

December 18, 2020

President-Elect Joseph R. Biden
Biden Transition Headquarters
1401 Constitution Avenue N.W.
Washington, D.C. 20232

RE: Federal School Discipline and Climate Recommendations

Since 2010, we have expressed concerns that while school discipline reforms have been touted as progress, they did not go far enough to eliminate the inherent racism of a broken system; ignored systemic issues with disparities in the use of exclusionary discipline and zero tolerance policies; and failed to provide the necessary accountability, oversight and enforcement to adequately center the needs of children in a way that adequately protects them. This moment calls for bold action to dismantle the systemic and institutionalized racism deeply embedded in exclusionary discipline policies and policing in schools. For at least the past 50 years, students – especially those who are Black, Native American, have a disability, or are otherwise marginalized – have had their education taken from them because of exclusionary discipline and criminalization. After years of advocacy from grassroots groups, youth, students, their families, and advocates, including many of the signers below, the Obama Administration took action.

We expect the Biden Administration to reverse many of the flawed and racist policies and actions of the Trump administration on public education that have slowed or stopped that progress (e.g., removed students from schools, incarcerated children at alarming rates, used schools as hunting grounds for immigration enforcement for immigrant children and their families, and brutalized far too many students as a result of police in schools). The increasing awareness of racism in our society demands that we make continued gains by advancing more effective and equitable policies regarding school climate and discipline, and boosting the level of civil rights oversight and enforcement.

Specifically, we offer the following recommendations:

1. Significantly strengthen and update the 2014 School Discipline Guidance Package to Enhance School Climate and Improve School Discipline Policies/Practices within the first 18 months.

- Reverse the Trump Administration’s rescission of the three primary parts of the Guidance Package: the Dear Colleague Letter, the Guiding Principles Document, and the Directory of Federal School Climate and Discipline Resources, and update the Guidance Package, with input from grassroots groups, youth, educators, community organizations, civil rights advocates, parents, students, and researchers.
- Commit, on day one, to updating and issuing a new Dear Colleague Letter that transforms how schools address and respond to students using a social and racial justice lens of equity.
- Commit to taking – and take – enforcement action in a timely response to Local Education Agencies (LEAs) and State Education Agencies (SEAs) violating civil rights of children and engaging in or allowing disproportionate and exclusionary treatment of Black children and children with disabilities.
- Review and publicly report data on potential civil rights violations using the combined lens of race with disability and race with gender to address the overlapping concerns.

- Involve complainants and those who are directly impacted in all phases of settlements and resolutions.

Rationale: Based on extensive findings that punitive and exclusionary discipline creates short- and long-term harms for all students, especially students of color,¹ the 2014 Guidance, at the time, provided much needed strategic leadership and information on enforcement, alternative strategies, and key resources to support states, districts, and schools in transitioning to more effective and equitable discipline and climate practices. This educational benefit, built upon the critical role of the Dear Colleague Letter, clarified the obligations to provide a healthy and nondiscriminatory school climate. Despite hopeful signs of progress,² the Trump Administration rescinded the guidance, and the absence of that guidance has left LEAs and SEAs without clear and practical direction and accountability on how to accomplish needed reform, increasing the possibility that local implementation will rely on ineffective strategies, or slowing down local and state efforts for fear they will not be supported by the Administration.

The guidance should not be dusted off and reissued. It must be significantly revised and strengthened. In addition to strengthening the federal guidance, the Biden Administration must undertake any needed revisions or additions to the enforcement protocol within the first 100 days and to the guidance document as soon as possible. This process must include the voices of grassroots stakeholders, particularly youth, parents, and students – especially those who have been negatively impacted by punitive and exclusionary approaches – advocates, educators, and researchers. This means addressing the fact that Black students with disabilities are the most frequently suspended group and that Black females, who are typically suspended at higher rates than most males, are likely subjected to biases that are unique to them.

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

- Fully fund and provide a sufficient number of full-time employees in the Office for Civil Rights (OCR) within the Department of Education, including the cost necessary to staff the office to fulfil all of its responsibilities.
- Reinstate the Civil Rights Data Collection (CRDC) that was scheduled to collect data from 2019-2020 and collect all available data including items that are cumulative in nature, such as counts of students who were suspended, expelled, or referred to law enforcement or arrested.
- Eliminate proposed changes to the CRDC, which have the potential to mask inequities in discipline affecting marginalized groups, retaining items related to school finance, teacher experience and absenteeism, early childhood education, and collection of data on English learner (EL) students served in special education.
- Collect CRDC data on an annual basis and report it to the public within 180 days of collection.

¹American Psychological Association Zero Tolerance Task Force. (2008). Are zero tolerance policies effective in the schools? An evidentiary review and recommendations. *American Psychologist*, 63, 852-862.

²Hirschfield, P. J. (2018). Trends in school social control in the United States: Explaining patterns of decriminalization. In J. Deakin, E. Taylor, & A. Kupchik (Eds.), *Handbook of School Discipline, Surveillance, and Social Control* (pp. 43-64). Cham, Switzerland: Palgrave MacMillan.

- Create additional data elements, including reasons for suspension and expulsion, money spent on police vs. student support personnel, informal removals from school, and a data initiative to assess the welfare of transgender students.
- Direct OCR to use enforcement and monitoring as tools to eliminate systemic racism. This will require reviewing all the changes made to OCR’s enforcement protocol made during the Trump administration and re-instating many of the changes made during the Obama administration.
- Review the data that reflects resource disparities, and investigate states and districts for discriminatory policies and practices that result in the inequitable distribution of education resources. Those states and districts that are found to be in violation will face significant reductions in their federal financial assistance.

Rationale: It is essential that ED’s ability to fulfil its duties to identify discrimination and enforce civil rights laws be restored without delay. It is not enough that the identification and enforcement roles of the OCR be reinstated; information collected by the CRDC must be continually updated and strengthened, data collected on an annual basis, and results shared with the community in a regular and timely manner. We urge immediate action on these recommendations, so that they can be implemented as part of the 2020-2021 CRDC data collection.

It is not enough to simply reinstate the policies and mandates of the Obama era OCR in this moment. We must make sufficient progress toward removing disparities in discipline and harm caused to children by these policies. We must not allow these types of disparities to continue without any significant changes to the structures through which ED holds schools and districts accountable, collects and reports data, and implements enforcement. We expect ED to significantly and fully demonstrate its enforcement authority to correct both the disparities and harms that impact children of color and others who are marginalized.

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

- Provide funding to implement, and require school personnel to be trained on, research-informed strategies for improving school climate and reducing exclusionary discipline.
- Fund research to support the implementation of effective alternatives to disciplinary exclusion, especially strategies for reducing disciplinary disproportionality by race and gender, sexual orientation or gender identification, and disability.
- Require schools to work towards de-escalating minor infractions instead of involving law enforcement.
- Prohibit the use of strip searches and corporal punishment, and eliminate the use of restraints (chemical or physical) and seclusion for all children.
- Support and sign into law the *Keeping All Students Safe in Schools Act* (KASSA S. 4924), which eliminates the use of seclusion and significantly limits the use of restraint.
- Support and sign into law the *Protecting Our Students in School Act* (H.R. 8460), which abolishes corporal punishment.
- Support and sign into law the *Create Respectful and Open World for Natural Hair Act* (CROWN Act H.R. 5309/S. 3167), which eliminates discrimination based on hair textures and styles commonly associated with a particular race or national origin.

Rationale: ED made significant changes during the Obama administration in supporting measures to improve school climate and move away from punitive and exclusionary discipline practices that reduce opportunities to learn,³ increase school dropout,⁴ and increase youth involvement in the juvenile justice system.⁵ Now more than ever, stronger federal guidance is required to ensure that schools are supported in the transition to positive, and nondiscriminatory strategies for improving school climate, through both increased funding and pre- and in-service training and technical assistance for all school personnel.

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

- Invest in critical personnel—counselors, social workers, school psychologists, and nurses—who have the expertise to appropriately address student behavior and conflict, and address students’ mental health needs.
- Increase grant funding to increase the capability of school infrastructure to better meet the mental health needs of students, and shift to restorative and trauma-informed supervision rather than a punitive approach to student behavior and conflict.

Rationale: This will require an immediate federal commitment to shift personnel funding from law enforcement to essential SISPs. In addition, guidance and support must be extended to schools to support a shift from a reactive and exclusionary orientation to structures that reflect a restorative, equitable, trauma-informed, and racial equity centered approach.⁶ Increasing investments in restorative and trauma-informed personnel, including counselors, school social workers, school psychologists, and nurses have been shown to build positive learning environments and support children’s success.⁷

5. Ensure that no federal funding streams are used to support police in schools from the Department of Education, Department of Defense, Department of Homeland Security, Department of Justice, or Department of Transportation, and also divest from school hardening initiatives.

- The Biden Administration should submit a budget that ends all federal funding for police in schools and school hardening efforts.

³ Losen, D. J., & Martinez, P. (2020). Lost opportunities: How disparate school discipline continues to drive differences in the opportunity to learn. Palo Alto, CA/Los Angeles, CA: Learning Policy Institute; Center for Civil Rights Remedies at the Civil Rights Project, UCLA.

⁴ Suh, S., & Suh, J. (2007). Risk factors and levels of risk for high school dropouts. *Professional School Counseling, 10*, 297-306.

⁵ Fabelo, T., Thompson, M. D., Plotkin, M., Carmichael, D., Marchbanks, M. P., & Booth, E. A. (2011). *Breaking schools’ rules: A statewide study of how school discipline relates to student’s success and juvenile justice involvement*. New York, NY: Council of State Governments Justice Center, and College Station, TX: Texas A&M University, Public Policy Research Institute.

⁶ Open Society Institute—Baltimore (2020). Restorative Practices in Baltimore City Public Schools: Research Updates and Implementation Guide. Retrieved from <https://www.osibaltimore.org/wp-content/uploads/2020/09/RP-Report-2020-FINAL.pdf> (last opened, December 18, 2020).

⁷ Bowie, L. (2020, October 21). “Johns Hopkins study shows potential for restorative justice to reduce suspensions, improve schools. Baltimore Sun. Retrieved from <https://www.baltimoresun.com/education/bs-md-restorative-practices-20201001-2quav5634zdnipahbcx46w6m6e-story.html>. (last opened, December 18, 2020).

- Support the *Counseling not Criminalization in Schools Act of 2020 (H.R. 7848/S. 4360)*, which ends federal funding for law enforcement in schools, and creates grants for trauma-informed services, mental health supports, and social and emotional learning.⁸

Rationale: The national conversation sparked by the murder of George Floyd and the youth-led movement calling for police-free schools has united groups on the urgency to remove police from schools. Current evidence shows that the presence of police in schools increases school suspensions,⁹ referrals of minor infractions to law enforcement,¹⁰ and school-based arrests,¹¹ and that those outcomes disproportionately harm students of color, students with disabilities, and LGBTQ students.¹² It will be impossible to disrupt the school-to-prison pipeline that puts the futures of so many of our youth at risk without removing law enforcement from schools. We demand the Biden Administration eliminate all federal funding streams, programs and services that place sworn law enforcement officers in schools.

6. End the transfer of military surplus to schools, school districts or school-based police departments.

- Issue an executive order ending the 1033 program.
- Support legislation that ends the transfer of military surplus to schools or school police, removes existing military equipment from schools and eliminates the 1033 program in totality.

Rationale: Military equipment and weapons have no place in schools. It is problematic that 22 school districts in 9 states are currently accepting military surplus equipment.¹³ We urge an executive agenda that supports legislation removing existing military equipment in the possession of schools and school districts; eliminating future acquisitions; and ending the 1033 program, especially for schools and school districts.

7. Provide schools with the technical assistance and financial resources needed during the COVID-19 pandemic, including to prevent disciplinary actions that bring harm to youth.

- Provide information and resources to help school staff learn how to recognize and address the academic and non-academic needs of students during distance learning.
- Provide guidance concerning the implementation of instruction and classroom management during the COVID-19 public health crisis that is nondiscriminatory by race/ethnicity, gender, sexual orientation and gender identity, and disability status.

⁸ Leadership Conference Letter, *Cosponsor S.4360/H.R.7848, The Counseling Not Criminalization In Schools Act (2020)* Retrieved from <https://civilrights.org/resource/support-childrens-health-and-well-being-cosponsor-s-4360-h-r-7848-the-counseling-not-criminalization-in-schools-act/> (last accessed Dec. 15, 2020).

⁹ Fisher, B.W., Hennessy, E.A. (2016). School Resource Officers and exclusionary discipline in U.S. high schools: A systematic review and meta-analysis. *Adolescent Research Review, 1*, 217–233.

¹⁰ Theriot, M. (2009). School resource officers and the criminalization of student behavior. *Journal of Criminal Justice, 37*, 280–287.

¹¹ Homer, E.M., & Fisher, B.W. (2020). Police in schools and student arrest rates across the United States: Examining differences by race, ethnicity, and gender. *Journal of School Violence, 19*, 192–204.

¹² Homer & Fisher, 2020.

¹³ Blad, E. (2020, June). “Senator Aims to End Military Equipment Program Used by School Police.” *Education Week*. Retrieved from <https://www.edweek.org/policy-politics/senator-aims-to-end-military-equipment-program-used-by-school-police/2020/06> (last accessed Dec. 15, 2020).

- Submit a budget that provides state and local governments with \$305 billion to support K-12 public education funding shortfalls caused by the COVID-19 pandemic.
- End criminalization during the COVID-19 pandemic in education, which has taken on a new form of punishment for youth and their families. Across the country there have been a number of cases where teachers have witnessed situations in homes and reported them to authorities resulting in arrests of youth and/or their family members, or suspension for actions that have little to do with education.¹⁴

Rationale: As the Biden Administration moves to re-establish federal leadership and support for addressing the pandemic, assistance to public education is critical. In the challenging new landscape of remote and hybrid learning, teachers need guidance on how to recognize and address the needs of students to keep them engaged. While instruction remains virtual, and as schools move to re-open, there is a dire need for federal and state departments of education to provide resources that can guide teachers' instructional and classroom management practices online and in transition to in-person learning. The Administration should provide guidance to school administrators and teachers about how to handle school discipline measures during the pandemic. This guidance should be produced as soon as possible with input from the community and especially youth affected by these harmful policies.

8. Rescind executive orders preventing diversity training or limiting young people's civil rights, and support increased training of educators in racial justice and equity.

- Immediately rescind Executive Order 13950, "Combating Race and Sex Stereotyping," and reverse all federal agency actions related to that executive order.
- Immediately rescind all guidance limiting the civil rights of young people of color, students with disabilities, immigrant students, female students, and LGBTQIA+ young people, including those who are transgender.
- Reassert, through leadership and funding, administration support for helping districts design and implement professional development on culturally responsive pedagogy, the harms of racial and ethnic stereotypes, and the importance of parent engagement.

Rationale: As a result of the increasing national recognition of the truth that Black lives matter, institutions throughout the country increased their focus on professional development surrounding anti-racism. That progress was halted and indeed reversed by Executive Order 13950 and its accompanying actions by federal agencies.¹⁵ Our nation cannot make progress towards racial justice without confronting our history of slavery and oppression. Empirically-validated processes like implicit bias, White privilege and the insights of critical race theory are imperative in those conversations. We urge the new administration to promptly and decisively re-assert federal support for professional development challenging racism and its corrosive effects.

¹⁴ Community Resource Hub for Safety and Accountability. (2020) *Unmasked: Impacts of Pandemic Policing*. Retrieved from <https://communityresourcehub.org/resources/unmasked-impacts-of-pandemic-policing/> (last accessed Dec. 15, 2020).

¹⁵ African American Policy Forum. (2020) *#TruthBeTold*. Retrieved from <https://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/5fbd51f0bbe8b0048b913b3/1606242806347/TruthBeToldPacket.pdf> (last accessed Dec. 15, 2020).

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

- Immediately prohibit information sharing between school staff and immigration officials.
- Immediately prohibit information sharing between school law enforcement and immigration officials, and prohibit immigration enforcement by school personnel or by immigration officials in or around schools.
- Immediately prohibit immigration officials from collaborating with school officials.

Rationale: School is a particularly sensitive location for the current excesses of immigration enforcement. Disciplinary action may lead to student interaction with law enforcement, which may have severe immigration and safety consequences for undocumented students and increase the risks of deportation.¹⁶ Additionally, the fear caused by any possible collaboration between schools and immigration has already had an impact on student and parent participation in school programs,¹⁷ undermining the intent of case of *Plyler v. Doe*, 457 U.S. 202 (1982) – “a State may not deny access to a basic public education to any child residing in the State, whether present in the United States legally or otherwise.”^{18 19 20} We strongly urge an executive order immediately ending all contact between Immigration and Customs Enforcement (ICE) and schools or school districts regarding immigration enforcement.

10. Appoint a Secretary of Education and Assistant Secretary for Civil Rights within the Department of Education who has publicly committed to police-free schools, has a proven record of uplifting the civil rights of young people, is committed to systemic reviews of civil rights violations, and will apply, when appropriate, a disparate impact analysis to claims of discrimination.

- We strongly encourage you to ensure that Black, Indigenous, People of Color (BIPOC) young people have meaningful input into the process to select the Education Secretary and Assistant Secretary for the Office of Civil Rights in the US Department of Education. These leaders must have a strong demonstrable record of working to dismantle the school-to-prison pipeline.
- With respect to all appointments, the Biden Administration is strongly urged to consider and appoint people who:

¹⁶ Marquez, N. & Prandini, R. (2018). *The school to prison to deportation pipeline*. Immigrant Legal Resource Center. Retrieved from https://www.ilrc.org/sites/default/files/resources/school_delinq_faq_nat-rp-20180212.pdf (last accessed Dec. 15, 2020).

¹⁷ Dillard, C. (2018, Fall). *The School-to Deportation Pipeline*. *Teaching Tolerance*, 60. Retrieved from <https://www.tolerance.org/magazine/fall-2018/the-school-to-deportation-pipeline> (last accessed, Dec. 16, 2020).

¹⁸ USDOJ Civil Rights Division & USDOE Office for Civil Rights (2014, May 8). *Dear Colleague Letter* (p. 1). Washington, DC: Author. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf> (last accessed Dec. 16, 2020).

¹⁹ Capps et al. (2020). *Immigration enforcement and the mental health of Latino high school students*. Washington, DC: Migration Policy Institute. Retrieved from https://www.migrationpolicy.org/sites/default/files/publications/immigration-enforcement-mental-health-latino-students_final.pdf (last accessed Dec. 16, 2020).

²⁰ Dee, T.S., & Murphy, M. (2018). *Vanished Classmates: The Effects of Local Immigration Enforcement on School Enrollment* (CEPA Working Paper No. 18-18). Retrieved from Stanford Center for Education Policy Analysis: <http://cepa.stanford.edu/wp18-18> (last accessed Dec. 16, 2020).

- Are from diverse backgrounds, as we believe that the leadership and policy work of this department should be done by and reflect the communities most affected by its work; people of color and others who are marginalized.
- Have a demonstrable record of working with directly impacted students and parents/caregivers as partners in improving education, not tokens.
- Have been public about ending the school-to-prison pipeline and shown a commitment to transforming schools through restorative and transformative justice and other positive alternatives.
- Have shown an ability to reduce racial disparities, improve school climate and uphold students' civil and human rights in their previous roles.

In conclusion, we will withstand any attempts by any federal agency or political appointee that undermines the demands and needs of Black communities on the ground. Going forward, we will:

- Provide lean and incisive mobilization strategies when Congress engages in anti-democratic, obstructionist tactics.
- Publicly support policies that align with our equity mission.
- Hold the Biden Administration accountable to attaining racial equity and allocating resources that support a positive school climate.

We are ready to partner with the Department of Education to ensure the redress of trauma inflicted on youth, particularly Black students. Thank you for the opportunity to share these recommendations. We look forward to working with the Biden Administration to remove harm and make schools safer, and more positive and fair for all students.

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Sincerely,

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 Bazelon Center for Mental Health Law
 Black With No Chaser
 Buried Alive Project

Center for Law and Social Policy (CLASP)
Center for Popular Democracy
CenterLink: The Community of LGBT Centers
Clearinghouse on Women's Issues
Committee for Children
Communities for Just Schools Fund
Council of Parent Attorneys and Advocates
DC Democratic Caucus for Returning Citizens
Defending Rights & Dissent
Dignity in Schools Campaign
Disability Law Project of Vermont Legal Aid
Disability Rights Education & Defense Fund (DREDF)
Drug Policy Alliance
Education Justice Alliance
Feminist Majority Foundation
Foundations for Divergent Minds
Girls Inc.
GO-HIGH CORP
Gwinnett SToPP
Health in Justice Action Lab, Northeastern University
IDRA
Justice For Families
Juvenile Law Center
Lawyers for Good Government (L4GG)
Legal Action Center
Legal Aid Justice Center
MomsRising
Montgomery County Civil Rights Coalition
Mothers on the Inside
National Alliance for Partnerships in Equity (NAPE)
National Black Child Development Institute
National Black Justice Coalition
National Center for Parent Leadership and Community Empowerment (National PLACE)
National Center for Special Education in Charter Schools
National Center for Youth Law
National Council of Churches
National Crittenton
National Disability Rights Network (NDRN)
National Education Policy Center (listed for identification purposes only)
National Equality Action Team (NEAT)
National Juvenile Defender Center
National Juvenile Justice Network
New Athens Creative, Inc.
New York Civil Liberties Union

North Carolina Justice Center
Parents Organized for Public Education
Public Advocacy for Kids
Rebuilding Independence My Style
SPAN Parent Advocacy Network
Special Education Equity for Kids in Connecticut
SPLC Action Fund
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