



December 19, 2018

VIA EMAIL

The Honorable Kenneth L. Marcus
Assistant Secretary for Civil Rights
U.S. Department of Education
Office of Civil Rights
400 Maryland Ave., SW
Washington, DC 20202

Re: AAUW Opposes Rescission of the School Discipline Guidance

Dear Assistant Secretary Marcus:

On behalf of the more than 170,000 members and supporters of the American Association of University Women (AAUW), I write to in full support of the 2014 school discipline guidance package, including the *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*, and to urge that it not be rescinded. This guidance package provided helpful resources for educators, administrators, students, and parents and reminded recipients of federal funding that their school discipline policies and practices must comply with nondiscrimination requirements in civil rights law. To rescind it would be to undermine the Department of Education's mission and would also send a message that the Department is not concerned about students' civil rights and well-being.

The guidance stands for the simple, but vital, principle that federal education funding will not be used to treat students of different races differently. The Department has acknowledged that disproportionate punishment unfairly hampers the educational, economic, and emotional development of students. The school discipline guidance package has been instrumental in providing assistance to schools so that they may reform their disciplinary practices. Indeed, the guidance was necessary after findings that schools' disciplinary practices were disproportionately harming students of color and students with disabilities.

Studies show that black students are punished more harshly and more frequently than white students for the similar offenses.¹ Critical to AAUW's mission, evidence shows that African American girls are often suspended for minor or subjective offenses, which may be infected by race- and sex-based stereotypes.² They are 5.5 times more likely to be suspended than white girls, and are the most likely racial and gender

¹ See, e.g., Daniel J. Losen and Jonathan Gillespie, "Opportunities Suspended: The Disparate Impact of Disciplinary Exclusion from School" (The Center for Civil Rights Remedies at The Civil Rights Project at UCLA, August 2012), <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/upcoming-cerr-research/losen-gillespie-opportunity-suspended-2012.pdf>.

² National Women's Law Center, "Let Her Learn: A Toolkit to Stop School Push Out for Girls of Color," https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2016/11/final_nwlc_NOVO2016Toolkit.pdf.

group to be suspended multiple times.³ For American Indian/Alaskan Native girls, the rate is more than three times that of white girls.⁴ The Department of Education's own data shows that students with disabilities, especially black students with disabilities, are significantly overrepresented among those subjected to all types of punishments in school, including suspension, referral to law enforcement, and corporal punishment.⁵

These dramatic statistics are all the more disturbing given the proven long-term negative impacts of exclusionary discipline on student's education and economic prospects.⁶ Exclusionary discipline, such as suspension and expulsion, deprives students of classroom learning time, which can cause them to fall behind on work, see their grades slip, and be pushed out of schools and into the criminal justice system. When students of color and students with disabilities are being punished at dramatically higher rates, it is clear that these students are being denied their right to an equal education.

Contrary to the claims of the Federal Commission on School Safety, disproportionately high disciplinary rates for protected classes of students does, in fact, constitute discrimination. There is simply no good evidence that racial differences in discipline are due to differences in rates or types of misbehavior by students of different races.⁷

In fact, there is a lot of misinformation about the guidance. Rescinding the guidance will not make schools safer. The guidance does not impose new federal or state laws, does not prevent any appropriate discipline for any student, does not tie administrators' or educators' hands in applying appropriate and fair discipline, or does not create new theories of liability.

On the contrary, the guidance provides helpful recommendations for investigating allegations of discriminatory discipline practices, gives examples of school disciplinary practices that *may* violate civil rights laws, and provides guidance about the appropriate role of law enforcement in schools. The guidance suggests prioritizing the use of evidence-based prevention strategies to promote positive student behavior and safe classrooms. In the end, the guidance helps schools create safer school atmospheres.

³ *Id.*

⁴ *Id.*

⁵ United States Government Accountability Office, "K-12 EDUCATION: Discipline Disparities for Black Students, Boys, and Students with Disabilities," March 2018, <https://www.gao.gov/assets/700/690828.pdf>.

⁶ Miner P. Marchbanks III et al., "The Economic Effects of Exclusionary Discipline on Grade Retention and High School Dropout" (The Civil Rights Project at UCLA, April 2013), <https://www.civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/the-economic-effects-of-exclusionary-discipline-on-grade-retention-and-high-school-dropout/marchbanks-exclusionary-discipline-crr-conf.pdf>; Robert Balfanz, Vaughan Byrnes, and Joanna Fox, "Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade" (Everyone Graduates Center, School of Education, Johns Hopkins University, December 2012), <https://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/sent-home-and-put-off-track-the-antecedents-disproportionalities-and-consequences-of-being-suspended-in-the-ninth-grade/balfanz-sent-home-crr-conf-2013.pdf>; Tony Fabelo et al., "Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement" (The Council of State Governments Justice Center and the Public Policy Research Institute at Texas A&M University, July 2011), https://knowledgecenter.csg.org/kc/system/files/Breaking_School_Rules.pdf.

⁷ Russell J. Skiba and Natasha T. Williams, "Supplementary Paper I: Are Black Kids Worse? Myths and Facts About Racial Differences in Behavior." (The Equity Project at Indiana University, March 2014), http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf.

Schools should be setting children up for successful futures, not for failure by using discriminatory disciplinary practices. AAUW strongly supports the 2014 guidance package, including the *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*. We urge you to reject the Commission's recommendation and uphold the Department's mandate to protect all student's civil rights. If you have any questions or I can provide further information, please feel free to contact me at 202-785-7720.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah J. Vagins".

Deborah J. Vagins
Senior Vice President, Public Policy and Research