

**THE UNITED STATES DEPARTMENT OF
EDUCATION'S PLAN TO CHANGE HOW SCHOOL
DISTRICTS APPROACH DISCIPLINE AND TO
REQUIRE THE REALLOCATION OF RESOURCES**

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Morgan A. Godfrey

O'MEARA, LEER, WAGNER & KOHL, P.A.

Relationships ▪ Reliability ▪ Results

7401 Metro Boulevard | Suite 600 | Minneapolis | Minnesota | 55439-3034
OLKWLaw.com | 952-831-6544

INTRODUCTION

On January 8, 2014, the United States Department of Education (DOE), through its Office of Civil Rights (OCR), issued a “Dear Colleague” letter, which identified a nationwide problem of unequal application of discipline to students of color in our public schools and provided notice regarding how the OCR intends to approach investigation of related complaints going forward.

The OCR and the Department of Justice’s Civil Rights Division (DOJ) have responsibility for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d, et seq., and its implementing regulations, 34 C.F.R Part 100, which prohibit discrimination based on race, color, or national origin by recipients of Federal financial assistance.

The OCR’s investigations into complaints of discriminatory discipline require public institutions to provide not only narrative responses to complaints received, but also a large volume of documentation and data ranging from system-wide demographics disaggregated by race, to policies and practices, to the population of Excel spreadsheets to include, among other things, details regarding the imposition of discipline for every student in a given school system over one or more years. These investigations result in public schools having to devote significant time and resources, both in terms of staff hours and legal expense, in formulating an appropriate response to the complaint and gathering and presenting the information requested in an accurate and favorable light.

The Identified Problem

The DOE maintains that the Civil Rights Data Collection (CRDC) it receives from public schools demonstrates that students of certain racial or ethnic groups tend to be disciplined more than their peers.

According to the DOE, African-American students without disabilities are more than three times as likely as their white peers without disabilities to be expelled or suspended. While representing 15% of the students in the CRDC, African-American students make up:

- 35% of students suspended once;
- 45% of students suspended more than once; and,
- 36% of students expelled.

In addition, over 50% of the students involved in school-related arrests or referred to law enforcement are Hispanic or African-American.

According to the DOE, an increasing number of students are losing important instruction time due to exclusionary discipline. Moreover, the increasing use of disciplinary sanctions such as in-school and out-of-school suspensions, expulsions, or referrals to law enforcement authorities creates the potential for significant, negative educational and long-term outcomes, and can contribute to what has been termed the “school to prison pipeline.” Finally, studies cited in the letter suggest a correlation between exclusionary discipline policies and practices and serious educational, economic, and social problems, including school avoidance and diminished educational engagement, decreased academic achievement, increased behavior problems, increased likelihood of dropping out, substance abuse, and involvement with juvenile justice systems.

The Department of Education and the U.S. Department of Justice have taken the position that the disparity in the imposition of discipline is not caused by differences in children, but rather by differences in training, professional development, and discipline policies of educational institutions. In other words, these departments maintain that it is the adult behavior of school staff and administration that needs to change.¹

The Focus is Nationwide

The OCR’s focus is not limited to a specific region of the country. It is a nationwide effort. The following are examples of recent resolutions of complaints or compliance reviews of discrimination in the imposition of discipline:

- Oakland Unified School District (Sept. 2012), California
- Christian County Public Schools (Jan. 2014), Kentucky
- Minneapolis Public School District (Nov. 2014), Rochester Public Schools (Sept. 2015), Minnesota
- Tupelo School District (September 2014), Mississippi

1. Remarks of U.S. Secretary of Education Arne Duncant at Release of Joint DOJ-ED School Discipline Guidance Package (January 8, 2014), Rethinking School Discipline, Archived Information. [Http://www.ed.gov/news/speeches/rethinking-school-discipline/](http://www.ed.gov/news/speeches/rethinking-school-discipline/).

Mandated Civil Rights Data Collection

The purpose of the DOE's CDRC is to obtain data related to the nation's public school districts' obligation to provide equal educational opportunity. The authority for the collection of such data can be found in the statutes the DOE enforces through the OCR including Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Section 504 of the Rehabilitation Act of 1973, and under the Department of Education Organization Act, and the regulations implementing these statutes.

CDRC has been collected since 1968 for particular topics and from certain selected schools. However, beginning with the 2011-2012 school year and going forward on a biennial basis, the DOE has mandated that all public schools (16,500 school districts, 97,000 schools, and 49 million students), charter schools, alternative schools, and schools serving students with disabilities provide data regarding the population of students, enrollment in advanced placement, algebra, calculus, physics, chemistry, and those subject to in-school suspension, out-of-school suspension, and expulsion, broken down by race.

What Happens When a Complaint is Filed

When a parent or a guardian files on behalf of a student a complaint of racial discrimination in the imposition of discipline, the OCR looks at the given public school's CDRC. If the CDRC reveals that students of the race at issue are receiving discipline in a significantly higher proportion than their percentage of students in the school population, the OCR will pursue the complaint on the basis of disparate treatment as well as disparate impact.

In the past, rather than wait for a complaint to arrive from the public, for compliance problems that were particularly acute, national in scope, or newly emerging, the OCR would conduct an agency-generated targeted compliance review. These were undertaken to benefit large numbers of students through policy or program changes designed to secure equal educational opportunity.

Now, depending on what the CDRC data of a given public school reveals regarding its discipline history with respect to minority students, when the OCR receives a complaint of racial discrimination in the imposition of discipline of a student, it will not only seek a narrative response to the complaint, but also a combination of over 50 narrative responses and/or documents (including filling in data on Excel spreadsheets) regarding a variety of categories. The categories range

from the proportion of students of color by grade, promotion/retention, gifted and talented programs, AP/Honors programs, to disciplinary policies and procedures, to disciplinary record keeping systems, to copies of all complaints/grievances filed regarding disciplinary matters, descriptions of proactive measures employed to ensure even discipline, District-wide data (on an Excel spread sheet) identifying name, race, student ID, gender, grade level, disability, and for each student, infraction, date and time of infraction, who referred by, location, comments, disciplinary action, action date, action days, who discipline decided by, police referral, and any appeal.

WHAT IS AT STAKE

If a public school fails to reply to the complaint of discrimination in the imposition of discipline, refuses to provide the OCR with requested documents and information, or refuses to voluntarily resolve the complaint, the OCR may institute enforcement proceedings, including refusal to accept applications for federal funding, an administrative action to cut off the school's current federal funding, and referral to the Department of Justice for the institution of suit to enforce the statutes at issue. Currently the federal government provides approximately 10% of public school funding, primarily in the areas of Title I Grants to Local Education Agencies to support students that are economically disadvantaged and grants under the Individual with Disabilities Education Act to support students with disabilities.

Aggrieved individuals may file administrative complaints with the federal agency that provides funds to the public school. Alternatively, they may file suit for appropriate relief in federal court.

In light of these potential outcomes and exposures, it is important to obtain legal counsel to assist public schools in providing appropriate narrative responses and guiding the production of the requested information and documentation.

For additional information, please contact one of the attorneys in the Education Law Group at O'Meara, Leer, Wagner & Kohl, P.A..

The Education Law Group



Morgan A. Godfrey
magodfrey@olwklaw.com
d: 952.806.0403
f: 952.893.8303



Shamus P. O'Meara
spomeara@olwklaw.com
d: 952.806.0438
f: 952.893.8338



Mark R. Azman
mrazman@olwklaw.com
d: 952.806.0408
f: 952.893.8308

O'MEARA LEER WAGNER & KOHL, P.A.

7401 Metro Blvd, Suite 600 | Minneapolis, MN 55439-3034 | olwklaw.com

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