



March 22, 2018

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

Dear Secretary DeVos,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 153 undersigned organizations, we write to express our support for the January 8, 2014 joint school discipline guidance package including the “Joint Dear Colleague on the Nondiscriminatory Administration of School Discipline” and to oppose any changes or rescission. **The 2014 guidance clarifies that the U.S. Department of Education (ED) expects that schools and districts are treating all children fairly and provides practical tools and guidelines for educators to create safe, supportive, and welcoming environments for all students. Rescinding the guidance would send the opposite message: that the Department does not care that schools are discriminating against children of color by disproportionately kicking them out of school and that the Department does not see itself as having a role in helping educators create and maintain safe schools that afford all students equal educational opportunities.**

ED is a civil rights agency and, together with the Department of Justice (DOJ), is responsible for protecting students from discrimination on the bases of race, color, national origin; sex; disability; and age.ⁱ Under Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975, the Department of Education is tasked with enforcing these laws in response to complaints of discrimination and through proactive compliance reviews, data collection, and technical assistance.ⁱⁱ All of the laws that ED and DOJ are responsible for require regulations, policy guidance, oversight, and enforcement in order to provide their intended benefits to students. We reject any effort to undermine, through the rescission or modification of the regulations and guidance used to inform all parties of their rights and obligations under the law, the protections and supports these laws provide. We also oppose any effort to limit the resources and practical tools to help recipients of federal funding proactively comply with the law.

Suspensions and expulsions, which are practices that remove a child from school temporarily or permanentlyⁱⁱⁱ in response to alleged misbehavior, are used too often in our schools and

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disproportionately against children of color, children with disabilities, and LGBTQ youth.^{iv} Researchers estimate that suspensions, most of which are for minor behaviors, result in tens of millions of days of lost instruction.^v For more than 40 years,^{vi} this problem has been documented and described by researchers^{vii}, ED, children^{viii}, educators, and community advocates. Students, parents, educators, and civil rights advocates asked ED and DOJ for years to get involved to address the overuse and discriminatory use of suspension and expulsion. The disproportionate use of exclusionary discipline could not be explained by differences in child behavior and so it was clear that action was needed to change the policies and practices of adults throughout the educational system.^{ix} The guidance documents were created to assist states, districts, and schools in developing practices and policies to enhance school climate and comply with federal civil rights laws. However, recently, consistent with other attacks on civil rights and communities of color, there have been public calls by opponents of school discipline reform to rescind this guidance and undermine the protections it describes.^x

When children are pushed out of school, they lose instructional time and are more likely to become involved with the juvenile and adult justice systems.^{xi} Disproportionate suspension rates mean children of color lose more instructional time than their White peers.^{xii} Multiple studies have shown other negative effects on suspended children^{xiii} as well as harm to children when their peers are suspended.^{xiv} *All* children are harmed when schools overuse punitive exclusionary discipline.^{xv} As the American Academy of Pediatrics says, “out-of-school suspension and expulsion represent an enormously costly and largely unsatisfactory solution to behavior problems in school, whether from the standpoint of the school district, the student, or the community.”^{xvi} These harms to children come with no benefit to school safety or student learning.^{xvii}

The 2014 guidance documents provide important information and support for educators who want to create safer and more welcoming schools and important cautions for schools where problems are not being addressed and children continue to be treated unfairly. The guidance documents themselves, however, must be combined with additional supports to ensure schools are safe and fair for their students. Schools and their teachers need sufficient support and resources, and sufficient enforcement action needs to be taken, including by ED, to ensure that the promise of the guidance documents and our civil rights laws really result in improved educational opportunity for children.

However, just as the guidance did not create or change law, rescinding the guidance would not affect the statutes and regulations that the guidance interprets. Schools would still be prohibited from discriminating against students and ED would still be obligated to enforce civil rights law. Thankfully, the materials and resources provided in the guidance package are now widely available and shared by educators who are leading the way to create more equitable school climates. At such a tenuous time, when progress on school discipline has been too slow and too limited, rollback of this much needed guidance would hamper progress and undermine children’s pursuit of their education. And when the nation is focused on the importance of building safe and inclusive school environments, rescinding the guidance would send exactly the wrong message.

Every child deserves and should be included in a warm, welcoming and responsive school that provides them the education they need to be ready for college, career, and life. Suspension and expulsion,

especially when used in a discriminatory manner, undermine that goal and deny children the education they need. The federal government's role in ensuring schools are free from discrimination has been articulated and confirmed by the Supreme Court of the United States in the *Brown v. Board of Education* (1954) decision, by Congress in the Civil Rights Act of 1964, and by ED in regulations and guidance – including the 2014 school discipline guidance – implementing that law. It is incumbent upon ED, children, families, educators, advocates, researchers, and policymakers to ensure that progress continues, equal educational opportunity is real, and those who would seek to turn back the clock and undermine progress are stopped. The urgency is real, and the responsibility is great.

Students deserve, and the law requires, a Department of Education that is working to protect all students from discrimination and to provide an excellent education for *all* students. These regulations and guidance documents, and continued enforcement of the law, are critical to making students' rights real. If you have any questions, please contact Leadership Conference Director of Education Policy Liz King at king@civilrights.org or 202.466.0087.

Sincerely,

National (70)

The Leadership Conference on Civil and Human Rights

ACLU

African American Ministers In Action

Alliance for Educational Justice

American Association of University Women

American Federation of Teachers

American-Arab Anti-Discrimination Committee

Anti-Defamation League

Augustus F. Hawkins Foundation

Autism Society

Autistic Self Advocacy Network

Center for Law and Education

Center for Public Representation

Children's Defense Fund

Clearinghouse on Women's Issues

Committee for Children

Council of Parent Attorneys and Advocates

Democrats for Education Reform

Dignity in Schools Campaign

Disability Rights Education & Defense Fund

Educators for Excellence

EduColor

Equal Justice Society

Feminist Majority Foundation

Girls Inc.
GLSEN
Human Rights Campaign
Judge David L. Bazelon Center for Mental Health Law
Juvenile Law Center
Lawyers' Committee for Civil Rights Under Law
League of Women Voters of the United States
Learning Policy Institute
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Alliance for Partnerships in Equity (NAPE)
National Association of Councils on Developmental Disabilities
National Bar Association
National Black Justice Coalition
National Center for Learning Disabilities
National Center for Special Education in Charter Schools
National Center for Transgender Equality
National Center for Youth Law
National Council of Jewish Women
National Disability Rights Network
National Down Syndrome Congress
National Education Association
National Partnership for Women & Families
National Urban League
National Women's Law Center
People For the American Way
PFLAG National
Sargent Shriver National Center on Poverty Law
Southeast Asia Resource Action Center
Southern Poverty Law Center
SPAN Parent Advocacy Network
Stop Sexual Assault in Schools
Students for Education Reform
TASH
Teach Plus
The Advocacy Institute
The Alliance to Reclaim Our Schools
The Arc of the United States
The Education Trust
The Expectations Project

The Opportunity Institute
TNTP
Transformative Justice Coalition
UnidosUS, formerly NCLR
Union for Reform Judaism
YWCA USA

State/Local (84)

Advocates for Children of New York
Arizona Center for Disability Law
Arkansas Advocates for Children and Families
Bucks County Down Syndrome Interest Group
California Down Syndrome Advocacy Coalition
Center for Pan Asian Community Services, Inc.
Chicago Lawyers' Committee for Civil Rights
Children Now
Children's Defense Fund - California
Children's Defense Fund - New York
Children's Defense Fund - Ohio
Children's Defense Fund - Southern Regional Office
Children's Defense Fund - Texas
Children's Policy and Law Initiative of Indiana
Children's Rights Clinic, Southwestern Law School
CLEAR
Coalition of Black Leaders in Education
Colorado Children's Campaign
Democrats for Education Reform - Colorado
Democrats for Education Reform - DC
Democrats for Education Reform - Massachusetts
Disability Law Center
Disability Law Center of Alaska
disAbility Law Center of Virginia
Disability Law Colorado
Disability Law Project of Vermont Legal Aid, Inc.
Disability Rights California
Disability Rights Florida
Disability Rights Iowa

Disability Rights of West Virginia
Disability Rights Oregon
Disability Rights Tennessee
Disability Rights Texas
Disability Rights Vermont
Disability Rights Wisconsin
Down Syndrome Connection of the Bay Area
Education Justice Alliance
Education Law Center - PA
Education Reform Now - Washington State
El Sol Science and Arts Academy
Excellence Unleashed
Fathers & Families of San Joaquin
Georgia Disabled Veterans Business Enterprise
Girls Inc of the Washington, DC Metropolitan Area
Gwinnett Parent Coalition to Dismantle the School to Prison Pipeline (Gwinnett SToPP)
Legal Aid Justice Center
Metro St. Louis Coalition for Inclusion and Equity (M-SLICE)
Michigan Protection & Advocacy Service, Inc. (MPAS)
Native American Disability Law Center
Native Hawaiian Education Council
Nollie Jenkins Family Center
North Carolina Justice Center
North Dakota Protection & Advocacy Project
North Montgomery Communities United for Prosperity
Northern California Students for Education Reform
Oklahoma Disability Law Center, Inc
Parent Advocate Group for an Equitable, Quality Education (PAGE QE)
Parent Educational Advocacy Training Center
Parent Support Arizona
Protection and Advocacy for People with Disabilities, Inc.
Public Counsel
Public Interest Law Center
Quality Education for Every Student
REACH
Restorative Schools Vision Project (RSVP)
Student Advocacy, Inc.

Students For Education Reform Boston
Students for Education Reform Denver
Students For Education Reform Minnesota
Students for Education Reform North Carolina
Tennessee Educational Equity Coalition
The Education Trust-Midwest
The Education Trust-West
The Education Trust–New York
The South Carolina Education Association
Thursday Network
TN NAACP
Vermont Family Network
West Hills College
Western CT Association for Human Rights, WeCAHR
Women's Law Project
Wyoming Children's Law Center, Inc.

ⁱ 20 U.S.C. Ch. 48

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

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

ⁱⁱⁱ NOTE: This may include referral to alternative schools or settings, homebound placements, and informal short term removals.

^{iv} See examples including: U.S. Department of Education, Office for Civil Rights. “2013-2014 Civil Rights Data Collection: A First Look.” October 28, 2016. <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>, and Himmelstein, K. E. W., & Brückner, H. “Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study.” *Pediatrics*. January 2011. <http://pediatrics.aappublications.org/content/127/1/49>.

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^{vii} See examples including: Fabelo, T., Thompson M. D., Plotkin, M., Carmichael, D., Marchbanks III. M. P., Booth, E. A. “Breaking Schools’ Rules: A Statewide Study of How School Discipline Relates to Students’ Success and Juvenile Justice Involvement.” *Council of State Governments Justice Center & The Public Policy Research Institute, Texas A&M University*. July 19, 2011.

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^{viii} *Ending the School to Prison Pipeline: Hearing before the Committee on the Judiciary, Senate, 112th Cong.* (2012). <https://www.gpo.gov/fdsys/pkg/CHRG-112shrg86166/pdf/CHRG-112shrg86166.pdf>

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

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^{xi} Palmer, Neal A., Greytak E. A, Kosciw J. G. “Educational Exclusion Drop Out, Push Out, and the School-to-Prison Pipeline among LGBTQ Youth.” *Gay, Lesbian & Straight Education Network*. 2016.

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^{xii} Losen, D. J., Whitaker, A. “Lost Instruction: The Disparate Impact of the School Discipline Gap in California.” *The Civil Rights Project*. October 24, 2017.

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

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

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^{xv} *Id.*

^{xvi} American Academy of Pediatrics. “Out-of-School Suspension and Expulsion.” 2013.

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^{xvii} Fenning, P. A., Pulaski, S., Gomez, M., Morello, M., Maciel, L., Maroney, E, Schmidt, A., Maltese, R. “Call to Action: A Critical Need for Designing Alternatives to Suspension and Expulsion.” *ERIC*. 2012.

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