision, by Congress in the Civil Rights Act of 1964, and by ED in regulations implementing that law. ED and DOJ are both civil rights agencies and are responsible for protecting students from discrimination on the bases of race, color, national origin; sex; disability; and age.ⁱ Under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975, ED is tasked with enforcing these laws in response to complaints of discrimination and through proactive compliance reviews, data collection, and technical assistance.ⁱⁱ All of the laws that ED and DOJ enforce require regulations, policy guidance, and oversight in order to provide their intended benefits to students. Since its creation, ED has served the important role of protecting children from discrimination and advocating on their behalf when their civil rights were violated. We reject any effort to undermine the protections and supports these laws provide, through the rescission of guidance used to inform all parties of their rights and obligations under the law. We also oppose any effort to limit resources and practical tools available to help recipients of federal funding proactively comply with the law.

This administration has taken one action after another to make schools less safe for LGBTQ students, sexual assault survivors, immigrant students, students of color, students with disabilities, and any child who experiences systemic discrimination. Researchers estimate that suspensions, most of which are for minor behaviors, result in tens of millions of days of lost instruction.ⁱⁱⁱ Black students are three times more likely to receive an out of school suspension and twice as likely to be subjected to a school-based arrest;^{iv} and Native American students make up 1 percent of all children in schools, but 2 percent of children referred to law enforcement.^v These racial disparities can also be seen for students with disabilities and LGBTQ students. 23.2 percent of all Black children with disabilities have been suspended out of school while only 8.4 percent of White children with disabilities have been suspended,^{vi} and 47 percent of Black LGBTQ students and 44 percent of Latino LGBTQ students have been disciplined at school compared with 36 percent of White LGBTQ students.^{vii} Students of color are often disciplined for subjective offenses when their White peers are not. Multiple studies have shown several negative effects on suspended children,^{viii} such as falling behind academically; being held back; dropping out of school; and interacting with the juvenile justice system, as well as harm to children when their peers are suspended.^{ix} All children are harmed when schools overuse punitive exclusionary discipline.^x All children deserve and should be included in a warm, welcoming and responsive school that provides the education they need to be ready for college, career, and life. Suspension and expulsion, especially when used in a discriminatory manner, undermine that goal and deny children the education they need.

Because the disproportionate use of exclusionary discipline could not be explained by differences in child behavior, it was clear that action was needed to change the policies and practices of adults throughout the educational system.^{xi} The 2014 guidance documents were created to assist states, districts, and schools in developing practices and policies to enhance school climate and comply with federal civil rights laws. However, just as the guidance did not create or change law, rescinding the guidance does not affect the statutes and regulations that the guidance clarifies. Schools are still prohibited from discriminating against students and ED is still obligated to enforce civil rights law. The guidance documents themselves must be combined with additional state and local supports to ensure schools are safe and fair for their students.

Schools and their teachers need sufficient support and resources, and sufficient enforcement action needs to be taken, including by ED, to ensure that the promise of the guidance documents and our civil rights laws really result in improved educational opportunity and equity for children.

Students deserve, and the law requires, a Department of Education and a Department of Justice that are working to protect *all* students from discrimination and to provide an excellent education for all students. This guidance package provides valuable resources for districts, continued vigorous federal enforcement of the law, and is critical to making sure students' civil rights are upheld. At such a tenuous time, when progress on school discipline has been too slow and too limited, rollback of this much needed guidance hampers progress and undermines children's pursuit of their education. And when the nation is focused on the importance of building safe and inclusive school environments, rescinding the guidance sends exactly the wrong message. It is incumbent upon ED to ensure that progress continues, equal educational opportunity is real, and those who would seek to turn back the clock and undermine progress are stopped. We urge this administration to reverse course and provide educators and schools the resources and information they need to protect children and support their learning, development and success; not make it easier for them to unfairly and illegally exclude children of color from school.

If you have any questions, please contact Leadership Conference K12 Program Analyst Anum Malik at malik@civilrights.org or 202.548.7171.

Sincerely,

National Organizations (75)

The Leadership Conference on Civil and Human Rights
African American Ministers In Action
American Association of Colleges for Teacher Education
American Association of University Women
American Civil Liberties Union
American Federation of Teachers
Anti-Defamation League
Association of University Centers on Disabilities (AUCD)
Augustus F. Hawkins Foundation
Autistic Reality
Autistic Self Advocacy Network
Campaign for Youth Justice
Children's Defense Fund
CLASP
Clearinghouse on Women's Issues
Collaborative for Academic, Social, and Emotional Learning (CASEL)
Committee for Children
Council of Parent Attorneys and Advocates
Democrats for Education Reform
Disability Rights Education & Defense Fund
Educators for Excellence
EduColor

Feminist Majority Foundation
Girls Inc.
GLSEN
Hindu American Foundation
Hispanic Federation
Human Rights Campaign
Judge David L. Bazelon Center for Mental Health Law
KIPP
Lawyers' Committee for Civil Rights Under Law
League of United Latin American Citizens (LULAC)
Learning Policy Institute
MALDEF
MANA, A National Latina Organization
NAACP
NAACP Legal Defense & Educational Fund
National Action Network
National Alliance for Partnerships in Equity (NAPE)
National Association of Councils on Developmental Disabilities
National Black Child Development Institute
National Center for Learning Disabilities
National Center for Parent Leadership, Advocacy, & Community Empowerment
National Center for Special Education In Charter Schools
National Center for Transgender Equality
National Center for Youth Law
National Congress of American Indians
National Council of Jewish Women
National Council of Teachers of English (NCTE)
National Council on Independent Living
National Disability Rights Network
National Education Association
National Indian Education Association
National Urban League
National Women's Law Center
People For the American Way
PFLAG National
Poverty & Race Research Action Council
Sargent Shriver National Center on Poverty Law
Southeast Asia Resource Action Center (SEARAC)
Southern Poverty Law Center
Stand for Children
Stop Sexual Assault in Schools
TASH
Teach Plus
The Advocacy Institute
The Arc of the U.S.
The Education Trust
The Expectations Project
The Opportunity Institute

The Sentencing Project
TNTP
UnidosUS
Union for Reform Judaism
United Negro College Fund (UNCF)

State Organizations (45)

Advocates for Children of New York
Center for Pan Asian Community Services, Inc.
Children Now
Children's Defense Fund - New York
Coalition of Black Leaders In Education
Colorado Children's Campaign
Council on American Islamic Relations, San Antonio, TX
Disability Rights Maryland
Down Syndrome Association of Connecticut
Edmonds Special Education Parent Support Group
Education Justice Alliance
Education Law Center – PA
Education Reform Now Colorado
Excellence Unleashed
Family Ties of Westchester, Inc.
Family Voices NJ
Focus on Racial Justice Committee, Sacramento
Girls Inc of the Washington, DC Metropolitan Area
Graham Windham
Greater Bridgeport NAACP Education Committee
Greater Warren Youngstown Urban League
Illinois Migrant Council
Legal Services for Children
LULAC-IL
Maryland Center for Developmental Disabilities
Michigan Alliance for Special Education
Nepperhan Community Center Inc.
New Orleans Youth Alliance
OCA - Asian Pacific American Advocates
Parent Advocate Group for an Equitable, Quality Education (PAGE QE)
Parent Education & Advocacy Leadership (PEAL) Center
Parent Support Arizona
PEATC
Project Butterfly New Orleans
Quality Education for Every Student
Sacramento Faces Race
SOSSI- Saving Our Sons & Sisters International
SPAN Parent Advocacy Network
Tennessee Educational Equity Coalition
The Committee for Hispanic Children and Families, Inc.

The Education Trust–New York
The Greater Sacramento Jewish Community Relations Council
The Guidance Center of Westchester
The Legal Aid Society
TN NAACP

ⁱ 20 U.S.C. Ch. 48

ⁱⁱ U.S. Department of Education, Office for Civil Rights. “About OCR.” Last modified: 10/15/2015.

<https://www2.ed.gov/about/offices/list/ocr/aboutocr.html>

ⁱⁱⁱ Losen, D., Hodson, C., Keith II, M. A., Morrison, K., & Shakti, B. “Are We Closing The School Discipline Gap.” The Center for Civil Rights Remedies. February 2015.

https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/AreWeClosingTheSchoolDisciplineGap_FINAL221.pdf.

^{iv} Skiba, R., Michael, R., Nardo, A., & Peterson, R. “The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment.” *The Urban Review*. December 2002.

<http://www.indiana.edu/~equity/docs/ColorofDiscipline2002.pdf>

^v U.S. Department of Education, Office for Civil Rights. “School Climate and Safety.” April 2018.

<https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>

^{vi} U.S. Government Accountability Office. “Discipline Disparities for Black Students, Boys and Students with Disabilities.” March 2018.

<https://www.gao.gov/assets/700/690828.pdf>

^{vii} Gay, Lesbian & Straight Education Network (GLSEN). “Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth.” 2016.

https://www.glsen.org/sites/default/files/Educational%20Exclusion_Report_6-28-16_v4_WEB_READY_PDF.pdf

^{viii} The Council of State Governments & Public Policy Research Institute at Texas A&M University “Breaking Schools’ Rules: A Statewide Study on How School Discipline Relates to Students’ Success and Juvenile Justice Involvement.” July 2011.

<https://csgjusticecenter.org/youth/breaking-schools-rules-report/>.

^{ix} Perry, B. L., Morris E. W. “Collateral Consequences of Exclusionary Punishment in Public Schools.” *American Sociological Review*. November 5, 2014.

<http://journals.sagepub.com/doi/abs/10.1177/0003122414556308>.

^x Id.

^{xi} Rausch, K. M., Williams N. T. “Supplementary Paper I: Are Black Kids Worse? Myths and Facts About Racial Differences in Behavior.” *The Equity Project at Indiana University*. March 2014.

http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf.