



July 23, 2021

Office for Civil Rights
U.S. Department of Education
Potomac Center Plaza
550 12th Street, SW
Washington, DC 20024

Re: Docket ID ED- 2021-OCR-0068 -- Request for Information Regarding the Nondiscriminatory Administration of School Discipline

On behalf of the SPLC Action Fund, we write to provide you with information regarding ongoing challenges relating to nondiscriminatory administration of school discipline in our public schools, particularly in the South. This information can inform future guidance, technical assistance, and resources to aid schools in providing positive, inclusive, safe, and supportive learning environments and experiences for all students. Our experiences working directly with educators, impacted students, families, and communities has given our staff considerable expertise on the issue.

Now in our 50th year, the SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people. The SPLC has successfully represented students facing unlawful punitive and discriminatory discipline and advocated to end systemic discriminatory school discipline policies and practices through various advocacy methods at the local, state, and federal levels. In the early 1990s, the SPLC launched its pioneering Teaching Tolerance program to provide educators with free, anti-bias classroom resources, such as classroom documentaries and lesson plans. Now renamed Learning For Justice, our program reaches millions of schoolchildren with award-winning curricula and other materials that promote understanding of our nation's history and respect for others, helping educators create inclusive, equitable school environments.

The SPLC Action Fund is dedicated to fighting for racial justice alongside impacted communities in pursuit of equity and opportunity for all. Along with our partners at the Southern Poverty Law Center (SPLC), we work primarily in the Southeast United States and have offices in Alabama, Georgia, Florida, Louisiana, Mississippi, and Washington, D.C. The SPLC Action Fund promotes policies and laws that will eliminate the structural racism and inequalities that fuel oppression of people of color, immigrants, young people, women, low-income people, and the LGBTQ+ community.

Since our nation's founding, denying access to meaningful quality education has been a principal tool used to perpetuate white supremacy, deny basic human rights, and to prevent an inclusive democracy. While recent centuries have seen significant strides towards more equitable schools, districts across the country continue to employ harmful and outdated discipline practices that push students out of their classrooms and exclude them from educational opportunities – especially students of color and students with disabilities. Dismantling the deeply rooted and longstanding systemic racism that exists within our public school system is critical to our collective liberation and to the integrity of our democracy and should be treated with the urgency it demands.

We know that students who are subjected to punitive discipline and excluded from their public education are at increased risk of school dropout and future involvement with the juvenile or criminal system, or other forms of institutionalization. We also know that the discipline policies that push students into these systems disproportionately impact students of color – especially Black girls – despite that they do not commit more disciplinable offenses than their white peers. The pervasive adultification and sexualization of Black girls not only increases their risk of contact with police, but also their risk of suffering police violence and harassment. Black girls are often left out of the discussion about disparities in school discipline.

Given these realities, analyzing the conditions that push these students out of school — such as a zero-tolerance disciplinary culture, overreliance on exclusionary discipline, data sharing with law enforcement and excessive police presence in schools — is an important step towards dismantling them and creating an education system that is safe and equitable for all students. Centralized federal guidance is necessary to achieve this end.

Our comments in response to the Department’s Request for Information are organized around the questions posted in the Request, supported by additional context and insights.

What are your views on the usefulness of current and previous guidance OCR and CRT have issued on school discipline? We would appreciate your comments on the guidance documents described above, including the 2014 guidance, the 2018 Dear Colleague letter, and the 2018 Questions & Answers on Racial Discrimination and School Discipline guidance.

2014 Guidance. The 2014 School Discipline Guidance Package must be updated strengthened, and reissued. The rescission of the 2014 Guidance by the Trump Administration in 2018 has left local and state educational agencies without clarity on how to effectively reform their discipline policies and practices. In the South, these LEAs and SEAs continue to rely on punitive and harmful disciplinary policies and practices that are not restorative or trauma-informed, serve no pedagogical purpose, and are discriminatorily enforced – especially against Black students and students with disabilities. As students return to school in the fall, the need for clarity is even more urgent as the learning gaps and socio-emotional and psychological impacts of the pandemic on students will likely affect their behaviors.

Updated guidance should center the input of grassroots groups, youth, educators, community organizations, civil rights advocates, parents, and researchers. And the new guidance should emphasize that schools must address and respond to student behavior using a social and racial justice focused lens of equity. Additionally, OCR must commit to acting promptly to enforce civil rights violations of children and stop the disproportionate and exclusionary treatment of Black students and students with disabilities. Moreover, it must involve complainants and advocates throughout the process. Unfortunately, the 2014 Guidance became increasingly ineffective even before its rescission because of OCR’s inability to act swiftly after it received complaints of civil rights violations in school discipline. And, finally, OCR must collect, review, and publicly report data on potential civil rights violations with greater regularity to ensure that data is not stale when released so that it is still useful for communities, students, families, educators, researchers, and advocates.

2018 Dear Colleague Letter. In 2018, the Federal Commission on School Safety – a Commission tasked with addressing gun violence and increasing safety in public schools,

recommended full rescission of the 2014 guidance and resource package aimed at protecting against discriminatory administration of discipline in public schools. Three days later, the Departments of Education and Justice complied with this recommendation, rescinding the 2014 guidance. The rescission led to even more uncertainty and downplayed the importance and need to address discrimination in school discipline. While the Dear Colleague Letter announcing the decision reaffirmed the commitment of the Departments to “vigorously” enforce civil rights protections in public schools, it also asserted the Departments’ position that the 2014 guidance “advance[d] policy preferences and positions not required by Title IV or Title VI.” Relying heavily on the idea that local districts should retain unfettered discretion over student misconduct, the Dear Colleague Letter implied that the federal government lacks a legitimate legal role in the monitoring and oversight of disparate impact. In a statement about the rescission of the 2014 guidance, Education Secretary Betsy DeVos commented that while students have a right to be free of discrimination, “they also have a right to be treated as individuals, and not as statistics.”

More severe outcomes for Black students indicate the discriminatory application of punishment in public schools – whether this discrimination is explicit or not. The “policy preferences and positions” advanced in the 2014 guidance released under Obama reflected this reality, and accurately described the role of the federal government in protecting against it. Further, contrary to the beliefs espoused by former Secretary DeVos, the Commission, and 2018 Dear Colleague Letter, studies have indicated that schools that prioritize restorative justice and a positive school climate over punitive, exclusionary discipline practices positively impact student conduct **and** school safety.¹

Guidance is necessary to encourage the overhaul of long-broken school discipline practices, to deter discriminatory administration of discipline, and to counteract the implicit biases plaguing our educational system, particularly in the Deep South where the prioritization of increasing funding for police in schools and other harmful state laws and SEA policies have exacerbated disparities in discipline and school push out. The Department should reverse the Trump Administration’s rescission of the 2014 guidance, and re-issue an updated and re-invigorated guidance package to provide local and state educational agencies with necessary structure and support to avoid the discriminatory implementation of discipline in schools.

2018 Q&A. Generally, the 2018 Q&A Guidance (“Guidance”) that was issued with the 2018 Dear Colleague Letter is not useful. The Guidance would be more useful if it included more definitive criteria, expectations, and specific examples of when Title VI might be implicated. Questions and Answers should focus on the scope and intent of Title VI. For example, the Guidance can explain the necessity for language access. The Guidance should also reference and direct readers to resources and materials on more specific topics.

The new, updated Guidance should ensure that student codes of conduct and the discipline referral process do not subject schools to Title VI non-compliance. Questions and Answers should not only warn against direct and intentional discrimination in discipline, but also caution against vague and subjective disciplinary standards that overwhelmingly affect students of color. For example, schools should be cautioned against disciplining students under violations like “incivility,” “disrespect,” “disorderly conduct,” or “other.” These subjective standards have

¹ Catherine H. Augustine, et al., *Can Restorative Practices Improve School Climate and Cut Suspensions?: An Evaluation of the Impact of Restorative Practices in a Mid-Sized Urban School District*, RAND CORPORATION (2018), available at https://www.rand.org/content/dam/rand/pubs/research_reports/RR2800/RR2840/RAND_RR2840.pdf.

been historically and disproportionately used to punish students of color. Additionally, schools may have specific discipline rules that are almost exclusively used against students of color, such as rules prohibiting the perception of being in a gang or forbidding certain student paraphernalia or hair styles. Accompanying Questions and Answers should also address discipline in the remote learning context as well. The use of subjective discipline has expanded during remote learning as more and more students, particularly students of color, are being disciplined for behavior in their homes or other off-campus conduct.

The Guidance should ensure that schools apply uniform and equitable procedures for determining whether a student committed a violation and, if applicable, what consequences are appropriate. Punishments that derive from speculation and a lack of probative evidence not only lead to an increase in wrongful punishments, but also disintegration of student trust in their public schools. Questions and Answers should address fair, uniform, and meaningful opportunities for students and administrators to examine alleged infractions. Similarly, Questions and Answers on eliminating zero tolerance policies, and using progressive discipline policies, would help limit harsh, excessive, disproportionate discipline, while improving school climate. Schools that use excessive exclusionary discipline should raise red flags, particularly when an overwhelming number of students who are pushed out are part of a protected class under Title VI. Further, Questions and Answers should address the role and obligations of law enforcement officials in the school disciplinary processes, including the disproportionate use of unwarranted well checks, sudden school zone residential checks, and unsubstantiated dependency and delinquency referrals to juvenile courts. To the extent law enforcement officials can be kept out of student discipline, they should be. A more equitable discipline process is one way that schools can avoid non-compliance with Title VI.

Finally, the Guidance should describe the complaint, investigation, and remedial process in more detail. Complainants and respondents would benefit in knowing when and how an investigation is opened, what information schools must collect and disclose during an investigation, and the timelines associated with an investigation. Questions and Answers should include clear criteria and examples of the complaint, investigation, and remedial process, as well as consequences for failure to remediate non-compliance of Title VI.

What ongoing or emerging school discipline policies or practices are relevant to you or the communities you serve, including any that you believe raise concerns about potentially discriminatory implementation or effects on students' access to educational opportunities based on race, color, national origin, sex, or disability?

Through our advocacy on behalf of students in the South and data that we have collected and reviewed, we continue to identify policies and practices that have discriminatory implementation or effects on students' access to equal educational opportunities based on race, color, national origin, sex, or disability.

The continued punitive, harmful, and discriminatory enforcement of discipline policies is particularly prevalent in the South. Some policies and practices that our clients have recently experienced and that contribute to this discriminatory enforcement include:

- **Policies Allowing Vague, Subjective, or Undefined Infractions in the Student Code of Conduct.** Vague, subjective, and undefined infractions are vulnerable to arbitrary and discriminatory enforcement – and they account for a significant number of student infractions. In Alabama, data suggests that 60% of school suspensions and expulsions result from these vague policies or practices. A study

of Pinellas County, Florida discipline found that more than half of suspended Black students were suspended for subjective offenses, like not cooperating, class disruption, insubordination, or disrespect.² Moreover, Black students were four times more likely to be arrested at school for disorderly conduct than white students and, for Black girls, that rate was six times greater than their white peers. Whenever a district intends to discipline a student for an infraction – especially where the discipline could be so consequential as a suspension or expulsion – the district should clearly define the infraction and outline the elements that the district is required to prove in order to discipline the student for committing the infraction, including the requisite intent required.

- **Policies Allowing Wide Discretion Over Off-Campus Conduct.** These types of policies have taken on new and greater significance during the increase in virtual learning over the last year. Schools have a new level of access to information about students' private lives in the virtual learning environment. A district's authority to discipline students for actions taken in their private lives at home should be very carefully regulated and limited to situations that clearly and significantly affect the school environment. In Georgia, many district codes of conduct allow for seemingly unfettered discretion for schools to discipline students for their off-campus conduct in addition to their on-campus conduct. Code provisions allowing discipline for off-campus conduct are often vague and overbroad, and whether to exercise authority over off-campus conduct is left squarely within the discretion of school administrators. Therefore, these policies are vulnerable to discriminatory application in the same way as vague or subjective infractions. For example, our client, a Black student in Georgia's largest school district, was permanently expelled for off-campus behavior – an off-campus misdemeanor charge that was later dismissed. As a result of our advocacy, a reviewing Court ultimately reversed the student's expulsion and agreed that the district's policy regulating off-campus conduct was unlawful and overbroad, but this outcome took significant time and expense, which many families cannot afford or access.
- **Policies Allowing "Assignment" to Alternative or Virtual School or otherwise suspended or expelled without due process.** Many school districts allow for students to be removed from their regular classrooms and "reassigned" to alternative placements, including virtual placements, in the sole discretion of district administrators. Districts do not define these "reassignments" as exclusions from the classroom – which they are – allowing them to circumvent the required process for suspending students from school. Excluding a student from their regular education environment and placing them elsewhere – usually without the same social/emotional or academic opportunities that exist in the regular school environment – is a significant disruption. The discretionary element also allows for discriminatory application.

We also have concerns about

- **Policies Allowing Discipline Under Zero Tolerance Policies without evidence of a Student's Intent to Violate a Rule or that they engaged in the alleged**

² *The Cost of School Policing*, AMERICAN CIVIL LIBERTIES UNION (2020), available at https://www.aclufl.org/sites/default/files/field_documents/school_policing_report_2018-19.pdf

misconduct. We have represented many students who were subjected to exclusionary discipline and arrest without evidence of their intent to violate a school rule or engage in the alleged misconduct. These students are typically Black and/or students with disabilities. Schools should be expected to prove that a student has engaged in the alleged misconduct and of their intent to violate a rule.

- **Policies Prohibiting “Gang Activity.”** Schools rarely define what constitutes “gang activity.” As a result, rules prohibiting gang activity are usually overly broad or vague, which leads to discipline referrals based on speculation and subjective interpretations of “gang activity.” These rules are used to punish otherwise innocent conduct. Student gestures, greetings, appearances, and even types of preferred music have been used as evidence to suspend students for gang activity. In communities where we advocate, the students subjected to these disciplinary policies are almost entirely Black and Latinx students. In one Jacksonville, Florida school, for instance, where 100% of the students expelled in the 2018 school year were Black even though the student population is less than 70% Black³, students were threatened with suspension or expulsion for wearing “Rest in Peace” paraphernalia honoring loved ones they lost that were popular among Black students because administrators wrongly associated the paraphernalia with gang affiliation.
- **Policies Prohibiting certain Dress and Hairstyles.** See below.
- **Policies Allowing SRO involvement for non-criminal disciplinary infractions.** As a result of the mandate to put police or armed guardians in every Florida school, the percentage of youth arrested at school hit a five year high of 20%, demonstrating an increase in the number of school arrests by 8% even while the number of youths arrested in the community declined by 12%⁴.
- **Policies that place excessive numbers of SROs in schools that are predominantly Black or brown.**⁵ School resource officers (SROs) are disproportionately placed in schools where Black students are the majority. In schools with student populations that are 75% or more Black, 54% had one or more SROs compared to only 33% of schools where white students comprised 75% or more of the student population. Black students make up 15% of the national K-12 student population, but 31% of law enforcement referrals and 36% of school-based arrests⁶. In Miami Dade, one of our community partners identified a school in a Black community that has over a dozen SROs while having only one mental health counselor.

³ *Summary of Selected Facts for Robert E. Lee High School*, CIVIL RIGHTS DATA COLLECTION, <https://ocrdata.ed.gov/profile/9/school/266776/summary> (last visited Jul. 23, 2021); *Discipline Report for Robert E. Lee High School*, CIVIL RIGHTS DATA COLLECTION, <https://ocrdata.ed.gov/profile/9/school/266776/disciplinereport> (last visited Jul. 23, 2021).

⁴ *The Cost of School Policing*, AMERICAN CIVIL LIBERTIES UNION (2020), available at https://www.aclufl.org/sites/default/files/field_documents/school_policing_report_2018-19.pdf.

⁵ *Id.*

⁶ *School Resource Officers and Racial Disparities in School Discipline and Juvenile Justice Referrals*, NATIONAL PREVENTION SCIENCE COALITION (Feb. 22, 2020), <https://www.npscoalition.org/post/school-resource-officers-and-racial-disparities-in-school-discipline-and-juvenile-justice-referrals> (last visited Jul. 23, 2021).

- **Policies that permit the sharing of private student information with police who use that information to target students.**⁷

The Pasco County, Florida Sheriff's Office, through its predictive policing program, purports to be able to determine which children are "destined to lead a life of crime." The Sheriff's staff pulls information from child welfare files, student records, family information, and past experiences with law enforcement to put children on secret lists. Those students and their families are then harassed repeatedly until they are arrested or leave town. For decades, the Pasco County School District was sharing school records with the Sheriff. This program is part of a larger trend of overpolicing in schools and the relaxing of FERPA protections. Indeed, the Florida Marjorie Stoneman Douglass High School Safety Commission advocated for districts to ignore FERPA obligations, to surveil children 24-7, to provide live feed camera access to law enforcement and to consider school resource officers as school personnel for the purpose of broad access to private student records. These policies all result in more children, and particularly Black and brown children, being pulled into the criminal justice system.

The discriminatory and discretionary enforcement of policies and practices like the above result in stark discipline disparities for Black students. Research consistently shows that Black students receive more severe disciplinary outcomes for the **same behaviors** as white students, and their behaviors tend to be perceived as more problematic or threatening.⁸ Black students are more likely to be referred for discipline due to subjective and arbitrary infractions. Black students are perceived as overly aggressive or defiant when compared to their white peers. Likewise, Black parents who advocate for their children are more likely to be seen as uncooperative or incapable of understanding than white parents who question the school's decisions.

For example, in one Louisiana school district where we have gathered information and data through a public records request, we know that Black students are experiencing higher levels of in-school suspensions, out-of-school suspensions, expulsions, and referrals to law enforcement than white students. In that Louisiana district during the 2017-2018 academic school year, Black students were expelled 158% more than white students, 451% more in 2018-2019, and 1225% more in Fall 2019. That same school district produced an overall arrest referral rate of the district to be equivalent to 529 per 100,000 youth per academic year. And Black students in the district received arrest referrals equivalent to a rate of 745 per 100,000 per academic year, 85% more than the rate seen in the state data in 2015. Further, most referral for arrests were for educational offenses (40.7%): Educational offenses could range from minor incidents like cell phone violations, disobedience, verbal disrespect of an authority figure, and leaving a class without permission.

⁷ See *Safe for Whom? How the MSD Commission is Putting Florida's Children in Danger*, SOUTHERN POVERTY LAW CENTER (2019), available at https://www.splcenter.org/sites/default/files/com_policyreport_fl_school_safety_for_web.pdf

⁸ Brett Arends, *Black children are more likely to be disciplined than white kids for the same behavior*, MARKETWATCH (Oct. 16, 2019, 10:34 AM), <https://www.marketwatch.com/story/black-children-are-more-likely-to-be-disciplined-than-white-kids-for-the-same-behavior-2019-10-16>.

In Alabama, local school district incident reports indicate that in 90% of infraction types, Black students were more likely to receive an out-of-school suspension than white students.⁹ Among the most frequently occurring infractions, Black students were nearly twice as likely to be removed from school for the same infractions as white students.¹⁰ National data reflects similar patterns. And annual CRDC data consistently shows that Black students are at least three times as likely to be excluded from school than their white peers. Although Black students make up only 16% of students enrolled in public schools nationally, they account for 45% of suspensions – resulting in missed instruction time and other academic opportunities.

For students with disabilities, non-compliance with the Child Find obligations of the IDEA is a serious problem, particularly for students with emotional and behavioral disabilities. Too often, children with disabilities are not identified, and when these children manifest behaviors of their disability, they are punished without a manifestation determination review (MDR) or any consideration or concern as to whether they may have an eligible disability underlying the behavior. For many school districts, MDRs are a mere formality. Districts spend little time reviewing a child’s disability, needs, and interventions, but rather focus on how to punish for the alleged infraction.

In Florida, students with disabilities are often illegally subjected to being involuntarily detained and examined under the Florida Mental Health Act, known as the Baker Act for behaviors that symptomatic of their disabilities. Students as young as five and six years old are handcuffed, transported in police cars, and detained at receiving facilities for days, often over their parents’ objections.¹¹ The Baker Act, which has become a normalized exclusionary disciplinary tool used against over 37,000 Florida children a year, is also used disproportionately on Black children; 25% of all children who were Baker Acted were Black in 2016-17 (the last year for which race data was reported statewide), despite Black children comprising only 15% of the under-18 population.

We also have identified through data and research that students who receive Free Lunch under the Free and Reduced Price Lunch program are significantly more likely to experience exclusionary discipline.

Based on data we analyzed for a Louisiana school district, the 2017-Fall 2019 academic years show unique patterns in the application of disciplinary actions across the district. While the use of in-school suspensions relatively low in grades Pre-K thru 5th, the usage explodes thereafter with key spikes occurring at 6th and 9th grades, possibly indicating in-school suspensions as a mechanism to create conformance to the new norms and expectations as students transition between school types. In contrast to in-school suspensions, however, out-of-school suspensions are used much more extensively in the 1st through 5th grades. Yet, the overwhelming prevalence of its use is in the 11th grade when students are nearing the end of the educational process within the district. This is a major factor in students being “pushed out” of school due to behavioral issues when they are near graduation.

⁹ Don Dailey, *School Discipline and Race in Alabama*, PUBLIC AFFAIRS RESEARCH COUNCIL OF ALABAMA (July 1, 2020), <http://parcalabama.org/school-discipline-and-race-in-alabama/>.

¹⁰ *Id.*

¹¹ *Costly and Cruel: How the Misuse of the Baker Act Harms 37,000 Florida Children Each Year*, SOUTHERN POVERTY LAW CENTER (2021), available at https://www.splcenter.org/sites/default/files/com_special_report_baker_act_costly_and_cruel.pdf

What promising practices for the administration of nondiscriminatory school discipline or creating positive school climates have you identified?

Rigorous due process protections for students facing long-term suspensions or expulsions from school, including the right to a fair discipline hearing before an impartial arbiter with the right to present evidence and cross examine witnesses, the right to counsel, and the right to appeal.

Restorative and trauma-informed disciplinary policies which center relationship-building, community, and genuine accountability, not removal of educational opportunities or exclusion from school as punishment. Disciplinary practices that focus on teaching students to modify behavior instead of simply punishing children.

Inclusive and accommodating dress codes for students help provide a welcome climate for all students. Too often, school dress and grooming codes result in students, particularly Black students, being “disciplined and shamed, denied access to education because their appearance doesn’t align with an (often arbitrary) dress code. . . . It’s worth noting that these dress codes often focus on hairstyles. For many African Americans, hair is more than “just hair.” For some, a hairstyle is tied to spiritual beliefs. For others, it is a symbol of pride stemming from African traditions. The policing of locs and other traditional black hairstyles begs the question: Are we asking students to shed who they are before stepping foot on our campuses? Is the erasure of cultural roots a prerequisite for an American education?”¹²

The Seattle Public Schools system has a broad policy that should be replicated:

“Students shall not be disciplined or removed from class as a consequence for wearing attire in violation of this policy **unless the attire creates a substantial disruption to the educational environment, poses a hazard to the health or safety of others, or factors into a student behavior rule violation such as malicious harassment or the prohibition on harassment, intimidation, and bullying.** . . . Typical consequences for a violation of this policy include parent/guardian contact or conference and the directive to cover, change, or remove the noncomplying attire. A student may be instructed to leave their classroom briefly to change clothes. The Principal or their designee should notify a student’s parent/guardian of the school’s response to violations of the student dress policy.”¹³

Community School Models that integrate academics, health (including mental health) and social services, community engagement and other supports often use restorative justice approaches to discipline. The models that we have seen in our states effectively reduce the number of suspensions, expulsions, arrests, and involuntary institutionalization.

Note that we do not recommend strictly behaviorist models of school discipline. Positive Behavioral Interventions and Supports (PBIS) is a trendy solution for school discipline at the moment. The PBIS framework, however, largely relies on behaviorist models and does not account for bias, inequitable policies and structures, student and community diversity, and so

¹² Coshandra Dillard, *Loc’d Out: How Thoughtless Dress Codes Can Harm Students From Day One*, *Learning for Justice*, August 17, 2018.

¹³ Seattle Public Schools, Policy No. 3224, Student Dress (July 20, 2021), available at https://www.seattleschools.org/UserFiles/Servers/Server_543/File/District/Departments/School%20Board/Policies/Series%203000/3224.pdf.

on. There are anecdotes of schools that have adapted PBIS to some success; however, PBIS alone is not going to eradicate the disproportionate effects of school discipline on students of color and students with disabilities—and can actually widen inequities.

Most behavioral issues are best alleviated with non-punitive practices and the help of mental health professionals. However, schools generally lack enough counselors or referrals for mental health services. According to the American School Counselor Association (ASCA), the national average student-to-counselor is 424-to-1. ASCA recommends a ratio of 250-to-1.

What are your views on this non-exhaustive list of disciplinary policies, practices, and other issues below?

(a) Discipline of students in pre-K through third grade, including in-school and out-of-school suspensions. Children want to do well in school, especially very young children, and when they exhibit challenging behaviors, they are likely communicating that they are struggling. Educators and administrators should be equipped and trained to identify these underlying struggles so they can get to the root of the behavior. In-school and out-of-school suspensions and expulsions are not an effective method of uncovering that critical information which could expose why the student is struggling. This is particularly true for very young children.

Excluding pre-K-3 students from their regular classrooms as punishment deprives them of critical instructional hours and of important opportunities for social, emotional, and behavioral development. Instead of excluding these children from school, these schools should provide wrap-around services, including before and after school care, mental health services, and access to nurses and social workers on campus. With very young children, often disruptive and challenging behaviors are indicative of an underlying disability and educators should be equipped to identify whether the student should be evaluated for additional services and supports.

Higher rates of K-3 out-of-school suspensions correlated with lower rates of reading and math proficiency.¹⁴ And students who were excluded from school during K-3 were six times more likely to be suspended when they reached ninth grade than other students who had not been suspended during these years.¹⁵ Discipline disparities for students of color and students with disabilities in pre-K through third grade are often more severe because of discrimination.

(b) Use of exclusionary disciplinary penalties, such as suspensions or expulsions, for minor, non-violent, or subjectively defined types of infractions, such as defiance or disrespect of authority. Most exclusionary disciplinary penalties that our clients encounter are for minor, non-violent infractions like defiance or disrespect. And, in many districts, these students are contemporaneously referred for arrest and/or prosecution. This type of disciplinary action is not only excessive, but also often fails to demonstrate that the student had any specific intent to violate a school rule. Further, Black students are disproportionately suspended and expelled for these types of minor, non-violent infractions compared to their white peers.

¹⁴ Kelsea Bond & Kanti Chalasani, *How Does Early Childhood Suspension Relate to Achievement in Reading and Math?*, THE GOVERNOR'S OFFICE OF STUDENT ACHIEVEMENT (September 2018), available at <https://www.attendanceworks.org/wp-content/uploads/2018/12/3rd-Grade-Reading-OSS-Analysis-Final-09262018.pdf>.

¹⁵ *Id.*

(c) Discipline issues relating to dress and grooming codes (including restrictions on hairstyles). Discipline based on student appearance has been historically and disproportionately used to punish students of color. Many schools have specific discipline rules that are almost exclusively used against students of color, such as rules prohibiting the appearance or perception of being in a gang or forbidding certain student hair styles. Dress codes should be inclusive, and students should not be disciplined for a simple violation of the dress code. Dress codes are often not inclusive of trans-students and students who identify as gender non-binary. These students may experience higher levels of discipline merely for wearing clothes that align with their gender identity. As noted above, the Seattle Public Schools have an excellent, inclusive dress code policy that allows for disciplinary action for a violation of dress code policy in extreme and limited circumstances.

(d) Corporal punishment. Corporal punishment and its overwhelmingly negative effects on students continues to be an issue in schools, particularly in Southern states. Despite more schools and districts continuing to outright ban it, corporal punishment still persists and continues to be advocated for by vocal supporters. “Corporal punishment is an ineffective method of discipline and has major deleterious effects on the physical and mental health of those inflicted.”¹⁶ Where corporal punishment is used in schools, Black students and students with disabilities are more likely to be struck by an educator. The analysis in SPLC’s 2019¹⁷ report takes a close look at the data among schools that administer corporal punishment. It finds that Black boys are about twice as likely to receive corporal punishment as white boys, and Black girls are three times as likely as white girls. In more than half of the schools that practice corporal punishment, educators hit students with disabilities at a higher rate than those without disabilities. Four states – Mississippi, Alabama, Arkansas, and Texas – account for more than 70 percent of all students receiving corporal punishment in our nation’s public schools. Mississippi alone is responsible for more than 29 percent of the country’s in-school corporal punishments – more than Florida, Georgia, Missouri, North Carolina, South Carolina, Kentucky, Illinois, Tennessee, Oklahoma, and Ohio *combined*.

We oppose the use of corporal punishment in schools under all circumstances. We often see that LEAs pose corporal punishment as an alternative to suspension or expulsion creating a Hobson’s choice for parents and granting LEAs with parental “consent” to exercise corporal punishment. Corporal punishment should not be the alternative to exclusionary discipline.

Education Week released an analysis of federal civil rights data on the use of corporal punishment in schools in 2016.¹⁸ The report found that Black students received physical punishment at twice the rate of white students nationwide. According to *Education Week*, “new research not only questions the effectiveness of corporal punishment like spanking and

¹⁶ Donald E. Greydanus et al., *Corporal Punishment in Schools: Position Paper of the Society for Adolescent Medicine*, 32 J. ADOLESCENT HEALTH 5, 385, 388 (2003).

¹⁷ The Southern Poverty Law Center & The Center for Civil Rights Remedies, *The Striking Outlier: The Persistent, Painful, and Problematic Practice of Corporal Punishment in Schools* (2019), available at https://www.splcenter.org/sites/default/files/com_corporal_punishment_final_web_0.pdf.

¹⁸ Alex Harwin, *A Persistent Practice: Corporal Punishment in U.S. Schools*, EDUCATION WEEK, Sept. 1, 2016, available at <https://www.edweek.org/a-persistent-practice/2016/08/00000174-228b-d566-a3ff-e29bdf4c0000>.

paddling, but suggests it might make it more difficult for students to behave well in the future.” Education Week reported that a 2016 study analyzing 50 years of research on 160,000 children by the University of Michigan “found the more children are spanked, even with an open hand, the more likely they are to defy adults and show more anti-social behavior, aggression, mental-health disorders, and lower academic achievement over time. Children struck with implements, such as paddles, showed even worse effects.”¹⁹ “A 2010 study in the journal *Neuroimage* also found that adolescents who had regular paddling over a three-year period showed less grey matter in the area of the brain associated with self-control and problem solving.”²⁰

(e) Inappropriate use of seclusion and restraint for disciplinary purposes.

Seclusion and restraint have overwhelming negative consequences against children, both psychologically, and oftentimes, physically. Seclusion and restraint should never be used for disciplinary purposes, and only as a last resort when the child’s safety or the safety of others is in imminent danger. Each instance of seclusion and restraint should be documented detailing the justification for its use. Educators should be trained on de-escalation techniques. Administrators should be warned that seclusion and restraint as a form of discipline against a child with behavioral disabilities subjects a school to disability discrimination. Seclusion and restraint practices tend to have a disproportionate impact on students with disabilities.

(f) Referrals to and the resulting interactions with school police, school resource officers, or other law enforcement.

For many school districts, an infraction of the student code leads to an automatic referral to law enforcement, which leads to a charge in either the juvenile or adult criminal system for that jurisdiction. As a result, we often must advise our clients not to testify at their own school disciplinary hearing because criminal charges have been filed or are forthcoming. In turn, this undermines their opportunity to have a fair hearing and a just outcome. In our recent experience in a large school district in Georgia, school police, also known as School Resource Officers (SROs), are commonly involved in all student discipline matters regardless of the severity of the infraction and they serve as an extension of the student discipline process with the school. And, in Alabama, we have represented victim students who were subjected to physical violence by SROs and our clients were suspended and expelled for their “involvement” in the interaction. In Florida, the MSD Commission has advocated to eradicate diversion programs that do not involve law enforcement despite the damaging impact of such interactions.

School Police, Racial Bias and Discipline

Schoolyard fights, childish pranks and tantrums used to result in a visit to the principal’s office. Today, however, code of conduct violations can end with students in handcuffs. Juvenile and adult courts then become inundated with children who pose no real threat in their communities. Studies have shown that school resource officers do not reduce crime but cause harm instead – including increased arrests, expulsions, physical restraint, and family stress.

School police present an integral dynamic for how students are disciplined in school. What was once a program to foster mentorship and community relations in the 1950’s and 1960’s, has evolved into more of a crime prevention arm during the anti-drug, anti-gang, and school

¹⁹ E.T. Gershoff & A. Grogan-Kaylor, *Spanking and child outcomes: Old controversies and new meta-analyses*, 30 *J. OF FAM. PSYCHOL.* 4, 453–469 (2016).

²⁰ Akemi Tomoda et al., *Reduced Prefrontal Cortical Gray Matter Volume in Young Adults Exposed to Harsh Corporal Punishment*, *NEUROIMAGE* (August 2009).

violence prevention initiatives over the last 30 years. It has been well documented that interaction with any form of law enforcement can create life-changing circumstances, especially for juveniles. This is further complicated when school police bring implicit bias to their execution of school discipline – creating harmful disparities for students of color, and possibly an introduction to the school to prison pipeline.

While data on school police is imperfect, there is an estimated 14,000 to 20,000 armed law enforcement officers in schools across the country.²¹ 58% of schools report a police officer present at least one day a week as of 2018, compared to only 1% in 1975.²² If that school has students that are predominantly Black, then the likelihood of having a law enforcement presence nearly quadruples.²³ In contrast, there are 14 million students in schools with police on campus, but no school counselor, nurse, psychologist, or social worker on staff.²⁴

Already disproportionate school discipline statistics can be easily exacerbated by the presence of school police. Research finds that police view Black boys as young as 10-years-old as less innocent and more threatening than whites – significant considering how police are often given responsibility for school discipline.²⁵ Schools with police have higher rates of school suspension and expulsion, especially for students of color.²⁶ Students of color attending schools with high suspension rates are more likely to be arrested and incarcerated later in life, and less likely to attend a four-year college.²⁷

While there has been an overall decline in juvenile arrest rates in recent years, school police increasingly initiate court referrals and arrests for students of color for minor, non-violent offenses such as disorderly conduct.²⁸ If a student is arrested, the odds of dropping out of school doubles, with only 26 percent of arrested students graduate from high school.²⁹ These

²¹ National Association of School Resource Officers, *Frequently Asked Questions*, <https://www.nasro.org/faq/> (last visited July 22, 2021).

²² Chelsea Connery, *The Prevalence and Price of Police in Schools*, U. OF CONN. CENTER FOR EDUC. POL'Y ANALYSIS (Oct 2020), available at https://cepa.uconn.edu/wp-content/uploads/sites/399/2020/10/Issue-Brief-CEPA_C-Connery.pdf.

²³ Melinda D. Anderson, *When Schooling Meets Policing*, THE ATLANTIC, Sep 21, 2015, available at <http://www.theatlantic.com/education/archive/2015/09/when-schooling-meets-policing/406348/>.

²⁴ Amir Whitaker et al., *Cops and No Counselors: How the Lack of School Mental Health Staff is Harming Students*, AMERICAN CIVIL LIBERTIES UNION, available at <https://www.aclu.org/report/cops-and-no-counselors>.

²⁵ Phillip Aitba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. OF PERSONALITY AND SOC. PSYCHOL. 4, 526-545 (2014), available at <https://www.apa.org/pubs/journals/releases/psp-a0035663.pdf>.

²⁶ Jeremy D. Finn & Timothy J. Servoss, *Misbehavior, Suspensions, and Security Measures in High School: Racial/Ethnic and Gender Differences*, 5 J. OF APPLIED RES. ON CHILDREN 2 (2014).

²⁷ Andrew Bacher-Hicks, Stephen B. Billings & David J. Deming, *The School to Prison Pipeline: Long-Run Impacts of School Suspensions on Adult Crime*, NAT'L BUREAU OF ECON. RES. (Nat'l Bureau of Econ. Res., Working Paper No. 26257, 2019), available at https://www.nber.org/system/files/working_papers/w26257/w26257.pdf.

²⁸ Ryan King & Marc Schindler, *A better path forward for criminal justice: Reconsidering police in schools*, BROOKINGS INSTITUTE, (2021), available at <https://www.brookings.edu/research/a-better-path-forward-for-criminal-justice-reconsidering-police-in-schools/>.

²⁹ Gary Fields & John R. Emshwiller, *For More Teens, Arrests by Police Replace School Discipline*, THE WALL STREET JOURNAL, Oct 20, 2014, available at <https://www.wsj.com/articles/for-more-teens-arrests-by-police-replace-school-discipline-1413858602>.

figures are important considering that Black students and students with disabilities are arrested at three times the rate of their white and non-disabled counterparts, respectively.³⁰

Some of the more egregious cases involve instances where school police display excessive use of force or show no discretion in arresting very young children – as they did with Yosio Lopez, a 7-year-old Latinx child with a disability from Dallas, Texas. Lopez was handcuffed and tasered by a school resource officer, then detained for over a week without his mother’s permission.³¹ Likewise, in Henderson, NC, an 11-year-old boy is filmed repeatedly slammed to the ground by a school policeman, prompting then-interim CEO of the Southern Poverty Law Center to quote, “Law enforcement officers are frequently brought in to schools to handle routine school discipline and this is far too often the result – an outrageously excessive use of force on young children. This must end. Our children deserve better.”³²

Kaia Rolle, a 6-year-old Black girl from Orlando, FL, was taken from school in handcuffs after having a simple temper tantrum in 2019.³³ Concern over the treatment of a child this age led to the passage of the Kaia Rolle Act in 2021, banning the arrest of any child in Florida under the age of 7. All these unnecessary, and often violent cases bring into question if armed responders are the most appropriate approach to school safety and discipline.

The revised and updated discipline guidance should describe and address the phenomenon of the school-to-deportation pipeline. “An estimated 725,000 students in grades K–12 are undocumented, according to the most recent Pew Research Center data. ... A dramatic increase in school security measures since the 1999 Columbine High School shooting has multiplied young immigrants’ vulnerability. In the intervening years, the number of SROs on K–12 campuses has increased by 50 percent, according to a February 2018 Immigrant Legal Resource Center report. Schools inadvertently participate in the school-to-deportation pipeline with zero-tolerance policies and the use of SROs. For students who are undocumented, related stress can manifest in behaviors that might be misinterpreted as discipline problems. American Psychological Association studies have shown that immigrant youth, particularly those who enter the United States as unaccompanied minors, have higher rates of anxiety, depression and post-traumatic stress disorder.”³⁴

Even with an increased police presence in schools, there has been no conclusive evidence showing that school police reduce crime.³⁵ In fact, given the potential trade-off with increased suspensions, expulsions, and excessive use of force, we should fully consider alternatives to school policing that could be more suitable children’s needs. Investment in school counselors and mental health professionals, restorative models for conflict resolution, and student wrap-

³⁰ Whitaker, *supra* note 24.

³¹ Artemis Moshtagian, *Dallas school police use handcuffs to restrain 7-year-old boy*, CNN, May 19, 2017, available at <https://www.cnn.com/2017/05/16/us/boy-handcuffs-dallas-school-trnd/> (last visited July 22, 2021).

³² Sloane Heffernan, *In Vance County, schools, sheriff, family fine SRO’s attack ‘unacceptable, egregious,’* WRAL NEWS, Dec 16, 2019, available at <https://www.wral.com/in-vance-county-schools-sheriff-family-fine-sros-attack-unacceptable-egregious/18836562/> (last visited July 22, 2021).

³³ Rosa Flores & Sara Weisfeldt, *Body camera videos show 6-year-old sobbing and pleading with officers during arrest*, CNN, Feb 26, 2020, available at <https://www.cnn.com/2020/02/26/us/body-camera-video-6-year-old-arrested/index.html> (last visited July 22, 2021).

³⁴ Coshandra Dillard, *The School-to-Deportation Pipeline*, LEARNING FOR JUSTICE, Fall 2018, available at <https://www.learningforjustice.org/magazine/fall-2018/the-school-to-deportation-pipeline>.

³⁵ Nathan James & Gail McCallion, CONG. RESEARCH SERV., R43126, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOLS (2013), available at <https://fas.org/sqp/crs/misc/R43126.pdf>.

around support, are all resources that have been historically underfunded by school systems. Investment in these alternatives can be in tandem with reconsidering the scope of authority allowed by police in schools, including powers to arrest and discipline students, amount of time expected on campus, and carrying police weaponry.

The number of SROs at Florida schools is more than double that of school psychologists and social workers, according to the 2020 ACLU Florida report *The Cost of School Policing*.³⁶ The study found that “during the 2018-2019 school year, the number of youth arrests at school increased 8%, while the number of youths arrested in the community continued to decline by 12%.” The number of students expelled or physically restrained also increased significantly. This includes younger children, too. Florida SROs arrested elementary-age students 345 times during the 2018-2019 school year. There was no consistent evidence that an increase in SROs at schools decreased the number of behavioral incidents. In other words, SROs do not necessarily improve school safety.

Re-envisioning the role of school police, and their relationship to school discipline and safety, could yield benefits for both a safe school climate, and the overall well-being of children.

(g) Referrals to alternative schools and programs. Referrals to alternative programs should be seen as exclusion from a child’s regular education environment and treated with the same gravity. In practice, we find that alternative programs are often inferior to regular education programs and do not present the same opportunities for socialization, participation in extracurricular activities or academic achievement and success. Alternative schools and programs often do not provide the services and supports that children with disabilities or children otherwise struggling academically, need to receive an appropriate education. They are often computer based with little to no teacher instruction.

For students with disabilities, alternative schools are often entirely unequipped to provide appropriate supports and accommodations. While alternative schools and programs are preferable to total exclusion from public education, they still deprive students of important academic and social opportunities and are an inappropriate form of discipline.

(h) Threat assessment practices. The idea of threat assessments comes from law enforcement work attempting to assess violent criminal threats or threats to homeland security – it is fundamentally problematic to extend these models to students in a school environment.

Threat assessments also present a new opportunity for schools to remove students while circumventing formal suspensions or expulsions – allowing students to be sent home unless or until they meet certain ‘conditions.’ Threat assessments are often harmful for students with disabilities and students of color where discrimination and bias play a significant role.

A handful of states have threat assessment laws - most exempt records from threat assessment processes from Open Records Requests. This often blocks information about such issues as program ‘effectiveness’ and who’s impacted – leading to lack of transparency.

³⁶ Michelle Morton et al., *The Cost of School Policing: What Florida’s students have paid for a pretense of security*, AMERICAN CIVIL LIBERTIES UNION (2019), available at https://www.aclufl.org/sites/default/files/field_documents/school_policing_report_2018-19.pdf.

In Pasco County, Florida, the Pasco County School District has data-sharing agreements with local law enforcement agencies, including the Pasco Sheriff's Office, to allow law enforcement to access confidential student records, including but not limited to grades, GPAs, discipline, and attendance. The Tampa Bay Times uncovered this as part of their investigative reporting into the Pasco Sheriff's Office Intelligence-Led Policing Program.³⁷ The Sheriff uses the information it gathers about children from the School District, the Department of Children and Families, social media, and the juvenile justice system to rank, score, and place children on secret lists. There are lists for adults as well. The Sheriff uses those lists to harass children, their friends (who the Sheriff refers to as their "associates"), and their families until they find a reason to arrest them. If the Sheriff cannot find any alleged criminal violation, they slap the families with code enforcement fines to pressure them to move. As a result of the practices in Pasco County, the U.S. Department of Education has launched an investigation into the School District. The SPLC also serves as the facilitator and co-lead of the P.A.S.C.O. Coalition (People Against the Surveillance of Children and Overpolicing), which formed to shut down the illegal predictive policing program.³⁸

(i) Students bringing weapons or using them at school. School disciplinary practices are also connected to and influenced by measures purporting to protect schools from mass shootings. Measures that actually put Black students, students of color and students with disabilities in danger should be discontinued. This includes "hardening" schools with additional law enforcement officers and surveillance, as well as arming educators. These measures have not only proven mostly ineffective in stopping mass shooters since the Columbine shooting in 1999, but also perpetuate already existing inequities for students of color and students with disabilities, who are more likely to be pushed into the school-to-prison and school-to-deportation pipelines in interactions with law enforcement, who are disproportionately subject to punitive punishment and who are disproportionately subject to physical force at the hands of adults in power.

For the past few decades, policies prohibiting weapon use or possession at school have been treated as zero-tolerance policies, requiring the exclusion of students who violate these policies with no regard for relevant factors like the type of weapon or the intent of the student. While schools certainly have a legitimate interest in regulating what kinds of objects come onto campus, permanently expelling a student who has accidentally brought a hunting knife to campus simply does not serve this interest. Intent – along with other factors like motive, level of threat presented to the school environment, and level of culpability based on age and intellect are always relevant factors to be considered before excluding a student from school.

Although the "unintentional hunting knife" example may sound like an uncommon event, in our practice, we have seen far more students excluded for committing these types of mistaken object infractions than for presenting real and legitimate threats to school safety. A particularly shocking example: we have represented a student facing permanent expulsion because she failed to report that **another student** had a kitchen knife in her backpack. We have known students permanently expelled for bringing party poppers – received in a gift bag from a church function – to school in a backpack.

(j) Use of surveillance technologies in a discriminatory manner.

³⁷ Kathleen McGrory, Neil Bedi, & Douglas R. Clifford, *Targeted*, Tampa Bay Times, <https://projects.tampabay.com/projects/2020/investigations/police-pasco-sheriff-targeted/>

³⁸ <https://www.splcenter.org/PASCOcoalition>

(k) School policies or practices related to teacher and staff training related to discipline, the role teachers play in referrals of students for discipline, and the role of implicit bias in disciplinary decisions. Today, implicit bias in subjective discipline referrals is a substantial cause of disproportionate discipline by race, gender, or ethnicity. With appropriate training and supports, those generally responsible for initial referrals can find alternatives to sending a child through the school discipline process and the potentially devastating consequences thereof.

Implicit bias is prevalent in school discipline decisions. Decision makers are usually comprised of other school administrators within the district. They are usually not independent and are capable of the same implicit biases and prejudices described above. Students of color are often treated as though they have more culpability or less remorse as compared to their white counterparts; thus, students of color are generally given less leniency and are disciplined at a disproportionately higher rate.

Educators need significant training in the harmful impact of exclusionary discipline, corporal punishment, and all forms of punitive discipline. These same educators need training in positive, restorative, and trauma-informed alternatives to punitive discipline.

(l) Discipline related to attendance and time management. Exclusionary discipline is a wholly inappropriate disciplinary response to infractions related to truancy, tardiness, or time management. First, because punishing students for skipping instructional time by loss of instructional time simply does not make sense. But also, because students with disabilities and students whose families are experiencing poverty are going to be disparately impacted by these kinds of policies.

(m) Discipline of victims of race, color, or national origin harassment, sex harassment, or disability harassment for misconduct that arises as a result of such harassment. Sadly, this is an all-too common experience for many victim students. Many LEAs treat these types of incidents as “mutual” because often the victim may engage in some defensive action to protect themselves from harassment. In both Alabama and Georgia, we have recently represented Black students who were racially harassed and physically attacked by white students. And when our clients defended themselves, they were punished more severely than the white students who harassed and assaulted them.

(n) Zero tolerance or strict, three-strike policies. A student’s intent, culpability, and potential impact on the school environment are always relevant considerations when determining an appropriate punishment. Zero tolerance policies disallow consideration of these extremely relevant factors. Zero tolerance policies fail to take into account other justifications like self-defense or misunderstanding.

(o) Reintegration of students who return to school after a long-term out-of-school suspension or expulsion. Students who are forced away from their peers teachers and classrooms are almost always behind when they return, not just academically but socially. Given that most children are not susceptible to significant changes, particularly younger children and children with emotional and developmental disabilities, long-term exclusion from school significantly increases the odds that such children will drop out.

Putting social/emotional supports and transition services in place for these students upon returning makes sense; however, many districts skip these types of services and opt instead for “behavioral contracts.” These contracts create a stigma around students coming back from

alternative programs and allow districts to exclude them for minor infractions after their return, without first conducting fair disciplinary proceedings.

(p) Discipline issues relating to virtual learning. The use of subjective and arbitrary discipline has expanded during remote learning as more and more students, particularly students of color, are being disciplined for behavior in their homes or other off-campus conduct. Some school districts have been forgoing school discipline due process procedures for alleged virtual infractions. Other school districts remove children from in-person learning and relegate them to virtual learning, arguing that this “transfer” does not count as discipline, and thus, no due process is required.

Districts have continued to discipline students by removing them from virtual classrooms even when they present no threat or disruption to the learning environment. There is simply no valid pedagogical purpose of exclusionary discipline for a student who is already remote when they present no threat or disruption to the learning environment. And this practice exposes exclusionary discipline for what it is: punishment by removal of instructional time without pedagogical purpose.

(q) Discipline issues relating to returning to in person instruction. During COVID, students with disabilities have experienced disruptions to their services and significant modifications in service delivery. Further, all students are at risk of additional stress and trauma caused by the crisis, which impacts their ability to focus on learning and regulate their behavior. Students have likely struggled from a lack of structured curriculums nonacademic programs, and extracurricular activities. Children have experienced lack of social contact with friends, family members, and teachers. As schools have and will continue to reopen, the impact of losses in education and services will continue and will likely impact student behavior. In light of this reality, districts should be encouraged to limit the use of punitive, exclusionary discipline, especially for truant behaviors and non-violent offenses.

(r) Discipline issues relating to activities off school campus or in virtual school settings, such as bullying through social media usage. LEAs should take bullying seriously, just like all forms of harassment in school. And in doing so, LEAs should identify effective ways to respond to bullying such that they are not excluding more students from the learning environment, but engaging and teaching those students why their behavior is harmful and how to correct it.

What types of guidance and technical assistance can OCR provide to best help SEAs and LEAs create positive, inclusive, safe, and supportive school climates and identify, address, and remedy discriminatory student discipline policies and practices (for example, Dear Colleague letters, Frequently Asked Questions documents, fact sheets, tool kits, videos on the nondiscriminatory administration of school discipline or positive school climate, and guidance on returning students to in-person instruction?)

In the South, educators need more guidance on best practices to create positive, inclusive, safe, and supportive school climates. We routinely encounter LEAs and local school boards who are simply uneducated on these practices. In addition to this training, LEAs should be educated on the cost and implementation of these practices. Resistance to change often comes from a lack of training of the effectiveness of these practices (and the ineffectiveness of exclusionary and punitive discipline) and the misperception that these alternative practices would be “too costly” for the LEA to implement.

With so few advocates working on school discipline in the South, resources that can help educators and administrators modify their practices will ease the pressure on advocates to challenge these systems.

What promising practices that have reduced the use of discipline or the disparities in the use of discipline between different groups of students (including promising evidence-based programs and success stories from particular school districts) should OCR consider highlighting in any future guidance or resource materials?

In one Nashville school, a trauma-informed approach towards school culture and discipline has resulted in remarkable results ending the use of exclusionary and punitive discipline, and OCR might consider highlighting this success in future guidance or resource materials.³⁹ We need more similar examples in the South, but they are rare.

To what extent can hiring and professional development practices be designed and aligned to ensure that teachers and staff are adequately prepared to manage classrooms and work with students in a fair and equitable manner?

Educators need more support and training for effective discipline, and schools need to use best practices for behavior modification in order to keep students in school and out of the school-to-prison and school-to-deportation pipelines. Classroom teachers are in a unique position to divert students from these pipelines. When teachers take a more responsive and less punitive approach in the classroom, students are more likely to complete their education. On an administrative level, hiring and professional development practices can be designed for more equitable classroom management that can result in significant improvement of internal measures around classroom management.

Trainings on alternatives to exclusionary discipline, trauma-informed practices, restorative justice, de-escalation techniques, IDEA child find, behavioral assessments and interventions, improving school climate, and available community based mental health services and supports for students, would all be impactful and useful professional development opportunities. For hiring, school districts should set the expectation of the type of school climate they expect from their staff, to ensure they are identifying and hiring the appropriate personnel to execute positive, restorative, and trauma-informed responses to discipline.

How do school discipline policies impact (a) students' opportunity to learn; (b) academic achievement; (c) students' mental health; (d) drop out and graduation rates; (e) school climate and safety; (f) access to instructional time; (g) teacher retention and satisfaction; (h) the rates at which staff refer students for formal discipline; (i) student participation in STEM courses, honors and advanced placement courses, arts and theater, and extra-curricular programming; (j) impact of discipline records on access to scholarships or on enrollment in college; (k) student participation in ceremonies (for example, graduation ceremonies and National Honor Society ceremonies); and (l) life outcomes (for example, earnings, reliance on public support, income, employment opportunities, and housing)?

³⁹ Alex Shevrin Venet, *The Evolution of a Trauma-Informed School*, EDUTOPIA, September 13, 2019, available <https://www.edutopia.org/article/evolution-trauma-informed-school>

Through our experience and research, we have seen that punitive and exclusionary discipline policies have a negative impact on all these criteria for consideration. To improve academic achievement, students' mental health, drop out and graduation rates, and overall school climate, we must create a positive, trauma-informed, and restorative culture in our schools. Discipline is an opportunity to teach, not punish, and educators should appreciate it as such.

Describe any data collection, analysis, or recordkeeping practices that you believe are helpful in identifying and addressing disparities in discipline. Conversely, describe any barriers or limitations in these areas, and any ideas you may have on how to overcome them.

We typically seek and rely on data directly from local school districts because it provides a more accurate and timely reflection of the school discipline experience for students than federal and state data collections sources. It would be helpful to have an annual reporting cycle of data. It would also be helpful to collect more specific data around disciplinary hearings, including the frequency, types of infractions at issue, demographics of students, whether students have access to legal counsel, and the disciplinary outcomes.

Demographic information should be collected by each infraction (disaggregated by personal characteristics). Currently, most school districts only report demographic information by type of punishment, and only report total number punished by infraction. Detailed information would help communities and school districts target potential trouble spots in disparate and over extensive discipline practices.

We appreciate the opportunity to provide our input as the Department considers policies and best practices related to the application and enforcement of nondiscriminatory administration of school discipline in our public schools. We would be pleased to serve as an ongoing resource for the Department on these issues as your work continues.

Sincerely,



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