



January 16, 2018

U.S. Commission on Civil Rights
General Counsel/Public Comments
1331 Pennsylvania Av. NW, Suite 1150
Washington, DC 20425
schooldiscipline@usccr.gov

RE: Comments on the School-to-Prison Pipeline: Intersections of Students of Color with Disabilities

Dear Commissioners:

On behalf of the Lawyers' Committee for Civil Rights Under Law, we write to the U.S. Commission on Civil Rights to express our comments on the development of its report on compliance with federal laws designed to protect students of color with disabilities from discrimination and whether laws adequately protect these students from discriminatory disciplinary actions and policies. As one of our nation's leading racial justice organizations, the Lawyers' Committee for Civil Rights Under Law has worked to secure equal justice for all through the rule of law for more than 50 years, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities. The invitation to address the proper discipline and special education identification, placement, and services for students of color at the intersection of race and disability is of particular interest to our organization given our long struggle to ensure equal educational opportunity for students within these groups.

Given this opportunity, we write to express a few simple truths, backed by years of research and personal accounts from students, educators and parents around the country. Simply put, many school discipline policies *do* have a disproportionate impact on students of color and those with disabilities, and federal guidance is needed and must be maintained in order to provide educators and families with clarity on these important issues.

Research has repeatedly shown that school discipline policies have a disproportionate impact on students of color and students with disabilities.¹ Data

¹ Students with disabilities are disproportionately students of color, less academically proficient, subjected to harsher discipline, retained and placed in alternative disciplinary or educational settings.

https://www.americanbar.org/content/dam/aba/administrative/diversity_pipeline/stp_preliminary_report_final.authcheckdam.pdf.



from the U.S. Department of Education's Office for Civil Rights found that Black children are suspended and expelled at rates three times greater than white students. While Black students make up 16% of student enrollment, they represent 27% of the referrals to law enforcement and 31% of those students subjected to a school-related arrest.²

Aggregate disability rates show that students of color are also far more likely to be identified as having a disability. Black students are 1.4 times more likely and Native American students are 1.7 times more likely to be diagnosed with a disability than their white and Asian peers.³ At the convergence of these two harmful trends, students of color with disabilities are suspended or expelled at the highest rates of all students.⁴ Black boys with disabilities are more than twice as likely as their white peers to receive an out-of-school suspension, while Black girls with disabilities are more than three times as likely as their white peers to receive an out-of-school suspension.⁵ These disparities are well-documented and demonstrate the discriminatory and harmful manner in which discipline policies are developed and implemented in schools across our country.⁶

Despite these consistent trends in discipline rates for students of color as well as students with disabilities, the rate of actual misbehavior for Black and

² <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>

³ <https://www.ed.gov/news/press-releases/us-department-education-takes-action-deliver-equity-students-disabilities>. "Race, poverty and interpreting overrepresentation in special education," Nora Gordon, September 20, 2017, Brookings Institute, <https://www.brookings.edu/research/race-poverty-and-interpreting-overrepresentation-in-special-education/>. However, socioeconomic status does *not* sufficiently account for the racial disparities we see in school discipline. "Policymakers Cannot Ignore the Overrepresentation of Black Students in Special Education," Kristen Harper, Child Trends, 2017, available at <https://www.childtrends.org/policymakers-cannot-ignore-overrepresentation-black-students-special-education/>.

⁴ 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.

⁵ *Id.* (27% of black boys with disabilities served by IDEA received an out-of-school suspension versus 12% of white boys with disabilities; 19% of black girls with disabilities served by IDEA received an out-of-school suspension versus 6% of white girls with disabilities).

⁶ See "38th Annual Report to Congress on the Implementation of the Individuals with Disabilities Act," U.S. Department of Education (2016), available at <https://www2.ed.gov/about/reports/annual/osep/2016/parts-b-c/38th-arc-for-idea.pdf>; "Racial and Ethnic Disparities in Special Education: A Multi-Year Analysis by State, Analysis Category and Race/Ethnicity," U.S. Department of Education, Office of Special Education and Rehabilitation Services, 2016, available at <https://www2.ed.gov/programs/osepidea/618-data/LEA-racial-ethnic-disparities-tables/disproportionality-analysis-by-state-analysis-category.pdf>.

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white students is about the same.⁷ Research has informed our understanding about the extent to which racial differences may account for the way in which we perceive students of color, identify disability, and respond to behaviors that may be considered a manifestation of a disability. Black and white students are sent to the principal's office at similar rates and commit serious offenses, such as carrying weapons or having drugs at school, at similar rates.⁸ Black students are more likely to be disciplined for subjective offenses, such as defiance or loitering; while white students are more likely to be disciplined for more clear-cut reasons, such as cutting class, smoking, and vandalism.⁹ Ultimately, it is the rate and degree of punishment that differ, not the student behavior.¹⁰

Discipline disparities are indicative of both systemic inequities and individual bias. These discriminatory acts of discipline would be harmful enough to students on their face, yet these consequences are amplified by the lasting impacts on children who are severely and repeatedly disciplined by their school and who are misidentified as having a disability. Misidentification can lead to students being routinely segregated from their peers throughout the day and subjected to more frequent and more severe disciplinary action. Research shows that underachievement often leads to misbehavior at school, which can contribute to a "downward spiral" of academic failure, disengagement, and antisocial behavior. School dropout, failure to graduate, and future incarceration are often the result of exclusionary discipline practices.¹¹ Students who are suspended or expelled are three times more likely to be in contact with the juvenile justice system the following year.¹²

⁷ <https://www.vox.com/2015/10/31/9646504/discipline-race-charts>.

⁸ *Id.* (vox)

⁹ A 2002 study found black students are more likely to be disciplined for subjective reasons. And a sweeping 2012 study of discipline policies in Texas backed this up: Even after controlling for 83 other factors, black students were 31 percent more likely to be suspended for discretionary reasons, rather than because they committed infractions where suspension was a mandatory punishment. That suggests some form of implicit bias is at play that leads to harsher punishment for black students than for others.

¹⁰ A study by researchers at Villanova University found that the percentage of black students at a school corresponded with how frequently that school suspended and expelled students. Strikingly, there was no relationship between how often schools suspended students and how much violence and drug activity the schools actually reported. When it came to how often schools doled out punishment, students' race appeared far more significant than their actual behavior.

¹¹ "School to Prison Pipeline Preliminary Report," ABA Sarah Redfield and Jason Nance, February 2016, ABA.

¹² <https://publicpolicy.wharton.upenn.edu/live/news/831-the-dangers-of-the-school-to-prison-pipeline>.

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As part of an effort to combat these inequities in our education system, federal officials have developed guidance documents to clarify schools' and districts' obligations to their students under the law. The 2014 regulations aimed to reduce the number of suspensions and expulsions of students of color and students with disabilities, both of whom receive such disciplinary actions at disproportionately high rates. According to the U.S. Department of Education's Office for Civil Rights, among the 2.6 million students suspended each year, Black boys are three times more likely than white boys to be suspended, Black girls are six times more likely than white girls to be suspended, and students with disabilities are more than twice as likely as their peers to be suspended.

The 2016 regulations established a more standardized method for how states must calculate the threshold at which the percentage of Black students classified as disabled becomes a "significant disproportionality" – a benchmark that triggers mandatory spending requirements for a portion of federal funds a district receives. The goal of the guidance, which was set to go into effect for the 2018-2019 school year, is to create a way to better monitor the long-held notion that students of color are identified as having learning disabilities at a greater rate than white students.

Together, these documents offer meaningful guidance to educators and administrators and have had a tangible impact on our schools. In many places, since the 2014 guidance was issued, suspensions have decreased in favor of other forms of discipline.¹³ This has enabled some schools to re-evaluate how they discipline *all* children, encourages them to build community within the schools, and examine why negative behavior is occurring and then address it. Moreover, teachers have been offered training on how to better handle discipline practices so we can keep kids in school where they belong.

Federal guidance has helped thousands of parents and students understand their rights and their schools' responsibilities. For instance, the Lawyers' Committee for Civil Rights Under Law has conducted workshops on disproportionality in discipline with parents who were aware of the issue. These guidance documents provide useful information on what parents can do if their school has a problem and how to advocate for change. Rescinding and delaying these documents keeps vital resources out of the hands of parents and may lead schools to return to ineffective "zero-tolerance" policies and other discipline

¹³ https://www.washingtonpost.com/local/education/new-federal-civil-rights-data-show-persistent-racial-gaps-in-discipline-access-to-advanced-coursework/2016/06/06/e95a4386-2bf2-11e6-9b37-42985f6a265c_story.html?tid=a_inl&utm_term=.089625e30b64

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practices that disproportionately push our most vulnerable students of color and those with disabilities out of school.

While federal guidance and enforcement is not a panacea to solve disproportionate discipline, it plays a truly valuable role. Together with vigorous enforcement, maintaining guidance on these issues, rather than rescinding or delaying them, leads to better schools for our children.

In conclusion, the disproportionality of school discipline policies is a legitimate threat to our children and our schools. The federal guidance documents at issue here play a meaningful role in clarifying schools' responsibilities for district staff, educators, and parents. Such documents must be maintained, implemented, and vigorously enforced. We appreciate the opportunity to comment on this issue and we stand committed to ensuring all students have access to full educational opportunity in our nation's public schools. For any questions or for additional information, please contact Brenda Shum, Director of our Educational Opportunities Project, at bshum@lawyerscommittee.org.

Respectfully,

Kristen Clarke
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