

Discover How Rescinding Guidance Documents Will Impact Discipline

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The U.S. Department of Justice (DOJ) and other federal agencies often release guidance to explain existing law. The U.S. Department of Education’s Office for Civil Rights (OCR), for example, provides guidance as an interpretation of federal law to assist schools as they develop policies. This is often referred to as an “agency letter,” which helps schools understand how the law should be applied to situations that arise in many different contexts. Although guidance documents do not have the force of law and are not legally binding, they are important resources to educate school personnel about the requirements of the law in a clear and concise format.

In 2017, the DOJ rescinded 25 guidance documents, and in 2018 it rescinded an additional 24 guidance documents. These documents span a wide range of issues, and many relate to education—which will have an impact on the civil rights of students and school officials. For example, the DOJ is the enforcement agency for the Americans with Disabilities Act (ADA), and the recent rescissions affect this act.

The rescission of these guidance documents is in response to President Donald Trump’s 2017 executive order (EO 13777) that invites federal agencies to create task forces to identify guidance documents that should be repealed or modified. While it is not uncommon for a new administration to update guidance documents, it has been very unusual to rescind so many in such a short time. It is likely that revoking these documents will impact K–12 students and school employees.

The Impact of the Rescission of the Guidance on Student Discipline

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A federal commission led by U.S. Secretary of Education Betsy DeVos sought to examine school safety. NASSP, as well as other organizations, sent a letter to Secretary DeVos urging her to seek input from educators who best understand these issues. One outcome of the commission resulted in a rescission of the guidance document on disproportionate discipline. NASSP noted that when the commission rescinded the guidance, it was “acting against conclusive research on the subject,” and that “this shortsighted decision would lead to more racial inequity and fewer educational opportunities for struggling students, while doing nothing to better protect schools from violence.”

Specifically, in January 2014, the Obama administration issued guidance urging school officials to seek out alternatives to suspension and other disciplinary measures that take students out of the classroom. At the same time, it highlighted that black and Latino students were suspended much more often than other students. The federal commission claimed that these Obama-era policies made schools reluctant to address unruly students for violent behavior. In addition to rescinding the guidance, the Department also released a separate Q&A that states, “It is not appropriate for OCR or a school to impose racial quotas or proportionality requirements for suspensions or other discipline sanctions as a remedy for discrimination.”

Since data show that black and Latino students are disciplined at disproportionate and higher rates than their peers, the Obama-era guidance was written to address this disparity. It promoted alternatives to suspension and expulsion in order to help reduce discriminatory discipline practices and help plug the school-to-prison pipeline. If school districts had severely skewed numbers, they could have been investigated. One element of the guidance applied the “disparate impact” principle from employment discrimination law. If discipline policies, while neutral on their face, had a disparate impact on a specific group of students, these policies could have been found in violation of the guidance. This was important to help address, reduce, and prevent disproportionate disciplinary practices for hair style, dress code, and other reasons that had disparate impacts on students of color.

The guidance helped highlight an issue of which many leaders and teachers may have been largely unaware. Research shows how teachers' and leaders' unconscious and implicit bias can impact their disproportionate disciplinary practice between white and Asian students compared to their black and Latino peers.

Although the 2014 letter's focus was on discrimination on the basis of race, color, or national origin, another group is disciplined at disproportionately high rates: students with disabilities. Students who have persistent, ongoing behavior problems may have a disability—and some are eventually referred for special education services. Students with disabilities are particularly susceptible to school discipline, especially black students with disabilities, who are disciplined at the highest rates.

The Obama-era guidance was intended to encourage approaches such as positive behavioral interventions and supports, conflict resolution, and restorative practices—which improve school culture and teach students to engage in desired behavior through positive reinforcement. Such methods address the root causes of behavior problems and provide struggling students with additional support rather than excluding them from the learning environment or criminalizing their behavior.

An associated document titled *Guiding Principles: A Resource Guide for Improving School Climate and Discipline* (2014) was rescinded at the same time. This guide begins by recognizing the challenge that schools face in creating nurturing, safe climates where teachers can be effective. The guide provided specific suggestions for ways in which schools and districts could proactively redesign their discipline policies and practices in order to create productive, safe, and supportive school environments. Many schools across the United States have implemented such approaches, and rates of exclusionary discipline have been somewhat reduced.

What Does This Mean for Principals?

Taking away the guidance does not change the law, but it can create unnecessary confusion in schools. By rescinding the Obama-era guidance, there is some concern that school districts may return to

the use of zero-tolerance policies that strengthen the school-to-prison pipeline rather than dismantle it. Without such guidance, schools may direct their attention elsewhere, which could exacerbate the discipline gap.

Although the law has not changed, withdrawing the guidance certainly sends a different signal to school officials who seek to comply with anti-discrimination provisions. Disproportionality in school discipline is a long-standing problem that is unlikely to be solved by any single guidance recommendation, but these documents draw attention to an important national issue. Even without the guidance in place, schools should be careful to administer student discipline in a manner that does not discriminate on the basis of race or disability status. School personnel will need to decide whether they will once again rewrite policy.

Principals might also look to national organizations for additional suggestions and model policies on this matter. For example, NASSP has addressed this issue and provides guiding principles, recommendations, and resources for school personnel (see www.nassp.org/school-discipline).

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