



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

July 8, 2019

Honorable Christopher S. Murphy
United States Senate
Washington, DC 20510

Dear Senator Murphy:

Thank you for your letter to Secretary DeVos and then-Acting Attorney General Whitaker concerning the January 8, 2014, Dear Colleague letter on the *Nondiscriminatory Administration of School Discipline* and related materials, jointly issued by the U.S. Departments of Education (ED) and Justice (DOJ), and requesting information about the Administration's efforts to enforce Title VI of the Civil Rights Act of 1964. Your letter has been forwarded to me, and I am pleased to respond on behalf of Secretary DeVos. I appreciate your views and concerns.

This Administration remains committed to ensuring that educational programs and policies are administered in a fair and even-handed manner, free from discrimination. There is no place for discrimination in our schools, including in student discipline. ED's Office for Civil Rights (OCR) will continue to fulfill its important mission of ensuring equal access to education and promoting educational excellence through vigorous enforcement of civil rights laws under its jurisdiction.

As you know, last year, the Federal Commission on School Safety, among other initiatives, held a number of outreach sessions to discuss solutions that promote student safety and that ensure disciplinary practices are effective and nondiscriminatory. Chapter 8 of the final report of the Commission (www.ed.gov/school-safety) discusses the 2014 Dear Colleague letter and concludes with recommendations that ED and DOJ rescind the letter and its associated documents, develop a resources and best practices guide to assist schools in improving school climate and learning outcomes, continue vigorous enforcement of Title VI of the Civil Rights Act of 1964, and provide appropriate information to the public on how ED will investigate and resolve cases of intentional discrimination.

Fulfilling one part of the Commission's recommendations, ED and DOJ rescinded the Dear Colleague letter and associated documents on December 21, 2018. Our decision to rescind the guidance makes it clear that discipline is a matter on which classroom teachers and local school leaders should have flexibility; teachers and school leaders may continue to implement discipline reforms they believe will foster improved outcomes for their students. As stated in our December 2018 rescission letter, the 2014 guidance documents were withdrawn because they advanced policy preferences and positions not required by federal law. The letter also emphasized that states and local school districts play the primary role in establishing educational policy, including how to handle student misconduct and discipline, and in ensuring that teachers have the support they need to implement appropriate discipline policies.

400 MARYLAND AVE. S.W., WASHINGTON, DC 20202-1100
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

With respect to your questions regarding the Administration's efforts to enforce Title VI of the Civil Rights Act of 1964, OCR's role is to ascertain the school's compliance with the civil rights laws under our jurisdiction. OCR has historically construed 34 C.F.R. § 100.3(b)(2) to include disparate impact analysis, although the Supreme Court has noted that interpreting this regulation to cover unintentional discrimination is in "considerable tension" with Title VI itself, which "prohibits only intentional discrimination." *Alexander v. Sandoval*, 532 U.S. 275, 280, 286 n. 6 (2001). As the Court has also noted disparate impact liability "has always been limited in key respects that avoid the serious constitutional questions that might arise ... if such liability were imposed based solely on a showing of a statistical disparity." *Texas Dep't of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, ___ U.S. ___, 135 S. Ct. 2507, 2522 (2015) (holding disparate impact claims cognizable under the Fair Housing Act). Any use of disparate impact analysis must be applied consistently with Supreme Court decisions.

On April 10, 2019, acting on the Commission's recommendation that ED "identify resources and best practices to assist schools in improving school climate," Secretary DeVos released the *Parent and Educator Guide to School Climate Resources* ("*Guide*"). This *Guide*, developed jointly by ED's Office of Elementary and Secondary Education and Office of Special Education and Rehabilitative Services, provides examples of best practices and includes resources school leaders and teachers can utilize as they work to achieve a positive school climate, reduce disciplinary concerns, and enhance school safety. Additionally, the *Guide* provides information to teachers and school leaders on how they can receive support from ED's two technical assistance centers dedicated to promoting safe and supportive schools, including the National Center of Safe and Supportive Learning Environments (<https://safesupportivelearning.ed.gov>) and the Technical Assistance Center on Positive Behavioral Interventions and Supports (www.pbis.org). The *Guide* includes an appendix of additional resources spanning the work of government agencies and private organizations, equipping parents and educators to create positive learning environments for all students (www2.ed.gov/policy/elsec/leg/essa/essaguidetoschoolclimate041019.pdf).

Finally, OCR continues to provide technical assistance to schools, districts, state education agencies, libraries, colleges, and universities across all statutory areas over which OCR has jurisdiction. For example, in FY 2017 and FY 2018, OCR's regional offices conducted a total of 330 technical assistance events. Of these 330 events, some of which addressed multiple topics, 108 addressed Title VI, 109 addressed Title IX, 251 addressed Section 504/Title II, and 60 addressed age discrimination. In addition, in 2017, 2018, and 2019, OCR conducted an annual training conference on civil rights compliance obligations for state education agencies that administer career and technical education programs.

In closing, Title VI continues to protect students, just as it did prior to the issuance of the "Rethink School Discipline" guidance in 2014. OCR stands ready to investigate complaints of discrimination, including those based on race, color, and national origin, whether arising from disciplinary actions by schools or otherwise.

Thank you again for writing and sharing your concerns. If you have any additional questions or concerns, please contact Jordan Harding, Principal Deputy Assistant Secretary, delegated the duties of the Assistant Secretary for Legislation and Congressional Affairs, at 202-401-0020.

Sincerely,



Kenneth L. Marcus
Assistant Secretary for Civil Rights