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September 23, 2020

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

Dear Secretary DeVos:

The U.S. Department of Education (“Department”) recently marked the 56<sup>th</sup> anniversary of the Civil Rights Act of 1964 by stressing the importance of racial equality for all, stating that “racism has no place in our nation or our schools.”<sup>1</sup> However, the marking of this anniversary stands in contrast to the very real need to dismantle racial inequality. In the area of education, the Department’s own data and research clearly show that starting in preschool and continuing through every stage of public education, students of color are suspended and expelled at higher rates than other students.<sup>2</sup> This long journey of discrimination – explicit and implicit – leads to higher pushout rates, lower college attendance, and diminished economic opportunity over a lifetime.

In 2014, the Departments of Education and Justice led a federal effort to address this issue head on: they issued guidance documents that underscored schools’ responsibilities to combat racial disparities in discipline practices, and provided tools to help schools examine and remedy their practices without jeopardizing school safety.<sup>3</sup> Most importantly, the guidance was rooted in the data-driven fact that schools discipline students of color more severely and at higher rates than their white peers for same or similar offenses. Racial disparities in discipline practices not only

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<sup>1</sup> U.S. Department of Education, *Letter to education leaders commemorating the 56<sup>th</sup> anniversary of the Civil Rights Act of 1964* (June 26, 2020).

<sup>2</sup> Black public preschool children are 3.6 times more likely to be suspended than White preschool children. See U.S. Department of Education, Office for Civil Rights, 2013-2014 Civil Rights Data Collection: A First Look (issued June 7, 2016 and revised: October 28, 2016), <https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.

<sup>3</sup> See U.S. Department of Education, U.S. Departments of Education and Justice Release School Discipline Guidance Package to Enhance School Climate and Improve School Discipline Policies/Practices (January 8, 2014) <https://www.ed.gov/news/press-releases/us-departments-education-and-justice-release-school-discipline-guidance-package->.

affects students' individual educational outcomes but helps maintain a system of racial inequality and criminalization of Black Americans.<sup>4</sup>

It was a hard look at the Department's own data in the Civil Rights Data Collection (CRDC) in 2014 that prompted the discipline guidance.<sup>5</sup> The Department found that Black students without disabilities were more than three times as likely as their white peers to be expelled or suspended.<sup>6</sup> Recent analysis of these data indicates these disparities were not an anomaly. CRDC data for the 2013-14 and 2015-16 school years, the most recent available, showed that while 15.5 percent of all students were Black, they accounted for 39 percent of school suspensions.<sup>7</sup> The 2014 guidance recognized that while other factors could be at play, research supported that these disparities were "not explained by more frequent or more serious misbehavior by students of color."<sup>8</sup> And therefore reducing these disparities would not reduce school safety.

However, in 2018, the Department under your leadership rescinded this monumental guidance in 2018 without relying on facts or data. After the horrific shootings at Marjory Stoneman Douglas High School, the Department of Education led the Federal Commission on School Safety (the "Commission") to research and recommend solutions to improve school safety. Its results were disappointing. Aside from ignoring common sense gun control measures, an entire chapter of the Commission's report focused on rescinding the 2014 discipline disparities guidance.<sup>9</sup> As explained below, it is unclear why the Department would use a report on school-targeted shootings, which occur more frequently at schools with predominantly white student populations, to rescind guidance designed in part to ensure equitable treatment for students of color.<sup>10</sup>

### **ED's reasoning for rescinding the 2014 discipline guidance should be re-examined**

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<sup>4</sup> The Department found that Students who experience suspensions, expulsions, or referrals to law enforcement authorities contribute to the "school to prison pipeline." See *Id.*

<sup>5</sup> CRDC collects "data on leading civil rights indicators related to access and barriers to educational opportunity at the early childhood through grade 12 levels." See U.S. Department of Education, Civil Rights Data Collection: Frequently Asked Questions, pg 1, (2019), <https://ocrdata.ed.gov/downloads/FAQ.pdf>.

<sup>6</sup> U.S. Department of Justice, Civil Rights Division and U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline (January 8, 2014), pg. 3, [www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf](http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf).

<sup>7</sup> U.S. Government Accountability Office, *K-12 EDUCATION: Discipline Disparities for Black Students, Boys, and Students with Disabilities*, GAO-18-258 (Washington, D.C.: March 22, 2018), pg 12, <https://www.gao.gov/products/gao-18-258> and U.S. Department of Education, Office for Civil Rights, *2015-16 School Climate and Safety* (April 2018, Revised May 2019), pg 13, <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

<sup>8</sup> Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, pg 4.

<sup>9</sup> U.S. Departments of Education, Justice, Homeland Security, and Health and Human Services, *Final Report of the Federal Commission on School Safety* (December 18, 2018), pgs 69-76, <https://www2.ed.gov/documents/school-safety/school-safety-report.pdf>.

<sup>10</sup> U.S. Government Accountability Office, *K-12 EDUCATION: Characteristics of School Shootings*, GAO-20-455 (June 9, 2020), pg 23. <https://www.gao.gov/products/GAO-20-455>

The Commission's report on school safety claimed that the recommendation to retract the 2014 guidance was informed by research, but GAO recently reported that the Department's decision was unfounded. GAO could find no empirical research that directly examined the link between school discipline—like suspensions, expulsions, and non-exclusionary approaches—and school shootings.<sup>11</sup> A decision to rescind effective,<sup>12</sup> researched-based guidance should be supported by valid, compelling research that the policy was harmful and counterproductive, not driven by ideology.

The Commission report also laid out spurious arguments against the general premise of the 2014 guidance, challenging the role of the federal government in addressing disparities in discipline and asserting that the federal government's overreach was making schools less safe.

First, the Commission report argued that discipline approaches should be conceived and enforced at the local level, and that the federal government should play a secondary, supportive role. The 2018 report stated, "local solutions are best suited to deal with the unique needs of local communities."<sup>13</sup> However, the federal government is tasked with enforcing civil rights laws, such as Title VI of the Civil Rights Act of 1964. The Departments of Education and Justice are "mandated to enforce nondiscrimination laws that Congress enacts and the [2014] guidance is within its jurisdictional bounds."<sup>14</sup> Thus, it has a responsibility to combat systemic racism and discrimination in our schools. Instead in relying on the justification of "local control", the Department's decision to rescind the guidance has allowed localities to perpetuate practices that harmed Black and brown students.

Second, the report argues that the threat of federal investigations will have a chilling effect, causing districts to base their disciplinary policies on numbers rather than teacher input and this chilling effect may make schools less safe.<sup>15</sup> The Brookings Institute, however, notes that, the Commission's report "provides little empirical evidence related to the effects of the [discipline disparities guidance] on student safety aside from anecdotes and survey response."<sup>16</sup> The Department should make civil rights policy grounded in research on its impacts on children, not anecdotal data.

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<sup>11</sup> *Id.*, pg 26.

<sup>12</sup> *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*, pgs 13, 97-98.

<sup>13</sup> *Final Report of the Federal Commission on School Safety*, pg 68.

<sup>14</sup> *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*, pg 144.

<sup>15</sup> *Final Report of the Federal Commission on School Safety*, pg 68.

<sup>16</sup> Jon Valant and Michael Hansen, "School Safety Commission's report uses tenuous logic to walk back guidance on school discipline," Brookings Institute (December 21, 2018), <https://www.brookings.edu/blog/brown-center-chalkboard/2018/12/21/school-safety-commissions-report-uses-tenuous-logic-to-walk-back-guidance-on-school-discipline/>.

Finally, the Department's approach ignores role of latent bias in education and especially relating to school discipline. This is contrary to research that has found time and time again that, bias (both explicit and implicit) has a clear link to racial disparities in school discipline.<sup>17</sup>

### **ED's current approach to school safety harms students of color**

The 2018 Commission report relies on rhetoric in lieu of facts and analysis; for example it claims that "maintaining order in schools is a key to keeping schools safe". The Department has urged schools to "seriously consider partnering with local law enforcement in the training and arming of school personnel."<sup>18</sup> But research shows that arming teachers poses serious safety risks for all students and more law enforcement in schools jeopardizes healthy learning climates for students of color.<sup>19</sup> They will be forced to interact with a system of policing that views them "as a threat and not as students."<sup>20</sup> More schools are now recognizing that law enforcement threatens student safety and are cutting ties with police departments.<sup>21</sup> The Department's push towards increasing law enforcement in schools, while simultaneously rescinding guidance to help clamp down on discriminatory discipline practices, is another example of the Department's failure to acknowledge or address the inequity students of color experience every day.<sup>22</sup>

Since the discipline disparities guidance was rescinded two years ago, the Department has done little to address the problem, and adopted practices that make it harder to examine the systemic nature of discriminatory discipline. Investigators in the Office of Civil Rights were told "to limit proactive civil rights probes rather than expanding them to identify systemic patterns [of

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<sup>17</sup> See e.g. Travis Riddle and Stacey Sinclair, "Racial disparities in school-based disciplinary actions are associated with county-level rates of racial bias, Proceedings of the National Academy of Sciences, <https://www.pnas.org/content/116/17/8255>; Cheryl Staas, "Implicit Racial Bias and School Discipline Disparities, Kirwan Institute, <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/05/ki-ib-argument-piece03.pdf>; Nicole Scialabba, "How Implicit Bias Impacts Our Children in Education," American Bar Association, <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2017/fall2017-how-implicit-bias-impacts-our-children-in-education/>; "Locked Out of the Classroom: How Implicit Bias Contributes to Disparities in School Discipline," NAACP Legal Defense & Educational Fund, [https://www.naacpldf.org/files/about-us/Bias\\_Reportv2017\\_30\\_11\\_FINAL.pdf](https://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf).

<sup>18</sup> Anya Kamenetz, "DeVos to Rescind Obama-Era Guidance on School Discipline," NPR (December 18, 2018), <https://www.npr.org/2018/12/18/675556455/devos-to-rescind-obama-era-guidance-on-school-discipline>.

<sup>19</sup> Everytown for Gun Safety, "Arming Teachers Introduces New Risks into Schools", (May 1, 2019), <https://everytownresearch.org/report/arming-teachers-introduces-new-risks-into-schools/>.

<sup>20</sup> Advancement Project and Alliance for Educational Justice, *We Came to Learn: A Call to Action for Police-Free Schools*, pg 11, <https://advancementproject.org/wecametolearn/>.

<sup>21</sup> Moriah Balingit, Valerie Strauss, and Kim Bellware, "Fueled by protests, school districts across the country cut ties with police," The Washington Post (June 12, 2020), <https://www.washingtonpost.com/education/2020/06/12/schools-police-george-floyd-protests/>.

<sup>22</sup> What's more, a July 19, 2019 report makes clear that "students of color were substantially more likely than their white peers to receive harsher discipline for similar offenses, and that students of color with disabilities were more likely than their white peers with disabilities to be expelled without educational services." U.S. Commission on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to-Prison Pipeline for Students of Color with Disabilities*, Jul. 2019, <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf> [hereinafter *Beyond Suspensions*] at 122.

discrimination]”<sup>23</sup> In 2019, the Department stopped collecting data on preschool discipline practices, including information on children of color who are suspended or expelled.<sup>24</sup> The Education and Labor Committee raised concerns with this decision.<sup>25</sup> As the Committee noted, “the Department has proposed this change in data collection even though current data collection indicates that preschoolers are more likely to face punitive school discipline than any other student group and that such discipline is disproportionately correlated to race and sex.”<sup>26</sup> Specifically, Black students make up 19 percent of preschool enrollment but account for 47 percent of suspensions.<sup>27</sup>

Racist policies and practices are ingrained in our institutions both in name and in effect, including in preschools, elementary schools, high schools, and colleges, and the Department must lead our educational system’s reckoning with this fact. Without action, America will needlessly expose another generation of students of color to unfair treatment in the classroom, the effects of which may last their whole lives. It is time to honestly and comprehensively reckon with systemic racism in the education system. We urge the Department to reinstate the 2014 guidance and the ability of Department staff and the public to examine discipline disparities across every grade.

Sincerely,



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**ROBERT C. “BOBBY” SCOTT**  
Chair

Cc: The Honorable Virginia Foxx, Ranking Member

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<sup>23</sup> Annie Waldman, “Shutdown of Texas Schools Probe Shows Trump Administration Pullback on Civil Rights,” *ProPublica*, April 23, 2018, <https://www.propublica.org/article/shutdown-of-bryan-texas-schools-probe-shows-trump-administration-pullback-on-civil-rights>. See U.S. Dep’t of Education, Office for Civil Rights, “OCR Instructions to the Field re Scope of Complaints,” June 8, 2017, <https://assets.documentcloud.org/documents/3863019/doc00742420170609111824.pdf>.

<sup>24</sup> Proposed changes to the Civil Rights Data Collection, <https://www.regulations.gov/document?D=ED-2019-ICCD-0119-0002>.

<sup>25</sup> Chairman Robert C. “Bobby” Scott, et. al., *Letter to Secretary Betsy DeVos*, re: the Department of Education’s proposed changes to the Civil Rights Data Collection (November 18, 2019), <https://edlabor.house.gov/download/committee-democrats-condemn-education-department-proposal-to-eliminate-collection-of-critical-civil-rights-data>.

<sup>26</sup> *Id.*

<sup>27</sup> U.S. Department of Education, *2013-2014 Civil Rights Data Collection: A First Look* (Issued June 7, 2016, Revised October 28, 2016), pg 3, <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf>.