

# School Discipline and Federal Guidance

## *The AFT's Response*

In January 2014, the U.S. departments of Education and Justice jointly issued legal guidance, in the form of a “Dear Colleague” letter, on the subject of discriminatory practices in the administration of student discipline and violations of Title IV and Title VI of the Civil Rights Act of 1964. To read the letter, and to learn more about the departments’ recent efforts to support discipline practices that keep students in school, visit <http://1.usa.gov/1Nm8AmB>.

The guidance relies upon data collected by the federal Office for Civil Rights, which have shown that under mandatory suspension or expulsion policies, certain groups of students are more likely to be disciplined based on race, ethnicity, gender, or sexual orientation. While focused on race, the letter reminds schools that federal law also prohibits discriminatory discipline based on other factors, including disability, religion, gender, and sexual orientation.

The guidance states that the administration of student discipline can result in unlawful racial discrimination in two ways: (1) when a student is subjected to different treatment based on the student’s race; and, more commonly, (2) when a policy is neutral on its face—meaning that the policy itself does not mention race—and is administered in an evenhanded manner but has a “disparate impact” (i.e., a disproportionate and unjustified effect) on students of a particular race. Under either scenario, statistical analysis can be used to track potential violations.

As the letter explains, the departments initiate investigations at particular schools based on complaints they receive from students, parents, community members, and others about possible racial discrimination in student discipline or as part of their regular compliance-monitoring activities. The departments use data to answer a three-part inquiry to assess whether a policy has an unlawful disparate impact:

- Has the discipline policy resulted in an adverse impact on students of a particular race?
- Is the discipline policy necessary to meet an important educational goal?
- Are there comparably effective alternative policies or practices that would meet the school’s stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group, or is the school’s proffered justification a pretext for discrimination?

According to the guidance, policies that impose mandatory suspension or expulsion can raise disparate-impact concerns. In all cases, the departments will investigate all relevant circumstances, such as the facts surrounding a student’s actions and the discipline imposed.

The guidance letter advises school systems to:

- Have a system for monitoring all disciplinary referrals;
- Ensure that staff are trained to administer student discipline in a nondiscriminatory manner; and
- Monitor and evaluate the impact of disciplinary practices. If the departments have concerns with the adequacy of a school district’s data collections and record keeping, they may require the district to implement various data collection practices.

If the federal departments conclude that a school district is in violation, the departments will attempt to resolve the matter through a voluntary agreement with the district before instituting a judicial or administrative action.

### **Next Steps**

Several years prior to the federal guidance, the AFT had begun a dialogue internally on positive approaches to school discipline—and the critical need for high-quality alternative education settings, effective professional development, administrator support, community collaboration, and better use of data—with a focus on increased student attendance, staff and student safety, parental involvement, and improved school climate and culture. In the summer of 2012, the AFT released a statement on then-newly announced disparate discipline data, reiterating a commitment to combating the effects of zero-tolerance policies and to working with communities to improve education for all children. It also affirmed the need for educators to receive related professional development and training.

In response to the 2014 federal letter, the AFT acknowledged the disturbing suspension data and embraced the guidance, noting that schools must be safe and welcoming places for all students and staff. But the AFT also cautioned that any new policies will succeed only if resources and support are available to help at-risk children thrive.

To that end, the AFT called upon school systems and the federal departments to make the following changes:

1. Provide ongoing professional development and training to all school staff, aligned with school and district reform goals, with a focus on evidence-based positive school discipline, conflict resolution, cultural relevancy and responsiveness, behavior management, social justice, and equity.
2. Earmark funding for states to collect data and to support a comprehensive and aligned system of mental health and intervention services for children and youth.
3. Increase school district and statewide investments in social-emotional learning and student-support teams, focusing on academic engagement, equitable access to rigorous coursework, and appropriate behavioral instruction.
4. Include time to collaboratively analyze and address school discipline data.
5. Review and monitor existing discipline codes to ensure they are appropriate, effective, and equitable.
6. Restore critical school personnel, such as counselors, psychologists, nurses, and school social workers, who have the knowledge and expertise to appropriately address student behavior.
7. Restore and provide training to essential paraprofessional and school-related support personnel, such as instructional aides, bus drivers, security and school resource officers, cafeteria staff, and custodial staff.
8. Include students, families, educators, school support personnel, juvenile justice professionals, law enforcement officers, child welfare workers, and other community members in developing and implementing school improvement/reform plans that will affect school climate.
9. Implement alternatives to suspension and expulsion to manage student behavior. Establish criteria for high-quality alternative education settings and develop transition protocols for students returning to their community’s schools.

—AFT GOVERNMENT RELATIONS  
DEPARTMENT