



# Protecting Students' Civil Rights

## *The Federal Role in School Discipline*

Jessica Cardichon and Linda Darling-Hammond

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## Executive Summary

Presidential administrations have a number of tools at their disposal for ameliorating the educational inequalities that exist across the nation. These tools include issuing federal guidance that informs and supports states and districts as they work to implement policies and practices that comply with federal law. The extent to which administrations have chosen to leverage these opportunities to advance educational equity has changed over time. Some administrations have chosen to take strong action not only to enforce protection under the law, but also to prevent instances of discrimination from arising.

A notable example is the decision by the Obama administration to support state and local efforts to end exclusionary and discriminatory school discipline practices that prevent students from having equal access to educational opportunity. This support came in the form of issuing guidance on civil rights and school discipline that described 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.

### **The Negative and Discriminatory Impact of Zero-Tolerance and Exclusionary Discipline Policies**

Research shows that discriminatory discipline practices have a significant negative impact on students of color, students with disabilities, and other historically underserved students. These practices often take shape as a result of zero-tolerance policies that apply strong punishments for particular infractions—including removing students from the classroom or school via suspensions and expulsions. Many districts and schools apply these policies to nonviolent and more subjective offenses, such as “willful defiance,” talking in class, tardiness, or truancy. Research shows that these policies result in negative consequences for student academic achievement, attainment, and welfare.

These policies are not only ineffective but also often applied in a discriminatory manner. Data provided by the U.S. Department of Education’s Civil Rights Data Collection demonstrate that students of color and students with disabilities, among other historically underserved students, are disproportionately suspended and expelled compared with their White and nondisabled peers. This was a key concern that the Obama administration discipline guidance was intended to address. Nevertheless, on December 21, 2018, the Trump administration rescinded this guidance and all supporting resources.

### **Effective Discipline Policies and Practices Designed to End Discrimination**

The administration took this action despite a substantial body of research showing that zero-tolerance policies and exclusionary discipline practices for nonviolent behavior are largely ineffective in changing student behavior or creating safe learning environments. Furthermore, considerable research suggests what does work. Effective policies and practices include:



- **Replacing zero-tolerance policies and the use of suspensions and expulsions for low-level offenses with strategies that teach social-emotional skills.** These strategies include teaching students how to build positive relationships and resolve conflicts peaceably. They also include targeted behavioral supports for at-risk students, methods for promoting student-school bonds, and strategies to prevent bullying.
- **Providing targeted support for educators.** 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 contribute to students' immediate and long-term behavioral change.
- **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 court judges, and others dealing with youth.
- **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.
- **Creating relationship-centered schools that support strong family and community engagement.** The voices of youth, family, and the community are particularly important in low-income communities of color where past and current experiences with the school system have been and can be less inclusive. Parent and community involvement can positively contribute to improved school climate and the provision of high-quality learning programs for students.

## States and Districts Lead the Way in Effective, Nondiscriminatory Discipline

A number of states and districts have already adopted these less punitive approaches to school discipline to create more inclusive learning environments. For example, 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. Michigan began its efforts with the formation of the Michigan School Discipline Task Force whose goal was to develop model policy that replaces suspensions and expulsions with alternative approaches to discipline.

Similar efforts are underway in Ohio and Colorado, where passage of state legislation reduced the use of exclusionary discipline practices. For example, in 2018 the Ohio Legislature passed Ohio House Bill 318 banning out-of-school suspensions for minor misbehavior for pre-k through 3rd grade, requiring specific training and memorandums of understanding for school resource officers, and providing grant funding for schools to implement positive behavior interventions and supports.<sup>1</sup> 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 additional funding for those efforts.

## **These Efforts Are Making Schools More, Not Less, Safe**

These state efforts are working. 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:

[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). [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.<sup>2</sup>

Instead of working to support and accelerate state efforts, the Trump administration chose to rescind the guidance. Although this action does not change federal antidiscrimination laws, it does 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. The decision also eliminates 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 some states and districts are implementing evidence-based approaches, those efforts are far from universal. The administration's rescission of discipline guidance removes an important set of evidence-based resources that support states and districts in their efforts to change harmful practices.

## Introduction

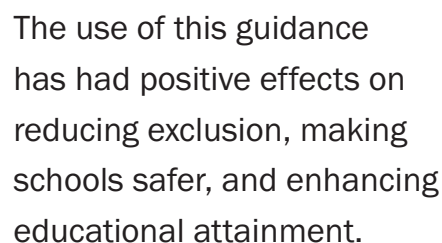
Today's education landscape, including how students experience school, can reflect pervasive educational inequities. Past federal administrations and congresses, recognizing their critical role in addressing inequality, often acted to address disparities and violations of students' civil rights that had been left unresolved by states and districts. These actions began with the passage of the Civil Rights Act of 1964 and, as it relates to education, the Elementary and Secondary Education Act (ESEA) of 1965. These laws enable the U.S. Department of Justice and the U.S. Department of Education to address violations of the law through investigation and litigation.

In addition to legislation, presidential administrations have several 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 extent to which administrations have chosen to leverage these opportunities to advance civil rights has changed over time. Some administrations have chosen to take strong action not only to enforce protection under the law, but also to prevent instances of discrimination from arising.

One of the most notable examples was the decision by the Obama administration to support state and local efforts to end exclusionary and discriminatory discipline practices in education that impede students' equal access to educational opportunity. Many of these practices took shape in the 1990s with the rise of zero-tolerance school discipline policies that unnecessarily removed students from school for nonviolent behavior and were often applied in a discriminatory manner. Researchers and grassroots and civil rights organizations began to document these practices and share information about the racially disparate and negative impacts on students of color and other historically underserved students. Their efforts sought evidence-based changes to state and local school discipline policies to reduce exclusionary and discriminatorily applied discipline policies.

Recognizing the positive impact of these grassroots efforts,<sup>3</sup> and the role of the federal government in supporting them, the Obama administration issued a series of guidance documents, including on the nondiscriminatory administration of school discipline.<sup>4</sup> These nonbinding guidance documents were based on extensive research on what works in closing educational opportunity gaps and for improving student outcomes. As we describe in this report, the use of this guidance has had positive effects on reducing exclusion, making schools safer, and enhancing educational attainment.

Despite this limited but significant federal role in education, the Trump administration has taken numerous actions that eliminate this kind of helpful guidance, leaving schools with less insight and information about how to address a range of actions that reinforce disparities in students' treatment in school and access to learning opportunities. At minimum, these actions could stall progress toward achieving educational equity; in some cases, the actions may, in fact, reverse progress.



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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.”<sup>5</sup> Since Trump took office, his administration has withdrawn nearly 600 policy documents regarding k–12 and higher education<sup>6</sup> and has rescinded, is considering rescinding, or has delayed implementation of the following federal guidance or regulations issued under the Obama administration:<sup>7</sup>

- **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.<sup>8</sup> 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.<sup>9</sup> The administration rescinded this guidance and all supporting resources on December 21, 2018.
- **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.”<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> 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 numerous issues related to significant disproportionality in the “identification, placement, and discipline of students with disabilities based on race or ethnicity.”<sup>13</sup> Research has shown how misidentification of African American children for certain special education categories obscures their real educational needs and compromises their educational outcomes.<sup>14</sup> The administration attempted to delay the implementation of this regulation until July 2020 but was sued by the Council for Parent Advocates and Attorneys. The U.S. District Court for the District of Columbia ruled that the department’s delay was illegal and required the 2016 final regulations to go into effect immediately.

Although 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 administration's actions not only depart from the traditions of federal oversight, but also ignore the social science research that has shaped policy, practice, and law protecting students' civil rights in education.

This report examines how this shift in the federal role in education could affect protections of students' civil rights in the area of school discipline. We discuss the underlying research that has been used to inform and identify best practices for supporting student behavior and achievement and keeping schools safe, the progress that has been made using research-based best practices, and the consequences of the administration's decision to roll back this guidance for productive approaches to school discipline.

## 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 for all students.

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 states 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 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.<sup>15</sup> However, over time, exclusionary policies were applied even to nonviolent and more subjective offenses, such as “willful defiance,” talking in class, tardiness, or truancy.<sup>16</sup>

This approach was in part supported by the rationale that “bad” students needed to be removed from the classroom so that other students could learn—an approach that labels students and then removes responsibility of the school and community to meet these students’ needs or to teach them

productive strategies. This rationale is particularly harmful, as research shows that perceptions about and the labeling of student behavior are often a result of implicit bias rather than actual student behavior.<sup>17</sup>

As a result of this theory, a number of states and districts began adopting zero-tolerance discipline policies and increasing police presence in schools in the 1990s based on the belief that applying highly punitive approaches to minor violations would be a deterrent and prevent more serious behavior.<sup>18</sup> 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.<sup>19</sup> Just as concerning, 20% of the students arrested were between the ages of 11 and 14.

Research shows that these policies have resulted in negative consequences for student academic achievement, attainment, and welfare.<sup>20</sup> 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.<sup>21</sup> 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.<sup>22</sup> 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.”<sup>23</sup>

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.<sup>24</sup> 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.”<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup>

In addition to lower student achievement and graduation rates, research shows that exclusionary discipline policies perpetuate the school-to-prison pipeline,<sup>28</sup> increasing the likelihood that students who experience exclusionary discipline policies will become involved in the juvenile justice system.<sup>29</sup> In some states and districts, “school discipline becomes criminalized through its extension into the juvenile court,”<sup>30</sup> 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.”<sup>31</sup> 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.”<sup>32</sup> 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.<sup>33</sup>

The life consequences for young people can be devastating, as demonstrated in part by the fact that more than one third of African American men between the ages of 20 and 34 who did not complete high school are currently incarcerated.<sup>34</sup> The impact of exclusionary discipline policies also takes a lasting toll on communities and their economic well-being, according to a recent study by the Civil Rights Project at UCLA.<sup>35</sup>

Research suggests that high suspension and expulsion rates also have significant long-term impacts on state economies. State-specific studies document net economic losses because of delayed workforce entry caused in part by school suspensions and expulsions.<sup>36</sup>

Both moral and economic necessity suggest the importance of addressing this issue as it relates to individual life outcomes and the well-being of the broader community.

## Discrimination in Discipline

Not only are these policies ineffective, but they are often applied in a 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 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.<sup>37</sup> Students of color and students with disabilities, among other historically underserved students, are disproportionately suspended and expelled compared with their White and nondisabled peers.

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,<sup>38</sup> and studies show that African American students receive harsher suspensions for more subjective and less serious behavior than their White peers.<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup>

The Civil Rights Data Collection and other national data sources found:

- **Disproportionate suspension among 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 comprised 8% of students enrolled and 25% of students who received an out-of-school suspension. By contrast, White male students comprised 25% of students enrolled and 24% of students



who received an out-of-school suspension. African American female students comprised 8% of students enrolled and 14% of students who received an out-of-school suspension. By contrast, White female students comprised 24% of students enrolled and 8% of students who received an out-of-school suspension. National data show that African American girls are 5.5 times more likely and Native American girls are 3 times more likely to be suspended from school than White girls.<sup>42</sup> American Indian/Alaska Native students are also overrepresented among expulsions and referrals to law enforcement.<sup>43</sup>

The discriminatory application of exclusionary discipline policies is also tied to disability status, gender, and other student characteristics. While students with disabilities comprise 12% of students enrolled in k–12, they represent 26% of students who receive an out-of-school suspension.<sup>44</sup> And according to a national survey, LGBTQ students are more likely to be suspended than their non-LGBTQ peers (25% compared to 15%).<sup>45</sup>

- **Disproportionate suspension among 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 most recent year for which the data is available, African American children represented 19% of public preschool enrollment and 47% of those who received more than one out-of-school suspension. By contrast, White students represented 41% of public preschool enrollment and 28% of such children who received more than one out-of-school suspension.<sup>46</sup> A study that includes both private and public preschool programs reveals similar disparities—African American preschoolers are 2.2 times more likely to be suspended or expelled than other children.<sup>47</sup>
- **Disproportionate suspension 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 represented 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%.<sup>48</sup> Similarly, more than 20% of girls of color with disabilities received an out-of-school suspension, compared with 12% of White girls with disabilities.<sup>49</sup> Further, as previously described, research shows that educator perception based on the race of the student—rather than actual differences in behavior—contributes to the disproportionate rates.<sup>50</sup>
- **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.<sup>51</sup>

## 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 policies have on students, (2) identifying the discriminatory application of exclusionary discipline practices, and (3) 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

A substantial body of research is clear that zero-tolerance policies and the use of exclusionary discipline practices for nonviolent behavior are largely ineffective in changing student behavior and in creating safe learning environments in which all students have the opportunity and supports they need to succeed. There is also considerable research about what policies and practices are effective. These policies and practices, which were included in the rescinded school discipline guidance, include:

- **Replacing zero-tolerance policies and the use of suspensions and expulsions for low-level offenses with strategies that teach social-emotional skills.**<sup>52</sup> These strategies include teaching students skills that enable positive relationships, help them resolve conflicts peaceably, and prevent bullying.<sup>53</sup> They also include targeted behavioral supports for at-risk students, and methods for promoting student-school bonds.<sup>54</sup> A review of more than 200 studies found, for example, that programs that teach social and emotional skills have yielded significant positive effects on student attitudes about self, others, and school, and have improved school safety. Overall, the programs “are associated with positive results such as improved attitudes about the self and others, increased prosocial behavior, lower levels of problem behaviors and emotional distress, and improved academic performance.”<sup>55</sup> Research also indicates that the effects of these efforts last over time and that developing student social-emotional skills increases graduation rates, along with achievement and positive behavior. 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.<sup>56</sup>
- **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<sup>57</sup> and contribute to students' immediate and long-term behavioral change.<sup>58</sup> This support should be provided to all staff who work with students, particularly teachers with little experience or preparation. Students of color are disproportionately taught by early-career teachers compared with their White peers,<sup>59</sup> and research indicates that there is a relationship between a high suspension rate and a higher than average number of novice teachers.<sup>60</sup> When staff lack strategies for managing behavior, focused supports may be needed 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 court judges, and others dealing with youth.<sup>61</sup> Implicit bias has been shown to be an important factor in disciplinary disparities. Research shows that educators can perceive student behaviors differentially based on the race of the student, contributing to the disproportionate rates of exclusionary discipline. Implicit racial bias often manifests itself in the form of negative stereotypes of students of color, with African American youth being viewed by some educators or adults in the school building as “irresponsible, dishonest, or dangerous.”<sup>62</sup> 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.<sup>63</sup> Such biases can negatively influence a teacher’s academic expectations for students as well as their treatment of students.<sup>64</sup> Recognizing and addressing implicit bias through staff training can prevent disproportionate application of exclusionary 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.<sup>65</sup> 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, when possible, to get a better understanding of who is being suspended and why.<sup>66</sup> (For example, students who belong to two or more disadvantaged subgroups are at the highest risk of being suspended, often for subjective offenses.<sup>67</sup>)
- **Considering ways to prevent negative consequences when designing and implementing policies that increase law enforcement presence in schools.** For example, such policies would seek to prevent the criminalization of children for minor misbehaviors. Training, including on implicit bias, can help to reduce the potential harm posed by school police or school resource officers who overreact to normal youth behaviors. While it is important to protect staff and students from physical violence, the regular presence of untrained law enforcement officers in schools can sometimes cause

disproportionate harm to students of color and other historically underserved students. Therefore, memoranda of understanding about norms and procedures are critical, and community engagement in the development of these policies is especially important.

- **Creating relationship-centered schools that support strong family and community engagement.** The voice of youth, family, and the community are particularly important in low-income communities of color in which past and current experiences with the school system have been and can be less inclusive. Parent and community involvement can positively contribute to improved school climate and the provision of higher quality learning programs for students.<sup>68</sup> Further, research shows that teacher outreach to parents is related to strong and consistent gains in student performance in both reading and math.<sup>69</sup> Recognizing the importance of these types of relationships for student and school success, the Every Student Succeeds Act (the bill to reauthorize ESEA) includes provisions that require states and districts to engage parents in school improvement efforts.<sup>70</sup>

## State and District Efforts to Use Evidence-Based Practices That Reduce Exclusionary Student Discipline

Many states and districts have already decided to adopt less punitive approaches to school discipline and are in the process of implementing these approaches with the goal of creating more inclusive learning environments. According to a recent analysis of state legislation, there has been a trend over the last 7 years to place limitations on punitive discipline, encourage the use of alternative strategies, and implement planning and reporting requirements.<sup>71</sup> In the 2017 legislative session, for example, lawmakers proposed at least 35 bills related to suspension and expulsion and 26 bills related to alternative school discipline strategies. Of those, 14 were enacted. In 2018, at least 11 states and the District of Columbia enacted 15 bills broadly related to suspension, expulsion, or disciplinary alternatives.<sup>72</sup>

### 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. 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.<sup>73</sup> 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 grades k–3.<sup>74</sup>

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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.”<sup>75</sup>

As a result of these approaches, California has achieved a sharp decrease in suspension rates while making schools safer. 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%.<sup>76</sup> According to national data, school-based firearm incidents in the state, which were well above the national average from 2009–10, were far below the national average by 2015–16, declining by more than 50% in the 7-year period. Significant decreases also occurred in rates of school-based fights, bullying incidents, and classroom disruptions over that period. Since the 2011–12 academic year, California has had fewer suspensions and expulsions in comparison to other states, and the sheer number of exclusionary discipline incidents has declined overall. Researchers found that these declines have held true for all racial and socioeconomic groups and school levels, narrowing disciplinary gaps among racial and ethnic groups across the state. High school graduation rates, now at 82%, have also increased in California since 2010, when they were 74%.

## Michigan

Michigan is another state tackling these important issues and adopting 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%).<sup>77</sup> Recognizing this disparity, 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:<sup>78</sup>

- 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.<sup>79</sup>

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. Because full implementation of these efforts did not begin until the 2017–18 school year, outcome data are not yet available; however, the state’s policies are now aligned with research-based practices.

### **Ohio and Colorado**

Recognizing that zero-tolerance and exclusionary discipline 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 Behavioral Interventions and Supports.<sup>80</sup>

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.<sup>81</sup> The state was able to point to district successes to justify this approach, such as those in the Denver Public Schools (DPS) system. 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%.<sup>82</sup> The decline in suspension rates continues. In 2016, despite an increase in student enrollment, 10 years after DPS 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.<sup>83</sup> In addition, during the 2015–16 school year, DPS was the only district out of Colorado’s five largest school districts to show a decrease in its early childhood suspension rate.<sup>84</sup> Colorado’s recent legislative activity is intended to replicate the gains made in DPS across other districts in the state. These efforts are intended to reduce the number of suspensions as well as any disparities within those suspensions.

## Potential Consequences of the Administration's Rescission of 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)."<sup>85</sup> 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."<sup>86</sup>

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 chose to rescind the guidance and all supporting resources on December 21, 2018. This action denies 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. The decision also eliminates 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. Although 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 removes an important set of evidence-based resources that support states and districts in their efforts to change harmful practices.

The administration's decision to rescind the discipline guidance is also based on reasoning that is not supported by research—instead taking an approach that treats school safety and data-supported research as if they are somehow at odds with each other. The administration uses a report released by its Federal Commission on School Safety<sup>87</sup> to justify the decision to rescind, despite the minimal research cited in the 180-page report.

Among the few references to research included in the report is a study that claims that the relationship between suspensions and race is "likely produced by pre-existing behavioral problems of youth that are imported into the classroom."<sup>88</sup> However, the study's conclusion goes beyond the empirical evidence presented and does not demonstrate a relationship between actual, observed misbehavior and suspension. Rather, the research shows a relationship between adults' *perceptions* of students' social skills and

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behaviors and suspensions. If those perceptions are clouded by racial bias, then the findings would confirm the manifest role of race in suspensions. The influence of racial bias is not accounted for in the study or in the commission's report overall.

Counter to the rescinded discipline guidance, the commission's report also encourages the criminalization of nonviolent behavior. As previously described, this disproportionately impacts students of color and other historically underserved students. The report recommends "a low threshold for defining concerning behaviors so that protocols address a continuum of behaviors, not just direct threats or behaviors indicative of planning for an attack." The report completely ignores the well-documented role of implicit bias in the application of these types of policies.

While the states and districts previously described will continue in their efforts to implement effective policies that create safe and inclusive learning environments, there will undoubtedly be states and districts that take their cue from this administration and implement ineffective policies that make students less safe.

The administration's decision 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. The commission's report recommends that when investigating claims of discrimination, only those that can be proven to be motivated by discriminatory intent, regardless of discriminatory impact, will need to be addressed. The Trump administration is seriously considering this recommendation, directing the Department of Education and "senior civil rights officials to examine how decades-old 'disparate impact' regulations might be changed or removed.... Under the concept of disparate impact, actions can amount to discrimination if they have an uneven effect even if that was not the intent."<sup>89</sup> Although it will likely be legally challenged, if the administration continues on this path, students will have less recourse when discipline policies are discriminatorily applied.

This approach is a complete reversal of the prior administration's approach. 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.<sup>90</sup> 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.

Federal civil rights enforcement plays a critical role in addressing racially discriminatory school discipline practices. Under the Obama administration, federal departments worked with states to address claims brought by grassroots organizers and legal advocates, resulting in significant action at the state and local level. For example, in 2015, as a result of a claim filed with the Department of Justice, Meridian, MS, agreed to take steps to prevent and address unconstitutional youth arrests and probation practices by the Meridian Police Department and the Mississippi Division of Youth Services.<sup>91</sup>

The agreement with the city of Meridian addressed “the Meridian Police Department’s prior practice of arresting students referred by the school district without assessing whether there was sufficient probable cause to justify the arrest. The settlement agreement prohibits the city police department from arresting youth for behavior that is appropriately addressed as a school discipline issue and requires documented probable cause determinations for any youth arrested for criminal offenses.”<sup>92</sup> As a result of federal involvement, the city of Meridian is focused on educating its students, not incarcerating them.

The Trump administration’s rescission of the discipline guidance does not abdicate the federal government’s responsibility for protecting students’ civil rights under federal law. At best, it misses the opportunity to support states and districts in creating inclusive and equitable learning environments that research shows keep students safe. At worst, it ignores the role of implicit bias in school discipline and encourages practices that criminalize student behavior and can have a harmful and lasting impact on their life outcomes.

## Conclusion

Any administration’s policy positions, actions, and interventions should be informed by evidence. Failure to use such evidence in the case of exclusionary discipline can perpetuate negative consequences for students, especially those of color and other historically underserved students who experience the results of discrimination in its application. The rescission of the federal discipline guidance could 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 that documents how best to create inclusive learning environments for all students. In so doing, it threatens the nation’s ability to educate and graduate young people with the skills needed to effectively compete in today’s complex society and economy, while it fails to recognize the dignity and potential in each and every student.

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