

Schools Must Address Discrimination in School Discipline

The U.S. Department of Education's Latest Effort to Undermine Protections for Students Does Not Change the Law.

Recent Guidance from the U.S. Department of Education Does Not Change School District's Legal Antidiscrimination Obligations.

SUMMARY

Title VI and Title IV of the Civil Rights Act of 1964 are federal civil rights law that have long prohibited race discrimination in schools, including in student discipline—both intentional different treatment and neutral policies that lead to an unjustified discriminatory effect on particular students. Federal agency guidance in the form of “Dear Colleague Letters” (“DCLs”) interprets existing federal laws, such as Title VI and Title IV. **The removal or rescission of federal guidance documents and resources does not change the law.** Even though the U.S. Department of Education (ED) rescinded previous DCLs and published a new DCL on discipline on August 18, 2026, schools may—and, to comply with the law, sometimes must—review and address racial inequalities in discipline. As detailed below, schools may also continue to adopt a wide range of policy changes to address discriminatory discipline to ensure that they are complying with both state and federal laws.

This document provides information regarding discriminatory discipline and its impact on students of color and students with disabilities. It also includes an accurate summary of the 2026 DCL and, importantly, provides a clear summary of what the law still requires schools to do to combat discrimination in discipline in schools. It includes examples of policies schools have adopted successfully in compliance with the law.

The Appendix includes summaries of examples of discriminatory discipline, including summaries of ED’s Office for Civil Rights (OCR) cases that were investigated and resolved under previous Republican and Democratic administrations.

Part I. What is Discriminatory Discipline and How Does it Harm Students?

Discriminatory school discipline practices are policies or practices that treat students differently based on race, color, national origin, disability, sex, or other protected characteristics, or that have unjustified disparate impacts on protected groups.

There are two forms of prohibited discrimination in school discipline that schools must address.

Intentional discrimination (disparate treatment). It is against the law for teachers and school administrators to treat similarly situated students differently because of race. For example, a principal would be intentionally discriminating based on race if, when dealing with a white student and a Black student who both skipped class and had a comparable offense and discipline history, she gave the white student a detention but the Black student a suspension.

In many past investigations, the federal government has found that some schools do intentionally discriminate based on race when disciplining students, often for what are called “subjective offenses,” or student conduct violations that are not clearly defined and are up for interpretation by whomever is giving out the discipline. Discipline categories, such as “defiance,” “disruption,” or “inappropriate behavior,” are often examples of subjective offenses. When violations of student conduct codes are too subjective, they leave room for bias to play a part in administrators’ decision-making, which can result in their discriminatory administering of school discipline.

Discriminatory effect (disparate impact). Not all discriminatory conduct needs to be based on intent. For decades, courts have confirmed that Title VI also prohibits schools from creating discipline policies that have the *effect* of subjecting students to discrimination on the basis of race, color, or national origin—even when the words of a policy itself are neutral and don’t mention race. When this happens, the question becomes whether the discipline policy has a “disparate impact” on students of a particular race. Under the disparate impact standard, a neutral discipline policy can break the law if it harms students of a particular race more often or more harshly than students of other races, and the reason for having the policy is not good enough to make up for how it might harm those students. In other words, a facially neutral discipline policy can violate the law if it disproportionately harms students of color and is not adequately justified.

Discriminatory Discipline Harms Students and Makes Schools Less Safe

Unjustified, neutral discipline policies are one of the most prevalent ways students of color lose educational opportunities. Discriminatory exclusionary discipline does not meet its intended pedagogical purposes and causes students to lose valuable instructional time. Moreover, research shows that frequent use of disciplinary removal negatively affects school climate. Discriminatory practices often increase punishment for repeated minor and subjective misbehaviors, including tardiness or disruptions. Often educators impose harsher consequences on students with disabilities and students of color for the same infractions. These practices increase punishment for subjective behaviors, imposing harsher consequences on students with disabilities and students of color for the same infractions. Exclusionary discipline under these conditions, especially school-based arrests, has long-standing collateral consequences for youth. And evidence demonstrates that these practices make schools less safe for all students. Rather than addressing actual threats to student and school safety, discriminatory discipline is meted out on the basis of bias rather than behavior.

Federal and state civil rights law allows, and sometimes even requires, schools to review data to understand the underlying causes of disparities. To be clear, students of color are not more likely to misbehave, but educators are more likely to punish students of color more based vague policies that allow for implicit bias. Reforming school discipline policies for everyone is lawful and leads to safer, more inclusive schools.

Part II. What What Is (and Is Not) in the 2026 Dear Colleague Letter on Discriminatory Discipline?

The Dear Colleague Letter about discipline that ED published on August 18, 2026 (“2026 DCL”) outlines the Trump administration’s arguments against using disparate-impact liability under Title VI. The DCL directs schools to stop “considering race in connection with student discipline.” As noted in this fact sheet and in the previous guidance that this DCL replaces, the only way that schools were directed to “consider race” was to review accurate data disaggregated on the basis of race regarding who was being suspended, expelled, or referred to law enforcement. Schools can continue to collect this data and review why those decisions were being made. They can also use this data to assess whether students were treated differently for similar behavior or whether certain policies had an unjustified impact on particular communities.

The 2026 DCL also states that efforts to “systematically and consciously eliminate or reduce statistical racial disparities” in the disciplinary process are not required by Title VI or the Constitution and suggest that these efforts may, in fact, violate Title VI or the Constitution. The DCL’s 2026 position, in short, is that a school disciplinary decision is generally unlawful if race equity is simply considered as a goal or a step in any part of the decision-making process, even if the resulting policy is race-neutral.

When the Trump administration advanced this same position in federal court in 2025, it was rejected by a district court judge. On February 14, 2025, OCR issued a Dear Colleague Letter clarifying the office’s interpretation of Title VI and the Equal Protection Clause under the Supreme Court’s 2023 decision in *Students for Fair Admissions v. Harvard* (“SFFA”). The February 2025 Letter suggested that, under SFFA, race-neutral policies are unlawful if they are “motivated by racial considerations.” Legal challenges were brought against this Dear Colleague Letter and, on August 14, 2025, the United States District Court for the District of Maryland vacated—in other words, voided—the Letter. Among other holdings, the Court determined that “[t]he Letter’s position proscribing race-neutral means of increasing all forms of diversity... is directly contradicted by binding precedent in this Circuit.” The court cited the Fourth Circuit’s 2024 decision in *Coalition for TJ v. Fairfax County School Board*, in which the Fourth Circuit explained: “To the extent the Board may have adopted the challenged admissions policy out of a desire to increase the rates of Black and Hispanic student enrollment at TJ—that is, to improve racial diversity and inclusion by way of race neutral measures—it was utilizing a practice that the Supreme Court has consistently declined to find constitutionally suspect.” The U.S. Supreme Court denied certiorari of the Fourth Circuit’s decision.

What is NOT in the 2026 DCL?

What is not included in the 2026 DCL is the fact that the previous DCL from January 2014 (“2014 DCL”) and the OCR Resource from March 2023 (“2023 Resource”) were developed in response to requests from students, parents, educators, and civil rights advocates who had asked ED and DOJ for years to get involved and address the overuse and discriminatory use of suspension and expulsion. The 2014 DCL and 2023 Resource cited extensive evidence showing that discriminatory discipline was widespread, persistent, and not explained by student behavior.

National OCR data revealed that Black students and students with disabilities were suspended, expelled, and arrested at far higher rates across states and grade levels, especially for subjective offenses like “defiance” or “disrespect.” Peer-reviewed research showed these disparities were not due to higher misbehavior: students of color were punished more harshly for the same conduct, and subjective infractions were more likely to be applied to them due to implicit bias. [The 2014 DCL](#) also documented that “neutral” policies—such as zero-tolerance rules and vague behavioral categories—produced racially disparate outcomes, with similar schools showing dramatically different discipline rates based on policy choices rather than student behavior. Studies further demonstrated that exclusionary discipline harms academic achievement, increases dropout risk, and heightens juvenile-legal involvement, disproportionately affecting students of color and students with disabilities. In recent years, additional studies have found that these collateral consequences are only exacerbated when law enforcement, including school resource officers, are involved in the administration of school discipline. Yet, evidence showed that alternatives like restorative practices, PBIS, clearer rules, and staff training reduced disparities without compromising school safety. Finally, OCR’s own investigations and resolution agreements confirmed that facially neutral policies were producing discriminatory effects and that policy changes reduced those harms, validating the need for disparate-impact analysis to uncover violations that intent-only standards would miss.

To be clear, the latest 2026 DCL (and its stated opposition to OCR's [2014 DCL](#) and [2023 Resource](#)) relies on [\[SB1\]](#) longstanding racist assumptions regarding who commits acts that require discipline. The parents, families, and educators who pushed for the discipline guidance in 2014 and the resource in 2023 rejected these assumptions and understood that the disproportionate use of exclusionary discipline could not be explained by differences in child behavior. It was clear that action was needed to change the policies and practices of adults throughout the educational system.

Part III – What are School’s Legal Obligations to Address Discriminatory Discipline?

Multiple federal statutes provide the foundation for a school’s obligation to address discriminatory discipline.

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving federal financial assistance—which includes virtually all public school districts and even some private schools that receive federal funds. Title VI’s protection applies to all students, including students with disabilities and LGBTQI+ students. **Title IV of the Civil Rights Act of 1964** authorizes the U.S. Attorney General to address the denial of equal protection on the basis of race, color, national origin, sex, or religion in public schools.

These federal protections routinely intersect with other civil rights laws in the discipline context, including **Section 504 of the Rehabilitation Act of 1973** (disability), **Title II of the American with Disabilities Act** (disability), **Title IX of**

the **Education Amendments of 1972** (sex), and the **Equal Educational Opportunities Act of 1974** (services for English Learner students). The **Individuals with Disabilities Education Act (IDEA)** is an education act to provide federal financial assistance to State and local education agencies to guarantee special education and related services to eligible children with disabilities. IDEA provides free, appropriate public education (FAPE). A FAPE is defined to mean special education and related services. States are required to ensure the provision of “full educational opportunity” to all children with disabilities. IDEA requires the development of an Individualized Education Program (IEP) document with specific content and a required number of participants at an IEP meeting.

State laws also protect students from discriminatory discipline. You can learn more about the obligations for schools to address discrimination in school discipline at the State of Student Rights, a summary of state-specific civil rights protections that protect students.

What is the legal analysis to determine if a discipline policy had a disparate impact?

There are generally three main steps to figure out if a school’s policy is having a discriminatory effect, or “disparate impact” on students of a particular race:

- **Identify the disproportionate effect:**
 - Even though the policy or practice may be neutral on the surface, does the policy or practice lead to students of a particular race, color, or national origin getting disciplined more often or more harshly than other students?
 - If the answer is “no,” then there is no need to continue.
 - If the answer is “yes,” then continue to the next step.

- **NOTE: Disparities found in data: an analytical tool, not an automatic violation:** When school records show that students of some races have been disciplined more often or more harshly than students of other races, that doesn’t automatically mean the school has broken federal civil rights laws. Instead, schools can better follow the law when they use the information, or “data,” that can be found in those records to learn more about the *underlying causes* of the differences for students. Data is just one tool—among many—that schools and government agencies can and should use to make sure their discipline policies are not leading to discrimination based on race and are fair for all students. Collecting and analyzing data is a lawful and, often, necessary step to comply with federal and state civil rights protections for students.

- **Determine the justification (what is the school’s reason for the policy or practice):**
 - Does the school’s policy or practice serve a *substantial, legitimate educational goal*, even if it affects certain students differently than others (i.e., even if it has a disproportionate effect)?
 - If the answer is no, then the policy fails. The policy is unlawful and should not be used by the school district.
 - If the answer is yes, go to the next step to see if there are other ways for the school to meet its stated educational goal.
- **Ask the school if it considered a less discriminatory alternative:**

- If there is a less discriminatory alternative, the school must take that action to comply with the law.

Federal “guidance” does not change the law

Discipline. But getting rid of federal guidance does not change the law or create new laws. Federal guidance resources are only meant to advise school districts on how to follow federal laws. Schools must still meet the requirements in Title VI and Title IV, regardless of the status of any particular guidance document, resource, or fact sheet. Remember, state and local laws also prohibit discrimination, and many often protect the rights of students from discrimination in the application of discipline.

Schools are always allowed to proactively change policies to ensure discipline is fair for all students

Nothing in federal law prohibits a school from voluntarily changing its discipline policies to make sure students of all races are treated fairly and able to stay in their classrooms. In fact, making those changes is squarely within a school’s authority. For years, school districts across the country have made their schools safer and more welcoming for all students by making these changes based on data as well as feedback from students, parents, and teachers in their communities.

Part IV. What Schools May Lawfully Do to Address Discriminatory Discipline and to Make Schools Safer for All Students

Drawing on prior examples from the U.S. Department of Education, here are some ways a school or school district can lawfully and neutrally discipline students without discriminating based on their race. Revising discipline policies does not make schools less safe – in fact, evidence demonstrates that effective and non-discriminatory policies make schools safer:

1. Revise codes of conduct, especially to make discipline policies less subjective

- Schools can define violations of the student code of conduct with elements that are concrete and appropriate for the age of the students. They can also eliminate—or narrow—unclear, overlapping, subjective categories (like “defiance,” “disrespect,” “disruption,” or “inappropriate behavior”) that can lead to unfair discipline.
- School districts can make sure the same consequences are given for similar behavior across all schools within them, rather than harsher punishments at some schools than at others for the same behavior.
- Schools can add a “nondiscrimination statement” to the student code of conduct, which would explain the school’s commitment to having fair school policies and a clear process for students and families to challenge a policy that the school might have applied in a discriminatory way.

2. Limit exclusionary discipline and protect due process

- Schools can save suspensions, expulsions, and classroom removal only for the most serious behaviors and avoid using “exclusionary discipline,” or discipline that pushes a student out of their classroom or other instruction time, for minor or subjective violations, such as being late, missing school, and not following the dress code.

- Schools can end “informal removals,” or sending students home without following a fair and consistent process. Instead, they should treat any early dismissal for misbehavior as formal exclusionary discipline that should follow the proper procedures. This provides students with due process for their removal from their classroom.
- Schools can allow students to make up work missed due to exclusionary discipline and support students as they return from detentions, suspensions, or alternative placements.

3. Focus on prevention and positive supports

- Schools can require staff to use a range of tools to correct student behavior or deescalate a situation before recommending that a student receive exclusionary discipline, unless there is a real threat to the safety of that student or others in the school building.
- Schools can work with teachers to use research-based methods, including Positive Behavioral Interventions and Supports (PBIS), restorative practices, conflict resolution, multi-tiered systems of support (MTSS), and trauma-informed services and counseling.
- Schools can make sure they are fully staffed with counselors and mental health professionals. They can also use available funding (including money from the federal government) to build supportive learning environments.

4. Define and limit the role of law enforcement

- Schools can make clear—through policy and legal agreements (including, for example, memoranda of understanding)—that school administrators, not police (including school resource officers or “SROs”), should handle normal discipline and that law enforcement involvement in schools should be limited to real safety threats.
- Schools can give students and families a process for raising concerns about SROs, documenting SRO actions, and reviewing incidents to make sure SROs are following school policies and nondiscrimination requirements.

5. Collect, disaggregate and act on discipline data

- Schools can keep and review accurate, complete discipline records. They can also organize and disaggregate their discipline data by race/ethnicity, school site, offense type, and—where appropriate—which individual staff member gave out the discipline.
- Schools can review this data and examine the underlying causes of any disparities, follow up with staff, and take action to correct the disparities if they are based in discrimination.
- Schools can publish disaggregated discipline data to support transparency and so the community can help the school stay responsible and accountable for making changes when needed.

6. Train staff and communicate with families

- Schools can train staff on managing their classrooms in a nondiscriminatory way and relying less on exclusionary discipline. They can also train SROs on their discipline policies and how the school district must follow civil rights laws.
- Schools can make sure that families who don’t speak English as a native language are given interpreters and translated materials, so they are able to receive the discipline information they need.
- Schools can meet with teachers, students, parents, and community members and ask them to help review and update discipline policies.
- Schools can support students who have experienced discriminatory discipline, such as clearing their discipline records and offering make-up educational services.

APPENDIX

EXAMPLES FROM OCR INVESTIGATIONS AS SUMMARIZED IN THE 2023 RESOURCE ON CONFRONTING RACIAL DISCRIMINATION IN STUDENT DISCIPLINE

The investigations below are drawn from the 2023 *Resource*, and include quoted summaries from that resource, and span the Obama, Trump, and Biden administrations. They are illustrative rather than exhaustive and, as the Departments of Education and Justice note, do not constitute binding precedent; each case turns on its own facts. Ordered oldest to newest, they show both the kinds of violations found and the concrete reforms districts adopted to resolve them.

Investigation	What the investigation found	Key remedies / reforms secured
Christina S.D., DE OCR · Dec 2012	Title VI violation: Black students punished more harshly than white peers for virtually identical conduct across all school levels; statistically significant disparities every year; first-time-referred Black students 2x+ as likely to be suspended.	Consultant-led policy revision; positive-behavior supports; documentation and annual review of SRO actions; collection and evaluation of all referral/discipline data; a standing discipline review team.
Minneapolis P.S., MN OCR · Nov 2014	Black students were ~40% of enrollment but ~75% of discipline incidents (79% of out-of-school suspensions; 70%+ of law-enforcement referrals); staff could not explain the different treatment in 25%+ of incidents.	Root-cause expert; district-wide team with annual review by school and teacher; alternatives required before referral; revised transfer policy and SRO program; annual SRO training.
Oklahoma City P.S., OK OCR · Apr 2016	Persistent disproportionate discipline of Black students (25% of enrollment, 55% of 1–5 day suspensions); self-audit found recordkeeping, due-process, and consistency problems and vague categories like “defiance of authority.”	Discipline Supervisor; clear referral procedures and elimination of vague/redundant categories; SRO Title VI training; student committees; annual data review with OCR pre-approval of changes.
Lodi U.S.D., CA OCR · Aug 2016	District followed its policy for a Black student but gave a white student who used a racial epithet more lenient consequences; harsher site-level consequences for subjective offenses removed Black students more often; some practices violated state law.	Compensatory services and record expungement for the student; Positive School Climate Coordinator; consistent consequences plus a list of minor behaviors never warranting suspension/expulsion; site-level data analysis and corrective plans.
Wicomico County P.S., MD DOJ · Jan 2017	Black and Latino students more likely to be disciplined, and disciplined more harshly, than white students—not explained by more serious misbehavior; over-reliance on SROs for routine classroom management.	Alternatives to exclusionary discipline for minor offenses; send-homes treated as exclusionary; make-up work; SROs limited to safety threats; accessible communication; a continuum of alternatives including restorative practices.
Loleta Union E.S.D., CA OCR · Nov 2017	Native American students overrepresented across disciplinary categories; racially biased administrator statements; a principal called the sheriff for minor behavior (e.g., climbing a tree); no trauma supports; poor recordkeeping.	Community and Tribal committee on discipline; parent information sessions and a complaint process; early trauma-informed intervention; MTSS, positive-behavior strategies, counseling, and special-education services.

Paramount Academy, AZ OCR · Dec 2017	A facially neutral dress code was selectively enforced against a Black student's afro, with shifting, pretextual rationales and no comparable enforcement against other students.	Written apology; dress-code revision (nondiscrimination statement, afros expressly permitted, complaint process); data collection on hair-related enforcement; staff training.
East Side Union H.S.D., CA OCR · Dec 2017	Disparities for Latino students driven by subjective offenses (referred for "defiance" ~8x more than white students) though near-equal for objective serious offenses; SROs ticketed Latino students at ~2x the rate; LEP communication failures.	Reduced subjectivity in policy; objective criteria for alternative-school transfers; SRO nondiscrimination training and a complaint process; administrators (not SROs) handle routine discipline; translation/interpretation for LEP families.
Durham P.S., NC OCR · Feb 2018	Black students were 6.1x more likely to be suspended and overrepresented in subjective categories; compliance concerns for Black students and students with disabilities. (Title VI, 504, Title II)	Quarterly principal data-review meetings and corrective action; implicit-bias training; accurate data on student-law-enforcement contacts; SRO complaint guidelines; alternatives to suspension.
Wake County P.S., NC OCR · Nov 2018	Subjective, overlapping offense definitions; Black students referred at higher rates and overrepresented among frequently referred students; first-time-disciplined Black students suspended at higher rates.	Community notice on how to raise SRO concerns; detailed reporting on referring staff and sanctions; data analysis for discrimination; corrective action for intentional discrimination.
Toledo P.S., OH DOJ · Jul 2020	Discriminatory discipline of Black students and students with disabilities in suspensions, expulsions, and law-enforcement referrals; inadequate language access for LEP parents. (Title IV, Title II, EEOA)	Expanded PBIS and individualized interventions; minimized law-enforcement referrals; regular review; reduced lost instructional time and make-up work; staff PD; qualified interpreters and translations.
Davis S.D., UT DOJ · Oct 2021	Harsher penalties for Black students than white peers for comparable offenses (especially subjective, e.g., "disruptive behavior"); disparate law-enforcement referrals; the district ignored discrimination complaints.	Districtwide code with alternatives and due process; periodic data review including referrals; identification and training of staff/schools disciplining students of color more harshly; SRO incident review; de-escalation and positive strategies.
Madison County S.D., AL DOJ · Jul 2022	Under a longstanding desegregation order, Black high schoolers were more likely than white peers to be referred for subjectively-defined behaviors.	Uniform policies across schools; concrete definitions of prohibited conduct; clear criteria for alternative placements; early intervention before exclusionary discipline.
Victor Valley Union H.S.D., CA OCR · Aug 2022	A pattern of harsher, more frequent discipline of Black students—especially for subjective behaviors—plus harsher treatment by school police, informal removals violating due process and state law, and inaccurate recordkeeping.	End of informal removals and reduced subjective categories; law-enforcement role limited via MOUs; climate surveys; regular disaggregated data analysis; accurate, publicly reported data.