Identifying Non-Discriminatory Factors in Discipline Outcomes

NAVIGATING THE BIDEN ADMINISTRATION'S DISCIPLINE GUIDANCE

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Overview

In light of the May 2023 U.S. Department of Education (ED) and Department of Justice (DOJ) guidance document titled "Resource on Confronting Racial Discrimination in Student Discipline" ("Biden Guidance"), which addresses racial disparities in student discipline, it is crucial for school districts to carefully assess the causes of these disparities before making changes to their policies. The Biden Guidance strongly implies that racial disparities are proof of discrimination, but it is important to recognize that nondiscriminatory factors often play a significant role in student disciplinary outcomes.

This resource is intended to support school boards and administrators who may feel compelled to alter their discipline practices to achieve the racial parity demanded by the Biden Guidance. It provides a broader context than the Biden Guidance, and considers multiple influences beyond race, ensuring that any policy changes comply with the nondiscrimination mandate in Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the 14th Amendment to the U.S. Constitution.

Explanations for Disparities

When a school district has racial disparities in an area such as student discipline, the district should investigate to see what the causes are. If intentional discrimination has occurred, then the district should take appropriate action. But factors that increase the likelihood of misbehavior, and which happen to be correlated with race, could be an explanation for observed differences.

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In other words, ***the existence of a racial disparity does not automatically mean that it was caused by discrimination.*** When evaluating whether racism is truly behind discipline disparities, school districts should **consider the below potential causal factors,** and whether they happen to correlate with student race in the communities served by those districts.

Family Income: Research has found that students from low-income backgrounds are more likely to get in trouble in school. This is possibly due to differences in parenting style and involvement impacted by low-income and poverty.

Housing Insecurity: A recent study found that housing insecurity was tied to misbehavior among students due to an increased prevalence of psychologically aggressive behavior from parents.

Family structure: Though discussion of traditional family structure is somewhat taboo among academics, there is research to show that children from single-parent families are more likely to have social and emotional adjustment problems. Such problems can lead to student misbehavior by impairing emotional regulation, social interactions, and decision-making skills.

Disability Status: Particularly when it comes to students with emotional and learning disabilities, research has found higher rates of exclusionary discipline. This includes disciplinary actions that remove students from their regular educational environment due to their behavior (i.e. suspensions, expulsions, etc.).

Student Achievement: Achievement and behavior are often a "chicken and egg" phenomenon where each exacerbates the other. But some evidence does suggest that students who do poorly in school are more likely to misbehave in the future.

Disparities in discipline: If a school district has significant numbers of minority teachers or administrators, it is possible to examine if those individuals exhibit similarly disparate rates of disciplining students in the same group. Studies show that racial differences in discipline rates remain even when there is a match between the race of a student and teacher.

Disparities in mandatory discipline: Some states have laws that proscribe mandatory disciplinary actions for certain specific offenses, such as committing a felony near the school or possession of drugs. These offenses allow for less discretion on the part of the school administration. If similar racial disparities exist among these offenses, it suggests something beyond race as the cause.

Crime in the Community: Differential rates of violent crime among racial groups have been used as supportive evidence that there may be actual behavioral differences among subgroups of students.

Conclusion

You may notice that many of these factors are likely to be correlated with each other. That is because the causes of misbehavior in schools are very complex and layered. And the above list is not even exhaustive: there are other factors that may contribute as well—though in some instances they may be difficult for school districts to measure. This is also a reason that a knee-jerk reaction to blame systemic racism is not warranted. School districts should consider all these potential alternative causes before jumping to the conclusion that their teachers and administrators are racists—an assumption that harms well-meaning educators and does nothing to help the children in question.

Additional Resources

For more information about the Biden Guidance, see our Clear Guidance memo, written in partnership with the State Policy Network Center for Practical Federalism Subregulatory Guidance project.

For information about how WILL is fighting back against race-based programs across the country, visit this webpage to learn about our Equality Under the Law project.

Reporting Violations

The U.S. Constitution and federal law require complete race neutrality in school discipline. Race must never play a factor—no matter how small—in deciding which students to discipline or not. Any decision to withhold discipline or impose discipline based on a student's race violates constitutional law, federal law, and could trigger the loss of federal funding under Title VI of the Civil Rights Act of 1964.

Any parent, school board member, or school employee made aware of a policy where race is a factor in discipline should report that information to https://will-law.org/contact-a-lawyer/.