

Skiba, Russell

From: Skiba, Russell
Sent: Friday, May 28, 2021 2:25 AM
To: Seugling, Carolyn
Cc: Eichner, James (CRT)
Subject: Re: [External] Request for Resources to share with Discipline Convening Registrants
Attachments: Skiba analysis of Trump Admin School Safety Commission Report.pdf; Riddle & Sinclair (2019) Racial bias and dispro in suspension.pdf; Welch & Little (2018) School Disc Dilemma.pdf; Ward et al (2019) Historic Lynching and Corporal Punishment.pdf

Hi Carolyn,

Sorry this is a little late, but it took me longer to complete the analysis of Chapter 8 of the School Safety Commission Report than I thought—I didn't fully realize just how problematic it was.

Inaccurate or unsupported statements, of which there are many, are highlighted with a corresponding comment. Thanks for the assignment Jim, it was most interesting.

Also attached are three recent articles on disciplinary disparities that use geographical or historical analyses to shine a light on the systemic nature of racism, and its contribution to disciplinary disparities. I have found Ward and Kupchik's study of the relationship between historical patterns of lynching and current rates of corporal punishment to be slightly chilling, but definitely enlightening.

Thanks for the opportunity to contribute to this, and hope we can continue to work together toward reclaiming positive and effective school discipline.

Best,
Russ

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Professor Emeritus
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On 5/25/21, 11:36 AM, "Seugling, Carolyn" <Carolyn.Seugling@ed.gov> wrote:

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Presenters,



FINAL REPORT OF THE FEDERAL COMMISSION ON
School Safety



Presented to the
PRESIDENT OF THE UNITED STATES

December 18, 2018





LETTER OF TRANSMITTAL

December 18, 2018

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

Our nation's schools must be safe places to learn. Sadly, incidents of school violence are too common in the United States, and far too many families and communities have suffered.

Following the school shooting in Parkland, FL, you established the Federal Commission on School Safety. You tasked the Commission with producing a report of policy recommendations in an effort to help prevent future tragedies.

Our work included field visits, listening sessions, and meetings with anyone and everyone who is focused on identifying and elevating solutions. After learning from students, parents, teachers, school safety personnel, law enforcement officers, mental health professionals, and others who play a role in keeping students safe, we have developed recommendations for leaders at the local, state, and federal levels. Our key observations and recommendations are included in this report. Our goal has been to identify local, state, and federal policy for lawmakers and local officials to consider. The report's recommendations can assist states and local communities in preventing school violence and improving recovery efforts following an incident.

There is no universal school safety plan that will work for every school across the country. Such a prescriptive approach by the federal government would be inappropriate, imprudent, and ineffective. We focused instead on learning more about, and then raising awareness of, ideas that are already working for communities across the country. That is why the Commission's work and recommendations focus on a variety of school sizes, structures, and geographic locations.

The federal government can play a role in enhancing safety in schools. However, state legislators should work with local school leaders, teachers, parents, and students themselves to address their own unique challenges and develop their own specific solutions. What may work in one community may or may not be the right approach in another. Each local problem needs local solutions. Rather than mandate what schools must do, this report serves to identify options that policymakers should explore.

Ultimately, ensuring the safety of our children begins within ourselves, at the kitchen table, in houses of worship, and in community centers. The recommendations within this report do not and cannot supplant the role families have in our culture and in the lives of children. Our country's moral fabric needs more threads of love, empathy, and connection.

Together with states, local communities, and families, we can all continue working to uphold our promise to keep students safe as they pursue their futures at school.

Sincerely,

Betsy DeVos, Secretary
U.S. Department of Education
Chair, Federal Commission on School Safety

Kirstjen M. Nielsen, Secretary
U.S. Department of Homeland Security

Alex M. Azar II, Secretary
U.S. Department of Health and Human Services

Matthew Whitaker, Acting Attorney General
U.S. Department of Justice

The Obama Administration's “Rethink School Discipline” Guidance

Teachers are often best positioned to identify and address disorderly conduct at school. They have an understanding of the students entrusted to their care and can see behavioral patterns on an ongoing basis. In partnership with principals and other school leaders, teachers can help correct—and where necessary, discipline—those behaviors that are unwelcome or unsafe for the school community. Maintaining order in schools is a key to keeping schools safe. Federal policies that adversely impact maintaining order in schools should be corrected.

Policy guidance issued under the Obama Administration placed an emphasis on tracking school disciplinary actions by race. That guidance, set forth largely in a Dear Colleague Letter and other sub-regulatory documents (hereinafter collectively “Guidance”), suggests that even facially neutral school discipline policies may violate federal law if they have a “disparate impact” upon members of certain racial groups in rates of suspension, expulsion, or referral to law enforcement.¹ The Guidance further communicates that such outcomes could give rise to an investigation by the U.S. Department of Education, putting a school at risk of losing federal funds.

As written and implemented, the Guidance has been criticized on three primary grounds. First, it creates a chilling effect on classroom teachers’ and administrators’ use of discipline by improperly imposing, through the threat of investigation and potential loss of federal funding, a forceful federal role in what is inherently a local issue. Second, authorities, including the United States Supreme Court,² have questioned the applicability of a disparate impact legal theory to Title VI of the Civil Rights Act of 1964, upon which the Guidance relies, thus calling into question its legal basis in the school discipline context.³ Third, the threat of investigations by the Office for Civil Rights (OCR) under sub-regulatory documents such as the “Rethink School Discipline” Guidance has likely had a strong, negative impact on school discipline and safety.⁴

This Administration is committed to ensuring that educational programs and policies are administered in a fair, equitable, and racially neutral manner that does not result in unlawful discrimination. When there is evidence beyond a mere statistical disparity that educational programs and policies may violate the federal prohibition on racial discrimination, this Administration will act swiftly and decisively to investigate and remedy any discrimination. At the same time, the federal government must also ensure that its policies and actions protect student safety, including when it is acting to ensure that educational programs and policies are administered in a racially neutral fashion. Where well-meaning but flawed policies endanger student safety, they must be changed. As President Trump noted when creating this Commission, “[e]very child deserves to grow up in a safe community surrounded by a loving family and to have a future filled with opportunity and with hope.”⁵

The Guidance sent the unfortunate message that the federal government, rather than teachers and local administrators, best handles school discipline. As a result, fearful of potential investigations, some school



districts may have driven their discipline policies and practices more by numbers than by teacher input. School discipline is a complex issue that is affected by local circumstances. For example, there may be other reasons for disparities in behavior if students come from distressed communities and face significant trauma. Local solutions are best suited for dealing with the unique needs of local communities.

Commission Observations

The Departments of Justice and Education held a summit on school discipline in April 2018. Numerous educators, parents, and experts shared their experiences. Some favored preserving the Guidance to reinforce the message that discrimination based on race, nationality, or ethnicity is unacceptable. Others stressed the importance of preserving specific portions of the Guidance designed to reduce exclusionary discipline (i.e., discipline that results in students spending time away from the classroom), such as the Positive Behavioral Interventions and Supports (PBIS) program discussed in Chapter 1. These individuals argued that exclusionary discipline practices have negative outcomes that fall disproportionately on certain demographic groups.

Others spoke against the Guidance, arguing that it is legally flawed and poses severe unintended consequences for school safety. These speakers described how their schools ignored or covered up—rather than disciplined—student misconduct in order to avoid any purported racial disparity in discipline numbers that might catch the eye of the federal government. They also argued that some alternative discipline policies encouraged by the Guidance contributed to incidents of school violence, including the rape of an elementary school student with a disability, the stabbing of one student by another student, and numerous assaults of teachers by students.

At the July 26 Commission meeting, school experts testified about the need for more local flexibility in handling student discipline and that the Guidance endangers school safety. These experts noted that disciplinary policy is most effectively addressed at a local level and that federal intervention in day-to-day disciplinary matters undermines local decision-making. Francisco Negron, General Counsel for the National School Boards Association, argued that discipline is a matter on which classroom teachers and local school leaders deserve both autonomy and deference.⁶

Judy Kidd, the President of the Classroom Teachers Association of North Carolina, stressed that the fear of an investigation by OCR has a negative effect on school climate and discipline. Specifically, she stated that the prospect of OCR intervention makes school staff less likely to refer matters to law enforcement. Instead of focusing on safety concerns and creating a climate conducive to learning in the classroom, Kidd noted that, in response to the Guidance, some school leaders have chosen to avoid potential OCR investigations by eliminating the use of out-of-school suspensions and expulsions, without considering the adverse impact that such practices have on school safety.⁷

When school leaders focus on aggregate school discipline numbers rather than the specific circumstances and conduct that underlie each matter, schools become less safe. A report of the AASA, The School Superintendents Association specifically discussed the safety issues that arise when schools are compelled to keep students in the classroom under circumstances where removal may be warranted. Salient comments from the survey underlying the report include:

Comments from 2018 AASA Discipline Survey

- “Students who are allowed to stay in school after gross offenses amp up their behavior in order to see how much they’ll get away with without consequence.”
- “There is a feeling that by keeping some students in school, we are risking the safety of students.”
- “Without proper additional staffing and facilities to keep these students in school, staff do experience a perceived (sometimes real) safety concern.”
- “Schools are not equipped to provide supports to mentally or emotionally unstable children. We need help.”
- “We have received numerous complaints from parents and staff about students who should not be in school based on their disciplinary records.”
- “We see victims of bullying and harassment tend to miss more days of school and are more likely to leave the district when the perpetrators are not removed from school.”⁸

During an August 28, 2018, Commission listening session, Jonathan Butcher, the Senior Policy Analyst at the Heritage Foundation's Center for Education Policy, shared similar sentiments, emphasizing that the Guidance extends beyond the appropriate role for the federal government on school safety.⁹ Instead, Butcher advocated "school-specific, targeted responses" created at the local level and cautioned that districts do not interpret the Guidance "simply as a suggestion." Rather, he stated that districts respond to the Guidance in whatever manner is most likely to avoid a lawsuit or federal investigation. In other words, avoiding legal jeopardy rather than achieving school safety drives decision-making.

Those who spoke in support of the Guidance focused on reducing the racial disparities in the discipline numbers without addressing the adverse consequences of the Guidance on school safety and climate.¹⁰ No speaker took the position, for instance, that the Guidance protected schools and teachers from violent acts. Some speakers promoted PBIS and similar policies as innovative, evidence-based reforms that both reduce exclusionary practices and improve school safety. However, no speaker claimed that schools need a federal mandate to adopt those policies, nor did any identify how repeal of the Guidance would prevent states and local school districts from adopting such policies. The Commission encourages schools and localities to implement programs that work best for them as noted in Chapter 1 of this Report on Character Development and a Culture of Connectedness.

In addition to the information provided by experts at Commission meetings, field visits, and listening sessions, materials considered by the Commission confirm the same troubling pattern noted by critics of the Guidance. For example, Gail Heriot, a University of San Diego law professor who also serves on the U.S. Commission on Civil Rights, captured how some teachers are caught in the unfortunate web of the Guidance.¹¹ She noted that school administrators are naturally concerned about scrutiny that may occur if students are disciplined at racially disparate numbers. That concern, she notes, can lead to school administrators closely scrutinizing individual teachers' disciplinary practices for real or imagined evidence of racial bias, while ignoring the underlying causes of student misbehavior. Heriot noted that students are less safe at

school when teachers turn a blind eye to misbehavior by disruptive or violent students in the interest of avoiding running afoul of federal investigators.¹²

Surveys of teachers confirm that the Guidance's chilling effect on school discipline—and, in particular, on the use of exclusionary discipline—has forced teachers to reduce discipline to non-exclusionary methods, even where such methods are inadequate or inappropriate to the student misconduct, with significant consequences for student and teacher safety. Indeed, while research indicates that exclusionary discipline practices are associated with negative academic outcomes¹³ and increased behavioral problems,¹⁴ some teachers have reported challenges with relying on non-exclusionary discipline practices. In Santa Ana, CA, 65 percent of teachers stated that non-exclusionary practices were not effective. Similarly, in Hillsborough, FL, 65 percent of teachers reported that non-exclusionary practices failed to improve school climate. In Madison, WI, only 13 percent of teachers reported that non-exclusionary practices had a positive effect on student behavior.¹⁵ In Charleston, SC, only 13 percent of teachers thought the school district's "new discipline system works, that the consequences are appropriate, and that it represents an improved approach."¹⁶

As one teacher observed,

[P]olicymakers have made it so we have no authority. Only perceived authority. Only as much power as you get your kids to believe. Once the kid finds out he can say 'F*** you,' flip over a table, and he won't get suspended, that's that.¹⁷

Accounts of similar teacher experiences have been reported across the country.¹⁸ And while alternatives to exclusionary discipline may be appropriate in many cases, it is important for teachers and schools to have the flexibility they need to impose appropriate discipline and maintain order in the classroom.

Separately, the Commission reviewed the Texas School and Firearm Safety Action Plan. That Plan notes that, when the individual disciplinary decisions of teachers are frequently questioned, teachers may pull back on removing potentially dangerous students from class. Not surprisingly, the Plan also showed that students in classes with disruptive students were less likely to learn.¹⁹

Research also supports the Texas findings, clearly indicating that the failure of schools to appropriately discipline disruptive students has consequences for overall student achievement.²⁰ For instance, research conducted by Scott Carrell of the University of California, Davis and Mark Hoekstra of Texas A&M University found as follows:

[D]isruptive students have statistically significant negative effects on the reading and math scores of students in their class. [Carrell and Hoekstra] also found that the presence of a disruptive student increases the probability that his classmates will commit a disciplinary infraction, with the largest behavioral effect observed in boys from low-income families. Thus, disruptive students can create a domino effect, increasing misbehavior and lowering academic achievement across the school.²¹

This domino effect can be seen, for example, in Wisconsin, where schools that adopted “non-punitive disciplinary measures” may have experienced lower reading and math scores than schools that maintained a traditional approach to discipline.²² In another study, University of Georgia professor Joshua Kinsler used data to simulate the interaction between school discipline policies and student achievement. His simulation found that a policy aimed at decreasing the racial discipline gap were associated with *increases* in the racial achievement gap, because the retention of disruptive students negatively impacted the achievement of African-American students as a whole.²³

There are also concerns about the underlying premise that African-American students are overrepresented in disciplinary matters due to racial discrimination. Research indicates that disparities in discipline that fall along racial lines may be due to societal factors other than race. For example, using data from the Early Childhood Longitudinal Study, Kindergarten Class (ECLS-K), researchers replicated the racial gap

Research clearly indicates that the failure of schools to appropriately discipline disruptive students has consequences for overall student achievement.

in student suspensions, but then analyzed the specific circumstances underlying these suspensions and discovered that “the racial gap in suspensions was completely accounted for by a measure of the prior problem behavior²⁴ of the student—a finding never before reported in the literature.”²⁵ The report concluded that “[t]hese findings highlight the importance of early problem behaviors and suggest that the use of suspensions by teachers and administrators may not have been as racially biased as some scholars have argued.”²⁶ This research undermines the core proposition in disparate impact theory that statistical disparities necessarily demonstrate that classroom teachers and administrators are motivated by race when disciplining students.²⁷

Legal concerns about the current Guidance

The Guidance relies on a disparate impact legal theory, but that theory lacks foundation in applicable law and may lead schools to adopt racial quotas or proportionality requirements.

A school's general duty to treat all students equally is enshrined into law by the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and Title VI of the Civil Rights Act of 1964.²⁸ Title VI protects all students who attend institutions receiving federal funding from being treated differently based on their race, color, or national origin. That protection extends to the entire course of the school disciplinary process, from behavior management in the classroom, to referral to an authority outside the classroom because of misconduct, and to resolution of a discipline incident.

The Guidance relies, however, on principles that are not enshrined in Title VI. Instead, it relies upon an implementing regulation of questionable validity to argue that Title VI prohibits not only intentional discrimination, but also many evenhandedly implemented policies that may nevertheless have a racially disparate impact.²⁹ That reading of Title VI is dubious, at best.

In 1978, the Supreme Court determined that Congress intended Title VI to prohibit “only those racial classifications that would violate the Equal Protection Clause” if committed by a government actor.³⁰ Just prior to this holding, the Supreme Court also held that the Equal Protection Clause requires proof of intentional discrimination and that disproportionate or disparate impact alone does not constitute a violation.³¹

In 2001, the Supreme Court went further, noting that interpreting Title VI's implementing regulations to cover unintentional discrimination is in "considerable tension" with the fact that the Title VI statute itself "prohibits only intentional discrimination."³² It also called "strange" the argument that executive agencies—like the Department of Justice or the Department of Education—would have the authority to adopt regulations that would prohibit a disparate impact on members of a specific racial group absent any evidence of intentional discrimination.

Despite the Supreme Court's case law in this area, the Guidance opted to interpret Title VI's implementing regulation as sufficient to establish a disparate impact theory for certain racial groups in the discipline area. Indeed, the Guidance told schools that even "neutral," "evenhanded" application of school discipline policies—the administration of policies without racial animus or discriminatory intent—can potentially violate this regulation.³³

By telling schools that they were subject to investigation, and threatening to cut federal funding because of different suspension rates for members of different racial groups, the Guidance gave schools a perverse incentive to make discipline rates proportional to enrollment figures, regardless of the appropriateness of discipline for any specific instance of misconduct. In response to OCR investigations involving school data, some school districts reportedly adopted racial quotas in school suspensions.³⁴ Others entered into settlements with OCR that could be interpreted as imposing racial proportionality requirements in school discipline data.³⁵

Although the Guidance did not expressly require any school to impose a strict racial quota in suspensions, it is inappropriate for the federal government to pressure schools to establish such quotas.³⁶ The Guidance presented hypothetical examples of discipline policies that might lead to a federal investigation, thereby incentivizing schools to preemptively shield themselves from federal oversight by minimizing racial disparities in discipline rates. Such expansive application of disparate impact theory is in tension with the purpose of Title VI and leads to school environments where discipline decisions may be based on race rather than student safety.

Courts are skeptical of schools attempting to achieve specific racial proportions in discipline through racial quotas or proportionality requirements, whether pursued unilaterally by a school or after an agreement with an executive agency. For example, the U.S. Court of Appeals for the Seventh Circuit struck down as unconstitutional a rule that it said would lead to racial quotas in discipline, stating:

Racial disciplinary quotas violate equity in its root sense. They entail either systematically overpunishing the innocent or systematically underpunishing the guilty. They place race at war with justice. They teach schoolchildren an unedifying lesson of racial entitlements.³⁷

The Guidance also offends basic principles of federalism and the need to preserve state and local control over education. For example, the Department of Education Organization Act warns the Department not to "exercise any direction, supervision, or control over the...administration...of any educational institution, school, or school system."³⁸ As the Supreme Court has emphasized, "public education in our Nation is committed to the control of state and local authorities," which should be respected even when student dismissals reflect "subjective" policy decisions.³⁹ Schools should have the flexibility to enforce disciplinary rules in light of their "need to be able to impose disciplinary sanctions for a wide range of unanticipated conduct disruptive of the educational process."⁴⁰ Schools should also receive deference as to whether their policies promote a "valid educational purpose" due to the "special characteristics of the school environment," and these policies should not be overturned merely because others disagree about their "wisdom."⁴¹

A school's decision to alter its discipline policies, even if prompted by a concern over racially disproportionate data, may end up resulting in *another* racial group displaying disproportionate discipline numbers. The disparate impact theory implicates an extraordinary range of decisions, as Civil Rights Commissioner Gail Heriot noted by illustration to contexts outside of discipline:

For example, in the education context, a university that considers the Math SAT score of an applicant for admission gives Korean Americans and Chinese Americans an advantage while

disadvantaging many other racial and national origin groups. A college that raises its tuition has a disparate impact on Cajun Americans, Haitian Americans and Burmese Americans, all groups that have below-average median household incomes. Similarly, a high school that decides to invest in a basketball team rather than a baseball team has a disparate impact on Latinos, who, on average, are shorter than African Americans and whites and hence less likely to qualify for

the basketball team... A university that gives college credit to students who can pass a foreign language exam has a disparate impact on Irish Americans, Scottish Americans and Anglo Americans, since they are unlikely to have a language other than English spoken in the home.⁴²

The flawed Guidance rests on a provision whose validity cannot be squared with the Supreme Court's holdings.

Recommendations

Based on the information contained in this chapter, the Federal Commission on School Safety offers the recommendations below.

FEDERAL GOVERNMENT

The Commission is deeply troubled that the Guidance, while well-intentioned, may have paradoxically contributed to making schools less safe. Significant concerns also remain regarding the legal framework upon which the Guidance is based. These concerns, together with the repeated concerns expressed by many that disciplinary decisions are best left in the hands of classroom teachers and administrators, warrant rescission of the Guidance. The Commission thus makes the following recommendations:

1. The U.S. Department of Justice (DOJ) and the U.S. Department of Education (ED), should rescind the Guidance and its associated sub-regulatory guidance documents. ED should develop information for schools and school districts that will identify resources and best practices to assist schools in improving school climate and learning outcomes as well as in protecting the rights of students with disabilities during the disciplinary process while maintaining overall student safety.
2. DOJ and ED should continue to vigorously enforce Title VI of the Civil Rights Act of 1964 and provide appropriate information to assist schools and the public in understanding how ED will investigate and resolve cases of intentional discrimination.

Chapter 8 Endnotes

- 1 On January 8, 2014, the U.S. Department of Justice and Department of Education jointly issued sub-regulatory guidance (collectively referred to as the "Guidance"). The Guidance includes the following documents:
 - A Dear Colleague Letter jointly signed by the Department of Justice and the Department of Education (The Dear Colleague Letter also included an Appendix titled "Recommendations for School Districts, Administrators, Teachers, and Staff").
 - A Resource Guide titled "Guiding Principles: A Resource Guide for Improving School Climate and Discipline";
 - Appendix 1 titled "U.S. Department of Education Directory of Federal School Climate and Discipline Resources";
 - Appendix 2 titled "Sample Discipline Category Profile";
 - An FAQ document titled "School Discipline Guidance Package FAQs"; and
 - A separate document titled "Supportive School Discipline Initiative."
- 2 See *Alexander v. Sandoval*, 532 U.S. 275, 280, 286 n.6 (2001).
- 3 Wright, J.P., et al. (2014). Prior problem behavior accounts for the racial gap in school suspensions. *Journal of Criminal Justice*. <https://www.sciencedirect.com/journal/journal-of-criminal-justice/vol/42/issue/3>. ("Our results suggest, however, that the association between school suspensions and blacks and whites reflects long-standing behavioral differences between youth and that, at least in the aggregate, the use of suspensions may not be as racially biased as many have argued.")
- 4 As noted by the AASA, The School Superintendents Association in its 2018 Discipline Survey, "[t]he noticeable uptick in investigations and compliance reviews [by the Office for Civil Rights] over the last nine years seems to have acted as a more powerful lever in influencing districts to reduce out-of-school time for students, even if teachers, parents, or students preferred for that specific child to be removed from class." 2018 AASA discipline survey: *An analysis of how the 2014 Dear Colleague Letter on nondiscriminatory administration of school discipline is impacting district policies and practices*, at p. 6. Retrieved from [http://aasa.org/uploadedFiles/AASA_Blog\(1\)/AASASurveyDisciplineGuidance2014.pdf](http://aasa.org/uploadedFiles/AASA_Blog(1)/AASASurveyDisciplineGuidance2014.pdf). The survey was administered by the AASA, The School Superintendents Association; the Association of School Business Officials International (ASBO); and the Association of Educational Services Agencies (ASEA). For purposes of this Report, they are collectively referenced as "AASA."
- 5 Briefing Statement from President Donald J. Trump, the White House (March 12, 2018), available at <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-taking-immediate-actions-secure-schools>.
- 6 See transcript, at p. 19: "But ultimately decisions about student discipline are pedagogical. They're matters of school concern, entitling school leaders to the kind of deference for their educational judgment which the courts have repeatedly acknowledged. So in considering matters of student discipline, particularly as it relates to instances of individual behavior, unrelated to instances of mass violence, for instance, the federal government should follow suit and equally defer to local education experts."
- 7 See transcript, at pp. 28–32.
- 8 2018 AASA discipline survey, at pp. 4–5. [http://aasa.org/uploadedFiles/AASA_Blog\(1\)/AASASurveyDisciplineGuidance2014.pdf](http://aasa.org/uploadedFiles/AASA_Blog(1)/AASASurveyDisciplineGuidance2014.pdf).
- 9 Statement from Jonathan Butcher to the Federal Commission on School Safety (August 28, 2018). <https://www2.ed.gov/documents/school-safety/transcript-08-28-2018.pdf>.
- 10 Various statements during Federal Commission on School Safety Public Listening Sessions (June 6, 2018; June 26, 2018; August 7, 2018; August 28, 2018) <https://www2.ed.gov/documents/school-safety/transcript-06-06-2018.pdf>; <https://www2.ed.gov/documents/school-safety/transcript-08-07-2018.pdf>; <https://www2.ed.gov/documents/school-safety/transcript-08-28-2018.pdf>.
- 11 Gail L. Heriot & Alison Somin, *The Department of Education's initiative on racial disparities in school discipline: Wrong for students, wrong for teachers, wrong on the law*. Tex. Rev. L. & Pol., 47–48, (forthcoming 2018); San Diego Legal Studies Paper No. 18–321, 3. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3104221.
- 12 Ibid.
- 13 Arcia, Emily, (May 1, 2006). Achievement and Enrollment Status of Suspended Students: Outcomes in a Large Multicultural School District, *Education and Urban Society*.
- 14 Hemphill, SA et al., (November, 2006). The effect of school suspensions and arrests on subsequent adolescent antisocial behavior in Australia and the United States. *Journal of Adolescent Health*.
- 15 Madison Teachers, Inc., (May, 2015). *Joint Committee on Safety and Discipline Report*, at p. 5. <http://www.madisonteachers.org/wp-content/uploads/2015/05/Joint-Committee-on-Safety-and-Discipline-Report-051315.pdf>.
- 16 See Charleston Teacher Alliance, 2017 Teacher Survey (2017). <http://www.charlestonteacheralliance.com/surveys.html>.
- 17 Eden, M. (June 11, 2018). In NYC school where a teenager was killed, students and educators say lax discipline led to bullying, chaos, and death. *The 74 Million, Investigation*. Retrieved from <https://www.the74million.org/article/investigation-in-new-york-city-school-where-a-teenager-was-killed-students-educators-say-lax-discipline-led-to-bullying-chaos-and-death/>.
- 18 See Mac Donald, H. (April 6, 2018). Who misbehaves? Claims that school discipline is unfairly meted out ignores actual classroom misbehavior. *City Journal*. <https://www.city-journal.org/html/who-misbehaves-15811.html>. See also <https://www.mprnews.org/story/2015/12/08/police-say-brothers-attacked-school-officials-and-lessons-not-learned>. (Fall 2018). *Thinking Minnesota*. <https://www.americanexperiment.org/magazine/thinking-minnesota-issue-13-fall-2018>.
- 19 *School and firearm safety action plan*. (May 30, 2018). Governor Greg Abbott, pp. 29–30. https://gov.texas.gov/uploads/files/press/School_Safety_Action_Plan_05302018.pdf.
- 20 Eden, M. (2009). School discipline reform and disorder: Evidence from New York City public schools, 2012–16, *Education Next* 9, No. 3. (*supra* at p. 9, citing Carrell, S.E., & Hoekstra, M.L. Domino effect.).
- 21 Ibid.
- 22 Mac Donald, H. (April 6, 2018). Who misbehaves? Claims that school discipline is unfairly meted out ignores actual classroom misbehavior. *City Journal*. <https://www.city-journal.org/html/who-misbehaves-15811.html>. Heather Mac Donald, the Thomas W. Smith Fellow at the Manhattan Institute, recently reported on the impact that changes to disciplinary policies have had on teachers. For example, the district attorney in St. Paul, Minnesota called a spike in attacks on teachers following the implementation of non-exclusionary practices a "public health crisis." Likewise, according to Ms. Mac Donald, Charlotte, North Carolina experienced "an increase in guns, drugs, and assaults on teachers; school assaults in Durham increased more than 50 percent last year." She also noted that "the district attorney in Syracuse forced schools to return to traditional disciplinary policies after a teacher was stabbed."
- 23 Josh Kinsler. (2013). School discipline: A source or salve for the racial achievement gap. 54 *International Economic Review*, 355. ("[D]iscipline may affect achievement positively through its effect on student behavior."); see also Eden, M. (July 28, 2017). NY educrats' plan to make schools less safe. *New York Post* (citing Kinsler, and noting that "a study by a University of Georgia professor found that efforts to decrease the racial-suspension gap actually increase the racial achievement gap"); accord Andrew Coulson. (January, 23, 2014). *Why team Obama's new education guidelines may hurt, not help, black students*. Cato Institute (Relaxing school discipline to shrink the "racial discipline gap" and "causes overall student achievement to fall" and thus "African-American children" suffer "disproportionately.") www.cato.org/publications/commentary/why-team-obamas-new-education-guidelines-may-hurt-not-help-black-students (citing Kinsler).
- 24 Some problem behaviors could potentially be due to adverse childhood experiences (ACEs). See generally <https://www.cdc.gov/violenceprevention/acestudy/index.html>.
- 25 Prior problem behavior accounts for the racial gap in school suspensions. (2014). *Journal of Criminal Justice*, 42, 257–266.
- 26 Ibid.

The School Discipline Dilemma: A Comprehensive Review of Disparities and Alternative Approaches

Richard O. Welsh and Shafiqua Little

University of Georgia

In recent decades, K–12 school discipline policies and practices have garnered increasing attention among researchers, policymakers, and educators. Disproportionalities in school discipline raise serious questions about educational equity. This study provides a comprehensive review of the extant literature on the contributors to racial, gender, and income disparities in disciplinary outcomes, and the effectiveness of emerging alternatives to exclusionary disciplinary approaches. Our findings indicate that the causes of the disparities are numerous and multifaceted. Although low-income and minority students experience suspensions and expulsions at higher rates than their peers, these differences cannot be solely attributed to socioeconomic status or increased misbehavior. Instead, school and classroom occurrences that result from the policies, practices, and perspectives of teachers and principals appear to play an important role in explaining the disparities. There are conceptual and open empirical questions on whether and how some of the various alternatives are working to counter the discipline disparities.

KEYWORDS: school discipline, zero-tolerance policy, school exclusion, exclusionary discipline, discipline disparities, restorative justice, PBIS, RTI, educational equity, suspensions, expulsions

Differences in the educational opportunities and outcomes of low-income and minority students (Carter, Skiba, Arredondo, & Pollock, 2017; Gordon, Piana, & Keleher, 2000; Skiba, 2015) have preoccupied policymakers, researchers, and educators and have placed a microscope on equity in K–12 education. In the past decade, school discipline policies and practices have garnered increasing attention because of the well-documented racial, gender, and income disparities in disciplinary outcomes (Gregory, Skiba, & Noguera, 2010; Losen, Hodson, Keith, Morrison, & Belway, 2015; Skiba, 2015). The disparities in disciplinary outcomes are fairly consistent across all settings and grades, indicating a systemic problem that starts as early as preschool (Skiba, 2015). School discipline policies may be intricately linked to the inequality of educational opportunities, experiences, and

(Skiba et al., 2011). Racial discipline disparities for Native American students have been scarcely reported (Gregory et al., 2010). Wallace et al. (2008) found that Native American boys and girls were more likely than White boys and girls to be sent to the office or detained after school. Students with disabilities (SWDs) and non-heterosexual youth are also at risk for disproportionate disciplinary actions (Himmelstein & Brückner, 2011). Higher rates of and disparities in disciplinary outcomes have been documented for SWDs (Achilles, McLaughlin, & Croninger, 2007; Losen, Hodson, Ee, & Martinez, 2014). Disproportionate discipline patterns have also been reported for lesbian, gay, bisexual, transgender, and queer (LGBTQ) students (Himmelstein & Brückner, 2011; Poteat, Scheer, & Chong, 2016; Snapp & Russell, 2016).

The extant literature suggests that the rates of and disparities in exclusionary discipline outcomes are multiply determined, local, multifaceted, and complex (Skiba, Chung, et al., 2014). No single factor explains the discipline disparities as empirical evidence indicates that student behavior, student characteristics, and school-level variables all contribute to disciplinary outcomes. The starting premise for explaining the rates of and disparities in exclusionary discipline outcomes is student behaviors and/or attitudes: Students who are disciplined are those who are misbehaving. Although several studies have found that problem behaviors and/or attitudes are strong predictors of receiving some form of disciplinary action, misbehavior (the type and frequency of infraction leading to each incident of suspension or expulsion) does not fully explain the rates of or disparities in exclusionary discipline outcomes (Skiba, Chung, et al., 2014). Students' race (Skiba, Chung, et al., 2014) and socioeconomic status (SES) (Hinojosa, 2008; Noltemeyer & McLaughlin, 2010; Skiba, Chung, et al., 2014) contribute to the likelihood of receiving exclusionary discipline. The literature suggests that race trumps other student characteristics in explaining discipline disparities. Race is one of the most significant predictors of OSS regardless of behavior (Huang & Cornell, 2017; Skiba et al., 2002; Skiba et al., 2011), and race is a significant predictor of receiving exclusionary discipline after accounting for SES (Huang & Cornell, 2017; Skiba et al., 2002; Wallace et al., 2008). For instance, Black students from low-SES backgrounds are more likely to be suspended than poor White students, and Black students with middle and high SES are more likely to be suspended than White students with similar SES (Skiba, Chung, et al., 2014). (Supplemental Table S2 summarizes the studies that explain the disparities in exclusionary discipline outcomes.)

Several school-level variables also contribute to the rates of and disparities in disciplinary outcomes. School characteristics such as demographic composition (especially the percentage of Black students) (Anderson & Ritter, 2017; Anyon et al., 2014; Gregory, Cornell, & Fan, 2011; Losen et al., 2015; Rocha & Hawes, 2009; Skiba, Chung, et al., 2014; Welch & Payne, 2010), average school achievement (Rausch & Skiba, 2005), and principals' perspectives (Mukuria, 2002; Skiba, Edl, & Rausch, 2007; Skiba, Chung, et al., 2014) partly explain the rates of and disparities in disciplinary outcomes. Variations in the attitudes of principals shape the rates of exclusionary discipline, and the evidence suggests that principals who consider the context and have a clear philosophy that guides discipline use exclusionary discipline less often relative to principals who strictly adhere to

disciplinary policy (Mukuria, 2002). Teachers' classroom management skills (Skiba, Chung, et al., 2014), teacher-student racial match (Bradshaw, Mitchell, O'Brennan, et al., 2010; Jordan & Anil, 2009; Kinsler, 2011; Lindsay & Hart, 2017), the lack of a representative bureaucracy (Blake, Smith, Marchbanks, Seibert, & Kim, 2016; Feistritzer, Griffin, & Linnajarvi, 2011; Grissom, Nicholson-Crotty, & Nicholson-Crotty, 2009; Meier, 1993; Meier & Stewart, 1992; Roch, Pitts, & Navarro, 2010; Rocha & Hawes, 2009; Staats, 2014), and teachers' perceptions, expectations, and bias (Bradshaw, Mitchell, O'Brennan, et al., 2010; Carter et al., 2017; Gershenson & Dee, 2017; Golann, 2015; Gregory & Mosely, 2004; Gullo, 2017; Hines-Datiri, 2015; McNeal, 2016; Okonofua, Walton, & Eberhardt, 2016; Skiba et al., 2011; Staats, 2014) also play a critical role in the disciplinary process.

Overall, the findings of our review suggest that occurrences in the classrooms and schools due to the policies and practices of schools, teachers' characteristics and classroom management, and principals' perspectives play an important role in explaining discipline disparities. The disparities in disciplinary outcomes may be better explained by the behavior of teachers and principals in schools rather than student characteristics such as misbehavior, poverty, or race. Recent evidence suggests that school-level variables are the strongest predictors of disciplinary outcomes (Skiba, Chung, et al., 2014). Skiba, Chung, et al. (2014) reported that students' race was not statistically significant in predicting OSS when percentage of Black students, school achievement, and principal perspectives on discipline are considered.

Notwithstanding, there is little empirical evidence to substantiate the notion that discriminatory behavior by teachers and school leaders is a significant driver of discipline disparities. Some scholars have highlighted that although there is evidence that school-level policies and practices contribute to the rates of and disparities in exclusionary discipline outcomes, the evidence concerning correlations between discipline practices and racial bias and discrimination is inconclusive (Skiba, Chung, et al., 2014; Steinberg & Lacoe, 2017). The lack of conclusive evidence is partly attributed to the data and methods as well as the scope of the studies examining discipline disparities. Although there are numerous quantitative studies, most studies tend to focus on identifying discipline disparities rather than explaining the mechanisms (e.g., the ideologies embedded within discipline policies and the deep-seated beliefs of school personnel) influencing the disparities. There are few experimental and quasi-experimental studies, and the majority of the studies employ predictive models—and thus the results are descriptive rather than causal claims regarding discipline disparities. It is also plausible that extant data may not sufficiently capture the complexities undergirding school discipline, limiting the ability to provide evidence of discrimination in discipline policies and practices. It is likely that the information needed to establish the smoking gun of racial discrimination in school discipline is not a function of data (Skiba et al., 2002).

Data play an important role in unpacking the explanatory factors underlying discipline disparities. Most studies that examined the contributors to discipline disparities considered factors at two levels: student and teacher characteristics (Bradshaw, Mitchell, O'Brennan, et al., 2010; Gregory & Weinstein, 2008;