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November 7, 2022

Update and publish school discipline guidance under Title VI of the Civil Rights Act of 1964 to clarify all students' right to be free from racial discrimination

The Honorable Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

The Honorable Miguel Cardona
Secretary of Education
U.S. Department of Education
400 Maryland Ave SW
Washington, DC 20202

Dear Attorney General Garland and Secretary Cardona:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 230 national organizations to promote and protect the civil and human rights of all persons in the United States, and the 79 undersigned organizations, we strongly urge you to update and publish school discipline guidance under Title VI of the Civil Rights Act of 1964 to clarify all students' right to be free from racial discrimination. While we are truly grateful for the release earlier this year of guidance clarifying schools' obligations not to discriminate in school discipline on the basis of disability consistent with Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA), for students of color with and without disabilities, the Title VI guidance is a critical missing piece of their civil rights protections.¹ Leadership and action from the U.S. Department of Education (ED) and the U.S. Department of Justice (DOJ) can — and must — enforce civil rights laws, meaningfully respond to racial discrimination in school discipline, and advance policies that create real safety for communities. Every child deserves a safe, welcoming, and inclusive learning environment where they have the chance to learn, grow, and thrive.

After years of advocacy, the Obama administration released a guidance package on January 8, 2014, including a Joint Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline to assist states, districts, and schools in developing practices and policies to enhance school climate and comply with federal civil rights laws. Unfortunately, that guidance was rescinded by the Trump administration on December 21, 2018. While this rescission did not change the way in which civil rights laws are enforced, it did undermine the protections the guidance describes. The civil rights community came together to develop

President and CEO
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¹ The Leadership Conference on Civil and Human Rights. "Department of Education Enforces Vital Nondiscrimination Rights for Students with Disabilities in School Discipline." July 19, 2022. <https://civilrights.org/2022/07/19/department-of-education-enforces-vital-nondiscrimination-rights-for-students-with-disabilities-in-school-discipline/#>

and release the following recommendations to strengthen and issue new guidance to ensure nondiscrimination of students in the context of school discipline.²

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

The historic release of joint school discipline guidance in July 2022 from the U.S. Department of Education's Office for Civil Rights and Office of Special Education and Rehabilitative Services was a needed step towards ensuring safe and inclusive school environments for all students. By clarifying the protections students with disabilities are entitled to under Section 504 and the IDEA, Secretary Cardona made clear that ED will fulfill its responsibility as a civil rights agency and ensure equal access to educational opportunity. We applaud this effort and urge both agencies to uphold their commitment to enforce civil rights laws and meaningfully respond to racial discrimination in school discipline by updating and publishing the Title VI school discipline guidance.

With the passage and signing of the Bipartisan Safer Communities Act, which includes funds that should be used to implement only evidence-based, preventative, and proactive measures that build positive school cultures and alternatives to exclusionary discipline and criminalization,³ school districts will be considering various options for actions they can take with respect to school safety. Clarity from ED and DOJ about schools' ongoing obligation to administer these and all programs in accordance with the Civil Rights Act will enable decisionmaking that supports meaningful safety and child wellbeing. Updated Title VI school discipline guidance will allow states, districts, and schools to implement the law in a way that ensures evidence-based investments in positive school climates are used to prevent further disenfranchisement of marginalized young people, including children of color, Native children, children with disabilities, LGBTQI+ young people, immigrant children, other marginalized children, and youth living at the intersections of these identities. In your leadership of ED and DOJ, we urge you to ensure

² The Leadership Conference on Civil and Human Rights. Comments in Response to Request for Information Regarding the Nondiscriminatory Administration of School Discipline. July 22, 2021. <https://civilrights.org/resource/re-docket-id-ed-2021-ocr-0068-comments-in-response-to-request-for-information-regarding-the-nondiscriminatory-administration-of-school-discipline/>

³ The Leadership Conference on Civil and Human Rights. Advance Safe, Healthy, and Inclusive School Climates: Invest in Evidence-Based Programs through the Bipartisan Safer Communities Act. August 3, 2022. <https://civilrights.org/resource/invest-in-evidence-based-programs-through-the-bipartisan-safer-communities-act/>

that school districts have the necessary guidance on how to develop practices and policies that provide meaningful safe, healthy, and inclusive school climates and comply with federal civil rights laws while they are implementing the Bipartisan Safer Communities Act.

As organizations committed to the fair and appropriate treatment of all children in all settings, we continue to press for changes to policy and practice — and for solutions and strategies to create positive school climates where there are meaningful improvements to school safety, including a positive learning environment, improved student engagement, and healthy interpersonal relationships. We urge you to join in the call for safe, inclusive, and healthy schools by updating and publishing school discipline guidance under Title VI of the Civil Rights Act of 1964 to clarify all students' right to be free from racial discrimination. We are grateful for your leadership and look forward to hearing your plans to ensure your agency is doing everything possible to advance safe, healthy, and inclusive school climates without compounding harm or increasing discrimination against marginalized students. If you have any questions, please contact Steven Almazán, k12 education senior program manager at The Leadership Conference on Civil and Human Rights, at almazan@civilrights.org.

Sincerely,

National Organizations:

The Leadership Conference on Civil and Human Rights
The Leadership Conference Education Fund
Advancement Project
American Association of Colleges for Teacher Education
American Association of University Women
American Atheists
American Federation of Teachers
American Humanist Association
Asian Americans Advancing Justice | AAJC
Autistic Self Advocacy Network
Bazelon Center for Mental Health Law
Brian Taylor Leadership Institute
Center for Learner Equity
CenterLink: The Community of LGBTQ Centers
Clearinghouse on Women's Issues
Collaborative for Academic, Social, and Emotional Learning
Committee for Children
Council of Parent Attorneys and Advocates
Disability Rights Education & Defense Fund
Equal Rights Advocates
Feminist Campus
Feminist Majority Foundation
Girls Inc.
GLSEN
Hispanic Federation
Human Rights Campaign

Human Rights First
IDRA
Japanese American Citizens League
KIPP Public Schools
LatinoJustice PRLDEF
MALDEF (Mexican American Legal Defense and Educational Fund)
NAACP
National Action Network
National Alliance for Partnerships in Equity
National Association of Councils on Developmental Disabilities
National Center for Learning Disabilities
National Center for Parent Leadership, Advocacy and Community Empowerment (National PLACE)
National Center for Transgender Equality
National Council of Jewish Women
National Disability Rights Network (NDRN)
National Education Association
National Network for Arab American Communities
National Urban League
National Women's Law Center
Poverty & Race Research Action Council
Public Justice
Speak Up! Special Education Advocacy
Stand for Children
Teach For America
The Arc of the United States
The Education Trust
The Trevor Project
YWCA USA

State & Local Organizations:

Advocates for Children of New York
Affirming Youth Foundation, Inc.
ASPIRA of the Mid-Atlantic
Coalition for Education & Economic Development, Inc.
Education Law Center-PA
Family Voices NJ
Fannie Lou Hamer Center For Change
Federation for Children with Special Needs
INCLUDEnyc
Independent Voters of Illinois-Independent Precinct Organization
Learning Rights Law Center
Mexican American Council
Michigan Education Justice Coalition
Mothers fighting for justice
NAACP - TN State Conference
New Orleans Youth Alliance
Nollie Jenkins Family Center, Inc.



North Carolina Justice Center
Ohio Hispanic Coalition
Parent Network of WNY
PEAK Parent Center
Show and Tell
SOSSI - Saving Our Sons & Sisters International
SPAN Parent Advocacy Network
The Parents' Place of MD
Up Wind Project Inc