

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BADER FAMILY FOUNDATION

v.

UNITED STATES DEPARTMENT OF
EDUCATION

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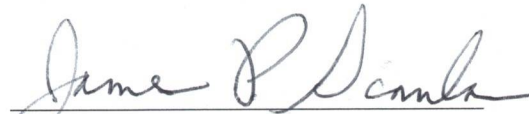
Civil Action No. 21-1741-DLF

DECLARATION OF JAMES P. SCANLAN

Attached is a true and correct copy of an email I sent to employees of the U.S.

Department of Education and the U.S. Department of Justice on May 10, 2021. Recipient email addresses included sgoldb1@law.columbia.edu, the email address of Suzanne Goldberg, the Education Department's acting Assistant Secretary for Civil Rights.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 2, 2021.



James P. Scanlan
1527 30th Street NW
Washington, DC 20007

From: jps <jps@jpscanlan.com>

To: "Pamela.karlan@usdoj.gov" <Pamela.karlan@usdoj.gov>, "Shaheena.Simons@usdoj.gov" <Shaheena.Simons@usdoj.gov>, "sgoldbl@law.columbia.edu" <sgoldbl@law.columbia.edu>, "Monique.dixon@ed.gov" <Monique.dixon@ed.gov>, "Suzanne.goldberg@ed.gov" <Suzanne.goldberg@ed.gov>, "Carolyn.Seugling@ed.gov" <Carolyn.Seugling@ed.gov>

Date: May 10, 2021 3:26 PM

Subject: May 11 event and Denver discipline disparities

Dear Acting Assistant Secretary Goldberg, Principal Deputy Assistant Attorney General Karlan, and moderators for the May 11, 2021 event "Brown 67 Years Later: Examining Disparities in School Discipline and the Pursuit of Safe and Inclusive Schools":

I saw the agenda for the referenced event, noting that Panel 3 will be addressing the effects of policies on racial and other disparities in school discipline and criminal justice outcomes in Denver Public Schools and that a representative of the organization Padres & Jóvenes Unidos will be on that panel.

In quite a few places, I have explained that contrary to the beliefs of the Departments of Education and Justice, generally reducing adverse school discipline and criminal justice outcomes tends to increase, not reduce, (a) relative racial differences in rates of experiencing the outcome (as commonly presented in terms of the ratio of the black rate to the white rate) and (b) the proportion blacks make up of persons experiencing the outcomes. References 1 to 8 explain the matter fairly briefly. Reference 9 discusses the matter at much greater length, while also explaining my lack of success in causing leadership of either agency to understand the issue during the Trump administration. See also discussion in the Appendix to reference to 10 of the government's dismissal of the appeal in *COPAA v. DeVos*.

But, as mentioned in reference 2, generally reducing suspensions tends to reduce absolute (percentage point) differences between suspension rates. I assume that in the great majority of the situations I have identified where general reductions in suspensions were accompanied by increases in the ratio of the black suspension rate to white suspension rate, the absolute difference between black and white rates decreased. I have explained to both agencies that most situations where it has been reported that general reductions in suspensions reduced racial disparities in suspensions involved situations where disparities were measured in terms of absolute differences between rates. See page 8 note 7 of reference 11 and page 3 of reference 12.

As discussed in the Appendix to reference 10, however, Denver is one of several places where researchers have stated or implied that restorative programs reduced the ratio of the black suspension rate to the white suspension rate, when in fact the ratio increased. That apparently occurred because researcher were unaware that relative differences and absolute differences could change in opposite directions, or that, in the school discipline context, this is the typical pattern. Reference 13 is a web page explaining the events in Denver more fully, while also discussing the many entities that were misled on this matter. The page references some Padres & Jóvenes Unidos data. But I am aware of no role Padres & Jóvenes Unidos had in causing this misunderstanding, which (as noted) was a result of academic research.

Reference 14 is a peer-reviewed paper by prominent members of the Positive Behavioral Interventions and Supports (PBIS) community that recognizes that general reductions in suspension tends to increase relative racial differences in suspensions while reducing absolute racial differences in suspensions. In addition to being the first paper from the educational research community that recognized the reducing suspensions tends to increase (rather than reduce) relative racial differences in suspension rates, this may be the first paper from that community that recognized even that a relative difference and the absolute difference could change in opposite directions.

The PBIS community, however, seems to continue to promote the mistaken belief that programs like PBIS that generally reducing suspensions will tend to reduce (a) and (b) for suspensions. The Department of Education, which provides substantial funding to pbis.org, may wish to explore this matter with members of the community, including the authors of reference 14.

As discussed in reference 1, Colorado was one of the first states to enact legislation to generally reduce suspensions while mistakenly believing that doing so would reduce the ratio of the black suspension rate to white suspension rate. Reference 15 discusses Padres & Jóvenes Unidos data from several years ago showing that, as a numerate observers should expect, decreases in suspensions in Colorado were accompanied by an increase in the ratio of the black rate to the white rate. Apparently, the size of relative racial/ethnic differences in suspensions is a basis for legislation further limiting the use of suspensions in Colorado. See reference 16. I do not know whether since the earlier legislation was enacted there has been either a consistent pattern of general decreases in suspensions or increases in relative racial differences in suspensions accompany such decreases. But I trust that such information is available in materials made public by the Department of Education (though lag time in publication of such data is often substantial). That information would reveal the extent to which the situation in Colorado is one where legislation based on the mistaken belief that reducing suspensions would reduce relative racial differences in suspensions led to further legislation based on the same mistaken belief.

I have not yet been able to find email addresses for Panel 3 speakers. I would appreciate it if Panel 3 moderator Acting Deputy Assistant Attorney General Simons would forward it to the other panelists, since some of them may be among those sharing the mistaken understanding of what occurred in Denver.

Sincerely,

James P. Scanlan
Attorney at Law
1527 30th Street, NW
Washington, DC 20007

jps@jpscanlan.com

1. "Misunderstanding of Statistics Leads to Misguided Law Enforcement Policies," *Amstat News* (Dec. 2012).
2. "The Paradox of Lowering Standards," *Baltimore Sun* (Aug. 5, 2013).
3. "Things government doesn't know about racial disparities," *The Hill* (Jan. 28, 2014),
4. "Things DoJ doesn't know about racial disparities in Ferguson," *The Hill* (Feb. 22, 2016).
5. "The misunderstood effects of the Baltimore police consent decree," *The Daily Record* (Feb. 15, 2018).
6. "Maryland Discipline Study Shows Usual – But Misunderstood – Effects of Policies on Measures of Racial Disparity," *The Gunpowder Gazette* (Dec. 16, 2019)
7. "A Criminal Justice Reform Premise That Is Statistically Flawed," Law360-Access to Justice (Apr. 5, 2021)
8. "Misunderstood Issues in the Measurement of Demographic Differences," Upstate New York 2021 Statistics Conference, Rochester, NY (Apr. 24, 2021)
9. "COPAA v. DeVos and the Government's Continuing Numeracy Problem," Federalist Society Blog (Sept. 12, 2019)
10. Usual, But Wholly Misunderstood, Effects of Policies on Measures of Racial Disparity Now Being Seen in Ferguson and the UK and Soon to Be Seen in Baltimore
11. Letter to U.S. Departments of Education, Health and Human Services, and Justice(July 17, 2017)
12. Handout distributed at March 22, 2018 meeting with U.S. Department of Education staff.
13. Denver Disparities subpage of Discipline Disparities page of jpscanlan.com
14. Erik J. Girvan, Kent McIntosh & Keith Smolkowski, "Tail, Tusk, and

Trunk: What Different Metrics Reveal About Racial Disproportionality in School Discipline," Educational Psychologist (2019).

15. Colorado Disparities subpage of the Discipline Disparities page of jpscanlan.com
16. <https://co.chalkbeat.org/2021/3/12/22328371/colorado-racial-disparities-discipline-bill-school-to-prison-pipeline>