



July 23, 2021

U.S. Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education Bldg.  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

***RE: Recommendations from the Federal School Discipline and Climate Coalition (FedSDC) in Response to the Department of Education's Office for Civil Rights Request for Information Regarding the Nondiscriminatory Administration of School Discipline***

Thank you for this opportunity to respond to the Office for Civil Rights (OCR) Request for Information Regarding the Nondiscriminatory Administration of School Discipline (RFI). **The Federal School Discipline and Climate Coalition (FedSDC) and the 54 undersigned signatories support the recommendations set forth in this letter.** These recommendations are also aligned with the breadth of comments being submitted by FedSDC and its coalition partners in response to the RFI. 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 at least the past 50 years, countless students – especially students of color – have had their education taken from them due to exclusionary discipline practices and the criminalization of school behavior. After years of advocacy from grassroots groups, youth, students, families, and activists, including many of the signers below, the Obama Administration took action beginning with disciplinary guidance package in 2014. However, we are at a pivotal moment in this country to address the harms racially discriminatory policies and laws have had on the educational achievement and opportunities of students and youth of color in our nation's schools. ***This moment calls for bold action to dismantle the systemic and institutionalized racism deeply embedded in exclusionary discipline policies and policing in schools.***

We urge the Biden Administration and the OCR to revise and reinstate the 2014 Guidance Package on an expedited timeline; to immediately reverse the educational policies and actions of the previous administration that have slowed or halted progress on disciplinary reform, and have proven particularly harmful to students of color; to support effective and equitable school climate and discipline guidance and practice; and to boost civil rights oversight and enforcement.

Specifically, we offer the following recommendations:

**1. Significantly strengthen, update and reissue the 2014 School Discipline Guidance Package**

**by the end of the 2021-2022 school year to enhance school climate and improve school discipline policies and Practices.**

Based on extensive findings that punitive and exclusionary discipline creates short- and long-term harms for all students, especially students of color, the 2014 Guidance provided much needed strategic leadership and information supporting schools, districts, and states in transitioning to more effective and equitable discipline and climate practices. Although the 2014 Guidance was a step in the right direction, it ultimately fell short because it failed to address discriminatory school discipline with an intersectional lens, and to specify ways in which police presence in schools can undermine school climate efforts and constitute possible violations of Title VI.

In the intervening years, the Trump administration has eroded the modest improvements to school climate created by the 2014 Guidance and generally signaled its hostility to Black, Native, and immigrant communities—all of which have led to many students feeling unsafe at school. These actions include: ED rescinding guidance documents on the rights of students with disabilities,<sup>1</sup> race-conscious admissions,<sup>2</sup> and discriminatory discipline; Secretary DeVos testifying before Congress that schools can decide whether to call Immigration and Customs Enforcement (ICE) on undocumented students<sup>3</sup> and continually understaffing OCR despite increased appropriations;<sup>4</sup> the Federal School Safety Commission exploiting the Parkland shooting to release a report<sup>5</sup> that made no gun control recommendations, but instead called for increased militarization and law enforcement in schools; and executive orders advocating for the creation of a white nationalist curriculum<sup>6</sup> and prohibiting government contractors from providing anti-racist or anti-sexist training.<sup>7</sup>

Safe, healthy, and inclusive school environments require students to have access to: an unbiased and culturally responsive curriculum; strong positive relationships with staff and students that foster belonging; fair and consistent rules and discipline policies that minimize lost instructional time; meaningful family engagement; and a system of supports to meet their social, emotional, and academic needs. Near the end of its term, the Trump administration ramped up actions that would engender white nationalism in schools to the detriment of historically marginalized students by issuing executive orders that discourage integrating Black history into curricula,

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<sup>1</sup> Jack Moore, Betsy DeVos Rescinds 72 Documents That Outlined Rights for Disabled Students, GQ (Oct.23, 2017), <https://www.gq.com/story/betsy-devos-disable-rights-guidelines>.

<sup>2</sup> Erica L. Green et al., Trump Officials Reverse Obama's Policy on Affirmative Action in Schools, N.Y. Times (July 3, 2018), <https://www.nytimes.com/2018/07/03/us/politics/trump-affirmative-action-race-schools.html>.

<sup>3</sup> Luke Darby, Betsy DeVos Says Schools Should Call ICE on Undocumented Students, GQ (May 26, 2018), <https://www.gq.com/story/devos-schools-call-ice-on-students>. Weeks later Secretary DeVos corrected her statement after advocates pointed out that allowing school administrators to report undocumented students to ICE violates Plyler v. Doe, a 1982 Supreme Court case that said undocumented students have the right to a free public education.

<sup>4</sup> Andrew Kreighbaum, Under DeVos, a Smaller Department of Education, Inside Higher Ed (June 13, 2018), <https://www.insidehighered.com/news/2018/06/13/education-department-staff-down-13-percent-trump-administration-began>.

<sup>5</sup> See Fed. Comm'n on Sch. Safety, Final Report of the Federal Commission on School Safety (2018), <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

<sup>6</sup> See Exec. Order No. 13,958, 85 Fed. Reg. 70,951 (Nov. 2, 2020), <https://www.whitehouse.gov/presidential-actions/executive-order-establishing-presidents-advisory-1776-commission/>.

<sup>7</sup> Exec. Order No. 13,950, 85 Fed. Reg. 60,683 (Sept. 22, 2020), <https://www.whitehouse.gov/presidential-actions/executive-order-combating-race-sex-stereotyping/>.

prohibiting training on how to identify race and sex stereotypes, and penalizing institutions that acknowledge systemic racism.<sup>8</sup> These actions are contrary to the research that shows the importance of professional development and coaching for adults in schools to help them develop and cultivate positive, asset-based, and anti-racist mindsets, and to address implicit bias.

Given this context, the 2014 Guidance package must be significantly revised, strengthened to outline when police in schools are involved in non-violent discipline or inequities in the allocation of social-emotional student supports may constitute a civil rights violation, and re-released as soon as possible. That revision process must include the voices of grassroots 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.

- We urge the Administration to *immediately* rescind the December 21, 2018 Dear Colleague Letter, reinstate the 2014 Guidance Package pending revision for the 2022-23 school year, rescind the Federal Commission on School Safety report and recommendations, and revise the 2018 Q & A document, in part to clarify that disparate impact analysis remains part of the monitoring and enforcement efforts of OCR.
- We strongly urge the Administration to signal its support for evidence-based disciplinary reform by making an *immediate* public commitment to revise and re-release of the 2014 Guidance Package by May 2022 and announcing a timeline for gathering stakeholder input, so that recommendations from the guidance can be implemented in the 2022-23 school year.
- Commit to timely enforcement action in response to Local Education Agencies (LEAs) and State Education Agencies (SEAs) violation of civil rights of children by engaging in or allowing disproportionate and exclusionary discipline and treatment of Black children and children with disabilities.
- Draft and release guidance on identifying intersectional claims of discrimination under Title VI, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1975, and Title II of the Americans with Disabilities Act of 1990 (ADA), and review and publicly report data on potential civil rights violations using the combined lens of race with disability and race with gender to address overlapping concerns.
- Revise the case processing manual and investigatory processes to meaningfully involve complainants and those who are directly impacted in all phases of complaint settlements and resolutions.

**2. Ensure that the Department of Education (ED), through OCR, fulfills its duty to protect all students from discrimination, regardless of their actual or perceived race, ethnicity, English language proficiency, immigration status, national origin, disability, sex, or sexual**

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<sup>8</sup> See, e.g., Kery Murakami, College Associations Urge DeVos to Drop Princeton Probe, Inside Higher Ed (Oct. 1, 2020), <https://www.insidehighered.com/quicktakes/2020/10/01/college-associations-urge-devos-drop-princeton-probe>.

### **orientation and gender identity.**

- Double the size of the OCR in order to rebuild and expand the office's ability to meet its policymaking, enforcement, and data collection responsibilities.
- Eliminate proposed changes to the CRDC by the previous administration, 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.

### **3. Support schools in implementing evidence-based and equitable alternatives to exclusionary discipline, zero tolerance policies, and law enforcement referrals.**

- Establish police-free schools through the elimination of law enforcement in schools and such policies, funding, and practices that support the placement, reliance and use of police in schools.
- Provide funding to implement, and require school personnel to be trained on, research-informed and culturally-sustaining strategies for improving school climate and reducing exclusionary discipline.
- Fund research to support the implementation of effective alternatives to disciplinary exclusion, especially strategies for reducing disciplinary disproportionality by race/ethnicity, sex (including, gender identity, sexual orientation, pregnancy and related conditions), and disability.
- Require schools to work towards de-escalating minor infractions instead of involving law enforcement.
- Prohibit the use of strip searches and corporal punishment, eliminate the use of seclusion, and significantly limit the use of restraint for all children.
- Support legislation that fosters better school climate, such as:
  - *The Counseling not Criminalization in Schools Act of 2021 (CNC H.R. 4011, S. 2125)*, which ends federal funding for law enforcement in schools, and creates

grants for trauma-informed services, mental health supports, and social and emotional learning to address childrens' and adolescents' health, mental, social, emotional, and academic needs in school;

- *The Create Respectful and Open World for Natural Hair Act of 2021 (CROWN Act H.R. 2116, S. 888)*, which eliminates discrimination based on hair textures and styles commonly associated with a particular race or national origin;
- *The Keeping All Students Safe in Schools Act of 2021 (KASSA H.R. 3474, S.1858)*, which eliminates the use of seclusion and significantly limits the use of restraint; and
- *The Protecting Our Students in School Act of 2021 (H.R. 3836, S. 2029)*, which abolishes corporal punishment in federally funded schools.

**4. Provide support for school mental health resources by increasing the funding for Specialized Instructional Support Professionals (SISPs) who are trained in racial justice and equity, including counselors, school psychologists, school nurses and school social workers.**

- Partner with the Department of Justice to redirect funding to disinvest from school police and to invest heavily in critical personnel—counselors, social workers, school psychologists, and nurses—who have the expertise necessary to appropriately address student behavior and conflict, and address students' mental health needs; and
- Increase grant funding to expand the capability of school infrastructure to better meet the mental health needs of students, and shift to restorative and trauma-informed supervision rather than a punitive approach to student behavior and conflict.
- Ensure that no federal funding streams are used to support police in schools from the Department of Education, Department of Defense, Department of Homeland Security, Department of Justice, or Department of Transportation, and divest from school hardening and militarization initiatives, including the 1033 program, which transfers surplus military equipment to schools and school-based police departments.

**5. Our nation cannot make progress towards racial justice without confronting our history of slavery and oppression. We urge the Administration to promptly and decisively assert federal support for professional development challenging racism and its corrosive effects, and to actively oppose all efforts that in any way restrict such professional development.**

- Support increased training of educators in racial justice and equity through federal grant programs to states, districts, and Institutes of Higher Education.
- Immediately rescind all guidance issued under the Trump administration limiting the civil rights of young people of color, students with disabilities, immigrant students, female students, and LGBTQIA+ young people.
- Promptly inspect and rescind all guidance from administrations prior to the Trump administration that limits the civil rights of young people of color, students with disabilities, immigrant students, female students, and LGBTQIA+ young people.

- Reassert, through leadership and funding, administration support for helping districts design and implement professional development on culturally sustaining practices, the harms of racial and ethnic stereotypes and biases, and the importance of parent engagement.

**6. Ensure the safety of immigrant students by prohibiting information-sharing, collaboration, and enforcement between immigration officials and school officials.**

- Partner with the Department of Homeland Security and Department of Justice to immediately prohibit information sharing between school staff and immigration officials, and between school law enforcement and immigration officials.
- Immediately prohibit immigration officials from collaborating with school officials.
- Prohibit immigration enforcement by school personnel or by immigration officials in or around schools.

In conclusion, we look forward to partnering with OCR to ensure the redress of trauma inflicted on youth, particularly Black students, and to develop positive and healthy school climates characterized by preventive and culturally sustaining practices. We will withstand any attempts by any federal agency or political appointee that undermines the demands and needs of Black communities on the ground. Going forward, we will publicly support policies that align with our equity mission and hold the Administration accountable for attaining racial equity and allocating resources to support positive school climates.

Thank you for the opportunity to share these recommendations. We look forward to working closely with OCR to remove harm and make schools safer, and to promote positive, fair, and culturally sustaining educational practices for all students.

For more information or should you have any questions, please contact Christopher Scott, Open Society Policy Center, at [Christopher.Scott@opensocietyfoundations.org](mailto:Christopher.Scott@opensocietyfoundations.org) and Breon Wells, The Daniel Initiative, at [Breon.Wells@thedanielinitiative.com](mailto:Breon.Wells@thedanielinitiative.com).

Sincerely,

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Open Society Policy Center  
 The Daniel Initiative  
 Alliance for Educational Justice  
 Center for Disability Rights  
 Center for Popular Democracy  
 Communities for Just Schools Fund  
 Dignity in Schools Campaign  
 Action communication and education reform  
 Activists With A Purpose Plus

Advocates for Justice VA Ltd.  
Autistic Self Advocacy Network  
Autistic Women & Nonbinary Network  
Bazelon Center for Mental Health Law  
Blacks in Law Enforcement of America  
Center for Law and Social Policy (CLASP)  
Clearinghouse on Women's Issues  
Coalition for Juvenile Justice  
Community Organizing and Family Issues  
Council for Children's Rights  
Council of Parent Attorneys and Advocates  
Disability Law Colorado  
Disability Rights Education & Defense Fund (DREDF)  
Education Law Center-PA  
Feminist Majority Foundation  
First Focus on Children  
Genders & Sexualities Alliance Network  
Gwinnett STOPP  
IDRA (Intercultural Development Research Association)  
Juvenile Law Center  
National Association of Councils on Developmental Disabilities  
National Black Justice Coalition  
National Center for Learning Disabilities  
National Center for Youth Law  
National Immigration Law Center  
National Parents Union  
National Women's Law Center  
Nollie Jenkins Family Center, Inc.  
Padres & Jóvenes Unidos  
POWER-PAC IL  
R.A.C.E.  
Racial Justice NOW  
Stand for Children  
The Black Police Experience  
The Center for Civil Rights Remedies at UCLA's Civil Rights Project  
The Institute for Compassion in Justice  
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