

Dear Colleague...
New Guidance on Student Discipline

Region 13 Curriculum Council
 February 6, 2014

Presented by **Mark Goulet**

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Dear Colleague Letter

- ◎ **On January 8, 2014, OCR and DOJ issued a “Dear Colleague” letter and guidance on creating fair student discipline policies and applying them in a racially and ethnically neutral manner.**
 - ◆ Guidelines for avoiding intentional and unintentional discrimination or discriminatory effects resulting from student discipline.
- ◎ **Title IV and Title VI of the Civil Rights Act of 1964**
 - ◆ Prohibit public primary and secondary schools from discriminating against students on the basis of race, color, and national origin.
 - ◆ In connection with all academic, educational, extracurricular, athletic, and other programs and activities of the school.
 - ◆ Including programs and activities a school administrators to ensure and maintain school safety and student discipline.

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Concerns Raised

- ◎ Various studies show that students belonging to certain racial and ethnic groups are disciplined more often and more harshly than their similarly situated peers.
 - ◆ Part of this joint federal effort came on the heels of the 2011 state-wide report *Breaking Schools’ Rules*, that gained national attention. The report studied data collected from 1 million Texas students.
- ◎ The disparity in disciplinary actions cannot simply be explained away by stating that there is a difference in the rate of offending. This leads to concerns that schools are engaging in illegal racial discrimination.

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Concerns Raised

- ⊙ Exclusionary discipline causes students to lose out on instructional time, and can lead to an increase in behavior problems, risk of dropping out, and substance abuse.
- ⊙ The increasing number of sanctions such as suspension, expulsion, and referral to law enforcement can contribute to the school-to-prison pipeline.

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Different Treatment

- ⊙ A type of intentional discrimination.
- ⊙ Student is subjected to **different treatment** based on the student's race.
 - ◆ Policy that is **discriminatory on its face** in that it explicitly requires different treatment based on student race.
 - ◆ Policy that is **neutral on its face**, but the policy is administered in a discriminatory manner.
 - ◆ Policy is **neutral on its face**, but the intent behind the policy was to target students of a specific race.

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Example

- ⊙ Two groups of students get into a fight. None of the students has a disciplinary record. One group of students is Hispanic and the other is Asian American.
- ⊙ Without knowing any other facts (*such as who started the fight*), the administration punishes the Hispanic students more harshly. This creates an *inference* of intentional discrimination.
- ⊙ Because the students are similarly situated, the school must be able to offer a legitimate, nondiscriminatory reason for the difference in the discipline issued that isn't a pretext for actual discriminatory intent.

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Disparate Impact

- ⊙ A type of unintentional discrimination.
- ⊙ A neutral policy is administered fairly and in an evenhanded manner but has a **disproportionate and unjustified effect** on students of a particular race.
- ⊙ Three-part inquiry:
 - ◆ (1) Has the policy resulted in adverse impact on students of a particular race as compared to other races?
 - ◆ (2) Is the discipline policy necessary to meet an important educational goal?
 - ◆ (3) Are there other, effective options to meet the school's goal that would have less of an adverse impact, or is the school's proffered justification a pretext for discrimination?

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Example

- ⊙ School has a zero tolerance tardiness policy which can result in removal from class and OSS. Evidence shows Asian-American students disproportionately affected by the rule.
- ⊙ Evidence shows Asian-American students are more likely to live farther from school and are forced to take public transportation, while white and Hispanic students live within walking distance of school. The use of public transportation means many Asian-American students are not dropped off until after school has begun.
- ⊙ The school would be required to articulate its legitimate goal, and OCR/DOJ would assess whether the rule was designed to meet the stated goal and whether there are other, better alternatives.
- ⊙ If OCR/DOJ finds there is a better alternative with less adverse racial impact, it might find the school in violation of Title VI and require implementation of the alternatives.

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OCR/DOJ Process

- ⊙ **Examples of Steps a School May be Asked to Take**
 - ◆ Correcting records of students treated differently;
 - ◆ Compensatory, comparable academic services to students affected;
 - ◆ Revision of discipline policies;
 - ◆ Development and implementation of teaching strategies for positive student behaviors, including use of appropriate supports and interventions, and utilizing exclusionary discipline as last resort;
 - ◆ Training for school personnel;
 - ◆ Supports for struggling students whose behavior disrupts education;
 - ◆ Designate school official as discipline supervisor to ensure fair implementation.

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State Law

- ⊙ **TEA is attempting to address racially disproportionate discipline starting with the collection of school data.**
- ⊙ **SB 420, introduced during the 2013 session, sought to address disproportionate discretionary discipline.**
 - ◆ Under this bill, TEA would examine school discipline data reported through PEIMS, and determine if districts were taking discretionary action disproportionately against students of a particular race or who were classified as requiring special education services.
 - ◆ Offending districts would be required to implement an approved remediation plan, and TEA would monitor the implementation.

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Use of Law Enforcement

- ⊙ **Organizational roles should be clearly defined.**
- ⊙ **School personnel, not SROs, are responsible for routine discipline.**
 - ◆ Train personnel and volunteers to understand the difference between disciplinary infractions handled by school officials and serious threats to school safety or serious school based criminal conduct that require law enforcement intervention.
- ⊙ **Collect data on and monitor SRO or other law enforcement personnel actions against students to ensure nondiscrimination.**

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Climate and Prevention

- ⊙ Appropriate student behavior should be positively reinforced.
- ⊙ All school personnel should have ongoing training on classroom management, conflict resolution, and de-escalation techniques. Evaluate current training procedures and determine what improvements could be made.
- ⊙ All personnel should be trained on the school's written discipline policy and on how to apply subjective criteria in making disciplinary decisions.
- ⊙ School personnel should undergo cultural awareness training, including both how to work with racially and ethnically diverse student populations and the harms in using stereotypes.

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Discipline Policies

- ◎ **Create a collaborative and inclusive environment** where all stakeholders (*e.g.*, personnel, students, community members) have a method of providing input into the discipline policy and process.
 - ◆ Create a committee or task-force to address issues and create workable and appropriate solutions.
- ◎ **Written discipline policies:**
 - ◆ Include a range of measures that students can take to improve behavior before disciplinary action is taken.
 - ◆ Clearly define offense categories and base penalties on objective criteria where possible.
 - ◆ Provide for alternatives to exclusionary discipline practices and for individual tailored support for student reentry into the classroom.

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Monitoring, Evaluating, Correcting

- ◎ **Have a system to monitor penalties, making sure they are consistent with the written policy.**
- ◎ **Create regular discipline reports from the data collected on offending students and penalties.**
- ◎ **Regularly evaluate disciplinary actions to determine how policies are affecting different populations.**
 - ◆ If there are disparities that raise concern, create a plan of action for the school to help fix the system at the root cause(s).
- ◎ **Determine a timeline or schedule for regular review and oversight, to ensure that there is consistency and prompt responsiveness.**

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Takeaways

- ◎ This is **NOT** new law or a new interpretation, but the OCR/DOJ are giving us an insider view of their process.
- ◎ What you should be doing:
 - ◆ Evaluate the current disciplinary process and procedures in schools.
 - ◆ Train school personnel on discipline and cultural awareness so that when a discretionary call must be made, it will be fair.
 - ◆ Write or revise discipline policies so they include alternative disciplinary measures and ensure that policies are as objective as possible.
 - ◆ Monitor and evaluate actions, and remediate where necessary.

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