

Congress of the United States

Washington, DC 20510

January 24, 2019

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

Mr. Matthew Whitaker
Acting Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Dear Secretary DeVos and Acting Attorney General Whitaker:

We write to express grave concern over the action of the U.S. Departments of Education and Justice (“the Departments”) to rescind the Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline and other related documents (“guidance”), and to request information concerning the Administration’s efforts to fully enforce Title VI of the Civil Rights Act of 1964 (Title VI) following this misguided rescission. This guidance was issued in 2014 to assist school districts, law enforcement agencies, and other recipients of federal financial assistance in understanding their obligations under Title VI and its implementing regulations and, in doing so, ensure students receive a safe, equitable, and high-quality education. Because rescission of the guidance does not change a school district’s legal obligation under the law, your action has frustrated the ability of districts to fully understand their federal civil rights obligations.

As applied to schools, Title VI requires discipline policies to be developed and administered in a manner that does not discriminate against students on the basis of race, color, or national origin *and* that does not “have the effect of subjecting individuals to discrimination” or “the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.”¹ Prompted by mounting evidence and research consensus that students of color face harsher discipline penalties for similarly-situated offenses than their white peers, the guidance you rescinded addressed the application of both regulatory provisions to these practices while maintaining school safety and improving school climate.^{2, 3}

¹ See 34 C.F.R. § 100.3(b)(1) to (2).

² Government Accountability Office. (2018). *Discipline Disparities for Black Students, Boys, and Students with Disabilities* (GAO-18-25). <https://www.gao.gov/products/GAO-18-258>

³ Russell J. Skiba and Natasha T. Williams. “Are Black Kids Worse? Myths and Facts About Racial Differences in Behavior: A Summary of the Literature,” *The Equity Project at Indiana University*, March 2014, http://www.indiana.edu/~atlantic/wp-content/uploads/2014/03/African-American-Differential-Behavior_031214.pdf

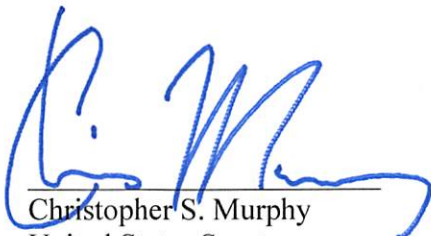
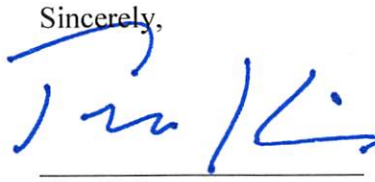
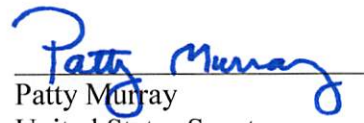
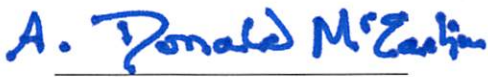


We are concerned that rescission of the guidance reflects a lack of commitment on the part of the Departments to fully enforce federal civil rights law that is intended to ensure that students are not discriminated against because of their race, color, or national origin. Our concern was heightened when we saw that the Question and Answer document issued by the Department of Education concurrently with rescission of the guidance addressed the obligation of schools not to intentionally discriminate, but made no mention of their obligations to not have the effect of unlawful discrimination on the basis of race, color, or national origin. Moreover, news reports suggest the Department's intent to rescind key regulatory requirements that prohibit federally funded programs from using methods of administration that have the effect of discriminating or denying equal benefit on the basis of race, color, or national origin.⁴

Regardless of the Departments' recent rescission or future plans to reregulate, the current regulations obligate the Departments to enforce against both intentionally discriminatory policies and practices and those that have a discriminatory effect. As such, we expect the Departments to fully enforce Title VI of the Civil Rights Act of 1964 and the implementing regulations as directed by Congress. To assure Congress of the Administration's intent to fulfill its enforcement obligation under federal civil rights law in this area, we request written responses to the questions below no later than February 13, 2019:

1. How are your Departments enforcing federal civil rights laws, including 34 C.F.R. § 100.3(b)(2) and the effects test contained therein, in the administration of school discipline?
2. How are your Departments informing schools of their obligations under federal civil rights law, including 34 C.F.R. § 100.3(b)(2) and the effects test contained therein, regarding the administration of school discipline?

Thank you for your prompt attention to this matter.

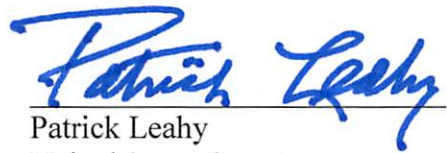
Sincerely,


Christopher S. Murphy
United States Senator
Tim Kaine
United States Senator
Patty Murray
United States Senator
A. Donald McEachin
Member of Congress
Suzanne Bonamici
Member of Congress
Robert C. "Bobby" Scott
Member of Congress

⁴ Laura Meckler and Devil Barrett, "Trump's Administration Considers Rollback of Anti-Discrimination Rules," *Washington Post*, January 3, 2018, https://www.washingtonpost.com/local/education/trump-administration-considers-rollback-of-anti-discrimination-rules/2019/01/02/f96347ea-046d-11e9-b5df-5d3874f1ac36_story.html?utm_term=.a6d9ff197eeb



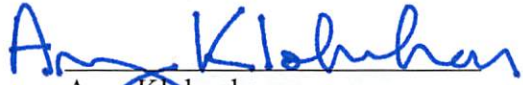
Charles E. Schumer
United States Senate



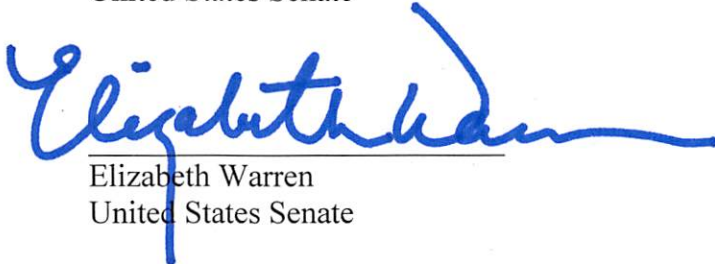
Patrick Leahy
United States Senate



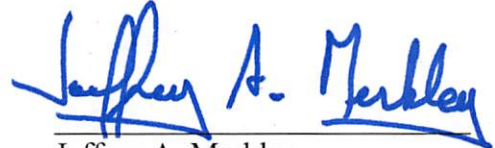
Richard Blumenthal
United States Senate



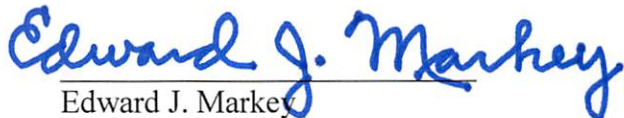
Amy Klobuchar
United States Senate



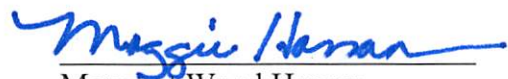
Elizabeth Warren
United States Senate



Jeffrey A. Merkley
United States Senate



Edward J. Markey
United States Senate



Margaret Wood Hassan
United States Senate



Tina Smith
United States Senate



Tammy Baldwin
United States Senate



Chris Van Hollen
United States Senate



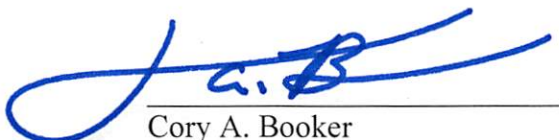
Kirsten Gillibrand
United States Senate



Sherrod Brown
United States Senate



Bernard Sanders
United States Senate



Cory A. Booker
United States Senate



Tammy Duckworth
United States Senate



Richard J. Durbin
United States Senate



Robert P. Casey Jr.
United States Senate



Mark R. Warner
United States Senate



Benjamin L. Cardin
United States Senate



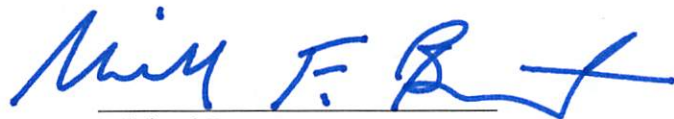
Robert Menendez
United States Senate



Mazie K. Hirono
United States Senate



Kamala D. Harris
United States Senate



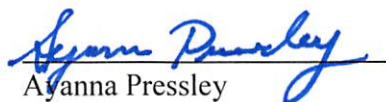
Michael Bennet
United States Senate



Karen Bass
Member of Congress



Nanette Diaz Barragán
Member of Congress



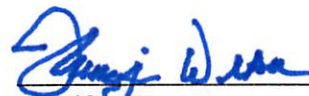
Ayanna Pressley
Member of Congress



Earl Blumenauer
Member of Congress



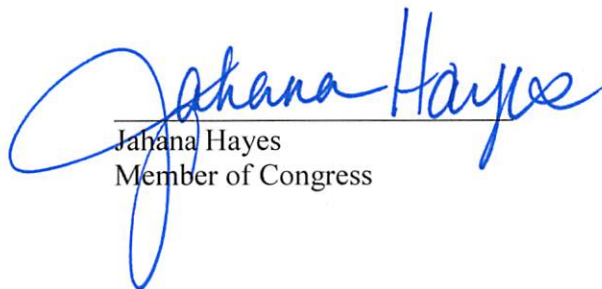
Tim Ryan
Member of Congress



Jennifer Wexton
Member of Congress



James A. Himes
Member of Congress



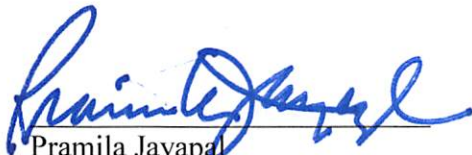
Jahana Hayes
Member of Congress



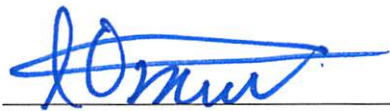
Mark Pocan
Member of Congress



Darren Soto
Member of Congress



Pramila Jayapal
Member of Congress



Ilhan Omar
Member of Congress



Adriano Espaillat
Member of Congress



Sheila Jackson Lee
Member of Congress



Jerrold Nadler
Member of Congress



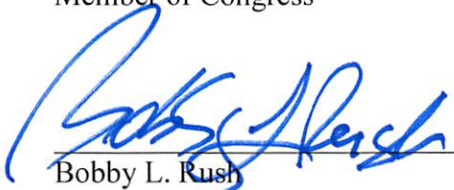
André Carson
Member of Congress



Eleanor Holmes Norton
Member of Congress



Peter Welch
Member of Congress



Bobby L. Rush
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress



Julia Brownley
Member of Congress



Jerry McNerney
Member of Congress



José E. Serrano
Member of Congress



Janice D. Schakowsky
Member of Congress



Tony Cárdenas
Member of Congress



Frederica S. Wilson
Member of Congress



Barbara Lee
Member of Congress



John Garamendi
Member of Congress



Sean Patrick Maloney
Member of Congress



David N. Cicilline
Member of Congress



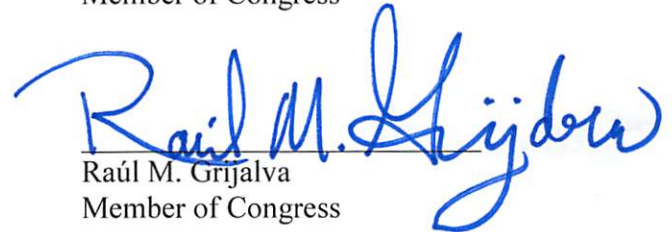
Alma S. Adams, Ph.D.
Member of Congress



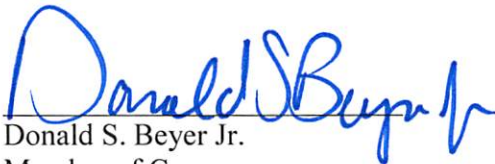
Steve Cohen
Member of Congress



Anna G. Eshoo
Member of Congress



Raúl M. Grijalva
Member of Congress



Donald S. Beyer Jr.
Member of Congress



Anthony G. Brown
Member of Congress



Mark DeSaulnier
Member of Congress



Debbie Dingell
Member of Congress



Marcia L. Fudge
Member of Congress