

A CALL TO ACTION:

*With No Updates to OCR Discipline Guidance Since 2014,
the Opportunity to Address Inequities for Students with Disabilities is Now*

In 2016, the federal government rescinded a 2014 disciplinary guidance package that had served as a much-needed resource to schools and districts across the country, a decision that CLE opposed.



It is now time for the Office for Civil Rights (OCR) to issue new comprehensive guidance that advances equity for all students, especially those with disabilities. Guidance should ensure districts and schools stop using harmful exclusionary practices, including suspensions, expulsions, and seclusions, in lieu of individualized supports and services that address and ameliorate the behavioral needs of students with disabilities.

As documented in [this 2019 CLE analysis](#), disciplinary removals cause students with disabilities to lose instructional time nearly twice as much as their peers without disabilities and slightly higher at charter schools compared to traditional schools nationwide. The disproportionality is even more pronounced when disability and race are factored together. For example, Black students with disabilities experience the greatest rates of disciplinary removals of any student subgroup.



Schools and districts run the risk of exacerbating these disturbing trends unless the OCR acts urgently to develop and issue new inclusive guidance that:

- 1 Views discipline inequities with a more intersectional lens - particularly the disproportionate discipline of students of color with disabilities
- 2 Addresses unique challenges with discipline inequities in the charter school sector, as well as opportunities to address it
- 3 Analyzes the role of alternative schools in the disciplinary process and how students with disabilities are referred
- 4 Advises against the overuse of exclusionary disciplinary consequences for minor, non-violent, or subjectively defined interactions
- 5 Examines the adverse impacts of law enforcement in schools on students with disabilities
- 6 Provides more evidence-based alternatives to discipline and affirmative steps for districts and state education departments to identify discipline-related inequities and leverage change

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KEY RECOMMENDATIONS

>> Improving Solutions for Equitable Discipline

- The OCR (in partnership with the Department of Justice) should reissue its 2014 Supportive School Discipline Initiative and Directory of Federal School Climate & Discipline Resources with evidence-based alternatives to suspension and expulsion.
- Update resources to emphasize fidelity of implementation, summarizing available technical assistance and regional case studies of success.
- Issue companion guidance that focuses on guiding districts and state departments of education through a process of proactively self-identifying inequitable practices, initiating systemic change, successfully implementing alternatives, and committing to ongoing evaluation.
- Work with other divisions in the department, such as the Charter School Program Office, as well as other charter school stakeholders to ensure guidance and/or technical assistance is widely disseminated to charter schools.

>> Leveraging Charter Oversight Functions to Achieve Positive School Climate

- Encourage the use of existing charter school oversight structures (i.e. charter authorizer, SEA, or umbrella LEA) for more thoughtful review and transparent monitoring of school disciplinary practices with a special emphasis on students with disabilities.
- Require applicants to state their plan for a culturally responsive and supportive school climate during the application process, and commit to proactively reviewing discipline data for inequitable practices.
- Review discipline policies and schoolwide discipline practices during renewal and through ongoing oversight.
- Provide additional tools and samples to help charter schools successfully implement changes to their school discipline practices.
- Emphasize the need for professional development concerning the implementation of alternatives to school discipline and supporting students with disabilities specifically.
- Clarify access to interim alternative educational settings (IAES) in the event of 45-day removals for students with disabilities.

>> Mitigating Unnecessary Alternative School Referrals

- Consider issuing guidance that reflects on common district practices around alternative school referrals and addresses these practices through the lens of Title VI and federal disability laws.
- Exercise greater scrutiny to ensure alternative school referrals of students with disabilities receive appropriate behavioral supports and interventions prior to the referral (aligned with best practices in [OSERS's 2016 guidance](#)).
- Examine whether inequitable discipline practices within schools are driving higher populations of students with disabilities and/or students of color to alternative schools.
- Assess the common practice of utilizing behavior modification programs as a basis for students earning their way out of the alternative school to determine whether students with disabilities are receiving proper individualized behavioral supports and interventions to accommodate their success with program requirements.