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May 15, 2018

The Honorable Betsy DeVos, Secretary
U.S. Department of Education
400 Maryland Avenue, S.W.
Washington, DC 20202

The Honorable Jeff Sessions, Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

RE: Support for the 2014 School Discipline Guidance

Dear Secretary DeVos and Attorney General Sessions:

The Dignity in Schools Campaign (“DSC”) writes to express its strong support for the 2014 Dear Colleague letter on the Nondiscriminatory Administration of School Discipline jointly issued by the Departments of Education and Justice and its accompanying Rethinking School Discipline policies. We urge you to maintain the school discipline guidance, without revisions, which will continue to protect the civil rights and educational achievement of children of color.

DSC is a coalition of over 100 grassroots and education advocacy organizations in 29 states. Since its inception in 2006, DSC members have worked to dismantle the school-to-prison pipeline by advocating for educational environments that keep students in school and learning. We have challenged the systemic use of exclusionary discipline practices that disproportionately impact students of color, students with disabilities, and students who identify as Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ), which the Department’s most recent civil rights data and other national research verifies.¹ Our recent national advocacy efforts have included releasing a toolkit for school communities on how to engage in the implementation of

¹ U.S. Dep’t of Education, 2015-2016 Civil Rights Data Collection: School Climate and Safety (April 2018), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>; See also, Hilary Burdge, Adela C. Licona & Zemi T. Hyemingway, LGBTQ Youth of Color: Discipline Disparities, School Push-out, and the School-to-Prison Pipeline 2, https://gsanetwork.org/files/aboutus/LGBTQ_brief_FINAL-web.pdf (“Research shows that LGBTQ youth of color in particular face persistent and frequent harassment and bias-based bullying from peers and school staff as well as increased surveillance and policing, relatively greater incidents of harsh school discipline, and consistent blame for their own victimization.”).

state plans under the Every Student Succeeds Act (ESSA),² including the promotion of effective strategies for reducing these persistent racial disparities in school discipline and providing meaningful supports to school districts to reduce the overuse of exclusionary discipline; and re-releasing a brief on why increasing the police presence in schools would lead to further disparities for students of color.³

Given that children and youth of color are frequently disciplined at dramatically disproportionate rates, we strongly support maintaining the Departments’ “Dear Colleague Letter,” which clarifies school districts’ civil rights obligations to discipline without discriminating on the basis of race, color, or national origin.⁴ The guidance was the first of its kind to recognize that students have been subjected to racially discriminatory practices in schools and that racial disparities in discipline data are not explained by more frequent misbehavior by students of color.

For example, according to the Department of Education’s Civil Rights Data Collection (“CRDC”) for the 2015-2016 school year, Black K-12 students made up 15 percent of the student population but 39 percent of the students who received at least one out-of-school suspension.⁵ Research shows that there is no evidence that students of color misbehave more than their white peers.⁶ However, students of color are often disproportionately disciplined for minor, subjective offenses such as disobedience and disruptive behavior, which are left up to the discretion of school staff, administrators, and school police who may be more likely to negatively interpret the behavior of certain racial and ethnic groups based on their own conscious or unconscious bias.⁷

These racial disparities were also recently highlighted in the U.S. Government Accountability Office’s (“GAO”) report on school discipline issued in March 2018, which reaffirms that Black students, in particular, are overrepresented among students who are disciplined.⁸ Studies reviewed for the report also found that implicit bias may cause these disparities and that “the type of offenses that Black children were disciplined for were largely based on school officials’ interpretations of behavior.” Further, the report

² Dignity in Schools, Engage for Education Equity: A Toolkit for School Communities on the Every Students Succeeds Act, http://partnersforeachandeverchild.org/wp-content/uploads/EfEE_Full-Toolkit.pdf.

³ Dignity in Schools, Police in Schools are Not the Answer to School Shootings, <http://dignityinschools.org/resources/police-in-schools-are-not-the-answer-to-school-shootings/>.

⁴ U.S. Dep’t of Education, Office for Civil Rights, Joint “Dear Colleague” Letter (Jan. 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html#ftn21>.

⁵ U.S. Dep’t of Education, *supra* note 1.

⁶ Russel Skiba, et al., New and Developing Research on Disparities in Discipline, the Equity Project at Indiana University, 2-3, (Mar. 2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2015/01/Disparity_NewResearch_010915.pdf.

⁷ Skiba, *supra* note 5, at 2.

⁸ U.S. Government Accountability Office, Discipline Disparities for Black Students, Boys, and Students with Disabilities (March 2018), <https://www.gao.gov/assets/700/690828.pdf>.

also found that Black students were the only racial group for which boys and girls were disproportionately disciplined across all six disciplinary actions examined (in- and out-of-school suspension, referral to law enforcement, expulsion, corporal punishment, and school-related arrest).

It goes without saying that students cannot learn if they are not in school, and the academic consequences of exclusionary discipline practices on student achievement are well-documented. Students who are suspended or expelled are more likely to fail a course, drop out of school, or become involved in the juvenile justice system.⁹ A recent study by the Civil Rights Project at the University of California found that, during the 2014-2015 school year, California students missed approximately two days of instruction each time they were suspended and black students, on average, missed 32 more days than their white peers.¹⁰

Critics of the guidance argue that it hampers school districts from administering discipline, raising a specter of schools with rogue criminal children roaming the hallways targeting teachers and students. However, the data does not support this. In many places, since the 2014 guidance was issued, suspensions have gone down without any noted decrease in school safety.¹¹ The guidance has helped thousands of parents and students understand their rights and schools' responsibilities. It has enabled some schools to re-evaluate how they discipline all children. It encourages them to build community within the schools and examine why negative behavior is occurring and address it. More teachers are getting trained on how to better implement positive discipline practices so we can keep kids in school where they belong.

Additionally, this critical guidance does not create any new requirements for schools or school districts. Rather, it provides valuable information to schools and districts to determine whether their disciplinary policies result in different treatment

⁹ Russell J. Skiba, Mariella I. Arredondo & M. Karega Rausch, *New and Developing Research on Disparities in Discipline*, *Discipline Disparities: A Research-to-Practice Collaborative*, 2 (Mar. 2014).

¹⁰ Daniel L. Losen & Amil Whitaker, *Lost Instruction: The Disparate Impact of the School Discipline Gap in California*, *Civil Rights Project*, 1 (2017), <https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/summary-reports/lost-instruction-the-disparate-impact-of-the-school-discipline-gap-in-california>.

¹¹ *See, e.g.*, Jane Meredith Adams, *Suspensions and expulsions decline as districts adopt alternatives, state says*, *EdSource*, Jan. 13, 2016, <https://edsources.org/2016/suspensions-and-expulsions-decline-as-districts-adopt-alternatives-state-says/93297>; *Suspensions are down. What does this mean for school safety?*, *Research Alliance for New York City Schools*, Jan. 31, 2017, https://steinhardt.nyu.edu/site/research_alliance/2017/01/31/suspensions-are-down-what-does-this-mean-for-school-safety/; *see also* National Center for Education Statistics, *Indicators of School Crime and Safety: 2017*, <https://nces.ed.gov/pubs2018/2018036.pdf> (providing that incidents of crime at school have decreased since 2014).

or have a disproportionate impact on certain groups of students. Indeed, it is designed to help schools follow the law they are obligated to obey to make sure students' rights are protected. The Departments must maintain this important tool, which serves the critical role of ensuring that schools and districts that receive federal funds follow existing laws designed to protect the rights of vulnerable students.

DSC knows better than most how important the school discipline guidance is. Our coalition was formed ten years ago as school discipline rates doubled what they were in the 1970s and racial disparities continued to widen. Given the rampant and racially disproportionate misuse of suspension and other exclusionary discipline practices across our communities, DSC and other advocates called on the Obama administration to release this guidance. Given this, we were extremely disappointed to learn of the exclusive nature of the Department's listening sessions on school safety and climate on April 4, 2018.¹² These sessions failed to include broad representation of impacted students and families, as well as community members working with schools and districts to promote positive school climates, including DSC member organizations. According to the Department's press release only one student and one parent participated in the listening sessions. Given that students of color and their families bear the brunt of the negative impacts of racially discriminatory discipline practices, the Department must prioritize soliciting feedback from these individuals, ideally by hosting follow-up listening sessions specifically for impacted students of color and their families. These sessions should be regional and held in communities that are predominately composed of families of color so that travel is not an obstacle to participation.

DSC also strongly opposes the Administration's use of the tragedy at Majority Stoneman Douglas High School in Parkland, Florida to advance its efforts to repeal policies designed to eliminate racial disparities in school discipline, as well as its efforts to "harden" our nation's schools by increasing police presence in schools and providing firearms training to school personnel. Instead, the Departments should help districts limit the assignment of police to schools and discourage efforts to arm school staff. The increased use of school police as disciplinarians disproportionately affects students of color. During the 2015-2016 school year, Black students made up 31 percent of those arrested or referred to law enforcement, despite comprising only 15 percent of the student population.¹³ Conversely, white students made up 49 percent of the student population and accounted for only 36 percent of students who were arrested or referred

12 U.S. Department of Education, Secretary DeVos Hosts School Safety and Climate Listening Sessions (April 4, 2018), <https://www.ed.gov/news/press-releases/secretary-devos-hosts-school-safety-and-climate-listening-sessions>.

¹³ U.S. Dep't of Education, *supra* note 1.

to law enforcement.¹⁴ The presence of guns in schools especially endangers Black children because the judgment of officers and school staff is affected by implicit,¹⁵ and sometimes explicit,¹⁶ bias. This is yet another aspect of the school-to-prison pipeline, where students of color are unfairly denied an opportunity to succeed, and instead are pushed out of school and into the juvenile or criminal justice system.

In addition to maintaining the school discipline guidance and limiting the presence of law enforcement in schools, DSC encourages the Departments to provide more resources to schools and districts to both protect students' rights and promote positive school climates, including school counselors, social workers, and access to evidence-based and promising programs like Positive Behavior Interventions & Supports¹⁷ and trauma-informed care.¹⁸

Thank you for considering this letter. If you have any questions or concerns, please do not hesitate to contact Natalie Chap at natalie@dignityinschools.org.

Sincerely,
The Dignity in Schools Campaign
(www.dignityinschools.org)

¹⁴ *Id.*

¹⁵ See Ajmel Quereshi et al., *Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline*, NAACP Legal Defense & Educational Fund, Inc., 2017, available at http://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf;

¹⁶ See, e.g., Matt Stevens, *Florida Teacher Says Her Racist Podcast Was 'Satire'*, N.Y. Times, Mar. 7, 2018, available at <https://www.nytimes.com/2018/03/07/us/florida-teacher-racism.html>; WFLA Web Staff, *Florida teacher used n-word, told students dating black people was 'not worth it,' district says*, WFLA, Mar. 10, 2018, available at <http://wfla.com/2018/03/10/florida-teacher-used-n-word-told-students-dating-black-people-was-not-worth-it-district-says/>; The Griot, *Florida teacher put on probation for telling racist jokes in classroom*, The Griot, Oct. 27, 2016, available at <https://thegriot.com/2016/10/27/florida-teacher-racist-jokes/>.

¹⁷ See Jenni Owen, et al., *Instead of Suspension: Alternative Strategies for Effective School Discipline*, Duke Center for Child and Family and Policy, 2015, available at https://law.duke.edu/childedlaw/schooldiscipline/downloads/instead_of_suspension.pdf.

¹⁸ See Katy O'Grady, *Transforming Schools with Trauma-Informed Care*, ASCA SCHOOL COUNSELOR, Jan. 2017, available at <https://www.schoolcounselor.org/asca/media/asca/ASCAU/Trauma-Crisis-Management-Specialist/TransformingSchools.pdf>.