



DIGNITY IN SCHOOLS

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**Written Testimony of the Dignity in Schools Campaign
Submitted to the U.S. Commission on Civil Rights in Response to its Briefing
on
“The School-to Prison Pipeline: The Intersections of Students of Color with
Disabilities.”**

December 8, 2017

I. Introduction

The Dignity in Schools Campaign (“DSC”) submits this written testimony in response to the U.S. Commission on Civil Rights briefing regarding how school disciplinary policies may affect the educational achievement of children of color with disabilities. 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 include encouraging state education departments to ensure that state plans under the Every Student Succeeds Act (ESSA) include effective strategies for reducing these persistent racial disparities in school discipline by selecting school climate as an indicator of school quality and by providing meaningful supports to school districts to reduce the overuse of exclusionary discipline.

II. Enforcing Regulations Under Part B of the Individuals with Disabilities Education Act

Given that children and youth of color are overrepresented in special education and that students of color with disabilities are frequently disciplined at dramatically disproportionate rates, we strongly support the U.S. Department of Education’s (“the Department”) regulations under Part B of the Individuals with Disabilities Education Act (IDEA), which were finalized in December 2016 and are intended to address issues related to significant racial and ethnic disproportionality in the identification, placement, and discipline of students with disabilities. The regulations set a common standard for identifying significant disproportionality and are intended to ensure that school districts review policies and practices to determine the root causes of these disparities and whether changes are needed.² The Department issued these regulations in direct response to the U.S. Government Accountability Office study showing

¹ U.S. Dep’t of Education, 2013-2014 Civil Rights Data Collection: A First Look (June 7, 2016), <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.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.”).

² U.S. Dep’t of Education, Assistance to States for the Education of Children with Disabilities; Preschool Grants for Children with Disabilities Final Regulations, 34 C.F.R. Part 300, et seq., <https://www2.ed.gov/policy/speced/reg/idea/part-b/idea-part-b-significant-disproportionality-final-regs-unofficial-copy.pdf>.

widespread non-compliance by states with provisions of the IDEA requiring states to identify districts with significant disproportionality.³ According to the study, most states set such high levels for identifying districts that no districts exceeded them, and, therefore, none were identified. Additionally, states permitted school districts to suspend students of color with disabilities at much higher levels than their white peers. For example, according to the Department's Civil Rights Data Collection for 2013-2014, one in four Black boys with disabilities received at least one out-of-school suspension, compared to only one out of ten white boys with disabilities.⁴ That same year, 18.6 percent Black girls with disabilities received at least one out-of-school suspension, compared to 5.2 percent of white girls with disabilities.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

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.⁸ A recent study by The Center for Civil Rights Remedies at the Civil Rights Project found that, during the 2014-15 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.⁹ Preliminary national findings from the Center for Civil Rights Remedies reveal that, during the same school year, Black students with disabilities lost 119 days of instruction per 100 students, while White students lost 46 days. These conservative estimates are based on data publicly reported by the U.S.

³ U.S. Gov't Accountability Office, GAO-13-137, Individuals with Disabilities Education Act: Standards Needed to Improve Identification of Racial and Ethnic Overrepresentation in Special Education (2013), <https://www.gao.gov/assets/660/652437.pdf>.

⁴ U.S. Dep't of Education, *supra* note 1.

⁶ Russell 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 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).

⁹ Daniel J. Losen and Amir Whitaker, The Disparate Impact of the School Discipline Gap in California, The Center for Civil Rights Remedies at the Civil Rights Project (Oct. 24, 2017).

Department of Education.

Given such rampant disparities, we have serious concerns regarding a draft Federal Register notice from the Department seeking comment on whether to delay the compliance date for the 2016 regulations until July 1, 2020 (and postpone data collection regarding the rights of the youngest children until 2022). This draft notice was published by Politico on October 26, 2017 and also notes that the Department would use the additional time to collect data from states that have already begun implementing the rule to determine if the regulations should be maintained or if they should be modified, replaced, or removed.¹⁰

These regulations should not be delayed. States have been legally required to address significant disproportionality in areas related to special education under the IDEA since 2004 and have had adequate time to develop appropriate measures for determining these disparities. Some states have already done so. Others have ignored their responsibility and legal obligation, which have resulted in violations of students' civil rights and have negatively impacted educational opportunity for far too many students of color. The regulations were already subjected to a public comment period in 2016. During this time, hundreds of individuals and organizations, including DSC, submitted comments on the appropriateness of the regulations. Further delay is unnecessary and will only result in harm to children who have already waited too long for an equitable education. The Department must enforce the rule as written.

III. Maintaining Joint School Discipline Guidance

In January 2014, the Department of Education and the Department of Justice issued the “Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,” clarifying school districts’ civil rights obligations to discipline without discriminating on the basis of race, color, or national origin.¹¹ 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. The guidance also states that a school is in violation of Title VI of the Civil Rights Act of 1964 if it implements policies that have an unfair effect and disparate impact on a certain group and provides examples

¹⁰ Benjamin Wermund, *What to expect from Trump’s pick to lead the civil rights office*, POLITICO, <https://www.politico.com/tipsheets/morning-education/2017/10/27/what-to-expect-from-trumps-pick-to-lead-the-civil-rights-office-223032> (Oct. 27, 2017) (including a link to the draft notice).

¹¹ 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>.

of situations in which schools may be in violation of federal civil rights laws.¹²

DSC knows better than most how important this joint 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.

Media reports indicate that high-ranking Department officials met with a group of conservative teachers and a parent interested in rescinding the guidance. 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 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 Department 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.

It is imperative that the Department maintains all regulations and non-regulatory guidance implementing nondiscrimination laws to ensure robust enforcement of protections afforded to students of color with disabilities and other marginalized students.

IV. Ensuring that State Plans Under the Every Student Succeeds Act (ESSA) Address Racial Disparities in School Discipline

Finally, the Department of Education must ensure that all children and youth, including students of color with disabilities, receive equal educational opportunity through robust implementation of ESSA. As the Department completes its review and approval of ESSA state plans, it is critical that the Department ensure that these plans meet the letter and intent of the law, including provisions related to school discipline. For example, ESSA requires states to describe how they will assist districts to reduce the overuse of practices that remove students from the classroom and aversive discipline practices, such as seclusion and restraint.¹³ The Department must ensure that states outline meaningful steps to address these issues in their plans, including by

¹² *Id.*

¹³ Every Student Succeeds Act, Public Law No. 114.95, S. 1177, 114th Cong. §1111(g)(1)(C) (Dec. 10, 2015) (hereinafter, ESSA).

providing districts with funding and professional development to address implicit and explicit bias in school staff and administrators, as well as the supports needed to implement alternative discipline practices such as restorative justice. There have been reports of inconsistencies in the Department’s feedback and reports that some of this feedback has failed to address all areas where state plans have not met the requirements of the law.¹⁴ State plans should not be approved unless they describe the specific actions the state will take to support positive conditions for student learning, especially for historically marginalized students.

Thank you for the opportunity to submit this written testimony for your consideration. 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 See e.g., Alyson Klein, ESSA: Four Takeaways on the First State Plans to Win Approval, Education Week (Sept. 12, 2017), http://blogs.edweek.org/edweek/campaign-k-12/2017/09/essa_four_big_takeaways_first_batch_plans.html; Letter from Sen. Patty Murray and Rep. Robert “Bobby” Scott to Secretary Betsy DeVos, U.S. Department of Education (Sept. 18, 2017), <https://www.help.senate.gov/imo/media/doc/2017-09-18%20ESSA%20statutory%20requirements%20letter.pdf>; and Phillip Lovell, Alliance for Excellent Education, Testimony before the House Committee on Education and the Workforce (July 18, 2017), <http://docs.house.gov/meetings/ED/ED00/20170718/106262/HHRG-115-ED00-Wstate-LovellP-20170718.pdf>.