December 15, 2017

The Honorable Betsy DeVos  
Secretary of Education  
U.S. Department of Education  
400 Maryland Ave, S.W.  
Washington, D.C. 20202

Dear Secretary DeVos,

We write to express our support for efforts to improve school climate and address the persistent, disproportionate impact of exclusionary and aversive discipline practices on groups of historically marginalized students, such as students of color. We strongly urge you to maintain guidance on discipline and compliance with Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin. This guidance is crucial to ensuring that all students receive a safe, equitable, and high-quality education as well as helping schools and other recipients of federal financial assistance understand their obligations to develop and administer discipline policies in a nondiscriminatory manner.

In January 2014, the Department of Education and the Department of Justice jointly released a school discipline guidance package to assist states, districts, and schools to develop and implement practices and strategies to enhance school climates and that ensure discipline policies and practices comply with federal civil rights law. These documents equip educators with a set of tools to support student success in an environment free from discrimination. The Departments issued this guidance package in response to well-documented excessive and disproportionate use of suspension and expulsion.\(^1\) In the 2013-14 school year, approximately 2.8 million students received one or more out of school suspensions from public schools according to the biennial Civil Rights Data Collection (CRDC). The CRDC also showed that African-American students were almost four times as likely to be suspended and nearly twice as likely to be expelled compared to white students, and students with disabilities were more than twice as likely to be subjected to exclusionary discipline measures compared to students without disabilities.\(^2\)

A statewide study by the Council of State Governments and Public Policy Research Institute, *Breaking Schools' Rules*, further demonstrates the pervasiveness of exclusionary discipline practices for all students, while underscoring the particularly acute impact for vulnerable

\(^1\) The issue of excessive and disproportionate discipline has been documented as early as the Children's Defense Fund's 1975 report, *School Suspensions: Are they helping children*. Other studies have only strengthened the body of evidence, such as *Out of School and Off Track: The Overuse of Suspensions in American Middle and High Schools* (2013) and *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline* (2011).

subgroups of students. According to the study, in Texas, which enrolls more than 10-percent of
the nation’s public school students, more than half of all students were suspended or expelled at
least once between 7th and 12th grade, while only 3 percent of disciplinary actions “were for
conduct for which state law mandates suspensions and expulsions.” The study found significant
racial disparities within discretionary disciplinary actions: “African-American students had a 31
percent higher likelihood of a school discretionary action, compared to otherwise identical white
and Hispanic students.” Meanwhile, “nearly three-quarters of the students who qualified for
special education services […] were suspended or expelled at least once.” These disparate
discipline practices can have severe academic consequences. According to the report nearly a
third of students who were suspended or expelled repeated a grade at least once, while 10 percent
dropped out. A 2017 study by the Legal Aid Justice Center found similar results in Virginia.

While African-American students make up only 23 percent of public school enrollment in the
Commonwealth, they account for nearly 60 percent of short-term suspensions -- with a
suspension rate of nearly four times their white peers’. These numbers are even starker when
examining African-American male students with disabilities, who were nearly twenty times more
likely to be suspended than white female students without disabilities. The 2014 school
discipline guidance package recognized these staggering disparities and provided educators with
more effective alternatives that keep children in school and ensure a safe learning environment
for everyone.

The 2014 school discipline guidance supports states in meeting their obligations under the Every
Student Succeeds Act. State educational agencies are now statutorily required to describe in their
state plan how they will support local education agencies (LEAs) to “improve school conditions
for student learning including through reducing – (i) incidences of bullying and harassment; (ii)
the overuse of discipline practices that remove students from the classroom; and (iii) the use of
aversive behavioral interventions that compromise student health and safety” (Sec.
1111(g)(1)(C)). ESSA also encourages schools implementing a Title I schoolwide program to
include “implementation of a schoolwide tiered model to prevent and address problem behavior”
as a strategy to meet the needs of all students in their required plans (Sec.
1114(b)(7)(A)(iii)(III)).

While we hope recent reporting that the Department of Education is considering revoking or
modifying this critical guidance on school discipline is inaccurate, we request that by January 5,
2018 you confirm your Department will not be revoking or modifying this critical guidance for
upholding the civil rights of students under Title VI.

Part of the stated mission of the Department of Education is “fostering educational excellence
and ensuring equal access.” It is our opinion that the discipline guidance is fundamental to
meeting this mission. We hope you will not undermine this mission by revoking or modifying
the discipline guidance released in January 2014.

6 https://www2.ed.gov/about/overview/mission/mission.html
Thank you for your attention to this critical issue. We look forward to your response.

Sincerely,

Tim Kaine  
United States Senator

Christopher S. Murphy  
United States Senator

Patty Murray  
United States Senator

Sherrod Brown  
United States Senator

Margaret Wood Hassan  
United States Senator

Richard J. Durbin  
United States Senator

Kamala D. Harris  
United States Senator

A. Donald McEachin  
Member of Congress

Robert C. "Bobby" Scott  
Member of Congress

John Lewis  
Member of Congress

Mark DeSaulnier  
Member of Congress

Alan Lowenthal  
Member of Congress

Pramila Jayapal  
Member of Congress

Vicente Gonzalez  
Member of Congress
Robert P. Casey, Jr.
United States Senator

Robert Menendez
United States Senator

G.K. Butterfield
Member of Congress

Jerrold Nadler
Member of Congress

Eleanor Holmes Norton
Member of Congress

Sheila Jackson Lee
Member of Congress

Gregory W. Meeks
Member of Congress

Gwen S. Moore
Member of Congress

Bonnie Watson Coleman
Member of Congress

Adriano Espaillat
Member of Congress

Lucille Roybal-Allard
Member of Congress

André Carson
Member of Congress

Danny K. Davis
Member of Congress

Bobby L. Rush
Member of Congress

Al Green
Member of Congress

Keith Ellison
Member of Congress
Jerry McNerney  
Member of Congress

Barbara Lee  
Member of Congress

Alcee L. Hastings  
Member of Congress

Jan Schakowsky  
Member of Congress

Steve Cohen  
Member of Congress

Frederica S. Wilson  
Member of Congress

Juan Vargas  
Member of Congress

Jared Huffman  
Member of Congress