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David Kladney, Commissioner  
Peter N. Kirsanow, Commissioner  
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U.S. Commission on Civil Rights  
1331 Pennsylvania Ave NW, Suite 1150  
Washington, D.C. 20425

*Submitted via email to [schooldiscipline@usccr.gov](mailto:schooldiscipline@usccr.gov)*

RE: Public Comment to the U.S. Commission on Civil Rights Public Briefing – *The School-to-Prison Pipeline: The Intersections of Students of Color with Disabilities*

Dear Chair Lhamon, Vice-Chair Timmons-Goodson, and Commissioners:

On behalf of the Education Law Center-PA (ELC) and the parents, students, and community organizations with whom we work, we thank the U.S. Commission on Civil Rights for requesting comments regarding how students of color with disabilities can be protected from discrimination, in compliance with federal laws. We write to underscore the importance of maintaining essential regulations and guidance that instruct and support schools to reduce the disproportionate exclusion of children of color with disabilities, improve school climate, and support academic success for all students.

ELC is a non-profit legal advocacy organization dedicated to ensuring that all of Pennsylvania's children have access to a quality public education. For over 40 years, we have advocated for the most educationally vulnerable students — children living in poverty, children of color, children in the foster care and juvenile justice systems, children with disabilities, English Language Learners, LGBTQ students, and children experiencing homelessness. Through individual advocacy, impact litigation, and legislative initiatives, ELC advocates on behalf of thousands of students each year and is recognized as a statewide and national expert in education law.

For decades, the Education Law Center has also been at the forefront of state and national reforms in school discipline. Again, on behalf of the most marginalized students, ELC works to press for systemic reforms to school discipline to promote positive school climate. Specifically, we are working closely with the Pennsylvania School Climate Coalition, the ACLU, the National Girls Initiative, the Civil Rights Roundtable, and a number of other local, state, and national

**Ensuring that all of Pennsylvania's children have equal access to a quality public education.**

groups to decrease and eliminate school exclusions and address issues of racial, disability and gender-based disproportionality. ELC has also worked for many years to improve access to quality education for children and youth in the dependency and delinquency systems. Both cohorts include high percentages of students of color with disabilities. Along with Juvenile Law Center (JLC) and the American Bar Association Center on Children and the Law, ELC co-founded the Legal Center for Foster Care and Education in 2007.<sup>1</sup> More recently, we partnered with Southern Poverty Law Center, JLC, and the American Bar Association Center on Children and the Law to form the Legal Center for Youth Justice and Education.<sup>2</sup> Both Legal Centers work to reshape federal, state, and local policies to improve educational outcomes and opportunities for system-involved youth.

ELC's extensive experience as advocates, and the lived experience of the children and families we serve inform our public comments on the need for continued enforcement of laws through regulations and significant federal guidance issued jointly by the U.S. Departments of Education and Justice (Guidance) to address the disproportionate impact of school discipline on students of color with disabilities.

Title VI regulations include those promulgated by the U.S. Department of Education as 34 C.F.R. § 100. These regulations are essential to meaningful enforcement because they define with precision the "recipient" to which the law applies, actions prohibited, and the scope of activities to which the law applies. For example, specific discriminatory actions prohibited are defined to include discriminating directly or through contractual or other arrangements on the ground of race, color, or national origin including denying an individual any disposition, service, financial aid, or benefit provided under the program. The regulations also delineate the responsibilities of Department officials and agencies to ensure compliance through policies, procedures, and the conduct of investigations, hearings, and rendering of decisions. See 34 C.F.R. § 100.8-11.

The Department's regulations under Title VI address both disparate treatment and disparate impact. Specifically, the regulations provide in part that a recipient, in determining the types of services provided or the class of individuals to whom opportunities are afforded, or the situations where such services or benefits are provided shall not "utilize criteria or methods of administration which *have the effect of* subjecting individuals to discrimination because of their race, color, or national origin, or have 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." 34 C.F.R. 100.3(b)(vii)(2) (emphasis added).

Because the statute and regulations apply to such a wide array of recipients and in varied circumstances and contexts, more specific guidance is needed to address effective implementation in the school discipline context. Agencies and institutions that receive funds covered by Title VI include 50 state education agencies, their sub-recipients, and 17,000 local education systems in addition to 4,700 colleges and universities and 10,000 other institutions.

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<sup>1</sup> Legal Center for Foster Care and Education available at <http://fostercareandeducation.org>.

<sup>2</sup> See Legal Center for Youth Justice and Education at <https://www.jjeducationblueprint.org>.

In response to data demonstrating significant disproportionality based on race and disability and research establishing its substantial deleterious impact on students, the U.S. Departments of Education and Justice issued important joint guidance on Nondiscriminatory Administration of School Discipline (“Guidance”)<sup>3</sup> which addresses racial and disability-based disparate treatment and impact in the school discipline context. The Guidance seeks to ensure compliance with Titles IV and VI of the Civil Rights Act of 1964, and to improve school climate and safety which are essential to improving academic success and closing achievement gaps. The Guidance included accompanying resources (“Guidance package”)<sup>4</sup> that assist states, districts, and schools to reduce the use of exclusionary discipline practices in favor of practices like restorative justice and broader school climate efforts. States, local education agencies, and schools need the information and tools provided by this guidance package to ensure compliance with federal education and civil rights laws which require that they identify and address racial bias in discipline policies and practices. The Guidance is also critical to effective implementation of the Every Student Succeeds Act (ESSA), which requires states and districts to address how LEAs will support efforts to reduce the overuse of discipline practices that remove students from the classroom, which may include identifying and supporting schools with high rates of discipline, disaggregated by each of the student subgroups as defined by Section 1111(c)(2). ESSA, 1111(g)(1)(c) and Section 1112 (b) (11).

The need for continued enforcement of federal guidance to address racial disparities in the administration of school discipline is clear. This Guidance is needed to enforce federal law and effectively implement the protections of Title VI, remedy profound disciplinary disparities among students of color with disabilities, and dramatically reduce and ultimately eliminate discriminatory discipline practices that violate the rights of students. The regulations and Guidance are also needed to improve student outcomes among both students of color with disabilities and all students. Exclusionary discipline practices dramatically impact learning. Research shows that exclusionary discipline practices undermine academic performance, often changing the life outcomes of suspended students. It harms all students.

The acute need for continued vigilance to protect students of color with disabilities from discrimination in school discipline requires continued enforcement of the full spectrum of laws, regulations, and guidance at the U.S. Departments of Education and Justice’s disposal. In Pennsylvania, students of color with disabilities experience disproportionate discipline in a manner comparable to national trends: Black students with disabilities receive out of school suspensions at the highest rates of any group of students. Some 22% of Black students with disabilities were suspended at least once. In fact, the profile of the PA student who is most likely to be suspended is a Black male student with a disability. Black and Latino students with disabilities are more likely to be suspended multiple times than any other group. Roughly a dozen districts suspend between 40 and 75% of Black students with disabilities. Similar patterns of punishment are reflected in contact with law enforcement and arrest. Over-identification, misidentification, and under-identification of students of color remain significant problems. Also problematic is the failure of schools to conduct manifestation reviews and to provide appropriate

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<sup>3</sup> This Dear Colleague Letter (2014) is available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

<sup>4</sup> The Guidance package is available at <https://www2.ed.gov/policy/gen/guid/school-discipline/fedefforts.html#guidance>.

individualized education supports. The result is the excessive punishment of students of color, especially those who have disabilities.

The Guidance contributes to the legal framework governing the administration of school discipline by making plain the direct application of both Title VI and the IDEA to the disproportionate and discriminatory discipline of students of color with disabilities. Despite Title VI's intent, as expressed by President John F. Kennedy, that "public funds, to which all taxpayers of all races [colors, and national origins] contribute, [must] not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination,"<sup>5</sup> racial discrimination in school discipline remains a pressing issue today. Similarly, IDEA's purpose to "ensure that the rights of children with disabilities and parents of such children are protected" remains unfulfilled.<sup>6</sup> The specificity of the Guidance ensures that Title VI and the IDEA respond directly to modern school discipline, including issues not contemplated by these statutes. For example, the Guidance reflects the extent to which some schools have abdicated responsibility for discipline to law enforcement and security personnel, placing responsibility for school discipline squarely in the hands of schools and recommending strategies for ensuring that on-campus security and police do not adversely impact students' education. In addition, the Guidance highlights the role that modern manifestations of discrimination, including unconscious bias and stereotyping, can play in producing disparities in discipline and describes what school districts can do to limit this.

The Guidance also adds to existing law by assisting recipients of federal funds in voluntarily complying and strengthening the ability of advocacy organizations, such as ELC, to ensure legal compliance. The value of federal guidance for Title VI is particularly significant given the absence of a private right of action for disparate impact claims under the law. The Guidance underscores the need for critical examination of facially neutral school practices that may nonetheless be discriminatory. Policies that require or encourage suspension or expulsion, impose exclusionary discipline for truancy, and/or prevent students from reenrolling after juvenile justice involvement have been shown to produce disproportionate discipline of students of color, and particularly students of color with disabilities.

ELC applauds the U.S Commission on Civil Rights' efforts to highlight the issue of discriminatory discipline of students of color with disabilities and the need for continued enforcement of federal laws that directly addresses racial and disability disproportionality. We urge federal policymakers to continue and enhance enforcement through full implementation of the Guidance to encourage districts to remedy profound disciplinary disparities among students of color with disabilities.

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<sup>5</sup> See Overview of Title VI of the Civil Rights Act of 1964, DEP'T. OF JUST. (Jan. 22, 2016), <https://www.justice.gov/crt/fcs/TitleVI-Overview>.

<sup>6</sup> 20 U.S.C. §1400(d)(1)(B).

Thank you for this opportunity to comment on the U.S. Commission on Civil Rights' report.

Respectfully submitted,

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