

# ***The National Coalition*** ***on*** ***School Diversity***

July 23, 2021

Suzanne Goldberg  
Acting Assistant Secretary  
Office for Civil Rights (OCR)  
U.S. Department of Education  
Potomac Center Plaza  
550 12th Street SW  
Washington, DC 20024  
*Submitted via the Internet: [www.regulations.gov](http://www.regulations.gov)*

## **RE: Request for Information on School Discipline [Docket ID ED-2021-OCR-0068]**

Dear Acting Assistant Secretary Goldberg:

Like the U.S. Department of Education, many of our organizations have monitored school discipline since school desegregation. In the 1970s, we witnessed Black students receive “suspensions and expulsions at much higher rates than white students” in the districts that fought desegregation the hardest.<sup>1</sup> In the 1980s and 1990s, we saw “zero-tolerance” discipline replace any supportive programming after white flight depleted these districts’ tax bases. And, after 2000, we watched discipline rates jump – and racial disparities widen – as these same schools pushed students out to make their numbers look better for the limited funding provided by No Child Left Behind.<sup>2</sup>

We know that discipline and desegregation are inextricably linked: both are intimately tied to the question of who belongs in our schools and communities. Our federal courts have connected the disparate discipline of Black students to “white institutional racism.”<sup>3</sup> And we have seen this exclusion extended to Latinx students, students with disabilities, and LGBTQ students with “a pervasive intolerance by school officials for all students who are different in any number of ways.”<sup>4</sup> At the same time, through the hard work of parents, students, and educators, we have watched districts revise their disciplinary policies in ways that reinforce the bonds between students and educators and reduce racial disciplinary disparities in the process.<sup>5</sup>

The Department’s 2014 *School Discipline Guidance Package* was an astute acknowledgement of what has been made painfully clear to your agency and our organizations over the last 50 years: we will not eliminate racial disciplinary disparities nor foster inclusive, integrated schooling without race-conscious

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<sup>1</sup> Derrick Bell, *Brown v. Board of Education and the Interest Convergence Dilemma*, 134 Harvard L. Rev. 518, 531 (1980).

<sup>2</sup> The Civil Rights Project & Advancement Project, *Opportunities Suspended: The Devastating Consequences of Zero Tolerance and School Discipline Policies* (2000); Advancement Project, *Test, Punish, and Push Out: How “Zero Tolerance” and High-Stakes Testing Funnel Youth into the School-to-Prison Pipeline* (2010).

<sup>3</sup> *Hawkins v. Coleman*, 376 F. Supp. 1330 (N.D. Tex. 1974) (disproportionately high suspension rates for Black students found to be the result of “white institutional racism” in Dallas Public Schools).

<sup>4</sup> Children’s Defense Fund, *School Suspensions: Are They Helping Children?* 9 (1975) (reviewing data from OCR’s first Civil Rights Data Collection).

<sup>5</sup> Thalia González, “Socializing Schools: Addressing Racial Disparities in Discipline Through Restorative Justice,” in *Closing the School Discipline Gap: Equitable Remedies for Excessive Discipline* (2014, Daniel J. Losen, ed.).

monitoring and remedies for improving school climates.<sup>6</sup> The prior administration’s rescission of the 2014 *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline* was a costly mistake – one that undermined the efforts of schools, districts, and states across the country to address decades of overreliance on exclusionary discipline. The 2018 *Dear Colleague Letter* was no substitute, abandoning the disparate impact analysis the Departments had wisely applied to our nation’s growing School-to-Prison Pipeline in 2014.

The disparate impact of exclusionary discipline practices on Black and Brown students is well-documented and will likely be exacerbated by the ongoing pandemic absent the Department’s decisive action. Reports have documented that COVID-19 infection rates are significantly higher in majority-minority zip codes, and that Black and Brown communities have been disproportionately affected by the financial instability created by the pandemic.<sup>7</sup> Districts must be prepared to provide the necessary social, emotional, behavioral, and compensatory services required to intervene early, provide students with needed support, and prevent reliance on punitive and exclusionary discipline.

As a starting point, we strongly urge the Department to rescind the 2018 *Dear Colleague Letter* and revisit the 2014 *Dear Colleague Letter* as it begins to formulate new school discipline guidance. As signatories, we support each other’s recommendations for updating the guidance to better address the disciplinary issues that have emerged and evolved since 2014, including school policing,<sup>8</sup> unreported discipline,<sup>9</sup> and the school-to-deportation pipeline.<sup>10</sup> In particular, we urge the Department to center developments in restorative and transformative justice in any new guidance. We write here, in coalition, to emphasize the need to start with the 2014 guidance as the proper foundation. Specifically, we urge the Department to make it explicitly clear that disparate impact analysis is not merely a policy preference, but a viable means of demonstrating liability under Title VI’s implementing regulations; that the rescinded discipline guidance represents the accurate description of the legal enforcement obligations of your agency, which extend to every recipient of federal funds.

As the Department has welcomed comment on the Civil Rights Data Collection, we reiterate our call to “[m]ake the Civil Rights Data Collection (CRDC) a universal and annually collected and reported database.”<sup>11</sup> We praise the Department for including funding for consecutive CRDCs in its budget request. With this, we expressly support the Center for Civil Rights Remedies’ recommendations for greater accountability in submitting accurate CRDC data and greater within-Department collaboration to ensure CRDC’s fidelity. Finally, we urge greater transparency on school policing through expanded CRDC reporting. We recommend including data on the presence of metal detectors and other security/surveillance technology,<sup>12</sup> as well as information on incidents resulting in student referrals and/or arrests (e.g., metal-detector search, public order offense, etc.).

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<sup>6</sup> Prudence Carter et al., *You Can’t Fix What You Don’t Look At: Acknowledging Race in Racial Disciplinary Disparities* (2016).

<sup>7</sup> See, e.g. Territorial Empathy, “Segregation is Killing Us,” (2021), available at: <https://storymaps.arcgis.com/stories/b9d7b073400c4c18950469ef79efe98a>.

<sup>8</sup> While school resource officer programs did not proliferate until after Columbine, school-based policing was, in some places, a response to school desegregation. See, e.g. Peter Piazza, “Safety and Security” in *Boston Schools: A History of Police and Repression, Part 1*, School Diversity Notebook (2020), available at: <https://sdnotebook.com/2020/08/19/safety-and-security-in-boston-schools-a-history-of-police-and-repression-part-1>.

<sup>9</sup> Lawyers for Civil Rights, *Unfinished Business: Assessing Our Progress on School Discipline under Massachusetts Chapter 222 23-26* (2018), available at: <http://lawyersforcivilrights.org/wp-content/uploads/2019/01/Unfinished-Business-PDF.pdf>.

<sup>10</sup> *Id.*

<sup>11</sup> Available at: [https://school-diversity.org/wp-content/uploads/NCSD\\_First-100-Days\\_Final.pdf](https://school-diversity.org/wp-content/uploads/NCSD_First-100-Days_Final.pdf).

<sup>12</sup> See Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 Emory L.J. 765 (2017), available at: <https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1793&context=facultypub>.

We also wish to highlight several additional recommendations from our 2021 *School Integration Priorities for a Biden/Harris Administration*<sup>13</sup> as they relate to this request:

- Review CRDC data for correlations between concentrations of race and poverty with the racially disparate impact of school discipline and school policing, including the presence of police and security staff and equipment (e.g., metal detectors and other security/surveillance technology) on school campuses and education funding spent on police.
- Prioritize investments in universal school lunch with improved nutrition and increase the number of school social workers to ensure students' basic physical and mental health needs are supported so they can thrive in the classroom.
- End the permissive use of federal education funding for school police,<sup>14</sup> given patterns of inadequate student support staff and higher police presence in districts and schools that serve a disproportionately high share of students of color.
- Revise the Charter Schools Program (CSP) to explicitly strengthen civil rights assurances regarding enrollment procedures, discipline, etc.

Finally – as you find ways to improve your agency's approach to school discipline, we strongly support consultation with students and scholars/researchers whose lived experiences and relevant expertise can help shed light on the connections between segregation and school discipline and should inform your work.

Thank you for the opportunity to present these comments. We would be happy to meet to provide further input and dialogue on this important issue.

Sincerely,

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<sup>13</sup> Available at: [https://school-diversity.org/wp-content/uploads/NCSDPB12\\_Final.pdf](https://school-diversity.org/wp-content/uploads/NCSDPB12_Final.pdf).

<sup>14</sup> The U.S. Department of Justice Office of Community Oriented Policing Services (COPS) provides grants to school districts to hire school resource officers. Schools also use Safe and Drug-Free Schools funds for security purposes.

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