FedSDC

July 23, 2021

To the Office for Civil Rights (OCR), U.S. Department of Education (ED)

RE: The Federal School Discipline and Climate Coalition's (FedSDC) comments in response to OCR's, Request for Information Regarding the Nondiscriminatory Administration of School Discipline -- Docket ID ED–2021–OCR–0068.

1. **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.**

   Answer: FedSDC believes it is vital that ED and the Departments of Justice (DOJ) reinstate the 2014 Joint ED-DOJ School Discipline Guidance Package in order to reaffirm and significantly strengthen the practices and strategies and address gaps in that guidance. The re-released guidance must underscore the need for state and local educational agencies (SEAs and LEAs) to take action to 1) remove law enforcement from schools; 2) reduce or eliminate exclusionary school discipline policies; 3) recognize and eliminate intersectional discrimination; and 4) implement positive and proactive practices and policies to develop and maintain safe, healthy and culturally-sustaining school communities. Such strategies include, but are not limited to, positive behavioral interventions and supports and other whole-school or district approaches to supporting the social and emotional health of the student body, restorative practices, social-emotional learning, culturally-sustaining instruction and classroom management, and revisions to codes of conduct to emphasize positive alternatives and eliminate harmful and/or racially discriminatory provisions.

   Extensive research findings show that punitive and exclusionary discipline creates short- and long-term harms for all students, especially students of color.[1] The 2014 School Discipline Guidance Package provided much needed information and strategic leadership on enforcement, alternative strategies, and key resources to support states, districts, and schools in transitioning to more effective and equitable discipline and climate practices. This educational benefit, built upon the critical role of the Dear Colleague Letter and the Guiding Practices document, clarified schools' obligations to provide a healthy and nondiscriminatory school climate.

---

[1]American Psychological Association Zero Tolerance Task Force. (2008). Are zero tolerance policies effective in the schools? An evidentiary review and recommendations. *American Psychologist*, *63*, 852-862.

As a result of these initiatives, the data indicate that State Educational Agencies (SEAs) and Local Educational Agencies (LEAs) across the country made real progress in reducing rates of suspension and expulsion. Legislatures throughout the country have pushed back zero tolerance by encouraging districts to eliminate automatic suspensions and expulsions, reducing discretionary suspensions for behaviors such as "willful defiance" and expanded the use of effective alternative disciplinary approaches, such as Positive Behavior Interventions and support.[2]

Yet the Trump Administration rescinded the 2014 guidance in 2018, in conjunction with the findings of the 2018 Report of the Federal Commission on School Safety. In contrast to the 2014 Guidance Package, the School Safety Commission report provided little or no research support for its findings; misreported, sometime in an egregious fashion, the work of others; and suggested, in the face of 20 years of evidence to the contrary,[3] that school safety would be compromised if local districts were not able to rely on harmful punitive discipline practices.

The replacement of the 2014 guidance that was largely evidence-based and carefully crafted, with a set of recommendations that were neither, left Local Educational Agencies (LEAs) and State Educational Agencies (SEAs) without clear and practical direction and accountability on how to accomplish needed reform. By doing so, it increased the possibility that local implementation would rely on ineffective and harmful strategies, and probably slowed down local and state efforts for fear they would not be supported at the Federal level.

As a consequence, many SEAs and LEAs continue to fund and implement policies and practices that disproportionately punish students of color more harshly and at higher rates than their White peers.[4] The continued physical and emotional harms students of color face and the disproportionate racial discrimination that Black and Brown students, including students with disabilities, endure daily requires explicit communication from ED and DOJ to enforce the laws that protect students from discrimination related to school discipline.

Guidance provided by the re-issuance of a strengthened school discipline guidance package is critical so that schools understand their legal obligation to refrain from the inappropriate use of exclusionary discipline, and to implement policies that recognize students' intersectional identities.

---

[2] Hirschfield, P. J. (2018). Trends in school social control in the United States: Explaining patterns of decriminalization. In J. Deakin, E. Taylor, & A. Kupchik (Eds.), *Handbook of School Discipline, Surveillance, and Social Control* (pp. 43-64). Cham, Switzerland: Palgrave MacMillan

[3] Welch, K., & Payne, A. A. (2018). Zero tolerance school policies. In J. Deakin, E. Taylor, & A. Kupchik (Eds.), *Handbook of School Discipline, Surveillance, and Social Control* (pp. 215-234). Cham, Switzerland: Palgrave MacMillan

[4] Skiba, R. J., Arredondo, M. I., Gray, C., & Rausch, M. K. (2018). Discipline disparities: New and emerging research in the United States. In J. Deakin, E. Taylor, & A. Kupchik (Eds.), *Handbook of School Discipline, Surveillance, and Social Control* (pp. 215-234). Cham, Switzerland: Palgrave MacMillan.

FēdSDC

The Department of Education (ED) should immediately rescind the 2018 guidance and reinstate the 2014 guidance pending further revisions that strengthen the analyses on when police involvement in discipline and inequities in the allocation of social-emotional supports constitute a violation of Title VI. In doing so, ED and DOJ must clearly re-affirm that they expect SEAs and LEAs to implement federal guidance to eliminate racial disproportionality through school discipline, to support non-exclusionary alternatives, and to establish culturally-sustainable education practices (e.g., curriculum, pedagogy, policies).

To signal its commitment to a re-invigorated agenda of evidence-based guidance and enforcement, OCR must undertake needed revisions or additions to the enforcement protocol and to the guidance document without delay. A timeline and clear deadline for the completion of that work should be announced immediately.

The process of revision must include the voices of local groups and organizing stakeholders, particularly youth, parents, and students – especially those who have been negatively impacted by punitive and exclusionary approaches – as well as advocates, educators, and researchers. This means addressing the fact that Black students with disabilities are the most frequently suspended group, that Black girls, who are even more disproportionately suspended than Black boys, are likely subjected to biases that are unique to them, and that these types of disparities have continued and even increased, for almost 50 years.

As a sign of the Administration's commitment, ED and DOJ should immediately:

- Reject the findings of the Federal Commission on School Safety, whose final report ignored the recommendations of many communities, discounted evidence-based findings, and improperly and erroneously suggested a connection between the use of research-based school climate programs and increases in targeted school violence;
- Rescind ex-Secretary DeVos Dear Colleague Letter (Dec. 21, 2018) withdrawing Obama Administration guidance regarding school discipline (Jan 8, 2014);
- Announce a commitment to release an updated version of the 2014 guidance package made publicly available by May 2022; and
- Announce commitment to engage in a comprehensive public comment or public hearing process as well as empower a panel that preferences the input of students, parents, educators, directly impacted families, community organizing groups, youth led groups, and advocates from historically marginalized communities over school leaders resistant to creating non-punitive, supportive school environments. The purpose will be to guide a revision process and take public input from all interested parties necessary to rewrite the new guidance and ensure it addresses all

concerns with the prior 2014 guidance, Dear Colleague Letter, and issues that have emerged since.

2. **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?**

Below are several issues we find concerning about discriminatory implementation that have significantly negative effects on student access to educational opportunities. We have confronted these issues in the past five years and will continue until they are fully resolved.

Police in Schools: In public schools across the nation, Black and Brown students overwhelmingly attend schools that are heavily policed and underfunded. According to the U.S. Department of Education's Civil Rights Data Collection, millions of students attend schools with police officers, but no counselors, nurses, psychologists, or social workers.[5] In contrast, the numbers of school police have escalated dramatically: As of the 2017-18 school year, 51% of schools had a law enforcement officer.

We have the resources to fully support the well-being of our students, but the Federal government has chosen instead to funnel dollars towards exponentially growing a juvenile and criminal legal system in which there are now nearly eight million adults and youth behind bars or within the probation and parole systems. A report from Communities United, Padres y Jóvenes Unidos, and other community organizing collectives, exposes the $3.4 trillion that have been invested in systems of mass incarceration since 1982 and the kinds of community investments that could have been made instead. For example, according to the report, just one year's worth of surplus carceral spending is sufficient to accomplish any one of the following demands: increase spending by 25 percent at every K-12 public school in the country, provide every household living in poverty with an additional $10,000 per year in income and/or tax credits, provide healthcare to five million uninsured persons, or fund one million new social workers, psychologists, conflict mediators, mental health counselors, and drug treatment counselors to address public health and safety issues. Since 1998, over $1 billion has been expended by the federal government to support and increase police presence in schools.[6] Legislation ending federal funding for school police (e.g., the

---

[5] Whitaker, A., Torres-Guillen, S., Morton, M., Jordan, H., Coyle, S., Mann, A. & Sun. W. L. (2019). *Cops and No Counselors: How the Lack of School Mental Health Staff Is Harming Students.* American Civil Liberties Union. https://www.aclu.org/report/cops and-no-counselors.

[6] Connery, C. (2020). *The Prevalence and the Price of Police in Schools.* Storrs, CT: UConn Center for Policy Analysis. Retrieved from *https://cepa.uconn.edu/wp-content/uploads/sites/399/2020/10/Issue-Brief-CEPA_C-Connery.pdf*.

Counseling Not Criminalization in Schools Act) would re-allocate $5 billion towards much-needed school-based mental health personnel.

The harms associated with school policing, especially for Black and Brown students, are many, and the benefits few if any. The negative outcomes associated with the presence of school police that disproportionately affect Black students are numerous, posing a serious threat to school success and life chances:

- decreased academic performance; [7]
- failure to graduate on time (Weisburst, 2019); [8]
- increased risk of out-of-school suspension (Fisher & Hennessy, 2016); [9]
- increased risk of reports to law enforcement (Nance, 2016); [10] and
- increased risk of arrest (Homer & Fisher, 2019). [11]

Some have argued that school police serve an important role in mentoring students. [12] But leading national researchers in the field have concluded that school safety funds would be far better expended on alternative programs or mental health personnel, who have been trained to a much higher degree in responding to students' mental health needs. [13]

There is little evidence that SROs reduce the likelihood or mitigate the impact of school shootings. In 197 instances of gun violence at U.S. schools since 1999, SROs intervened successfully in only three instances. [14] Nor is there evidence that school policing has a positive impact on school crime. Research has found the presence of police in schools to be associated with higher rates of reports to law enforcement, often for minor misbehavior. [15]

---

[7] Legewie, J., & Fagan, J. (2019). Aggressive policing and the educational performance of minority youth. *American Sociological Review, 84*(2), 220-247. https://doi.org/10.1177/0003122419826020

[8] Weisburst, E. K. (2019). Patrolling public schools: The impact of funding for school police on student discipline and Long-term education outcomes. *Journal of Policy Analysis and Management, 38*, 338-365. https://doi.org/10.1002/pam.22116.

[9] Fisher, B. W., & Hennessy, E. A. (2016). School resource officers and exclusionary discipline in US high schools: A systematic review and meta-analysis. *Adolescent Research Review, 1,* 217–233.

[10] Nance, J. P. (2016). Students, police, and the school-to-prison pipeline. *Washington University Law Review*, *93*, 15–20.

[11] Homer, E. M., & Fisher, B. W. (2020). Police in schools and student arrest rates across the United States: Examining differences by race, ethnicity, and gender. *Journal of School Violence, 19*, 192-204. https://doi.org/10.1080/15388220.2019.1604377.

[12] Canady, M., James, B., & Nease, J. (2020). *To protect and educate: The school resource officer and the prevention of violence in schools.* National Association of School Resource Officers.

[13] Gottfredson, D. C., Crosse, S., Tang, Z., Bauer, E. L., Harmon, M. A., Hagen, C. A., & Greene, A. D. (2020). Effects of school resource officers on school crime and responses to school crime. *Criminology & Public Policy, 19*, 905-940. doi:10.1111/1745-9133.12512; Kupchik, A. (2020, April). Counselors and mental-health workers can make a bigger difference than SROs. *Delaware Online*. Retrieved from https://www.delawareonline.com/story/opinion/2020/06/27/counselors-and-mental-health-workers-can-make-bigger-difference/3258330001/.

[14] Connery, 2020

[15] Na, C., & Gottfredson, D. C. (2013). Police officers in schools: Effects on school crime and the processing of offending behaviors. *Justice Quarterly, 30*(4), 619-650. doi:10.1080/07418825.2011.615754.

FedSDC

Far from being effective in creating positive feelings of safety, school police programs appear to create harm and distrust among students of color. Black students have less favorable attitudes towards school police,[16] and are significantly less likely to report that they feel safe when school police are present in their school.[17]

In the wake of protests last summer following the murder of George Floyd by police officers in Minneapolis, Minnesota, local school districts across the nation began to sever contracts with municipal police departments, and some dismantled school police departments altogether. These long overdue reforms were made possible by the visionary efforts of Black and Brown students who for decades have demanded an end to the school-to-prison pipeline and the criminalization of young people in their schools.

The physical and psychological policing of Black and Brown young people is a lethal tactic that upholds centuries-old systems of justice and oppression. The underinvestment in student support services and the corresponding overinvestment in school policing exacerbates not only a physical toll on many Black and Brown students in particular, but also an emotional, psychological, and intellectual toll. The presence of police officers in schools creates learning environments characterized by punishment, exclusion, and disposability that threaten student learning opportunities, particularly for Black and Brown students.

Examples of School Districts Ending Police Presence:

In each of the examples below, pressure from community organizers led to important next steps by boards of education to end police presence in schools.

- **Oakland, CA** - In June 2020, the Oakland Unified School District (OUSD) voted unanimously to dismantle the district's school police department by passing the "[George Floyd Resolution to Eliminate the Oakland School Police Department](#)," a resolution calling on the school district to divest from police in schools and reinvest in support for whole child initiatives and young people with disabilities. In the OUSD resolution, school officials noted that, "such a deeply embedded and institutionalized form of preemptive policing has extremely significant consequences, foreclosing opportunities toward graduation, college, and employment for Oakland's Black youth, school policing is fundamentally undermining the economic and public health of the Black community by restricting access and opportunity." This resolution was made possible by Black Organizing Project, an Oakland-based community organization that has organized

---

[16] Pentek, C., & Eisenberg, M. E. (2018). School resource officers, safety, and discipline: Perceptions and experiences across racial/ethnic groups in Minnesota secondary schools. *Children and Youth Services Review, 88*, 141-148. https://doi.org/10.1016/j.childyouth.2018.03.008

[17] Theriot, M. T., & Orme, J. G. (2016). School resource officers and students' feelings of safety at school. *Youth Violence and Juvenile Justice, 14*(2), 130-146. https://doi.org/10.1177/1541204014564472.

FedSDC

for more than a decade to urge school officials to reimagine safety and end police presence in schools.

- **Denver, CO** - In June 2020, Denver Public Schools (DPS) [voted unanimously to end its contract](#) with the Denver Police Department and will phase out officers from all public schools through June 2021. In the Denver Public Schools' resolution to eliminate school-based police officers, school officials noted, "DPS has an obligation to promote the healthy development of each one of its students, which includes protecting them from the impact of systemic racism to the greatest extent possible while they are at school." This resolution was a result of the powerful organizing of Padres y Jóvenes Unidos, a Denver-based youth and parent community organization that organizes to end the school-to-prison pipeline and school-to-deportation pipeline in Denver and the state of Colorado.

- **Milwaukee, WI** - In June 2020, the Milwaukee Public School Board unanimously passed a resolution to end all contracts between the Milwaukee Police Department and Milwaukee Public Schools. Additionally, this resolution ended any contracts to buy or maintain criminalizing equipment, including metal detectors, facial recognition software, and social media monitoring software. The passage of this resolution was [made possible by Leaders Igniting Transformation (LIT)](#), a Milwaukee-based youth organizing group that works to end the school-to-prison pipeline in Milwaukee and the state of Wisconsin.

Schools must be places where all students feel emotionally and physically safe and where their needs are met. Rather than continuing to support structures of enforcement and fear, ED and OCR should encourage practices that build relationships within school communities to prevent and heal the traumas of interpersonal and systemic violence, and to nurture the inherent genius of youth, especially that of Black and Brown youth.

It is imperative that Federal educational investment be redirected from policing and carceral approaches towards education and student support services. Now more than ever, schools must be locations of nurturing and healing rather than sites of harm and punishment that are often a direct consequence of police presence in schools.

Student Dress Codes and Grooming Standards: Dress codes and grooming standards disproportionately affect girls of color, and often serve as a means of enforcing gendered notions of attire, perpetuating racial stereotypes about cultural attire, and blaming girls for "distracting" others with their attire. Research has shown that Black girls are more likely to lose instructional time through exclusionary discipline as a result of a dress code or grooming violation. Dress codes can also specifically harm LGBTQ+ students and other gender-nonconforming or gender-expansive youth.

Here are examples of practices that we have witnessed in schools:

- Black students are disciplined for wearing hairstyles or headwear associated with Black culture, such as hair wraps, bonnets, Bantu knots, locs, do-rags, and hair combs.
- Black girls are disciplined more than their White peers for dress code infractions, such as wearing spaghetti straps or a short skirt, based on adults' stereotyped perceptions that they are more sexually provocative because of their race, and thus more deserving of punishment.
- Dress codes promote gender stereotypes, such as girls should wear clothes that are "feminine" (dresses or skirts) and that boys wear pants to support them as more active and athletic. Such rules pose significant obstacles for transgender students when schools do not respect their gender identity, for nonbinary students, gender-nonconforming students and for gender-fluid students.
- Dress codes that emphasize how girls should cover their bodies so as not to distract or tempt boys promote rape culture and an environment where sexual harassment--that is unwelcome conduct of a sexual nature--is excused. These policies fail to create a culture of respect in schools by declining to make boys accountable for their behavior and, instead, blame girls' choices for boys' misconduct.
- Some educators, administrators, security guards, and school police have enforced dress codes by unnecessarily touching girls without their consent.
- Dress codes are often enforced through shaming students, such as sending them home (constituting informal suspensions) or forcing them to wear attention-grabbing clothing "fixes."

ED should address this problem by prohibiting the use of exclusionary discipline on students based on their gender and sexist dress and grooming standards in school. ED should also restore, and update regulations related to dress and grooming standards, previously rescinded in 1982.

Police Harassment, Violence, and Abuse Against Black Girls in Schools: Police violence against Black girls is not an isolated incident, but an ongoing systemic issue in the U.S. education system that ED so far has not addressed. Here are a few examples of police violence and criminalization that have taken place in the last two years alone:

- [Black girl in Illinois told to leave school, tasered, thrown downstairs and arrested for having cell phone out in class at age 16 - April 2019.](#)
- [Black girl arrested in New Mexico for taking too much milk in the cafeteria and being disruptive at age 11 – Aug. 2019.](#)
- [Black girl slammed against a wall and choked in Georgia so officer could break up fight at age 15 - Aug. 2019.](#)

- [Black girl (Kaia Rolle) arrested in Florida for throwing a tantrum at age 6 – Sept. 2019.](#)
- [Black girl charged with felony in Kansas for pointing her fingers in the shape of a gun at classmates at age 13 - Sept 2019.](#)
- [Black girl ("Grace") sentenced to juvenile detention in Michigan at the beginning of the pandemic for violating her parole when she didn't complete her schoolwork at age 15 - July 2020.](#)
- [Black girl tased in Florida because she was fighting at age 15 – Jan. 28, 2021.](#)
- [Black girl (Taylor Bracey) slammed to the ground, knocked unconscious, and handcuffed in Florida to prevent a fight at age 16 – Jan. 27, 2021.](#)

ED must take steps to remove police from schools, as a means of affirming Black girls and demonstrating that they are as deserving of care and support as any other student.

Use of Exclusionary Discipline, Zero Tolerance, and Unnecessary Police Involvement During On-line Learning: As schools transitioned to virtual learning as a result of the Covid-19 pandemic, there have been numerous incidents of unnecessary and discriminatory uses of exclusionary discipline, zero tolerance and police involvement. In almost all cases where race was identified, the student subjected to the punishment was Black:

- A Louisiana school district sought expulsion when a teacher saw an unloaded BB gun in a fourth-grade boy's room during Zoom class. https://www.washingtonpost.com/nation/2020/09/25/louisiana-student-bbgun-expulsion/
- In New Jersey, the police were called to the home of a boy who had a plastic Nerf gun visible on his desk during a Zoom class. https://www.northjersey.com/story/news/bergen/edgewater/2020/09/11/edgewater-nj-police-called-after-student-had-nerf-gun-during-zoom-class/3468499001/.
- In Colorado Springs, police were called when a 12-year-old boy was seen playing with a Nerf gun during a virtual art class. The boy was suspended for five days. https://www.washingtonpost.com/nation/2020/09/08/black-student-suspended-police-toy-gun/.
- In Baltimore County, MD: During an online class, a screenshot of an 11-year old's collection of BB and airsoft guns in the video's background was taken and sent to the principal. Police were called to search the family's home. https://foxbaltimore.com/news/project-baltimore/bb-gun-in-virtual-class-sparks-debate.
- Michigan: A 15-year-old girl was sent to juvenile detention for three months after a judge ruled that she violated her probation by not completing online homework. The judge commented that the girl's probation was "zero tolerance, for lack of a

better term." https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention.

- In Gwinnett County, GA: A sixth-grade student who was the victim of a Zoom bomber was wrongfully punished for posting threats and racist language. https://www.ajc.com/news/gwinnett-student-challenges-suspension-over-zoom-bombing-allegations/UMQAYE3COVAB3DE4M2Q6QPHVCI/.
- A Black seventh grader played with a toy gun during a virtual class. His school called the police. https://www.washingtonpost.com/nation/2020/09/08/black-student-suspended-police-toy-gun/#click=https://t.co/013DK0e5mY; Cohen, J. (2020, July 14).
- A teenager didn't do her online schoolwork. So a judge sent her to juvenile detention. https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention.

These examples represent the larger problem of how systemic and institutionalized racism coupled with exclusionary discipline policies and the use of unnecessary police involvement contribute to the trauma and disruption in the lives of Black and Brown students and communities.

ED must fully commit to greater social and emotional support for students of color whether in-school or virtually. Specifically, reissued guidance can help schools replace and prevent implementation of these punitive measures, such as suspensions and expulsions, with social and emotional learning and restorative practices. The guidance can include resources to help school staff learn about the strengths and needs of students during distance learning through regular check-ins and class meetings, conferencing, student journaling, close observation of students and their work, and regular connections and outreach to parents. For example, the Connected Learning Model recommends encouraging teachers to hold office hours and schedule one-on-one check-ins with each student to provide a safe haven for students to discuss their feelings and experiences.

Social and Emotional Learning (SEL): SEL can be a powerful tool for deep relationship-building with self, with others, with community, with passions, with ancestors, with land...when it's culturally-sustaining. The promise of culturally-sustaining SEL is exemplified by:

1. Implementing restorative justice, not as a reactive tool, but a tool for relationship-building from the start; and
2. Building trusting relationships with students, instead of school hardening, where school administrators and teachers actively listen to students, parents, and communities to co-construct a positive environment.

Young people are still developing emotionally, behaviorally and socially, learning about social roles and concepts, and strategies to process emotions. It is unreasonable and unrealistic to expect children and teens to grow and learn about social and emotional development without positive encouragement, guidance, patience and kindness. When these tools are missing or lacking in schools, schools become emotionally, psychologically and intellectually unsafe and harmful environments for young people. To support replacement of exclusionary discipline practices, implementations of SEL should highlight in greater detail alternative strategies that teach social and emotional skills and foster identity-safe learning environments.

While the original guidance addressed social and emotional learning, it did not include extensive research and resources on social and emotional learning to support its effective implementation. The reissued guidance should highlight extensive research[18] on social and emotional learning and strategies that teach students skills that enable positive relationships, help them resolve conflicts peaceably, and prevent bullying.

This guidance can also underscore how social and emotional learning approaches can be racially and culturally-sustaining and not another form of policing students of color. The guidance should include recommendations for supporting and educating the whole child-including creating identity-safe classrooms, such as teaching that promotes understanding, student voice, and student responsibility; cultivating diversity through regular use of diverse materials, ideas, and activities; and creating relationships in caring, orderly, and purposeful classroom environments.

Threat Assessments:

Threat assessment procedures, as originally developed, were intended to represent a *fact-based* approach to preventing targeted violence and shootings in schools (Randazzo et al, 2006).[19] Meant to replace discredited approaches such as *profiling* that attempt to predict whether a student will engage in targeted violence,[20] threat assessment is described as focusing on "the student's behavior in the instant case [suggesting] that the student might be on a pathway toward violent behavior."[21] Protocols vary widely, but typically involve a team of school personnel, including a school police officer, who consider information and recommendations about a student identified as a potential "threat."

Threat assessments were developed in the late 1990s in an attempt to prevent school shootings and targeted violence, while avoiding ineffective and harmful student profiling.

[18] Taylor, R. D., Oberle, E., Durlak, J. A., & Weissberg, R. P. (2017). Promoting positive youth development through school-based social and emotional learning interventions: A meta-analysis of follow-up effects. *Child development*, *88*(4), 1156-1171.

[19] Randazzo, M. R. et al., (2006). Threat assessment in schools: Empirical support and comparisons with other approaches. In S.R. Jimerson & M. J. Furlong (Eds.), The *handbook of school violence and school safety: From research to practice* (pp. 147-156). Mahwah, NJ: Lawrence Erlbaum Associates.

[20] Sewell, K. W. & Mendelsohn, M. (2000). Profiling potentially violent youth: Statistical and conceptual problems. *Children's Services: Social Policy, Research, and Practice, 3,* 147-169.

[21] Randazzo et al. (2006), p. 153.

FēdSDC

Since the Parkland school shooting tragedy, the U.S. Secret Service *National Threat Assessment Center* – under the Trump Administration and early in the Biden Administration – has released three publications on school threat assessment.[22] These publications (and accompanying federal trainings and technical assistance) send an optimistic message to schools and districts that they can prevent school shootings and other targeted school violence if they, with the help of law enforcement, assess potential threats posed by students.

Unfortunately, threat assessment as it is currently being implemented has not succeeded either in preventing targeted violence or in avoiding profiling. A lack of consistent standards leads to subjectivity in the process itself, while insufficient funding and inadequate training lead to a lack of treatment fidelity, resulting in inadequate or even harmful implementation. In practice then, rather than preventing future violent action, the process of threat assessment often results in increased rates of disciplinary action for students of color and those with disabilities, including suspension or expulsion for non-safety threatening behavior completely unrelated to shootings or targeted violence.

The rapid spread of threat assessment nationwide, without sufficient attention to quality control and training, can lead to severe negative unintended consequences, especially for children of color and children with disabilities. A final report on a six-year implementation of the Virginia Threat Assessment Protocol [23] showed that students with disabilities were 3.9 times more likely to be referred for threat assessment than their non-disabled peers. The proportion of Black students referred for threat assessment was 1.3 times (30%) greater than the proportion of referred White students. Approximately two-thirds of referrals as "threats" were classified by school teams as either "Low Risk" or "Transient", indicating a lack of threat to the school. Yet schools reported administering disciplinary actions in *71%* of all cases in which a threat assessment had been carried out. Perhaps most telling, in 1,865 completed threat assessments, there was no report of a shooting that was attempted and averted.

Below are observations from FedSDC member organizations of applications that indicate inappropriate, discriminatory and problematic implementation of threat assessment in schools:

- **Inappropriate Triggers for Threat Assessments:** Assessments may be triggered by unreliable, anonymous, and even personally vindictive reports, that may be based on normal child/adolescent behaviors, pose no specific threat of substantial harm to others, and may lack a defined target, timing, or means of carrying it out.

---

[22] Averting Targeted School Violence (March 2021); Protecting America's Schools: A U.S. Secret Service Analysis of Targeted School Violence (November 2019); and Enhancing School Safety Using a Threat Assessment Model: An Operational Guide for Preventing Targeted School Violence (July 2018).

[23] Cornell, D., & Maeng, J., (2020). *Student Threat Assessment as a Safe and Supportive Prevention Strategy: Final Technical Report.* Charlottesville, VA: Curry School of Education, University of Virginia. https://www.ojp.gov/pdffiles1/nij/grants/255102.pdf

Rather than focusing on specific current behavior that may indicate an imminent risk, poorly implemented threat assessments often result in profiling a student because of their identity or characteristics, or an attempt to funnel the child into mental health services, both of which are approaches found by leading researchers in the field to be ineffective or even harmful.[24]

- **Inappropriate Processes for Threat Assessments**: Assessments may involve sloppy investigative techniques (e.g., not based on evidence-based supports, research, and resources), and may violate a student's due process rights (e.g., providing the opportunity for the student/parent to hear the allegations and refute them) or special education law requirements.

- **Inappropriate Consequences from Threat Assessments:** Inappropriately conducted threat assessments may result in unfair labeling and stigma for the student, inappropriate sharing of documents with law enforcement, unnecessary and/or unfair disciplinary actions, inappropriate arrests, or referrals to immigration authorities or child protective services.

- **Discriminatory Disparities in Threat Assessments**: While data on the disproportionate impacts of threat assessment are still emerging, the preliminary evaluation data cited above suggests a strong possibility of discriminatory outcomes for students with disabilities and students of color.

- **Problems with the Threat Assessment Research:** Extant threat assessment research has explored whether there are race- or disability-based disparities in threat assessment findings, given a referral for threat assessment. However, there has yet to be attention to the very substantial racial and disability disparities among those referred for threat assessment, or to the disparities in outcomes that have been found for students with disabilities.

The problem of profiling, as well as the absence of evidence of effectiveness in preventing targeted violence, strongly suggests that the threat assessment framework that has been promoted by ED, DOJ and the U.S. Secret Service National Threat Assessment Center (NTAC), and implemented in many districts and schools, has been recommended and disseminated too quickly, and has the potential for causing serious harm to children and youth in schools. Threat assessments are unnecessary in a number of contexts, and inappropriately conducted in many others. In the very few instances in which they could be helpful in preventing targeted violence, their effectiveness has yet to be proven.

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

---

[24] Randazzo et al (2006)

FẽdSDC

The following recommendations reflect our view on what federal agencies must do to ensure SEAs and LEAs are creating culturally-sustaining, holistic positive and safe school climates, and preventing additional physical and emotional harms for youth and students in schools:

End Police Presence in Schools, Invest in Education:

- End federal funding for police in schools, including but not limited to resources made available through the Office of Community Oriented Policing Services (COPS).
- Redirect federal funding used for police and policing infrastructure in and around schools to programs that incentivize school districts to: 1) provide services designed to address students' social and emotional needs; 2) hire culturally-sustaining student support staff, including but not limited to: counselors, social workers, psychologists, and restorative/transformative justice practitioners; 3) provide ongoing training and professional development for student support staff.
- Divest from policing strategies in schools.
- Invest in critical personnel—counselors, social workers, school psychologists, and nurses—who have the expertise to appropriately address student behavior and conflict, and address students' mental health needs.
- Increase grant funding to expand the capacity of school infrastructure to better meet the mental health needs of students, and shift to restorative and trauma-informed supervision and away from a punitive approach to student behavior and conflict.
- Immediately end through Executive Order schools' and districts' use of Department of Defense 1033 program - a program that provides military grade weapons to local municipalities and schools. In addition, advance legislation that ends the transfer of military surplus for use in or around schools, removes existing military equipment from schools, and permanently eliminates the 1033 program.
- End collaboration and data sharing between Immigration and Customs Enforcement (ICE) and schools.
- Prohibit the use of use strip searches, corporal punishment, and restraints (chemical or physical), and limit or eliminate the use of seclusion in schools.
- Protect Student Privacy by ensuring that LEAs do not share student information with law enforcement and enforce all violations of FERPA and IDEA restrictions.

Decriminalize Student Behavior:

- Eliminate policies, discontinue grants and pilot programs that criminalize students for age-appropriate behavior and school-based misconduct.

- Require and mandate the use of alternatives to exclusionary discipline and interactions with law enforcement.
- Reiterate that law enforcement should never be involved in school discipline and provide guidelines that operationalize what that means and how to achieve it.
- Ensure the safety of immigrant students by prohibiting information-sharing, enforcement, and collaboration between immigration officials and school officials.
- Ensure that threat assessment programs are not utilized to criminalize students, suspend them in or out of school, or otherwise exclude them from school.
- Ensure that social media monitoring programs, such as those that monitor student activity on Facebook, Twitter or Instagram, are not used to exclude, criminalize, or target students unless they express an imminent threat to their own safety or the safety of others;
- Provide schools with the technical assistance and financial resources needed during the COVID-19 pandemic, and particularly to address and prevent harmful disciplinary actions.

Overall Recommendations:

- Reassert, through leadership and funding, support for SEAs and LEAs to design and implement professional development resources on culturally responsive pedagogy, the harms of racial and ethnic stereotypes and biases, the history of racism and the struggle against it, and the importance of parent engagement.
- institute greater oversight and enforcement by ED and DOJ, through their respective civil rights offices, of SEAs and LEAs as well as Juvenile Detention and Correctional Facilities that violate the educational and civil rights of youth and students.
- Delegitimize policing as a safety mechanism as the data, both qualitative and quantitative, has consistently shown what happens when schools legitimize policing practices.
- Fund, support, and implement culturally-sustaining educational practices to shift how an entire school approaches supporting, uplifting and sustaining all cultures through curriculum, pedagogy, policies, and practices.
- End the School Violence Prevention Program (SVPP) and Community Policing Development (CPD) micro-grants and resource alternatives that do not include school hardening or police in schools in order to improve school security. Neither DOJ nor ED should fund police in schools or information-based sharing technology between schools and law enforcement.
- End programs that fund surveillance technologies in schools, including but not limited to risk assessment algorithms and data sharing agreements, social media

monitoring, facial recognition technology and other biometric surveillance systems.

4. **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.**

    In-school and out-of-school suspensions must be eliminated for all students in pre-K through fifth grade. Use of exclusionary discipline for students in pre-K through third grade should be banned, and not included as required or necessary tools for educators in disciplinary codes to address misbehavior or minor misconduct. No research shows the use of suspensions as a response to minor misconduct is effective. California, Texas and Ohio have banned the use of suspensions for minor misconduct for young children, and in California the use of suspensions as a form of discipline has been banned through grade eight.

    (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**.

    The use of disciplinary exclusion should continue to be reduced, with the goal of their complete elimination once appropriate alternatives are in place. Over 30 years, expanded zero tolerance policies and an overreliance on exclusionary school discipline have too often led to suspensions, expulsions, referrals, arrests and push-out of students for a broad range of behaviors that are often typical of normal adolescent development. The over-extension of zero tolerance policies has too often led to the disconnection from school and the criminalization of Black and Brown students and youth, students with disabilities, and LGBTQ+ students and youth --- for behaviors and infractions that can and should be addressed without the use of exclusionary discipline or the involvement of law enforcement. Research shows students and youth of color are subject to larger achievement gaps and more harsh forms of discipline than their White counterparts, the racial disparity between girls is more pronounced than the disparity between boys. Further, arrests, suspensions, expulsions, and barriers to school re-entry cut students off from positive interactions and relationships with adults in supportive settings such as school, thus causing a variety of negative life outcomes.

    (c) **Discipline issues relating to dress and grooming codes (including restrictions on hairstyles).**

    Answer: Discipline issues relating to dress and grooming codes continue to be an issue that we and many of our coalition partners are confronting because of their

FℰᵈSDC

racist, xenophobic and disproportionate applications. As such, we believe that dress codes and grooming standards--including mandatory uniform policies, which tend to be adopted in majority Black schools--should be abolished or at a minimum, receive heightened scrutiny under federal civil rights law. Dress codes and grooming standards disproportionately affect girls as they often serve as a means of enforcing gendered notions of attire, perpetuating racial stereotypes about cultural attire, and wrongfully putting the onus on girls for "distracting" others with their dress. Studies show that Black girls are more likely than other demographics of students to lose instruction time through exclusionary discipline, such as in- and out-of-school suspensions, as a result of a dress code or grooming violation. Dress codes can also specifically harm LGBTQ+ students and other gender-nonconforming or gender-expansive youth. ED should address this problem by prohibiting the use of exclusionary discipline on students based on their gender and sexist dress and grooming standards in school. ED should also restore pre-1982 regulations related to dress and grooming standards with updates to prohibit policies that have a disparate impact based on sex (including gender identity, sexual orientation, pregnancy and related conditions).

(d) Corporal punishment.

Answer: We oppose all corporal punishment in schools and support legislation ending the use of corporal punishment, such as the Protecting Our Students in Schools Act of 2021 (H.R. 3836, S. 2029). Although the majority of State Educational Agencies (SEAs) prohibit the use of corporal punishment in schools, nineteen states continue to allow this brutal treatment of primarily Black and Brown students, as well as (or including) students with disabilities.

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

Answer: Seclusion and restraint[25] should be eliminated, for disciplinary purposes and otherwise. Seclusion and restraint are inherently traumatic and can be life-threatening, particularly when a physical restraint restricts breathing. A 2009 report from the Government Accountability Office (GAO) found that at the time there was no federal oversight of restraint and seclusion practices and that instances of death and significant injury could be attributed to its use - a reality that has not significantly improved nor changed within the twelve years since the report was published. A 2019 ProPublica report on seclusion as used in the state of New Jersey found that New Jersey school districts rarely reviewed reports of restraint and seclusion unless they were requested by reporters, that the children being monitored during seclusion

---

[25] This coalition gives to the term "restraint" and the term "seclusion" the same meaning that these terms have within the May 26, 2021 introduced version of the Keeping All Students Safe Act of 2021 (KASSA H.R. 3474, S.1858).

were under traumatic levels of stress, and that seclusion could occur not because of safety concerns but due to minor behavioral disturbances or actions of defiance.

The Department of Education Office for Civil Rights' (OCR) Civil Rights Data Collection (CRDC), in every reported year, finds that restraint and seclusion are used primarily on youth with disabilities, and on Black and Brown youth with disabilities. For example, in the 2017-2018 school year, the Restraint and Seclusion CRDC issue brief reports that students with disabilities made up 80% of all students subjected to seclusion and restraint despite being only 13% of the student body. It additionally states that Black students (for example) were 26% of those with disabilities subjected to physical restraint and 34% of those with disabilities subjected to mechanical restraint, despite making up only 18% of students with disabilities. These disparities inflict significant traumatic harm upon our nation's Black and Brown children.

Restraint and seclusion are not just traumatic but completely unnecessary. Student social-emotional regulation can be managed by whole-school, holistic, trauma-informed mental health, academic, and social supports that do not punish students for their behavior, such as Positive Behavioral Interventions and Supports (PBIS). For students whose disabilities can materialize into negative appearing behaviors, schools must conduct Functional Behavioral Assessments (FBAs) and other necessary assessments and develop a Behavioral Intervention Plan (BIP) based on the resulting data that incorporates PBIS. Additionally, restraint and seclusion in situations where a person is an imminent threat to themselves or others are also not necessary. Training modules exist that can help educators and administrative staff learn to de-escalate behavior without resorting to restraint and seclusion.

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

To be clear, we unapologetically support police-free schools.. The American Criminal Legal System is a stain on our democracy. Our schools should not be a mirror reflection of a system that replicates and reinforces patterns of racial and economic oppression that trace from slavery, including Black Codes, Convict Leasing, Jim Crow Laws, and The War on Drugs. What has resulted through the increased criminalization of students and youth, an overreliance of law enforcement in schools, the implementation of discriminatory and exclusionary policies, and school hardening practices and tactics, is the school-to-prison pipeline. It denies millions of youth and students the opportunities, legal equality, and human rights they deserve, and fuels high rates of racial disproportionality and traumatic harm to Black and Brown children.

Police violence against Black girls is not part of isolated incidents, but rather an ongoing systemic issue in the U.S. education system that ED so far has not addressed.

ED must take steps to get police out of schools, as a means of affirming Black girls and demonstrating that they are as deserving of care and support as any other student.

The school to prison pipeline creates additional harms for immigrant and undocumented youth. School arrests and student criminalization can lead to referrals to U.S. Immigration and Customs Enforcement (ICE) agents for immigration detention and deportation. SROs and school police have increasingly pushed out immigrant youth through accusations of gang affiliation.[26] School incident reports detailing vague suspicions of a student's purported gang activity such as doodling in class or wearing a certain color or type of clothing often make their way into federal immigration enforcement investigations to help build out deportation cases.[27] Even where the harms of school police interaction stop short of deportation, school arrests can impact a students' ability to apply for citizenship in the future as well as have serious effects on student emotional wellbeing.

We must listen to students and youth to understand what safety means and looks like to and for them, and build schools that are holistically safe, supportive and provide culturally-sustaining educational practices. We have to move beyond police involvement, zero tolerance, and exclusionary school discipline policies, and focus on alternatives that support the whole student in an environment without harmful interactions with law enforcement.

This new paradigm must not just lead to changing policies and practices but to establishing police-free schools. It must shift resources away from investments in criminalization and policing, and towards culturally-sustaining educational practices and schools, wraparound supports, curriculum, pedagogy, mental and behavioral health services, and more. It is through this approach, and through establishing students' and families' cultural knowledge, experiences, and perspectives in all aspects of the school culture, that we will end the school to prison and deportation pipelines, end the criminalization of youth, and create healthy, thriving, culturally-sustaining, and holistically safe school communities.

We know and have long acknowledged policing in the U.S. has a racist and damaging history. Law enforcement and policing tactics have no place in schools. Especially because they are a driving force behind the criminalization of Black and Brown students and youth and continue to subject all youth and students to physical, emotional, and verbal harms and harassment. If the Biden Administration claims to be devoted to advancing racial equity frameworks and environments as well as

---

[26] See New York Immigration Coalition & CUNY School of Law, Swept Up in the Sweep: The Impact of Gang Allegations on Immigrant New Yorkers 33-35 (June 2018), https://mk0newyorkimmign9f3m.kinstacdn.com/wp-content/uploads/2018/06/SweptUp_Report_Final-1.pdf.
[27] See, e.g., Hannah Dreier, He Drew His School Mascot — and ICE Labeled Him a Gang Member, ProPublica (Dec. 27, 2018), https://features.propublica.org/ms-13-immigrant-students/huntington-school-deportations-ice-honduras/.

FĕdSDC

supporting underserved communities, and the ED and DOJ are committed to the elimination of racial disparities in schools, then it is imperative to move away from exclusionary school discipline policies that have negative impacts on the educational outcomes of students of color and students with disabilities, and center the voices of directly impacted youth, students and families.

The Civil Rights Data Collection and the 2014 School Discipline Guidance are both well-known and established. They have provided significant data, information, and context about the rampant racial disproportionality that exists in K-12 schools, and the physical, emotional, and verbal traumas that students of color and students with disabilities face. Yet, while we still need more data, and need a revised and stronger guidance from ED, we also need both ED and DOJ to significantly ramp up the resourcing and support culturally-sustaining, holistically safe school communities and make it a mandated priority for schools to implement culturally-sustaining educational practices, while moving away from punitive and draconian practices. As ED and DOJ undertakes this work and efforts, we demand that you both move away from police in schools as a first step and model all aspects of the school community in a culturally-sustaining ways by:

- Supporting efforts and legislation such as the Counseling Not Criminalization Act (H.R. 4011, S. 2125);
- Divesting from law enforcement strategies and schools and eliminate the prioritization on the reliance of law enforcement, which is not limited to physical presences of police in schools, but also their interactions with students and youth, the ways in which schools share and provide information to law enforcement, and law enforcements interactions with students and youth outside of school campuses in the surrounding communities that are also part of the school community, its culture and climate; and
- Delegitimize policing as a safety mechanism, as it does not promote or equate safety, especially for students of color.

(g) Referrals to alternative schools and programs.

Answer: Modern-day segregation is subtler than it was in 1954 or 1973, but it is still just as harmful and insidious. Segregation, as used herein, not only refers to the District's practice of placing students with disabilities in rooms or schools separated from their peers without disabilities, but also encompasses all of the other exclusionary practices used by the District to separate students of color and disabled students from their peers. Those practices include referrals to alternative schools and programs. Schools use these practices to avoid providing Positive Behavioral Supports and Interventions (PBIS) and holistically safe, supportive and culturally-

sustaining educational practices. As a result, hundreds of thousands of students are placed in inferior educational environments where they are subject to even harsher disciplinary practices, including restraints and seclusions, and provided an education with lower academic standards. These students are often trapped in these alternative placements for the rest of their academic careers with no route back to public schools. As ED and DOJ undertake this work and efforts, we demand that you monitor school districts to ensure they implement PBIS and have structures for providing push-in behavioral and academic services to prevent segregation of disabled students of color.

(h) Threat assessment practices.

Answer: Students and youth are not threats - and the entire threat assessment framework that has been implemented and lifted up by ED, DOJ, and the NTAC of the U.S. Secret Service is wholly incompatible with children in schools. Threat assessments are unnecessary and inappropriate in a number of contexts, and in the very few, and remote, instances they could be helpful in preventing catastrophic events; their effectiveness has yet to be determined or proven.

All Threat Assessments involve direct referrals to law enforcement. OCR should deem all Threat Assessments with police in schools as a referral to law enforcement and should break down the referrals to law enforcement by type or reason.

The "threat assessment" approach is further embedding a massive law enforcement infrastructure in our schools – contributing to a prison-like environment in what should be a sanctuary of learning. Further, the ballooning of this approach across the country is blithely ignoring the severe negative consequences of the approach, including harm to children of color and children with disabilities.

We will continue to confront the harms of threat assessments and seek to stop the expansion of privacy and civil rights violations, and discriminatory assessments and interventions under threat assessments.

For additional concerns FedSDC has regarding threat assessments, see our response above to question two under Threat Assessments.

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

Answer: The current era of digital learning has heightened pre-existing concerns about student surveillance and privacy as students are now monitored through social media, digital learning platforms, facial recognition cameras, device usage, location data, covid-surveillance tools, and more. As technologies have advanced over the years, the scope and depth of the surveillance and data collection has vastly expanded, with very little oversight or regulation.

Millions of students are monitored daily by private vendors contracted by schools. Gaggle, for example, is a leading provider of school email and shared document monitoring and is currently used to monitor a staggering 4.5 million students across 1,400 school districts. Surveillance companies like Gaggle are able to monitor everything from professional emails to personal chat messages, without permission from the students themselves. Student surveillance does not stop at the school doors but continues everywhere children carry their school-issued computers and whenever they log into school accounts. Digital learning during the Covid-19 pandemic has meant that students and families have found themselves subject to school surveillance inside their homes and to devastating effects. For example, families struggling to support their children with virtual learning have experienced traumatic and unnecessary contact with law enforcement and child services.

As students return to physical school buildings, they are increasingly greeted by facial recognition technology despite studies that prove that facial recognition technology is inaccurate, and miscategorizes the faces of women and people of color, who, as a recent federal study shows, are up to one hundred times more likely to be falsely identified. With no oversight for the use of facial recognition technology in schools, students of color run the risk of winding up in unregulated police and gang databases, or even arrested and prosecuted, due to the inaccuracy of this technology and its disproportionate use against communities of color.

(j) 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.

Answer: Even when schools have PBIS and restorative justice policies and practices on paper, punitive and discriminatory discipline practices proliferate largely due to schools' failures to incorporate these practices into school structures through training. Educators, administrators, and allied professionals need regular and repeat training to develop a shared understanding of the harms of punitive discipline and the need for PBIS and restorative practices. All staff should understand the impact of punitive discipline on children's learning, behavior, growth, and ability to maintain relationships. Educators must trust that they will be supported by their colleagues and leadership when they raise issues with schools' use of punitive discipline. Training should further help staff incorporate PBIS and restorative practices into the existing school structures instead of using those practices as on-offs that "disrupt" or break-up class schedules. As a result, students should be able to work collaboratively *with* their educators to organically utilize restorative and positive practices in the classroom.

(k) Discipline related to attendance and time management.

Answer: Use of arrests, exclusionary discipline policies, referrals to law enforcement, family courts, and truancy courts should be eliminated and not used as remedies to address tardiness, truancy or attendance related issues. There is a myriad of interventions to address attendance and time management issues that do not require criminalizing or compounding absenteeism or attendance by formal or informal removals from schools.

(l) 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.

Answer: Title IX, Title VI, Section 504, and the Americans with Disabilities Act (ADA) prohibit retaliation against those who complain of discrimination based on sex, race, national origin and disability, in addition to ensuring that schools respond effectively to harassment based on these traits. Unfortunately, we know all too well how student survivors of sexual harassment who courageously report such encounters—especially survivors of color, survivors with disabilities, LGBTQ survivors, and pregnant or parenting survivors—are often punished when they turn to their schools for help and support. Some are disciplined for physically defending themselves against their harassers, acting out in age-appropriate ways in response to trauma, violating nondisclosure agreements imposed by the school by talking to friends about their harassment, and missing school to avoid seeing their harasser.[28] Others are punished for sexual contact on school grounds, based on administrators' conclusions that the contact was "consensual," premarital, or that the accusations of assault were false—meaning these students are punished for their own sexual assaults.[29] Student survivors in college have also increasingly faced retaliation from their assailants who seek to weaponize school disciplinary proceedings by filing baseless cross-complaints in an effort to silence and punish victims.[30] Department guidance and the updated Title IX rule must make it clear that these types of treatment and responses constitute unlawful retaliation.

---

[28] See, e.g., National Women's Law Center, 100 School Districts: A Call to Action for School Districts Across the Country to Address Sexual Harassment Through Inclusive Policies and Practices 2 (2021), https://nwlc.org/wp-content/uploads/2021/04/100SD-report-5.3.21-vF.pdf; Christina Cauterucci, BYU's Honor Code Sometimes Punishes Survivors Who Report Their Rapes, Slate (Apr. 15, 2016), https://slate.com/human-interest/2016/04/byu-s-honor-code-sometimes-punishes-survivors-who-report-their-rapes.html.

[29] See, e.g., S.M. v. Sealy Ind. Sch. Dist., No. CV H-20-705, 2021 WL 1599388, at *2-*3 (S.D. Tex. Apr. 23, 2021); 100 School Districts, supra note 5, at 2; Brian Entin, Miami Gardens 9th-grader says she was raped by 3 boys in school bathroom, WSVN-TV (Feb. 8, 2018), https://wsvn.com/news/local/miami-gardens-9th-grader-says-she-was-raped-by-3-boys-in-school-bathroom; Nora Caplan-Bricker, "My School Punished Me," Slate (Sept. 19, 2016), https://slate.com/human-interest/2016/09/title-ix-sexual-assault-allegations-in-k-12-schools.html; Aviva Stahl, 'This Is an Epidemic': How NYC Public Schools Punish Girls for Being Raped, Vice (June 8, 2016), https://broadly.vice.com/en_us/article/59mz3x/this-is-an-epidemic-how-nyc-public-schools-punish-girlsfor-being-raped.

[30] Know Your IX, The Cost of Reporting: Perpetrator Retaliation, Institutional Betrayal, and Student Survivor Pushout 17-22 (Mar. 2021), https://www.knowyourix.org/wp-content/uploads/2021/03/Know-Your-IX-2021-Report-Final-Copy.pdf.

FedSDC

Students of color, LGBTQ+ students, students with disabilities, and pregnant and parenting students, who face additional discrimination also based on these identities, are more likely to be retaliated against after reporting sexual harassment and assault. For example, combined sex and race stereotypes lead school educators and administrators to "adultify" Black girls, seeing them as more promiscuous and less deserving of protection and care than their peers.[31] Adultification bias causes schools to view the sexual harassment reports of Black girls and other girls of color as less serious and instead of launching an investigation, choose to ignore, blame, or punish them. Similarly, schools are less likely to believe LGBTQ+ student survivors due to reliance on stereotypes that they are "hypersexual," "deviant," and/or invite "attention" toward themselves.[32] These biases fuel discriminatory responses to reports of harassment or assault and unjust disciplinary practices. For example, a national survey of LGBTQ+ youth found that 7.3% were disciplined after reporting their own victimization to school staff.[33] When LGBTQ+ student survivors decline to report harassment or assault—as most do not because they doubt an effective response—they may nonetheless be disciplined for it.[34] Student survivors with disabilities also face challenges when reporting sexual harassment based on stereotypes that students with disabilities are less credible[35], and because they may have difficulty describing or communicating about the harassment they experienced, especially if they have a developmental or cognitive disability.[36]

When schools fail to respond effectively to sexual harassment and assaults, the impact can be devastating—leading to many student survivors pushed out of school because they do not feel safe, are expelled for lower grades in the wake of their trauma, or suspended after they report the instance(s) to administrators.

---

[31] Georgetown Law Center on Poverty and Inequality Girlhood Interrupted: The Erasure of Black Girls' Childhood, 1 (2018), https://www.law.georgetown.edu/poverty-inequality-center/wpcontent/uploads/sites/14/2017/08/girlhood-interrupted.pdf.

[32] See, e.g., Gillian R. Chadwick, Reorienting the Rules of Evidence 39 Cardozo L. Rev. 2115, 2118 (2018), http://cardozolawreview.com/heterosexism-rules-evidence; Laura Dorwart, The Hidden #MeToo Epidemic: Sexual Assault Against Bisexual Women, Medium (Dec. 3, 2017), https://medium.com/@lauramdorwart/the-hidden-metoo-epidemic-sexualassault-against-bisexual-women-95fe76c3330a.

[33] Joseph G. Kosciw, Caitlin M. Clark, Nhah L. Truong, & Adrian D. Zongrone, The 2019 National School Climate Survey: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Youth in Our Nation's Schools 34 (2020), GLSEN, https://www.glsen.org/research/2019-national-school-climate-survey.

[34] The same survey found that higher levels of victimization are associated with higher rates of discipline: compared to LGBTQ students who experienced no or low levels of victimization, LGBTQ students who experienced higher levels of victimization based on their sexual orientation were nearly twice as likely to have been disciplined at school (47.0% vs. 26.7%). LGTBQ students who experienced higher levels of victimization based on their gender expression were substantially more likely to have been disciplined at school (46.8% vs. 27.2%). In this case, "victimization" included sexual assault and harassment, verbal harassment, physical harassment, and physical assault. Id. at 50.

[35] Leigh Ann Davis, People with Intellectual Disabilities and Sexual Violence 2, The Arc, https://www.thearc.org/document.doc?id=3657 (last updated Mar. 2011).

[36] E.g., Nat'l Inst. of Justice, Examining Criminal Justice Responses to and Help-Seeking Patterns of Sexual Violence Survivors with Disabilities 11, 14-15 (2016), https://www.nij.gov/topics/crime/rape-sexual-violence/Pages/challenges-facingsexual-assault-survivors-with-disabilities.aspx.

The Department must restore and strengthen Title IX protections. This includes restoring the definition of sexual harassment consistent with earlier guidance (and with OCR's standards for race- and disability-based harassment claims) and requiring that schools' disciplinary procedures be fair by allowing both parties the same procedural rights, also consistent with earlier guidance (including, but not limited to, requiring a standard of proof that equally burdens both parties). The Department should require schools to provide supportive measures, including reasonable academic, safety, mental health accommodations for complainants to ensure they are able to continue to learn and remain in school, and provide disability accommodations for both respondents and complainants to ensure fair responses. The Department should also explicitly prohibit any forms of retaliation against those who disclose instances of sex discrimination and protect student survivors against retaliation. This includes, but is not limited to, prohibiting the punishment or discipline towards a victim for collateral conduct that occurred during or in response to the harassment or assault (e.g., alcohol or drug use, consensual sexual contact, reasonable self-defense, presence in restricted parts of campus, nonattendance to avoid seeing the harasser, etc.). The Department should also continue to prohibit punishment and discipline for "false" reports that are based solely on the school's conclusion that there was not sufficient evidence to support a finding of harassment.

(m) Zero-tolerance or strict, three-strike policies.

Answer: Zero-tolerance policies and three-strike policies should be eliminated. They are ineffective, mirror the criminal legal system, and disproportionately impact Black and Brown students and youth of color. Zero-tolerance and three-strike policies were written into school handbooks in the 1990s, created originally to be a deterrent for bringing weapons into schools. These policies stemmed from law enforcement's adoption of the "broken windows" theory and the Gun-Free Schools Act. Moreover, these racist policies and laws that were built off racist theories and views have had a negative and significant impact on the achievement gap as well as furthering the School to Prison and Deportation Pipelines and criminalization of students and youth. Far too often zero-tolerance policies funnel students into these pipelines. Zero-tolerance policies have been used in a racially discriminatory manner that is specific, consistent, and harsh towards Black and Brown students and youth, when rules are broken (often minor school based offenses such as dress code violations, vandalism, talking back, insubordination, etc.), compared to their White counterparts for the same offenses.[37] To prevent the further criminalization and undeniable harms zero-

---

[37] 14 See, e.g., Russell Skiba and M. Karega Rausch, "School Disciplinary Systems: Alternatives to Suspension and Expulsion," in G.G. Bear and K. M. Minke (eds), Children's Needs III: Development, prevention, and intervention (pp. 87-102), http://www.indiana.edu/~equity/docs/Alternatives_to_Expulsion.pdf; National Association of School Psychologists; Annenberg Institute for School Reform, "Creating Safe Passage: Collaborative Approaches to Equitable School Discipline Reform," Voices in Urban Education, No. 42, 2015, http://vue.annenberginstitute.org/issues/42.

FēdSDC

tolerance have on students and youth, in particular Black and Brown students including students with disabilities, schools and districts must use alternatives such as restorative practices, intervention teams, access to mental health professionals, training opportunities for counselors, culturally-sustaining educational practices and wraparound services and supports. Other strategies that focus on teaching students social-emotional skills are more beneficial than exclusionary disciplinary, zero-tolerance and three-strikes policies.

(n) Discipline issues relating to returning to in-person instruction.

Answer: We are concerned about a potential rise of disciplinary removals for students with disabilities, whose needs and behavioral manifestations of their disabilities may pose unique challenges in the reopening of schools and ongoing application of COVID-19 precautions. In the 2020 publication co-authored by the Center for Learner Equity and the National Center for Learning Disabilities, Disproportionate Discipline & COVID-19: A Call for Change, they noted:

"Student compliance with new safety requirements will present new challenges and heightened scrutiny in an environment in which many educators are particularly anxious about their health... Applying this new paradigm of school rules to students with disabilities demands intentional planning to avoid a tidal wave of harsh discipline in the name of preventing the spread of the virus...Schools will need to prioritize professional development and intentional staff coaching in order to make important shifts school-wide. By investing in the capacity of their staff, schools will be better prepared to implement strategies that support the diverse needs of families and students. We suggest that schools employ three proactive strategies to ensure that students with disabilities are able to thrive in school in our new reality: robust communication, collaborative planning, and a commitment to a holistic approach to behavior…[And] we suggest that schools reject the urge to rely on suspensions, expulsions, or restraint and seclusion and commit to not authorizing any of these discipline practices for violations of COVID safety rules...Given that this entire generation of students

---

15 Edward W. Morris and Brea L. Perry, "The Punishment Gap: School Suspension and Racial Disparities in Achievement," Social Problems, Vol. 63, No. 1, 2016, 68–86; M. Karega Rausch and Russell J. Skiba, "The Academic Cost of Discipline: The Relationship Between Suspension/Expulsion and School Achievement," Center for Evaluation and Education Policy at Indiana University, Annual Meeting of the American Educational Research Association, April 2005, http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/Academic-Cost-of-SchoolDiscipline.pdf; Kaitlin P. Anderson, Gary W. Ritter, Gema Zamarro, "Understanding a Vicious Cycle: Do Out-of School Suspensions Impact Student Test Scores?," Dept. of Education Reform at The University of Arkansas, EDRE working paper, March 30, 2017, http://www.uaedreform.org/downloads/2017/03/understanding-a-viciouscycle-do-out-of-school-suspensions-impact-student-test-scores.pdf; Andy Whisman and Patricia Cahape Hammer, "The Association Between School Discipline and Mathematics Performance: A Case for Positive Discipline Approaches," Division of Teaching and Learning Office of Research, West Virginia Dept. of Education, Sept. 2014, https://files.eric.ed.gov/fulltext/ED569903.pdf; Tom Loveless, 2017 Brown Center Report on American Education: Race and school suspensions, Brookings Institute, March 22, 2017, https://www.brookings.edu/research/2017-brown-center-report-part-iii-race-and-school-suspensions/.

FedSDC

has experienced an enormous disruption in their educational opportunities, we cannot afford to inflict more trauma or further disengage them. Rather, the focus should be on giving students the support they need." [38]

Also, based on our active and ongoing partnerships with school special education leaders, we are concerned that some schools may try to convert COVID-19 virtual instruction into a new version of homebound instruction for students with disabilities who have (real or perceived) behavioral challenges at school. Such abuse of the legacy of the 2020-2021 school year's virtual instruction would both uniquely discriminate against students with disabilities and deny them a free appropriate public education (FAPE), but also, present a massive circumvention of the official disciplinary process by de facto expelling them from campus.

We urge OCR to work across ED to ensure these issues are addressed in any forthcoming guidance (COVID-19 or otherwise).

5. **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)?**

Answer 1: OCR must make clear to LEAs and SEAs that enforcement of disparate impact is an obligation, not a policy preference, and OCR will be using its enforcement authority to address disparate impact.

ED and DOJ should issue joint guidance on the following, including but not limited to:

A. **Law Enforcement (Police in Schools):** ED and DOJ must provide clear and explicit guidance to SEAs and LEAs to discontinue the use of law enforcement in schools, including Memorandums of Understandings (MOUs) with law enforcement, and prohibit information sharing and access to student records with law enforcement and Immigration, Customs and Enforcement (ICE).

Rationale: Research has shown law enforcement in schools poses a high risk of harm to youth and students. We know from research (see attached outline of research: *Harms of SROs to Black and Brown Students*), youth and student testimonies, video evidence, and law enforcement themselves that police in schools creates a more punitive and negative learning environment impacting all students but

---

[38] Wendy Tucker and Meghan Whittaker, Disproportionate Discipline & COVID-19: A Call for Change (2020), p. 3-7. https://www.centerforlearnerequity.org/wp-content/uploads/Discipline-in-Times-of-Covid-1.pdf.

FedSDC

disproportionately harming (physically and emotionally) Black and Brown students, including students with disabilities. ED and DOJ have recognized and acknowledged this, though the ED and DOJ should not neglect their responsibilities to protect students of color and with disabilities from the discriminatory and disproportionate consequences of police in schools. These consequences include suspensions, arrests, ticketing, and referrals to law enforcement or courts. Additional harms include academic disengagement, school dropout, family separation, incarceration, emotional trauma, and other lifelong collateral consequences.

ED and DOJ should strongly articulate guidance on establishing police-free schools through measures, such as: 1) discontinuing school based police programs, such as those in New York, Baltimore, etc., 2) establishing or rearticulating FERPA prohibitions on police access to records and information, and 3) providing significant protections against law enforcement and ICE policies and actions that are harmful to undocumented or immigrant students or students from immigrant families.

B. **Data Collection (CRDC):** ED and DOJ should provide guidance to schools and districts on the Office for Civil Rights' (OCR) role in the collection and reporting of the Civil Rights Data Collection (CRDC). Additional guidance should include OCR's authority not only over the implementation of the CRDC, but its Title VI enforcement. The schools and districts that receive Federal financial assistance from ED have to provide complete and accurate data on all required elements of school discipline data. ED and DOJ must make clear that failure to comply will be a violation of federal law and would prevent OCR from the implementation of regulations and therefore compliance with civil rights laws. As such, ED must affirmatively state that schools and districts that fail to comply or conceal disparities in school discipline data would be in violation of Title VI and subjected to compliance enforcement and oversight, including investigations and the withdrawal of federal funding for all programs and/or activities of a recipient of Federal financial assistance.

Rationale: The CRDC is essential for the public to understand the state of education in the U.S., and in supporting the mission of OCR—to ensure compliance with anti-discrimination laws. Without consistent and affirmative communication with SEAs and LEAs from OCR about their obligations to report data, SEAs and LEAs will continue to fail to provide accurate and complete data. It is a core requirement that the CRDC collection and reporting be completed in order to ensure compliance with civil rights laws.

C. **Threat Assessments:** ED should provide guidance through a civil rights lens around threat assessments and reassess the Student Privacy Policy Office's problematic student privacy guidance.

Rationale: ED has a responsibility to address the many concerns with threat assessments, in order to stop their inappropriate and unlawful use. Threat assessments are not evidenced based and are harmful, especially for intersectional youth, when they are used as a "benign" method to obtain services for children who are not otherwise identified as needing them, or as a way to prevent misdemeanor or minor criminal behavior and school code violations.

   D. **Culturally-Sustaining Education Programs (pedagogy, curricula and training):** ED should clearly define and provide guidance on requirements for establishing culturally-sustaining educational practices, which requires the pedagogies, curricula, policies, and practices of schools to recognize and value the importance and inclusion of students' and families' cultural knowledge, experiences, and perspectives.

Rationale: This is aligned with the goal to change (through curriculum, pedagogy, policies, practices, etc.) the approaches on how schools support, value, and elevate all cultures within a school. Siloed practices will not advance the necessary shifts and evolution in school climate to build responsive and holistic school communities where everyone feels safe and welcomed.

   E. **Alternatives to Exclusionary School Discipline (elimination of exclusionary discipline and non-exclusionary):** ED and DOJ must reinforce and uplift examples of alternatives to school discipline that are transformational, rooted in restorative practices and justice, trauma and healing-informed, provide mental health supports, and are culturally-sustaining. There should be additional clarity made to schools and districts with already high percentages of disproportionality, that the continued application of exclusionary discipline policies is a Title VI violation.

Rationale: Without enforcement, schools and districts will continue to advance exclusionary discipline and zero tolerance policies that are both racially discriminatory and disproportionate. Absent the guidance and accountability, Black, Brown, Native, Immigrant, students with disabilities and other students of color will continue to suffer tremendous harms including arrest, physical and emotional harms, and loss of instruction time and experience a widening of educational achievement gaps, etc.

   F. **Equitable Distribution of School Resources and Connection to Title VI Enforcement:** ED should update guidance on equitable distribution of resources, with an emphasis on prioritizing resources that support student wellbeing and mental health over those that criminalize students. The previous *Dear Colleague Letter on resource equity obligations of school districts, States and individual schools that receive Federal funds* referred not only to funding, but also "access to rigorous courses, academic programs, and extracurricular activities; stable

workforces of effective educators, leaders, and support staff; safe and appropriate school buildings and facilities; and modern technology and high-quality instructional materials." The updated guidance should make clear that resource equity also includes access to adequate social-emotional supports, such as school counselors, psychologists, and trauma-informed practices that are evidence-based.

Rationale: Money spent on school resource officers (SROs) combined with an abundance of other school surveillance mechanisms means that millions of students—mostly Black and Brown students—attend schools that significantly lack resources for mental health and other student supports. In 2018, the Center for American Progress found that "schools where the non-White population was greater than 50 percent of the school population were two to 18 times more likely to use a mix of metal detectors, school police and security guards, locked gates, and random sweeps than schools where the non-White population was less than 20 percent." Many of these schools with heavy surveillance and criminalization mechanisms are the same ones that do not employ a single school nurse. This gross inequitable distribution of school resources reflects a bias deeply ingrained in the national consciousness: White students are more deserving of care and support than Black and Brown students. Mental health resources give students the social and emotional wellbeing to be able to focus on and benefit from instruction and academic activities. Without them, LEAs and SEAs are effectively denying Black and Brown students' access to education guaranteed under Title VI. This is particularly true in the wake of the disruptions, death, and economic loss ravaging Black and Brown communities across the nation during the COVID-19 pandemic. For these reasons, the updated guidance should inform SEAs and LEAs of how OCR may interpret inequitable distribution of resources that disproportionately criminalize Black and Brown students as a violation of Title VI and other civil rights laws.

G. **Community and Stakeholder Oversight, Guidance and Coordination:** ED must convey to schools and districts that directly impacted families, youth, students, local organizing groups, and community organizations, are necessary and required stakeholders who should be part of any conversations focused on proposed policies, procedures and practices related to school discipline and climate. Specifically, ED must require SEAs and LEAs to establish continuous and ongoing stakeholder oversight, guidance, and coordination of activities or policies with the aforementioned groups to ensure a policies and strategies are decreasing exclusionary discipline disparities and to effectively implement positive, culturally-sustaining approaches to holistic school climate and safety.

Rationale: Schools and districts should not make policies in isolation nor without the consultation and approval from communities who stand to be most impacted. Moreover, it is imperative that local, state, and national agencies abide by the vision of safety said stakeholders define for themselves and for their school communities. We have seen the

FedSDC

negligence of enforcement play out far too long, resulting in an ever-increasing presence of militarized schools, discrimination and disproportionality, and physical harms and trauma inflicted on Black, Native, or Immigrant students, youth and children in our institutions of learning.

H. **Training and Professional Development (should not include law enforcement or school hardening consultants):** Both ED and DOJ should highlight the importance of and mandate requirements for training school educators on bias reduction (implicit and explicit), culturally-sustaining educational practices, stress management, trauma, child and adolescent development, healing informed practices, culture, restorative and transformative justice, and racial equity, etc. These are critically important to creating school communities that focus on centering the voices and perspectives of youth and students, particularly those who are directly impacted by police in schools and exclusionary discipline, students with disabilities and LGBTQ+ students. The guidance should emphasize the importance of counselors, social workers, and other mental health professionals in schools to provide support and services. The guidance should also make clear that law enforcement, school hardening consultants, firms, and liaisons are not part of the school community, as evidence and research show they do little to foster culturally-suitable educational practices or create safe school environments. Further, the guidance should require ongoing training to ensure that educators are continuously learning and updating practices and that they are well-equipped to understand each new generation of students.

Rationale: ED and DOJ should explicitly state the importance of and mandate training, hiring, and retaining educators, counselors, mental health professionals, social workers, etc. who are pro-student and youth-centered, pro-racial justice, pro-immigrant, pro-disability, anti-racist and anti-oppression, and culturally-sustaining. Such action would show the federal government's commitment to creating positive school climates. It would also put schools and districts on notice that they are required to engage in training that provides culturally-sustainable approaches to education and ensure that practices are not implemented in ways that are harmful or inconsistent with the well-being of students, particularly those who have been historically oppressed, marginalized, and physically or emotionally traumatized. All training should exclude clinical and/or law enforcement-based strategies. Incorporation of such strategies only exacerbates the harm students of color, including LGBTQ+ students and students with disabilities, face. Moreover, any such approach increases the racial discrimination and disproportionality that far too many students face and is a significant step in the wrong direction.

I. **Technology and School Hardening:** First, ED and DOJ should explicitly state in guidance that both agencies are discontinuing funding and support for the planning and implementation of school hardening grant initiatives, programming,

and pilots. Second, ED and DOJ's guidance should make clear that school hardening security measures (including metal detectors and wands, weapons, guns, electronic restraints, chemical restraints, batons or tasers), zero tolerance policies, and the use of technology for predictive measures or surveillance should be discontinued. Third, ED and DOJ must make clear the arming of educators and administrators, and fortifying schools as an attempt to alleviate fears regarding school safety is not acceptable nor tolerable. Lastly, guidance on school hardening should point to the research that such measures and school hardening, despite gross examples of such practices being used in Black and Brown communities, have no evidence or proof of being effective.

Rationale: Hardening schools is not effective at keeping students safe. School hardening measures, a reliance on police in schools and arming educators and administrators places students at risk of abuse due to excessive force by police officers. It also creates an environment that puts Black and Brown students at even higher rates of experiencing physical and emotional harm as well as significantly increased rates of discrimination. We know that school hardening does not improve the overall conditions of school climate. Creating a healthy, thriving, culturally-sustaining and holistically safe atmosphere for all students, especially students of color and students with disabilities, ensures that all students are safe from practices and tactics that are racially discriminatory, oppressive, traumatizing, and are disproportionately impacting.

Answer 2: ED and DOJ should issue the following joint guidance to provide direction to state and local education officials on how the inappropriate use of school discipline affects students who are members of intersectional communities:

A. **Addressing Discrimination**: Strengthen the 2014 discipline guidance document to address discrimination under Title IX, Section 504, the ADA, and the IDEA, and specifically include examples and application regarding students of color with disabilities, Black and Native American girls or LGBTQ+ students, and other students representing intersectional communities.

Rationale: Without strong, clear guidance schools and districts will continue to discriminate, disproportionately harm and create negative impacts for students of color and students with disabilities, and gender-based harms within communities of color will continue to be overlooked.

B. **Adopting an Intersectional Approach to Fighting Discrimination:** ED should issue guidance outlining protections provided not only by Title VI, but also by Title IX, Section 504, and the ADA (alone and in combination with Title VI) against intersectional discrimination, specifically including discriminatory discipline policies and practices. The guidance should include instructing schools to use data comparators that accurately capture students' unique identities to

FedSDC

determine whether race-based or other forms of discrimination have taken place on their campuses (i.e., analyzing data under Title VI with a "race and" method, such as "race and sex" or "race and disability"). ED should clarify in the updated guidance that OCR will use an intersectional lens when considering formal complaints and investigating schools for further enforcement action, such that it will initiate investigations under all civil rights statutes implicated by the facts alleged in formal complaints to OCR, even if the complainant alleges discrimination on a single axis, such as race or sex alone.

Rationale: Practices like enacting vague "school disturbance" laws, policing girls' bodies through dress codes, and using restraint and seclusion on students with disabilities have led to overly harsh and more frequent discipline of Black and Brown students, as a result of unbridled administrator discretion and bias. For example, studies show that people are likely to "adultify" Black girls, perceiving them as loud, defiant, sexually provocative, and less innocent than their White counterparts. This gendered racial bias combined with vague policies that allow for broad administrator discretion in imposing discipline, lead school staff to punish Black girls more often and more harshly for normal childlike behaviors, even though they are not more likely than other students to misbehave. The 2014 Dear Colleague Letter on "Nondiscriminatory Administration of School Discipline" explicitly focused on Title VI guidance yet seemed to categorize race discrimination in discipline as an issue that could and should be analyzed separately from other personal characteristics like gender and disability status. This one-dimensional view of Title VI excludes the ways in which bias affects students across multiple facets of their identity and often leaves the most marginalized students without adequate relief or protection. ED should instead address the issues as intersectional, with new guidance that encourages the consideration of how students may experience discrimination as the result of multiple and intersecting identities, and outlines the overlapping protections provided to under Title VI, Title IX, Section 504, and the other civil rights laws that ED enforces.

C. **Sec. 504 and ADA Violations:** ED should firmly state that if a district's policy or practice fails to comply with the law, specifically those that violate Section 504 and/or the ADA, it could constitute a violation of Title VI disparate impact regulations.

Rationale: Failure to implement policies and practices required by disability rights laws (i.e., remedy lost instruction time due to disciplinary removals such as school-based arrests, identify students who are eligible for support and services under Section 504, address the needs and requirements of homeless youth) are Title VI violations if they impact students of color more than White students. ED's own data, and that of SEAs and LEAs, continue to show the egregious and harmful failures by schools and districts that act on behalf of, or in the best interest of students of color and students with disabilities.

As a result, ED must make clear that schools and districts who fail to act, could constitute any number of violations and denials under Section 504 and/or the ADA, but could be in direct violation of Title VI disparate impact regulations.

Additional guidance areas:

D. As with the 2014 guidance, any legal guidance documents, such as "Dear Colleague Letters," should be accompanied by resources and documentation of how schools successfully support all students, including students of color with disabilities, with effective best practices.

E. ED and DOJ should develop and publish a review of the data and research to reveal how detrimental school-based police are to children and youth that clearly indicates the resolve of the Biden Administration to end federal support for police in schools. It should include references and access to training materials on effective practices that are trauma-informed, culturally-sustaining, and devoid of police involvement and/or engagement, in order to ensure that students, educators, administrators and additional school staff are fully supported.

F. ED and DOJ should issue updated guidance that addresses the role of law enforcement on school campuses when responding to school-wide safety calls, such as shootings, catastrophic events, and natural disasters. Their role is to ensure the safety of students of color and students with disabilities, secure the scene and leave.

6. **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?**

Equity and Restorative Practices. We still live in a world where our Black and Brown children are more at risk to be killed, to not graduate from high school, to live in poverty, and to be pushed into the criminal justice system. Historical trauma and systemic oppression continue to create barriers for our communities of color.

Our school systems are in crisis. The struggle to ensure equity for our students becomes deeper, darker, and more difficult with each passing day. Why is equity needed? Our school systems were created to promote the ideals of white supremacy, leaving our students who are Black, Brown, Indigenous, low-income, or disabled without the access, opportunity, and sense of belonging of their White peers.

Equity is not a destination; it is a journey that includes institutional reckoning and transformation through healing. The transformation of our system can only happen when we accept the reality of why and how the system was formed and how it has

harmed generations of students. Restorative practices provide a compassionate, authentic, and loving way to do this hard work.

Systemic oppression exists as a result of prejudice, discrimination, and racism fueled by microaggressions and implicit biases. This has created inequity that has resulted in academic disparities; the school-to- prison pipeline; generational poverty; and poor mental, physical, and emotional health. To focus on equity requires a transformation of the systems that created the inequity. This transformation must be centered in healing and connection and begins with resetting the foundation upon which these systems are built. The work of resetting the foundations must be collective and include the voices of all those in the community. Then the community must commit to individual, communal, and systemic healing and connection through culturally responsive and culture-sustaining practices; trauma-aware and -informed care; an intentional development of resiliency; and the embracing of restorative mindsets, heart sets, and actions. In order for this transformation to continue, the work must be consistently monitored and adjusted by the community as a whole.

Additionally, Restorative justice initiatives (RJI), including restorative practices have proven to reduce the use of system generated disciplinary practices that includes prescribed punitive consequences and outcomes. This promising practice must be infused throughout all levels of educational systems to be truly effective. This includes all levels of staff, students, parents and community. Oakland and San Francisco school districts have had successful models. The following states have proven long term sustainable restorative models: California, Colorado, Illinois, Minnesota and Pennsylvania.

7. **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)?**

Answer: School discipline policies including exclusionary school discipline polices and police in schools directly contribute to lost instruction, removal from schools and the criminalization of students and youth of color, LGBTQ+ and gender-nonconforming youth, students with disabilities, and their communities, despite all evidence they are no more likely to engage in misbehavior or criminal activity than their cis gendered, non-

disabled White peers. While emergency planning and building infrastructure for positive school learning environments are important components of school design, school discipline policies that call to arm educators with weapons, increase the police presence in and around schools, and expand investments in physical security and surveillance infrastructure are disproportionately harmful, violent, and traumatizing to Black and Brown students and youth.

Research demonstrates that over-reliance on suspension and expulsion does not improve school safety, is not effective for correcting misbehavior, and fails to deter future misconduct. Suspensions also cause students to lose valuable instructional time and this is one of the reasons why they are associated with worse school-wide educational outcomes including lower achievement and increased risk for grade retentions well as, and increases in the likelihood of a student dropping out and having contact with the criminal legal justice system for juveniles and adults. However, as the CRDC shows, some schools have continued to increase suspension and expulsion rates and have exacerbated academic achievement gaps through exclusionary discipline policies that exacerbate inequities in the opportunity to learn and have resulted in continued school push-out. The CRDC with OCR, ED, and DOJ enforcement can play a huge role in lowering suspensions and expulsions by providing guidance on how districts can replace these punitive measures with restorative practices, replace law enforcement and security guards with youth counselors, mental and behavioral health specialists, and training for educators to ensure the use of strategies that create safe and inclusive learning environments for all students. Moreover, with renewed legal guidance on the potentially unlawful disparate impact of unsound or less effective approaches districts will better understand that they have an obligation to regularly review the disparities in their discipline data. Holistic, safe, supportive, culturally-sustaining and positive school climates prepare students for success and each school must use every tool at its disposal to drive innovative and comprehensive approaches to meet the needs of students, without traumatizing and victimizing students through the use of racially discriminatory and disproportionate exclusionary discipline policies and practices. Studies have demonstrated that when schools focus on what will help all students, all students benefit. To be successful, students, youth and their communities must be actively engaged and participating in their education. Due to their negative impact on graduation rates, there are also large economic costs associated with suspensions that are averted when we reduce or eliminate their use. Schools should have policies and programs in place to support this objective and eliminate exclusionary school discipline models that promote disengagement.

FedSDC understands all too well the devastating harm to young people's futures and educational outcomes the increased police presence in schools has and continues to cause. The direct consequence of police in schools, coupled with the systemic biases and

failures of police departments across the country, is the criminalization of typical adolescent behavior,[39] with deep and disturbing racial implications.[40] While Black children are only 15 percent of all children in school nationwide, they make up 33 percent of the children arrested,[41] despite research showing that children of color do not misbehave more than their White counterparts.[42] Certain subgroups, like Southeast Asian American children of refugees, are also disproportionately affected by police in schools,[43] but these data are often overlooked because of aggregated data on "others."[44] Troublesome disparities also exist for children with disabilities, where the data show they are nearly three times more likely to be arrested than children without disabilities.[45] A child may be disciplined both by the school and by law enforcement, and studies show that students who are suspended or expelled are then up to three times more likely to become involved with the juvenile legal system.[46] The school discipline system is operating as a quasi-legal system but in most instances, children have no access to counsel, particularly a specialized juvenile defense attorney, in this system. Moreover, students who face arrests are less likely to graduate, succeed academically, and have stable employment.[47] All of these factors then increase one's likelihood of coming into contact with either the juvenile or criminal legal system.[48]

In addition to its troubling consequences for student success, increased presence of law enforcement officers in schools supported by federal funding undermines student safety. Proponents of school policing often cite student safety as their primary justification, but

---

[39] American Civil Liberties Union. (2019). *Cops and no counselors: How the lack of school mental health staff is harming students.* https://www.aclu.org/sites/default/files/field_document/030419-acluschooldisciplinereport.pdf (listing 25 most common behaviors that lead to school arrest and criminal charges. The number one criminal charge is "disrupting school" for "spraying perfume, fake burping, fake fart spray, refusing to change a t-shirt, and criticizing an officer"); see also Advancement Project, et al. (2018). *Police in schools are not the answer to the Newtown shooting*. http://dignityinschools.org/wp-content/uploads/2018/03/Police-In-Schools-2018-FINAL.pdf

[40] Theriot, M. T. (2009). School Resource Officers and the criminalization of student behavior. *Journal of Criminal Justice*, *37*, 280–287. See also Nance, J. P. (2015). Students, police, and the school-to-prison pipeline. *Washington University Law Review*, *93*, 15–20.

[41] Education Week. (2017). *Which Students Are Arrested the Most*? https://www.edweek.org/ew/projects/2017/policingamericas-schools/student-arrests.html#/overview.

[42] Skiba, R. J., & Williams, N. T. (2014). Are Black kids worse? Myths and facts about racial differences in behavior. *The Equity Project at Indiana University*, 1-8. https://indrc.indiana.edu/tools-resources/pdf-disciplineseries/african_american_differential_behavior_031214.pdf

[43] Jung, P., et al. (2015). *Asian Americans & Pacific Islanders behind bars: Exposing the School to Prison to Deportation Pipeline*. https://www.searac.org/wp-content/uploads/2018/04/18877-AAPIs-Behind-Bars_web.pdf.

[44] Hu, C., & Esthappan, S. (2017). *Asian Americans and Pacific Islanders: A missing minority in criminal justice data*. https://www.urban.org/urban-wire/asian-americans-and-pacific-islanders-missing-minority-criminal-justice-data.

[45] American Civil Liberties Union (2019).

[46] American Civil Liberties Union. (2021). *School-to-prison pipeline [Infographic]*. https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline-infographic.

[47] Nance, J. P. (2015). Students, police, and the school-to-prison pipeline. *Washington University Law Review*, *93*, 15–20. https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1782&context=facultypub.

[48] Ibid.

FedSDC

there is no substantial evidentiary support for that assertion.[49] In fact, several studies have suggested that the presence of prison-like conditions such as armed officers in schools may actually make students feel less safe than if there were no police in the school.[50] Moreover, constant policing and surveillance in a place where youth are supposed to feel safe can in and of itself be trauma-inducing, regardless of the intent of the officers.[51] LGBTQ students have also reported facing hostile interactions with and, in some instances, verbal assaults by the SROs that have been appointed to protect them.[52]

ED and DOJ must collaborate with local organizing groups, students, youth, and directly impacted families to re-focus ED and DOJ funding and efforts; systematically change the cultures within schools through police-free school models; and provide curriculum, pedagogy, policies, practices, supports, and wrap-around services to enhance positive school climates. This collaboration should serve as a commitment to stop draconian and backwards approaches to school safety and support approaches that provide young people with the opportunities they need to thrive and determine a better future for themselves, their families, their communities, and our nation. As a first step and model towards supporting aspects of the school community in a culturally-sustaining ways ED and DOJ should:

- Require alternatives to exclusionary school discipline (suspensions, expulsions, arrests, ticketing, handcuffing, referrals to law enforcement or family courts, etc.,) and holistic approaches such as culturally-sustaining and trauma informed mental health supports, restorative/transformative justice, positive behavioral interventions and supports, restorative practices, social-emotional learning, culturally-sustaining educational practices and classroom management, revision of codes of conduct and elimination of harmful and racially discriminatory school discipline codes, etc.

[49] Garcia, C. (2003). School safety technology in America: Current use and perceived effectiveness. *Criminal Justice Policy Review, 14*, 30-54; Addington, L. A. (2009). Cops and cameras: Public school security as a policy response to Columbine. *American Behavioral Scientist, 52*, 1424-1446.; Borum, R., Cornell, D., Modzeleski, W., and Jimerson, S. (2010). What can be done about school shootings? A review of the evidence.
Educational Researcher, 39(1), 27-37; Casella, R. (2006). *Selling us the fortress: The promotion of techno-security equipment for schools.* Abingdon, UK: Routledge. See also American Psychological Association Zero Tolerance Task Force. (2008). Are zero tolerance policies effective in the schools? An evidentiary review and recommendations. *American Psychologist, 63*, 852-862.
[50] Schreck, C. and Miller, J. (2003). Sources of fear of crime at school: What is the relative contribution of disorder, individual characteristics and school security? *Journal of School Violence*, *2*(4), 57-79; Gastic, B. (2011). Metal detectors and feeling safe at school. *Education and Urban Society*, *43*, 486-498.
[51] See, e.g., Jones, N. (2014). "The regular routine": Proactive policing and adolescent development among young, poor black men. *New directions for child and adolescent development*, *2014*(143), 33-54. (finding that routine police interaction injures a young person's sense of self, especially when these interactions occur during adolescence); Landers, A. J., Rollock, D., Rolfes, C. B., & Moore, D. L. (2011). Police contacts and stress among African American college students. *American Journal of Orthopsychiatry*, *81*(1), 72.
[52] Lambda Legal (2015). *Protected and served?* (Executive Summary)
https://www.lambdalegal.org/sites/default/files/publications/downloads/ps_executive-summary.pdf

FedSDC

- Resourcing holistic approaches that provide wraparound supports and services, investments in counselors, mental health professionals, and educators that will advance culturally-sustaining educational practices, all of which can provide safe schools that do not rely on, support, or seek out police or surveillance.

- Prioritize de-escalation interventions, supportive student services, and restorative practices should all be utilized instead of relying on criminalization that has consequences for students, families, and their communities.

- End the prioritization of property protection or narrowly defining safety based on a vision that relies on physically and emotionally harming and criminalizing students and youth who have disabilities, are minorities or from underserved communities.

8. **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?**

Answer: The hiring of and proper training and professional development practices for schools and educators are important. However, they must be rooted in culturally-sustaining educational practices and aligned with both policies and practices that go beyond educators simply managing classrooms. It is also critically important to ensure that educators not only work with students in a fair and equitable manner, but they must also be equipped to use alternatives to inappropriate use of exclusionary discipline and implementation of both practices that recognizes students' intersectional identities.

Students in our nation's schools are members of intersectional communities. There are Black, Brown and White students with disabilities. Students personally identify across a spectrum of sexual orientations and gender identities. The overuse and inappropriate use of exclusionary discipline may be discrimination that is actionable not only under Title VI of the Civil Rights Act, but also Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex (including sexual orientation, gender identity, pregnancy and related conditions); and Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, which prohibit disability-based discrimination. The inappropriate disciplinary removal of students with disabilities may also deny them a free and appropriate public education (FAPE) in the least restrictive environment (LRE), as required by the Individuals with Disabilities Education Act (IDEA), which also prohibits significant disproportionality in the administration of discipline to students of color with disabilities.

Guidance issued as part of or along with the re-issuance of a strengthened school discipline guidance package is needed so that schools understand their legal obligations

to refrain from inappropriate use of exclusionary discipline, and to implement policies that recognize students' intersectional identities.

The CRDC confirms that students with disabilities, especially students of color with disabilities, face disproportionately high rates of in-school and out-of-school suspension, expulsion, and referrals to law enforcement. Students with disabilities are twice as likely to be suspended as their peers without disabilities, and among Black students with disabilities the rate jumps to one in four. Male students of color with disabilities, including Black, multiracial, Native American, and Pacific Islander students, are more than twice as likely to receive one or more out-of-school suspensions than are White male students with disabilities. Students with disabilities, especially those of color, are disproportionately affected by punitive school policing policies because they are more frequently disciplined for minor public order offenses. They are disproportionately arrested, often for behaviors that are manifestations of their disability.

Studies supported by ED show that these students suffer both short-term and long-term negative consequences from disciplinary removals from the classroom. For example, students with disabilities who are separated from the classroom fall behind in school, and students who have not been identified as having a disability cannot be evaluated for whether they need additional, individualized supports for learning, including behavior supports, if they are not in school. Plus, students who have experienced trauma leading to disability may be re-traumatized by punitive discipline practices. Research has demonstrated that suspensions are associated with decreased school engagement and lower individual and school-wide achievement. And students who are suspended from school have an increased likelihood of contact with the criminal justice system and incarceration as they transition to adulthood

Disaggregated data show that Black and Native girls face some of the largest barriers to educational opportunities due to racism and sexism embedded into school codes of conduct, discipline policies, or dress code policies. These girls are excluded from school at rates far higher than their White peers, despite no evidence that they misbehave more frequently. Rather, they are punished more, often targeted for their very identities and causing them to miss critical class time. For example, Black girls are more likely than their White peers to receive a disciplinary action for a discretionary offense like talking back, violating a dress code, or being "defiant."

As a result of discriminatory and harmful disciplinary policies, Black girls are five times more likely and Native girls are three times more likely to be suspended from school than their White peers. Unfortunately, these disparities begin early, when it is developmentally inappropriate and ineffective to exclude students from school. Nationally, in preschool, Black girls make up 20% of girls enrolled and 53% of out-of-school suspensions for girls. Black girls are also targeted by other harmful disciplinary actions. Black girls in this

FĕdSDC

country are three times more likely to receive corporal punishment and four times more likely to be arrested at school than White girls. These disparities in exclusionary discipline lead to the pushout of Black girls from schools at alarming rates.

Given these realities, hiring, training and professional development must be aligned in ways that go beyond managing classrooms, bare minimum fairness and equity. These practices and initiatives have to be aligned in proactive, prevention-oriented approaches that don't include use of exclusionary discipline and focus on changing educator-student interaction in creating school communities and classrooms where all students and youth are seen, heard, and valued and receive the support they need to succeed.

9. **Describe any data collection, analysis, or record-keeping 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.**

Answer: The CRDC has been important in identifying and addressing a number of significant disparities in discipline. Specifically, the continued high rates of out-of-school suspension and expulsion evidenced in the Civil Rights Data Collection (CRDC). Research demonstrates that over-reliance on suspension and expulsion does not improve school safety, is not effective for correcting misbehavior, and fails to deter future misconduct. Suspensions also cause students to lose valuable instructional time and this is one of the reasons why they are associated with worse school-wide educational outcomes including lower achievement and increased risk for grade retentions well as, and increases in the likelihood of a student dropping out and having contact with the criminal legal justice system for juveniles and adults. However, as the CRDC shows, some schools have continued to increase suspension and expulsion rates and have exacerbated academic achievement gaps through exclusionary discipline policies that exacerbate inequities in the opportunity to learn and have resulted in continued school push-out. The CRDC with OCR, ED, and DOJ enforcement can play a huge role in lowering suspensions and expulsions by providing guidance on how districts can replace these punitive measures with restorative practices, replace law enforcement and security guards with youth counselors, mental and behavioral health specialists, and teacher training to ensure the use of strategies that create safe and inclusive learning environments for all students. Moreover, with renewed legal guidance on the potentially unlawful disparate impact of unsound or less effective approaches districts will better understand that they have an obligation to regularly review the disparities in their discipline data. Holistic, safe, supportive, culturally-sustaining and positive school climates prepare students for success and each school must use every tool at its disposal to drive innovative and comprehensive approaches to meet the needs of students, without traumatizing and victimizing students through the use of racially discriminatory and disproportionate exclusionary discipline policies and practices. Studies have

demonstrated that when schools focus on what will help all students, all students benefit. To be successful, students, youth and their communities must be actively engaged and participating in their education. Due to their negative impact on graduation rates, there are also large economic costs associated with suspensions that are averted when we reduce their use. Schools should have policies and programs in place to support this objective and eliminate exclusionary school discipline models that promote disengagement. In meeting this challenge, the annual reporting and collection of school discipline data is critically important to identify schools and districts where there exists an overreliance on suspensions and expulsions, disparities, and huge populations of student contact with the criminal justice system, and provide alternatives to suspensions and expulsions for misbehavior.

The Department's recent expansion of the CRDC to include more data related to school discipline and climate has been a good first step. However, even further expansion of the CRDC is required. This should include a comprehensive set of school discipline data indicators such as: the grade level of students subject to discipline, the duration of exclusionary discipline actions, disaggregation by the general types of incidents giving rise to disciplinary action, and the number of threat assessments conducted, the demographics of students subjected to threat assessments, what services students received after any threat assessments, and any other student outcomes from threat assessments, including school exclusion. FedSDC supports the CRDC's continual collection of data on restraint and seclusion data in the CRDC, and urges ED to disaggregate data with respect to the seclusion and restraint of students by both race and type of disability, such that is clear, for example, whether or not students are more likely to be subjected to restraint and seclusion when they are a Black autistic student. Adequate annual collection and reporting of this information will engender the implementation of the types of evidence-based approaches to improving school discipline that improve academic performance, student attendance, and perceptions of school safety while lowering disciplinary rates. Further, annual collection will correspond to the spirit of the provisions of the Every Student Succeeds Act which added the annual reporting of the discipline data to the state and district report cards in 2016 and also will align with the annual collection and reporting of disaggregated data required by the IDEA at section 20 U.S.C.1418(a). Finally, without annual data to review, it is difficult to enforce civil rights requirements and combat systemic racism, which includes evaluating the need to replace policies and practices that have a systemic discriminatory impact.

Given the importance of having school discipline policies which improve the educational opportunities provided to all students while maintaining a safe, productive learning environment, we want to make clear the importance of ensuring that information related to school discipline practices is as complete as possible. The problems associated with the previous CRDC collection, including the 2017-2018 collection, such as non-compliance

and issues with incomplete, delayed and under-reported data -- especially with regard to data on school arrests and law enforcement referrals – should not be a recurring challenge.

OCR is responsible for the enforcement of laws that prohibit discrimination on the basis of race, color, national origin, sex, disability, and age in all programs and institutions that receive financial assistance from ED, we expect OCR to carry out its responsibilities to investigate and resolve discrimination complaints, monitors desegregation and equal educational opportunity plans, reviews possible discriminatory practices by recipients of Federal education funds, and provides technical assistance to recipients of funds to help them meet these civil rights requirements. We also expect OCR to use its enforcement authority to ensure annual and publicly available collection that accurately and timely collects and reports all information and data under the CRDC.

It is essential that ED's ability to fulfil its duties to identify discrimination and enforce civil rights laws be restored without delay. It is not enough that the identification and enforcement roles of the OCR be reinstated; information collected by the CRDC must be continually updated and strengthened, data collected on an annual basis, and results shared with the community in a regular and timely manner.

ED must make sufficient progress toward removing disparities in discipline and harm caused to children by these policies, and not allow disparities to continue without any significant changes to the structures through which ED holds schools and districts accountable, collects and reports data, and implements enforcement. ED to significantly and fully demonstrate its enforcement authority to correct both the disparities and harms that impact children of color and others who are marginalized. Some immediate and critical first steps in protecting data collection efforts and are essential to addressing disparities and identify discrimination in discipline are:

- Reinstate the Civil Rights Data Collection (CRDC) that was scheduled to collect data from 2019- 2020 and collect all available data including items that are cumulative in nature, such as counts of students who were suspended, expelled, or referred to law enforcement or arrested.
- Eliminate proposed changes to the CRDC, which have the potential to mask inequities in discipline affecting marginalized groups, retaining items related to school finance, teacher experience and absenteeism, early childhood education, and collection of data on English learner (EL) students served in special education.
- Collect CRDC data on an annual basis and report it to the public within 180 days of collection.

- Create additional data elements, including reasons for suspension and expulsion, money spent on police vs. student support personnel, informal removals from school, and a data initiative to assess the welfare of transgender students.
- Direct OCR to use enforcement and monitoring as tools to eliminate systemic racism. This will require reviewing all the changes made to OCR's enforcement protocol made during the Trump administration and reinstating many of the changes made during the Obama administration.
- Review the data that reflects resource disparities and investigate states and districts for discriminatory policies and practices that result in the inequitable distribution of education resources. Those states and districts that are found to be in violation will face significant reductions in their federal financial assistance.

About FedSDC

FedSDC is a diverse group of organizations and individuals committed to advocating for legislative and federal action to protect the interests and educational rights of Black and Brown students and youth through a racial justice and educational equity lens. Establishing police-free schools and effective, non-punitive, and culturally-sustaining practices in school discipline is a core value for FedSDC.

For more information about FedSDC or should you have any questions and need additional follow up on any of the items outlined in our comments, please contact Chris Scott, Open Society Policy Center, at Christopher.Scott@opensocietyfoundations.org and Breon Wells, The Daniel Initiative, at Breon.Wells@thedanielinitiative.com.