

United States Senate

WASHINGTON, DC 20510

May 18, 2021

VIA ELECTRONIC DELIVERY

The Honorable Miguel Cardona
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530

Dear Secretary Cardona and Attorney General Garland:

We write to express our concern over the effect of punitive and discriminatory school disciplinary measures. All students, no matter their race, color, national origin, religion, sex (including sexual orientation and gender identity) or disability, deserve access to a safe, inclusive and supportive learning environment.

The Federal Government plays a critical role in ensuring that schools provide equitable environments for students, free of discrimination. *Brown v. Board of Education*, Title VI of the Civil Rights Act, the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, Title IX of the Educational Amendments Act and the Americans with Disabilities Act all affirm this mandate.

While we are grateful for your work to support students during the pandemic, there is much more work to do to protect students from the harms of overly harsh discipline practices. Out-of-school suspensions have escalated significantly since the 1970s. Schools started adopting harsh discipline policies like “zero tolerance” in the 1990s. Exclusionary school policies do not work; they impede student success, with research showing that strict school discipline inhibits a student’s chance of attending an institution of higher education.

Unfortunately, these policies have led to sharp increases in school expulsions and suspensions. Black and Hispanic students, American Indian and Alaska Native students, LGBTQ students, students with disabilities and English learners experience the brunt of the consequences, shuffling them into the school-to-prison pipeline, denying them an education, and limiting their future opportunities.

According to a U.S. Government Accountability Office review, elementary and secondary schools disproportionately discipline Black students, American Indian and Alaska Native students, male students and students with disabilities. Although Black students represent 15.5 percent of the public school enrollment, they account for 39 percent of students suspended from school. As exclusionary school discipline policies continue to exacerbate racial inequities within

public education, studies have shown fairer and more effective alternatives. Building positive school climates, including through the faithful implementation of restorative justice practices, which provides social-emotional support to students and holds them accountable, can help reduce racial disparities by building trust instead of pain.

Under the Obama administration, we began to see changes at the State and local level to mitigate the criminalization of Black students in the education system with the promotion of the restorative justice framework. The Obama administration's school discipline guidance, issued in 2014 to assist schools receiving Federal financial assistance, improved schools' understanding of their obligations under Title VI of the Civil Rights Act, and in doing so, helped students receive a safe, equitable education. Following the implementation of alternative disciplinary measures, school suspensions began to decrease. In fact, data from the Office for Civil Rights reported that students were less likely to be suspended in 2016 than they were in 2012—though racial disparities were still present.

In 2019, however, the Trump administration rescinded this guidance. Under the Trump administration, the Department of Education withdrew nearly 600 pieces of guidance set forth under the Obama administration. Although the Trump administration rescinded the Obama administration's discipline guidance, it did not change local education entities' obligations under the law. This rescission frustrated school districts' ability to understand their Federal civil rights obligations.

These events demonstrate how crucial it is that the U.S. Department of Education and Department of Justice (Departments) fully enforce Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Title IX of the Educational Amendments Act. These Departments must protect students from discrimination. The enforcement of students' civil rights is particularly critical as schools continue to reopen safely and students readjust to the physical classroom setting and navigate the emotional toll of the COVID-19 pandemic.

Your respective Departments should support this transition by providing guidance that would help schools reduce school suspensions, especially for students of color, LGBTQ students, students with disabilities and English learners. Therefore, we ask your Departments to address discriminatory and harsh punitive discipline practices that hinder students' opportunity to become contributing members of society by issuing guidance that would:

1. Strengthen the Obama administration's previous guidance on the nondiscriminatory administration of school discipline;
2. Encourage that schools revise their discipline policies to focus on restorative justice practices, to include guidance containing detailed, updated recommendations on how to best enforce alternative discipline practices;

3. Encourage schools to adopt sufficient and continuous training as they work on sustainable, alternative disciplinary practices – with training that includes education on trauma-informed practices, implicit bias training and anti-racism training, along with training for specific school personnel to be full-time restorative practice coordinators; and
4. Identify Federal funding streams that may be used to provide students with school-based services to meet their social, emotional and mental health needs by hiring mental health providers, such as school counselors, nurses, social workers and psychologists and utilizing restorative justice programs and other proven methods to address student health and wellbeing.

Thank you for your attention to this matter; we look forward to working with you all in addressing this critical civil rights issue.

Sincerely,



Tammy Duckworth
United States Senator



Christopher S. Murphy
United States Senator



Michael Bennet
United States Senator



Cory A. Booker
United States Senator



Tina Smith
United States Senator



Elizabeth Warren
United States Senator



Tim Kaine
United States Senator



Sherrod Brown
United States Senator



Robert P. Casey, Jr.
United States Senator



Raphael Warnock
United States Senator



Bernard Sanders
United States Senator



Alex Padilla
United States Senator