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Understanding the Federal Role in Protecting Student Civil Rights

A Focus on School Discipline

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Introduction

Today's education landscape is marred by pervasive and often deepening educational inequalities. The very kind of public school system that the U.S. Supreme Court sought to eradicate in *Brown v. Board of Education*—one that is stratified along racial lines—persists, but now with “double segregation” along both racial and socioeconomic lines¹ and exclusionary discipline practices that disproportionately impact students of color, pushing them further away from educational opportunity.

Past federal administrations, recognizing the importance of the federal platform and bully pulpit, often took action to address persistent educational inequities and ongoing violations of students' civil rights left unresolved by states and districts. After the *Brown* ruling, President Eisenhower dispatched troops from the 101st Airborne Division to accompany African American students integrating Central High School in Little Rock, AR, when local authorities defied desegregation orders.² The Civil Rights Act of 1964, particularly its Titles IV and VI,³ gave the federal government a mechanism to enforce school integration from recipients of federal funds, enabling the Department of Justice to address violations of the law through investigation and litigation. And the following year's passage of the Elementary and Secondary Education Act (ESEA), in 1965, significantly expanded federal funding of education, accompanied by requirements for recipients of those funds to comply with federal civil rights law.

In addition to working with Congress on legislation, presidential administrations have a number of other tools at their disposal that allow them to play a significant role in ameliorating educational inequalities. These include issuing federal guidance, regulations, and statements of administration policy, as well as use of an administration's investigative powers, data collection and dissemination, and budgetary requests. The Obama administration took advantage of these opportunities, issuing guidance on racial diversity, transgender students' rights, resource equity, and the nondiscriminatory administration of school discipline, among others.⁴ These nonbinding guidance documents were based on extensive research on what works in closing educational opportunity gaps and for improving student outcomes.

However, in contravention of this limited but significant federal role in education, the Trump administration has begun to take actions that undermine students' civil rights and contradict research on how to support positive educational outcomes. At minimum, this administration could stall progress toward achieving educational equity and may, in fact, reverse progress.

The actions in question began with an executive order by the administration directing Secretary of Education Betsy DeVos to conduct a review of the federal role in education, including addressing “whether and how the federal government has overstepped its legal authority in k–12 schools.”⁵ Since taking office, the Trump administration has withdrawn nearly 600 policy documents regarding k–12 and higher education⁶ and has rescinded, is considering rescinding, or has delayed implementation of the following federal guidance or regulations issued under the Obama administration:⁷

- **Guidance on civil rights and school discipline** issued by the U.S. Department of Education and the U.S. Department of Justice describing how schools can meet their legal obligations under federal law to administer student discipline without discriminating against students on the basis of race, color, or national origin.⁸ Research shows that discriminatory discipline practices have a significant negative impact on students of color, including compromised educational outcomes due to lost instruction time and higher likelihood of involvement with the juvenile justice system.⁹ The administration is considering rescinding this guidance.
- **Guidance on the voluntary use of race to achieve diversity and avoid racial isolation in elementary and secondary schools** issued by the Civil Rights Division of the U.S. Department of Justice and the Office for Civil Rights, U.S. Department of Education. This guidance was issued to “explain how, consistent with existing law, elementary and secondary schools can voluntarily consider race to further compelling interests in achieving diversity and avoiding racial isolation.”¹⁰ Social science research has demonstrated that diverse learning environments benefit both White students and students of color—including by preparing them for global citizenship and social interactions with diverse peers.¹¹ The administration rescinded this guidance on July 3, 2018.
- **Guidance on the treatment of transgender students** issued by the U.S. Department of Education and the U.S. Department of Justice asking schools to treat transgender students according to their gender identity, including with respect to names and pronouns, restrooms, and dress codes. Research shows that transgender students experience high rates of bullying by peers and adults, and the stress of harassment and discrimination, including implementation of policies that do not treat students according to their gender identity, can lead to lower attendance and grades as well as depression, anxiety, and suicidality.¹² This guidance was rescinded by the current administration in February 2017, one month after the president took office.
- **Individuals with Disabilities Act regulations** issued by the U.S. Department of Education “aimed at promoting equity by targeting widespread disparities in the treatment of students of color with disabilities” and at addressing a number of issues related to significant disproportionality in the “identification, placement, and discipline of students with disabilities based on race or ethnicity.”¹³ Research has shown how misidentification of African American children for certain special education categories obscures their real educational needs and compromises their educational outcomes.¹⁴ The administration has delayed the implementation of this regulation until July 2020. Recently, the administration has also indicated that it might take another approach and replace these regulations with new regulations in 2019.

While these actions do not change the underlying federal civil rights law and students’ rights to equal protection under the law, they serve to hinder the speed and effectiveness of implementation and signal to states and districts a lack of federal commitment to upholding students’ civil rights and increasing access to equal educational opportunity. The Trump administration’s actions are not only a departure from the federal oversight, but also a renunciation of the social science research that has shaped policy, practice, and law protecting students’ civil rights in education.

This paper examines how this shift in the federal role in education could affect protections of students' civil rights. We focus on one of the numerous areas under threat by the current administration that will have significant repercussions for students' educational experiences and outcomes: school discipline. We discuss the underlying research that has been used to inform and identify best practices for protecting students' civil rights, the progress that has been made using research-based best practices, and the consequences of rolling back these protections for historically underserved students.

Understanding the Negative Impact of Zero-Tolerance and Exclusionary Discipline Policies

The nonbinding guidance on civil rights and school discipline issued by the U.S. Department of Education and the U.S. Department of Justice under the Obama administration was intended to reduce excessive rates of school exclusion as well as disparities in rates of student discipline based on race, color, or national origin status. It provided information to support states, districts, and schools in their efforts to move away from ineffective policies, such as zero-tolerance approaches that exclude students from school, and replace them with research-based practices that keep students safe and improve educational outcomes.

The guidance includes four educative components for states, districts, and schools:

- (1) A Dear Colleague guidance letter on civil rights and discipline describing how, under federal law, schools can meet their legal obligations to administer student discipline without discriminating against students on the basis of race, color, or national origin. The letter includes information and examples for schools regarding how to determine the existence of intentional discrimination and disparate impact and identify the appropriate remedies.
- (2) Research-based Guiding Principles describing actions state and districts can take to improve school climate and school discipline, including alternatives to exclusionary discipline practices.
- (3) A Directory of Federal School Climate and Discipline Resources including sample memorandums of understanding, discipline policies, and surveys.
- (4) A Compendium of School Discipline Laws and Regulations cataloging the school discipline laws and regulations in each state.

These resources are intended to increase state and local awareness of the impact and legal implications of exclusionary discipline practices, identify effective alternatives, and prevent incidents and the need for federal involvement.

The effects of exclusionary discipline policies

Exclusionary discipline practices are often the result of zero-tolerance policies adopted at the state or local level. Zero-tolerance policies apply strong punishments for particular infractions—including removing students from the classroom or school through the use of suspensions and expulsions. Initially, zero-tolerance policies were intended to deter students from violent or illegal behavior because the punishment for such a violation would be harsh and certain; the policies were applied to incidents that involved weapons, drugs, or acts of violence.¹⁵ However, over time, exclusionary policies were applied even to nonviolent and more subjective offenses, such as willful defiance, talking in class, tardiness, or truancy.¹⁶ A number of states and districts began adopting zero-tolerance discipline policies in the 1990s based on the belief that applying highly punitive approaches to minor violations would be a deterrent and prevent more serious behavior.¹⁷ For example, during the 2011–12 school year in New York City, 60% of the student arrests made by the New York City Police Department's

School Safety Division personnel were for disorderly conduct, which includes typical student misbehaviors such as writing on desks and horseplay.¹⁸ Just as concerning, 20% of the students arrested were between the ages of 11 and 14.

Research shows that these policies result in negative consequences for student academic achievement, attainment, and welfare.¹⁹ Students who are removed from school lose instructional time and tend to have lower academic success, higher rates of grade retention, and lower graduation rates, and are more likely to become involved in the juvenile justice system.²⁰ Recent studies have shown that students score lower on tests during the years they have been suspended and that the number of days a student is suspended is related to the size of the decrease in that student's test scores.⁵⁰ Further, a student who is suspended or expelled for a discretionary violation is "twice as likely to repeat his or her grade compared to a student with the same characteristics, attending a similar school, who had not been suspended or expelled."²¹

In addition to poor academic performance and increased grade retention, a student's associated odds of dropping out of school double with their first suspension.²² Research finds that even for "students who are otherwise regularly attending school and passing their courses in the 9th grade, being suspended can lead to more suspensions, lowered attendance and course failure in later years, and as such act as the trigger mechanism which puts them on the path to ultimately dropping out."²³

A study that followed 10th-grade students in California for 3 years while the state's zero-tolerance policy was in effect found that, after controlling for other major dropout factors, suspensions in California lowered graduation rates by nearly 7 percentage points.²⁴ These outcomes are not unexpected. When students are regularly removed from the classroom, they fall behind in their classwork and become socially and emotionally distant and disengaged from school, beginning a process of successive failures.²⁵

In addition to lower student achievement and graduation rates, research shows that exclusionary discipline policies perpetuate the school-to-prison pipeline,²⁶ increasing the likelihood that students who experience exclusionary discipline policies will become involved in the juvenile justice system.²⁷ In some states and districts, "school discipline becomes criminalized through its extension into the juvenile court,"²⁸ regardless of the severity of the behavior, such as whether a student is being disciplined for truancy or willful defiance rather than causing some form of damage or injury.

Data from several districts across various states "show that the alleged misconduct leading to court referral is typically quite minor. This 'net-widening' effect reflects increased collaboration between schools and the juvenile justice system, which has eroded the traditional boundaries between the two institutions."²⁹ Studies also show how the "anticipatory labeling of students as future prisoners in need of coercive control or exclusion can be a self-fulfilling prophecy as students frequently suspended from school face increased risks of juvenile and adult incarceration."³⁰ The result is unnecessary use and overreliance on alternative educational settings or "juvenile justice facilities where educational supports and opportunities may be less available," narrowing rather than expanding educational opportunity.³¹

Racial discrimination in discipline

Not only are these policies ineffective, but they are often applied in a racially discriminatory manner—one of the key concerns the discipline guidance is intended to help states, districts, and schools address. According to the U.S. Department of Education’s Office for Civil Rights Civil Rights Data Collection, during the 2015–16 school year, 2.7 million students in k–12 received one or more out-of-school suspensions.³² Students of color and students with disabilities are disproportionately suspended and expelled compared with their White and nondisabled peers. According to the Civil Rights Data Collection:

- Disproportionate suspension rates of k–12 students:** African American male and female students receive out-of-school suspensions at disproportionate rates compared with their White peers. During the 2015–16 school year, African American male students were 8% of students enrolled and 25% of students who received an out-of-school suspension. By contrast, White male students were 25% of students enrolled and 24% of students who received an out-of-school suspension. African American female students were 8% of students enrolled and 14% of students who received an out-of-school suspension. By contrast, White female students were 24% of students enrolled and 8% of students who received an out-of-school suspension. Students with disabilities were 12% of students enrolled and 26% of students who received an out-of-school suspension.³³
- Disproportionate suspension rates of preschool children:** African American preschool children receive out-of-school suspensions at disproportionate rates compared with their White peers. During the 2013–14 school year, the first year for which data analysis is available, African American children represented 19% of preschool enrollment and 47% of preschool children who received more than one out-of-school suspension. By contrast, White students represented 41% of preschool enrollment and 28% of preschool children who received more than one out-of-school suspension.³⁴
- Disproportionate suspension rates of students of color with disabilities and from low-income families:** African American male and female students with a disability and from low-income families receive out-of-school suspensions at disproportionate rates compared with their White peers without a disability and from higher income families. During the 2013–14 school year (the most recent year for which data analysis is available), African American males from low-income families in special education were less than 5% of the total student population and 24% of students suspended. More than 20% of boys of color with disabilities were likely to receive one or more school suspensions, compared with 10% of White boys with disabilities receiving one or more school suspensions. Additional data show that for students who were suspended 12 to 14 times, the suspension rate for African American males in special education from low-income families increased to 56%.³⁵ Similarly, more than 20% of girls of color with disabilities received an out-of-school suspension, compared with 5% of White girls with disabilities.³⁶

- **Disproportionate expulsion rates of k–12 students:** African American male and female students are expelled at disproportionate rates compared with their White peers. During the 2015–16 school year, African American male students were 8% of students enrolled and 23% of students who received an expulsion, whereas White male students were 25% of students enrolled and 27% of students receiving an expulsion. African American female students were 8% of students enrolled and 10% of students who received an expulsion, whereas White female students were 24% of students enrolled and 10% of students receiving an expulsion. Students with disabilities were 12% of students enrolled and 24% of students who received an expulsion.³⁷
- **Disproportionate arrests and referrals to law enforcement:** African American students are referred to law enforcement or are arrested at disproportionate rates compared with their White peers. During the 2015–16 school year, African American students represented 15% of student enrollment and 31% of students referred to law enforcement or arrested. By contrast, White students represented 49% of student enrollment and 36% of students referred to law enforcement or arrested. Students with disabilities represented 12% of student enrollment and 28% of students referred to law enforcement or arrested.³⁸

These racial disparities in discipline rates are not a result of differences in student behavior. They are a function of the fact that students of color are often treated and punished more harshly when they engage in behaviors similar to those of their White peers. Students of color are suspended from school for fairly minor behavior that does not pose a serious threat to safety,³⁹ and studies show that African American students receive harsher suspensions for more subjective and less serious behavior than their White peers.⁴⁰ This is demonstrated in a recent analysis of the use of exclusionary discipline practices in the New York City public school system. Despite the 50% reduction in suspensions between the 2010–11 school year and the 2016–17 school year, racial disparities in the length of suspension remained.⁴¹ African American students received relatively longer suspensions on average for 8 of the top 10 infractions students were suspended for and were suspended for roughly twice the number of days as students in one of the other ethnic groups for bullying, reckless behavior, and altercation.⁴²

The high rates of school exclusion for students of color, as demonstrated by the Civil Rights Data Collection, have been encouraged by zero-tolerance policies, which assign explicit, predetermined punishments to specific violations of school rules, regardless of the situation or the context of the behavior.⁴³

Alternatives to Exclusionary and Discriminatory Discipline Practices

Under the Obama administration, the Department of Education and the Department of Justice recognized their federal responsibility to respond to discriminatory practices, putting forward a set of nonbinding guidance documents designed to remedy these disparities in discipline rates and support states, districts, and schools in creating safe and inclusive learning environments. The Departments did so within the discipline guidance by (1) identifying the harm zero-tolerance and similar types of policies, including their discriminatory application, have on students and (2) sharing research-based policies and practices to support state and local efforts to reduce disparities in exclusionary discipline and improve school climate.

The following describes the underlying research supporting the policies and practices included in the discipline guidance and the progress being made by states and districts already implementing these policies and practices.

Research-based approaches to creating safe and inclusive learning environments for all students

The research is clear that zero-tolerance policies and the use of exclusionary disciplinary practices for nonviolent behavior are ineffective in creating safe learning environments in which all students have the opportunity and supports they need to succeed. The research is also clear about what policies and practices are effective—and they are the same policies and practices included in the current school discipline guidance that is under threat of rescission. These policies and practices include:

- Replacing zero-tolerance policies and the use of suspensions and expulsions for lower-level offenses with strategies that teach social-emotional skills.**⁴⁴ These strategies include teaching students skills that enable positive relationships, help them resolve conflicts peaceably, and prevent bullying.⁴⁵ They also include targeted behavioral supports for at-risk students, and methods for promoting student-school bonds.⁴⁶ A review of more than 200 studies found, for example, that social and emotional programs have yielded significant positive effects on student attitudes about self, others, and school and “enhanced students’ behavioral adjustment in the form of increased prosocial behaviors and reduced conduct and internalizing problems, and improved academic performance on achievement tests and grades.”⁴⁷ Research also indicates that developing student social-emotional skills increases graduation rates. According to a 2017 meta-analysis on the effects of social and emotional learning, students participating in social and emotional learning programs demonstrated a 6% increase in high school graduation rates and an 11% increase in college graduation rates.⁴⁸

- **Providing targeted support for educators.** Research demonstrates that interpersonal, instructional, and environmental supports produce better school performance when they include caring teacher-student relationships that foster commitment and bonding to school; engaging teaching approaches such as proactive classroom management and cooperative learning; and safe and orderly environments that encourage and reinforce positive classroom behavior, and ⁴⁹ contribute to students' immediate and long-term behavioral change.⁵⁰ This support should be provided to all staff who work with students, particularly teachers with little experience. Students of color are disproportionately taught by early-career teachers compared with their White peers⁵¹ and research indicates that there is a relationship between a high suspension rate and a higher than average number of novice teachers.⁵² When staff lack strategies for managing behavior, focused supports may be needed, particularly for early-career teachers, to develop these skills and strategies.
- **Eliminating disproportionate rates in student discipline by providing training on implicit bias and asset-based youth development for all teachers and administrators, school resource officers, police, juvenile judges, and others dealing with juveniles.**⁵³ Implicit bias has been shown to be an important factor when examining inequity in discipline. Implicit racial bias manifests itself in the form of negative stereotypes of students of color, with African American youth being viewed as irresponsible, dishonest, and dangerous.⁵⁴ Research shows that educators can perceive student behaviors differentially based on the race of the student, contributing to the disproportionate rates in discipline. According to a recent study, this may be a function of more generalized implicit biases regarding race and criminal or delinquent behavior, including an association between race and perceived threat of aggression.⁵⁵ Implicit bias negatively influences a teacher's academic expectation for students.⁴⁹ Recognizing and addressing implicit bias through staff training can prevent disproportionate application of school discipline policies before they occur.
- **Developing and implementing model school discipline policy and agreements that clarify when educator discipline versus law enforcement discipline is warranted, such as through a memorandum of understanding.** This includes eliminating referrals to law enforcement for all nonviolent, noncriminal offenses and replacing them with effective staff-led strategies for classroom management, conflict resolution, and mediation.⁵⁶ It includes providing clarity about which types of incidents well-trained school-based resource officers should be involved in and how to involve them in ways that are aligned with respectful and inclusive practices. Further, the selection of the appropriate discipline response strategy should be based on a disaggregated data analysis, where possible, to get a better understanding of who is being suspended and why. (For example, students who belong to two or more disadvantaged subgroups are at the highest risk of being suspended, often for subjective offenses.)⁵⁷

State and district efforts to implement evidence-based practices for reducing exclusionary student discipline

A number of states and districts have already decided to implement these approaches and create more inclusive learning environments. Some of these efforts are far enough along in the implementation process to have demonstrated a positive impact on students, particularly students of color.

California

California began its effort to reduce the use of exclusionary discipline by collecting and examining data that revealed high numbers of expulsions and suspensions statewide, particularly for African American students. In an effort to reduce the use of exclusionary practices, California moved to establish social-emotional supports for students, as well as restorative justice practices centered on promoting respect, taking responsibility, and strengthening relationships. This began with the state repealing its zero-tolerance policies and replacing them with policies that encourage restorative practices.⁵⁸ The California Department of Education (CDE) also took legislative action after the data revealed that certain subgroups of students experienced a disproportionate percentage of expulsions and suspensions for nonviolent behaviors, such as willful defiance. In 2013, California lawmakers passed Assembly Bill 420, “limiting suspensions and expulsions for disruptive behavior in certain grades.”⁵⁹

Further, when the state passed a new Local Control Funding Formula, which changes how schools are governed and funded, school climate was included in the state’s eight priorities. California also includes suspension rates in its statewide school accountability and improvement system under the Every Student Succeeds Act.

To support these efforts, the California Commission on Teacher Credentialing passed new standards for teachers and administrators, including competencies in teaching social-emotional skills and in using restorative practice. In addition, the CDE “initiated forums and workshops to make districts, administrators, and teachers aware of successful alternatives to suspensions and expulsions, including ‘restorative justice’ programs that help students understand the nature and consequences of their actions. Other strategies underway in California schools include teaching life skills and emotional control.”⁶⁰

As a result of these approaches, California has achieved a sharp decrease in suspension rates: Between 2011 and 2016, suspensions declined by 33.6%, driven by a 77% decline in suspensions for “willful defiance,” and expulsions dropped by 40.4%.⁶¹ In the Oakland Unified School District (OUSD) alone, the suspension rate for African American students for disruption or willful defiance declined by 37%, from 7.4% to 4.7% (down from 1,050 instances to 630 instances) in one school year. This reduction in student suspensions has been paired with an increase in graduation rates. For example, OUSD experienced an increase in its 4-year graduation rate 3 years post-restorative justice intervention.⁶²

Michigan

Michigan is another state tackling these important issues, and although it is at a much earlier stage in its efforts compared with California, it is adopting a number of research-based policies. Its efforts began with the formation of the Michigan School Discipline Task Force in 2013. The task force includes members of the Michigan Department of Education and other state-level departments, school administrators, teachers, law enforcement and court officials, and community representatives. The task force’s goal was to develop model policy for reducing suspensions and expulsions using alternative discipline. At the time, statewide suspension rates for African American high school students were more than triple those for White high school students (28% vs. 8%), and 50% more African American elementary school students were suspended than White secondary students (12% vs. 8%). Recognizing these disparities, and recognizing that exclusionary discipline policies resulted in lower student engagement, academic achievement, and graduation rates—contributing to the school-to-prison pipeline—the work of the task force led to the following actions aligned with the policies in the discipline guidance:

- In 2014, the Michigan State Board of Education approved model policy and a revised Model Code of Student Conduct, providing “guidance to all Michigan schools on creating culture change and addressing behavioral concerns using non-exclusionary methods.”
- In April 2016, Michigan passed a school aid budget bill requiring districts to reduce the number of expulsions and suspensions. If a district failed to do so, it would lose part of its state funding, beginning in the 2017–18 school year.
- In December 2016, the Michigan governor signed bipartisan legislation that changed the state’s previous “mandatory expulsion” requirements, requiring all schools to consider the following before suspending or expelling any student for any reason: (1) the student’s age and disciplinary history; (2) whether the student has a disability; (3) the seriousness of the violation, and whether it threatened anyone’s safety; (4) whether a “lesser intervention” would “properly address” the behavior; and (5) whether “restorative practices” will be used to address the behavior. The law also explicitly encourages the use of “restorative practices” in addressing bullying.⁶³

Michigan’s efforts also reflect its commitment to preventing civil rights violations by reducing disproportionality in student suspension rates. It is important to note that Michigan’s efforts are designed to respond to high rates of exclusionary discipline overall and to any disproportionality in those rates, recognizing, as California did, that addressing disproportionality requires distinct strategies and interventions in addition to the broader efforts to reduce exclusionary discipline practices. Since full implementation of these efforts did not begin until the 2017–18 school year, outcome data is not yet available; however, the state’s policies are now aligned with research-based practices.

Ohio and Colorado

Recognizing that zero-tolerance and exclusionary disciplinary policies are ineffective, and following the Obama administration's informative guidance, other states are taking similar steps through their state legislatures and departments of education. For example, the Ohio Legislature recently passed Ohio House Bill 318, banning out-of-school suspensions for minor misbehavior for pre-k through 3rd grade, requiring specified training and Memorandums of Understanding for School Resource Officers, and providing grant funding for schools to implement Positive Behavior Interventions and Supports.⁶⁴

In Colorado, the legislature passed a series of laws and adopted policies to reduce the use of exclusionary discipline practices and replace them with restorative justice approaches, including providing additional funding to support those efforts.⁶⁵ The state was able to point to district successes to justify this approach, such as those in the Denver Public Schools system (DPS). After implementing restorative justice policies and moving away from zero-tolerance policies, between the 2006–07 school year and the 2012–13 school year, the rate of suspensions for African American students in DPS fell from 17.61% to 10.42% and the gap between African American students' suspension rate and White students' suspension rate fell from almost 5.88% to 2.28%.⁶⁶ The decline in suspension rates continues. In 2016, despite an increase in student enrollment, 10 years after Denver began implementing restorative practices and other reforms, suspensions dropped from 11,000 in 2006, when the district had about 70,000 students, to 4,500 in 2016, when the district had more than 92,000.⁶⁷ In addition, during the 2015–16 school year, Denver was the only district out of Colorado's five largest school districts to show a decrease in its early childhood suspension rate.⁶⁸ Colorado's recent legislative activity is intended to replicate the gains made in Denver across other districts in the state.

Potential Consequences of Rescinding the Federal Discipline Guidance

According to the National Center for Education Statistics' Indicators of School Crime and Safety 2017 survey, as these efforts to reduce school exclusions have been underway, schools across the nation are becoming safer. For example, the “percentage of public schools recording one or more incidents of violence, theft, or other crimes was lower in 2015–16 (79%) than in every prior survey year. (Incident rates ranged from 85 to 89% between 1999–2000 and 2009–10.) Similarly, the percentage of public schools that reported one or more incidents of violence, theft, or other crimes to the police was lower in 2015–16 (47%) than in every prior survey year (ranging from 60 to 65% between 1999–2000 and 2009–10).”⁶⁹ In addition, “the percentage of schools taking at least one serious disciplinary action was lower in 2015–16 than in 2003–04 across all specific offense types except the distribution, possession, or use of alcohol, for which there was no measurable difference between the two years.”⁷⁰

Despite no evidence that the discipline guidance is making schools less safe, and trends that suggest schools are becoming safer while the guidance has been in place, the administration is considering rescinding it. That action would deny schools and districts a research-based set of resources for creating safe, inclusive learning environments and information about how to apply these policies in a nondiscriminatory manner. It would also eliminate the current focus on correcting discriminatory application of state and district discipline policies and practices, and identifying the appropriate remedy when a civil rights violation occurs. While there are a number of states and districts implementing evidence-based approaches, those efforts are far from universal. The administration's rescission of the discipline guidance would remove an important set of evidence-based resources that support states and districts in their efforts to change harmful practices.

The administration's consideration of whether to rescind the discipline guidance is occurring within the context of other administration efforts to roll back civil rights protections—which will likely further compound the problems noted above. In addition to the previously described guidance and regulations that have been repealed, are under consideration for repeal, or delayed, the administration is:

- **Limiting investigations of patterns of discrimination.** Under the Obama administration, when the U.S. Department of Education's Office for Civil Rights received an individual complaint related to complex issues, such as school discipline, the investigation into the complaint could take steps to determine whether the allegations were part of a pattern of discrimination.⁷¹ As the data previously cited demonstrates, discriminatory treatment related to school discipline is often found not to be an isolated incident, but rather a pattern of treatment for particular subgroups of students, specifically, students of color and students with disabilities. A narrow approach ignores this reality and is likely to result in a required remedy that does not address the broader school, district, or state policies that lend themselves to discriminatory application.

- **Dismissing cases that claim a pattern of discrimination.** This administration has instructed investigators to dismiss a complaint if it is a continuation of a pattern of complaints previously filed with the Office for Civil Rights by an individual or group against multiple recipients or a complaint is filed for the first time against multiple recipients that, viewed as a whole, places an “unreasonable burden” on the Office’s resources.⁷² As of the end of March of this year, this has resulted in more than 623 complaints being dismissed, not because there was no actual violation of the law, but because of the volume of complaints.⁷³
- **Proposing to cut funding for the Office for Civil Rights.** This administration’s fiscal year 2018 and 2019 budget requests sought to cut funding for the Office for Civil Rights, rather than seeking to maintain current funding or seeking additional funds.⁷⁴ Despite the request to cut more than \$325,000 from its budget, Congress increased its funding, providing \$117 million for fiscal year 2018.

Conclusion

Any administration's policy positions, actions, and interventions should be informed by evidence. To fail to use such evidence will likely either result in or perpetuate negative consequences for students of color and other historically underserved students. Rescission of the federal discipline guidance documents threatens progress and may have a chilling effect on proactive state and local efforts to create more inclusive and equitable learning environments for all students. Rescission ignores the benefits of well-established research documenting how best to create inclusive learning environments for all students. Further, it threatens the nation's ability to produce engaged citizens able to effectively compete in a diverse global workforce, while it fails to recognize the dignity and potential in each and every student.

Endnotes

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