

Note: The official version of this document is the document published in the Federal Register. This document has been sent to the Office of the Federal Register and has been scheduled for publication on June 8, 2021.

4000-01-U

DEPARTMENT OF EDUCATION

Request for Information Regarding the Nondiscriminatory
Administration of School Discipline

[Docket ID ED-2021-OCR-0068]

AGENCY: Office for Civil Rights (OCR), U.S. Department of
Education.

ACTION: Request for information.

SUMMARY: This notice is a request for information in the form of written comments that include information, research, and suggestions regarding the administration of school discipline in schools serving students in pre-K through grade 12. OCR solicits these comments to inform determinations about what policy guidance, technical assistance, or other resources would assist schools that serve students in pre-K through grade 12 with improving school climate and safety, consistent with the civil rights laws that OCR enforces, to ensure equal access to education programs and activities. OCR has promulgated regulations to implement civil rights laws and periodically provides

policy guidance and technical assistance to clarify these statutory and regulatory requirements. Information received through this request may be used to assist OCR in preparing further guidance, technical assistance, and other resources.

DATES: We must receive your comments on or before July 23, 2021

ADDRESSES: Written comments may be submitted as indicated below:

- Federal eRulemaking Portal: Using the Docket ID number above, please go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site.

- Mail: If you do not have internet access or electronic submission is not possible, you may mail written comments to the Office for Civil Rights, U.S. Department of Education, Potomac Center Plaza (PCP), 550 12th Street, SW, Washington, DC 20024. Mailed comments must be postmarked by July 23, 2021, to be accepted. Comments submitted by email or fax will not be accepted.

Privacy Note: The Department's policy is to make all electronic comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov.

Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Alejandro Reyes, Director, Program Legal Group, Office for Civil Rights, Potomac Center Plaza (PCP), room 6125, 550 12th Street, SW, Washington, DC 20024. Telephone: (202) 245-7272. Email: Alejandro.Reyes@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), please call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

If you have difficulty understanding English, you may request language assistance services for Department information that is available to the public. These language assistance services are available free of charge. If you need more information about interpretation or translation services, please call 1-800-USA-LEARN (1-800-872-5327) (TTY: 1-800-877-8339).

SUPPLEMENTARY INFORMATION:

I. Background

A. OCR's role in enforcing Federal civil rights laws

OCR enforces Federal civil rights laws and their implementing regulations, including those that prohibit discrimination based on race, color, or national origin (Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., 34 CFR part 100) (Title VI); sex (Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., 34 CFR part 106); disability (Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, 34 CFR part 104, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq., 28 CFR part 35);¹ and age (Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., 34 CFR part 110). These laws prohibit discrimination in the programs or activities of schools and other entities that receive Federal financial assistance from the Department (recipients), or, in the case of Title II, are public entities, regardless of whether they receive Federal financial assistance.

These laws apply to a wide range of entities, including all State educational agencies (SEAs); approximately 17,600 local educational agencies (LEAs); over 5,000 postsecondary institutions; 80 State vocational

¹ OCR shares, with DOJ, responsibility for compliance with Title II with regard to educational institutions. 28 CFR subpart 35.190(b)(2); 28 CFR subparts 35.172-35.174.

rehabilitation agencies and their subrecipients; and other institutions that receive Departmental financial assistance, such as libraries, museums, and correctional institutions.

OCR fulfills its mission to protect civil rights in many ways, including by (1) responding to civil rights complaints filed by members of the public; (2) proactively conducting compliance reviews and directed investigations to enforce Federal civil rights laws; (3) monitoring recipients' adherence to resolution agreements reached with OCR; (4) issuing policy guidance to increase recipients' understanding of their civil rights obligations and students' and families' awareness of students' civil rights; (5) providing technical assistance and other information to recipients and the public; and (6) administering and disseminating the Civil Rights Data Collection (CRDC).

OCR develops policy guidance based on legal developments, its enforcement work, and civil rights data trends. In addition, OCR develops policy guidance, technical assistance, and other informational materials in response to compliance concerns raised by public inquiries, requests for technical assistance, and engagement with a wide array of education and civil rights stakeholders.

OCR's policy guidance and technical assistance are designed to ensure that every student has equal access to education programs and activities free from discrimination. These guidance and technical assistance documents are available on OCR's website at

www.ed.gov/ocr/frontpage/faq/readingroom.html.

B. OCR and other Federal agency policy guidance on the nondiscriminatory administration of school discipline

As described below, OCR and other Federal agencies have taken multiple approaches to analyze and address longstanding issues related to the nondiscriminatory administration of school discipline and the creation of positive school climates.

OCR and the U.S. Department of Justice Civil Rights Division (CRT): In 2014, following input from a wide array of stakeholders, OCR and CRT jointly released a [Dear Colleague letter](#) on the nondiscriminatory administration of school discipline and related materials ("guidance") to identify, avoid, and remedy discrimination based on race, color, or national origin in the administration of school discipline and create a positive school climate.² The

² Dear Colleague Letter on Nondiscriminatory Administration of School Discipline (January 8, 2014) (rescinded) available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>. See also, ED-DOJ School Discipline Guidance package

guidance emphasized the requirements of Titles IV and VI of the Civil Rights Act of 1964, which protect students from race, color, or national origin discrimination, and discussed both racial and national origin discrimination due to different treatment of, and unjustified disparate impacts on, students of color. The guidance also noted how the growing and disproportionate use of exclusionary discipline policies, such as in-school and out-of-school suspensions, caused students to lose instructional time and created the potential for significant, negative educational and other long-term impacts that contributed to the school-to-prison pipeline.

In 2018, OCR and CRT issued a [Dear Colleague letter](#) that rescinded the 2014 guidance.³ This rescission followed a [report](#) and [recommendations](#) issued by the 2018 [Federal Commission on School Safety](#).⁴ In 2018, OCR also issued a [question-and-answer document](#) with information on how OCR

website (archived) available at <https://www2.ed.gov/policy/gen/guid/school-discipline/fedefforts.html#guidance>.

³ Dear Colleague letter (December 21, 2018) available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201812.pdf>.

⁴ Federal Commission on School Safety listening session transcripts, report and recommendations are available at <https://www.ed.gov/school-safety>.

assesses a school's compliance with Title VI with respect to the administration of school discipline.⁵

U.S. Government Accountability Office (GAO) and the U.S. Commission on Civil Rights (USCCR): GAO released [a report](#) in March 2018 in which it analyzed CRDC discipline data from the 2013-14 school year. This report found that Black students, boys, and students with disabilities were disproportionately disciplined "regardless of the type of disciplinary action, level of school poverty, or type of public school attended."⁶

Likewise, in its 2019 report--BEYOND SUSPENSIONS: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities--the USCCR found that:

Students of color as a whole, as well as by individual racial group, do not commit more disciplinable offenses than their white peers – but black students, Latino students, and Native American students in the aggregate receive substantially more school discipline than their white peers and receive harsher and longer

⁵ OCR's Questions and Answers on Racial Discrimination and School Discipline (December 21, 2018) is available at <https://www2.ed.gov/about/offices/list/ocr/docs/ga-title-vi-201812.pdf>.

⁶ U.S. Government Accountability Office, *K-12 Education: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, 12 (March 2018) available at <https://www.gao.gov/products/gao-18-258>.

punishments than their white peers receive for like offenses.⁷

OCR's Civil Rights Data Collection (CRDC): OCR's most recent analysis of discipline data from the 2017-18 CRDC shows that these racial disparities persist. In particular, the data show that students of color are disproportionately subjected to disciplinary actions in contrast to their White peers.⁸ With respect to referrals to law enforcement, which includes school-based arrests and the issuance of citations and tickets, CRDC data revealed that in 2017-18, Black students represented only 15 percent of the total student enrollment but accounted for 29 percent of all students referred to law enforcement--almost twice their share of overall student enrollment. White students, on the other hand, accounted for 47 percent of total student enrollment in 2017-18, but only 38 percent of referrals to law enforcement.

⁷ U.S. Commission on Civil Rights, BEYOND SUSPENSIONS: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities, 161 (July 23, 2019), <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>.

⁸ In 2017-18, 50.9 million students were enrolled in pre-K through grade 12 in public schools across the country. The data and all percentages are from the 2017-18 CRDC released in October 2020 and updated in May 2021. Downloadable data files of information from the CRDC are available at <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2017-18.html>. The definitions used by the CRDC can be found at <https://crdc.communities.ed.gov/#communities/pdc/documents/17270>.

These disparities in referrals to law enforcement are apparent in the treatment of students with disabilities as well. Students served under the Individuals with Disabilities Education Act (IDEA)⁹ represented 13 percent of total student enrollment but 27 percent of students referred to law enforcement in 2017-18. During that school year, Black students with disabilities represented 18 percent of all students provided services under IDEA but 32 percent of those who were referred to law enforcement.

With respect to other exclusionary discipline practices, CRDC data from 2017-18 show that Black students represented 38 percent of students who received one or more out-of-school suspensions -- over two times their share of overall student enrollment (15 percent). In addition, Black students accounted for 36 percent of all expulsions and 33 percent of students who were expelled without educational services.¹⁰ By contrast, White students

⁹The Office of Special Education Programs (OSEP) in the Department's Office of Special Education and Rehabilitative Services (OSERS) administers the IDEA. For information about the IDEA, please see [osep.comunities.ed.gov](https://www.osep.comunities.ed.gov) and www.ed.gov/osers/osep/index.html.

¹⁰ The 2017-18 CRDC collected expulsions data for students who were expelled with education services, students who were expelled without educational services, and students who were expelled under zero-tolerance policies. A zero-tolerance policy is a policy that results in mandatory expulsion from a student's regular school for the remainder of the school year or longer if the student commits one or more specified offenses. Examples of specified offenses include those involving guns or other weapons, violence, or similar factors, or combinations of these factors.

accounted for 47 percent of overall student enrollment but received comparatively fewer expulsions: 36 percent of all expulsions and 41 percent of students who were expelled without educational services. American Indian or Alaska Native students received expulsions at rates (1.1 percent and 1.8 percent, respectively) that were slightly higher than their share of total student enrollment (1.0 percent).

Disparities worsen when you examine the intersection between race and sex. According to the 2017-18 CRDC data, Black girls were the only group across all races or ethnicities for girls where a disparity in school suspensions was observed. Black girls accounted for 11.1 percent of in-school suspensions and 13.3 percent of out-of-school suspensions, which is almost two times their share of total student enrollment of 7.4 percent. Black boys accounted for 7.7 percent of total student enrollment and received both in-school suspensions and out-of-school suspensions at rates (20.1 percent and 24.9 percent, respectively) almost three times their share of total student enrollment -- the largest disparity across all race/ethnicity and sex groupings.

Students with disabilities were also overrepresented in exclusionary disciplinary actions as shown by CRDC data from 2017-18. Despite representing only 13 percent of the

student population, they represented 25 percent of all students who received one or more out-of-school suspensions and 15 percent of those who were expelled without educational services in 2017-18. Black students with disabilities represented 26 percent of expulsions without educational services although they accounted for only 18 percent of all students provided services under IDEA in 2017-18.

C. Commitment to equity and this request for information

On January 20, 2021, President Joe Biden issued an [Executive Order On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#) to affirm the Administration's policy of and commitment to pursuing "a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality."¹¹

Consistent with this approach, OCR is issuing this notice to solicit information on school climate and

¹¹ Executive Order 13985 [On Advancing Racial Equity and Support for Underserved Communities Through the Federal Government](#) (January 20, 2021), available at <https://www.federalregister.gov/documents/2021/01/25/2021-01753/advancing-racial-equity-and-support-for-underserved-communities-through-the-federal-government>.

discipline practices in our nation's schools serving students in pre-K through grade 12, and how best to support and build schools' capacity to promote positive, inclusive, safe, and supportive school climates in a nondiscriminatory manner.

II. Solicitation of Comments

A. Information solicited

The Department requests information from students, families, educators, school leaders, SEAs, LEAs, community-based organizations, civil rights organizations, and other stakeholders regarding the ongoing discipline challenges in our nation's schools. OCR is also interested in learning about discipline issues arising during this unprecedented time of school closures, virtual learning, hybrid learning, and reopening schools during the COVID-19 pandemic, as well as promising practices for addressing student discipline and creating positive school climates in these unique learning environments.

In particular, OCR is soliciting responses to the questions and requests below in the form of written comments to inform determinations about what policy guidance, technical assistance, or other resources would aid schools serving students in pre-K through grade 12 in providing positive, inclusive, safe, and supportive school

climates and ensuring the nondiscriminatory administration of school discipline under the laws OCR enforces.

B. Instructions for responding to this request for information

When responding to this request for information, please be as specific as possible in your comments. If you are aware of any supportive research (qualitative or quantitative) or promising school- or community-based programs, please include citations, websites, or other information that might enable OCR to follow up on the information you have shared.

OCR recognizes students may experience multiple forms of discrimination at once and encourages commenters to identify and address individual and intersectional discrimination as appropriate. This might include, for example, comments on disproportionate discipline of students of a certain race, color, or national origin who are also male, female, LGBTQI+, and/or who are also students with disabilities.

If you are commenting on materials that OCR has issued in the past, please indicate if you believe OCR should consider affirming, changing, or rejecting such materials in future guidance, and the reasons for your recommendations.

Please do not submit comments focused on OCR's handling of complaints filed with OCR as this topic is beyond the scope of this request for information and will not be considered.

C. Request for information

Please address one or more of the following questions or requests:

1. What are your views on the usefulness of current and previous guidance OCR and CRT have issued on school discipline? We would appreciate your comments on the guidance documents described above, including the 2014 guidance, the 2018 Dear Colleague letter, and the 2018 Questions & Answers on Racial Discrimination and School Discipline guidance.

2. What ongoing or emerging school discipline policies or practices are relevant to you or the communities you serve, including any that you believe raise concerns about potentially discriminatory implementation or effects on students' access to educational opportunities based on race, color, national origin, sex, or disability?

3. What promising practices for the administration of nondiscriminatory school discipline or creating positive school climates have you identified?

4. What are your views on this non-exhaustive list of disciplinary policies, practices, and other issues below?

(a) Discipline of students in pre-K through third grade, including in-school and out-of-school suspensions.

(b) Use of exclusionary disciplinary penalties, such as suspensions or expulsions, for minor, non-violent, or subjectively defined types of infractions, such as defiance or disrespect of authority.

(c) Discipline issues relating to dress and grooming codes (including restrictions on hairstyles).

(d) Corporal punishment.

(e) Inappropriate use of seclusion and restraint for disciplinary purposes.

(f) Referrals to and the resulting interactions with school police, school resource officers, or other law enforcement.

(g) Referrals to alternative schools and programs.

(h) Threat assessment practices.

(i) Students bringing weapons or using them at school.

(j) Use of surveillance technologies in a discriminatory manner.

(k) School policies or practices related to teacher and staff training related to discipline, the role teachers

play in referrals of students for discipline, and the role of implicit bias in disciplinary decisions.

(l) Discipline related to attendance and time management.

(m) Discipline of victims of race, color, or national origin harassment, sex harassment, or disability harassment for misconduct that arises as a result of such harassment.

(n) Zero tolerance or strict, three-strike policies.

(o) Reintegration of students who return to school after a long-term out-of-school suspension or expulsion.

(p) Discipline issues relating to virtual learning.

(q) Discipline issues relating to returning to in-person instruction.

(r) Discipline issues relating to activities off school campus or in virtual school settings, such as bullying through social media usage.

5. What types of guidance and technical assistance can OCR provide to best help SEAs and LEAs create positive, inclusive, safe, and supportive school climates and identify, address, and remedy discriminatory student discipline policies and practices (for example, Dear Colleague letters, Frequently Asked Questions documents, fact sheets, tool kits, videos on the nondiscriminatory administration of school discipline or positive school

climate, and guidance on returning students to in-person instruction)?

6. What promising practices that have reduced the use of discipline or the disparities in the use of discipline between different groups of students (including promising evidence-based programs and success stories from particular school districts) should OCR consider highlighting in any future guidance or resource materials?

7. How do school discipline policies impact (a) students' opportunity to learn; (b) academic achievement; (c) students' mental health; (d) drop out and graduation rates; (e) school climate and safety; (f) access to instructional time; (g) teacher retention and satisfaction; (h) the rates at which staff refer students for formal discipline; (i) student participation in STEM courses, honors and advanced placement courses, arts and theater, and extra-curricular programming; (j) impact of discipline records on access to scholarships or on enrollment in college; (k) student participation in ceremonies (for example, graduation ceremonies and National Honor Society ceremonies); and (l) life outcomes (for example, earnings, reliance on public support, income, employment opportunities, and housing)?

8. To what extent can hiring and professional development practices be designed and aligned to ensure that teachers and staff are adequately prepared to manage classrooms and work with students in a fair and equitable manner?

9. Describe any data collection, analysis, or record-keeping practices that you believe are helpful in identifying and addressing disparities in discipline. Conversely, describe any barriers or limitations in these areas, and any ideas you may have on how to overcome them.

III. Conclusion

OCR appreciates the contributions of students, families, educators, school leaders, SEAs, LEAs, community-based organizations, civil rights organizations, and others to this request for information. We will review every comment, and, as described above, electronic comments in response to this request for information will be publicly available on the Federal eRulemaking Portal at www.regulations.gov.

Please note that OCR will not directly acknowledge or respond to comments, including comments that contain specific questions or inquiries. OCR issues a limited number of policy guidance and technical assistance documents each year. Receipt of comments in response to

this request for information does not imply that OCR has decided to issue policy guidance, technical assistance, or other resources.

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the *Federal Register* and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of the Department published in the *Federal Register*, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at www.federalregister.gov. Specifically,

through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated:

Suzanne B. Goldberg,
*Acting Assistant Secretary for
Civil Rights.*