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NATIONAL ASSOCIATION OF
School Psychologists

4340 East West Highway, Suite 402, Bethesda, MD 20814
PHONE: 301-657-0270
FAX: 301-657-0275

Alejandro Reyes
Director, Program Legal Group
Office for Civil Rights
U.S. Department of Education
550 12th Street SW
Washington, DC 20024

RE: ED–2021–OCR–0068
Submitted via: www.regulations.gov

Dear Director Reyes,

The National Association of School Psychologists (NASP) is grateful for the opportunity to submit comments related to the Request for Information (RFI) Regarding the Nondiscriminatory Administration of School Discipline. NASP represents 25,000 school psychologists who work with students, families, educators, administrators, and communities to ensure all of our students have the supports they need to be successful. School psychologists provide direct and indirect interventions to support student social-emotional learning, mental and behavioral health, and academic success. NASP believes that positive and effective school discipline is critical to promoting students' successful learning and overall well-being and we oppose discriminatory and/or ineffective policies, procedures, and practices that result in disparate outcomes and marginalize groups of students.

NASP has long been concerned with the increased use of exclusionary discipline, particularly among students from historically minoritized backgrounds. As noted in the background information of the Request For Information, there is significant evidence that exclusionary discipline is disproportionately applied and is especially problematic for students of racially minoritized backgrounds, particularly Black children and youth, students identified with disabilities, students from low-income and economically marginalized backgrounds, and sexual minority youth (e.g. Kosciw et al., 2018; Mittleman, 2018; Musu-Gillette et al., 2018). Further, there is evidence that discipline disproportionality begins in early childhood settings (SRI Education, 2016). It is clear, based on the data shared as part of this RFI, and data collected and reported from the Civil Rights Data Collection, that the Department understands and acknowledges the realities of disproportionality in discipline, including referral to law enforcement, especially as it applies to students of color, students with disabilities, and students of color who also have a disability. We look forward to being partners in efforts to eliminate the inappropriate use of exclusionary discipline and advance positive and effective strategies that promote equitable outcomes for all students.

We are pleased to offer the following comments to the specific questions posted by OCR. In addition, we would like to reiterate our full support for the comments submitted by the Consortium for Citizens with Disabilities.

Discussion of Questions Posed by OCR
1. **What are your views on the usefulness of current and previous guidance OCR and CRT have issued on school discipline? We would appreciate your comments on the guidance documents described above, including the 2014 guidance, the 2018 Dear Colleague letter, and the 2018 Questions & Answers on Racial Discrimination and School Discipline guidance?**

NASP Response
NASP was pleased when, in 2014, the Departments of Education and Justice jointly released a School Discipline Guidance Package that included guidance and resources to help districts identify, avoid, and remedy discrimination based on race, color, or national origin in the administration of school discipline and create a positive school climate.

We were dismayed when this guidance was rescinded on the basis of false assertions that this guidance had resulted in decreased school safety and increased school violence. Schools that implemented interventions as a result of the guidance, such as providing more mental health supports, implementing restorative practices, and teaching students social and emotional skills-have reported improved student behavior and safer schools. NASP believes in positive discipline policies that are consistent and fair and include multitiered supports, rather than overly harsh and punitive approaches such as "zero tolerance" policies. We believed this guidance was, and is, vital to deter systemic disparities, implicit biases, and discipline policies with minor and subjectively defined offenses (such as insubordination). As such, **we strongly urge you to reissue the School Discipline Guidance Package** that addresses the need to achieve equity for all students, especially students with disabilities and students of color, who are disproportionately impacted by harsh and ineffective exclusionary discipline policies and practices. In doing so, we urge collaboration with the Office of Special Education Programs to ensure that the unique needs of students with disabilities are considered and their civil rights upheld.

2. **What ongoing or emerging school discipline policies or practices are relevant to you or the communities you serve, including any that you believe raise concerns about potentially discriminatory implementation or effects on students' access to educational opportunities based on race, color, national origin, sex, or disability?**

NASP Response
NASP remains concerned about the disproportionate rate of exclusionary discipline and referral to law enforcement among students of color, students with disabilities, and those with intersectional identities. Despite efforts to improve school climate and discipline across the country, data continues to demonstrate that exclusionary disciplinary practices are being used at inappropriate rates.

3. **What promising practices for the administration of nondiscriminatory school discipline or creating positive school climates have you identified?**

NASP Response
NASP has outlined several positive and evidence based practices in the [Framework for Safe and Successful Schools](#) and the [Framework for Effective Discipline](#). Positive and effective discipline practices must be embedded within a multi-tiered system of support that provides a full range of academic, social-emotional, and mental and behavioral health services for all students. Effective discipline requires a collaborative, schoolwide, multitiered approach that: prioritizes teaching and reinforcing positive behaviors; focuses on effectively intervening in and addressing the cause of unwanted behavior; and teaching alternatives for negative and harmful behavior as opposed to focusing on punishment. Positive and effective discipline incorporates positive behavioral interventions and supports, social–emotional learning, restorative justice practices, and other evidence-based interventions to help resolve conflict and teach alternatives to negative behavior, violence, and aggression. Importantly, effective and positive approaches to discipline employ culturally responsive practices, promote equity, and keep students in school and out of the juvenile justice system.

4. **What are your views on this non-exhaustive list of disciplinary policies, practices, and other issues below?**

NASP Response
   (a) **Discipline of students in pre-K through third grade, including in-school and out-of-school suspensions.**

   NASP does not maintain a specific position on the prohibition of suspension and expulsion for students in pre-K through grade 3. However, there is little evidence that exclusionary discipline improves behavior, and in fact it can harm students' social and emotional development. We encourage schools to implement positive and effective discipline practices that teach and reinforce positive behaviors and provide opportunities to correct inappropriate behavior. We strongly urge OCR to address the overuse of exclusionary discipline in preschool in a re-issued guidance package.

(b) Use of exclusionary disciplinary penalties, such as suspensions or expulsions, for minor, non-violent, or subjectively defined types of infractions, such as defiance or disrespect of authority.

The use of suspensions and expulsions for minor, non-violent infractions should be prohibited. As the Department has recognized, suspensions and other disciplinary removals generally do not help reduce misbehavior and may negatively affect the student. For students with disabilities, suspensions may indicate that the school is not meeting the student's behavioral needs and is not providing the student a free appropriate public education or equal educational opportunities. Schools should focus on providing students with behavioral supports, including Functional Behavioral Assessments or Behavioral Intervention Plans, not removing them from school.

(c) Discipline issues relating to dress and grooming codes (including restrictions on hairstyles).

NASP is committed to policy and practice that protects the rights of all students to be educated in safe schools and communities free from prejudice and discrimination and those that enable equitable opportunity and outcomes. Dress and grooming codes, including those that restrict specific hairstyles, disproportionately impact Black children. Discipline policies should be responsive to the racial, ethnic, and cultural make up of the school community and allow students to freely express themselves and their heritage.

(d) Corporal punishment.

NASP supports the elimination of use of corporal punishment and supports H.R. 1234/S.2029, the *Protecting Our Students in Schools Act* which would prohibit the use of corporal punishment in public schools and has been introduced in the 117th Congress. NASP's full position on corporal punishment is available here.

(e) Inappropriate use of seclusion and restraint for disciplinary purposes.

NASP supports HR 3474/S.1878, the *Keeping All Students Safe Act* which would prohibit the use of seclusion, mechanical, prone, supine and chemical restraint, and reduce the use of physical restraint.

(f) Referrals to and the resulting interactions with school police, school resource officers, or other law enforcement.

Research indicates that schools with a higher proportion of Black and other minoritized students are more likely to have law enforcement or security presence.   Data clearly show that the use of referrals to school police, school resource officers, or other law enforcement disproportionately impact students of color. Presence of police in schools is associated with higher rates of exclusionary discipline, with the most significant increases in discipline occurring among Black students.   It is the current position of NASP that if school police are utilized, they should be trained as school resource officers (SROs) according to the standards outlined by the National Association of School Resource Officers. Further, there must be a memorandum of understanding that clearly states that SROs and other school law enforcement officials have no role in student discipline matters. Discipline is the responsibility of school administrators, and school law enforcement should not be involved unless there is a clear legal violation or their involvement is necessary to protect students and/or staff (e.g., a student bringing a weapon to campus). It must be clear that in such cases these are legal actions, not disciplinary actions. It is never appropriate to rely on or expect school resource officers to take on disciplinary issues that are the responsibility of the school administrator.

Policies and practices related to school police involvement in student discipline are inconsistent across districts. As such, any discipline guidance must address the impact that SROs and school police can have on communities of color and strategies to help ensure that, when SROs and school police are present, they are not involved in discipline matters, and that they are not contributing to inequitable outcomes for students, especially students of color.

(h) *Threat assessment practices.*

NASP supports the use of behavioral threat assessment and management (BTAM) in schools. Appropriately implemented BTAM efforts, as outlined in this best practices considerations document, can identify effective interventions and supports that mitigate a potential threat and help move the student(s) toward a more positive pathway. NASP is aware of concerns surrounding the impact of threat assessment procedures on students with disabilities and students of color. However, research shows, *that when implemented correctly,* BTAM does not result in disparities among Black, Hispanic, and White students in terms of suspensions, school transfers, or legal actions. There is significant variance in how schools and districts implement BTAM and the type and quality of professional development provided to ensure school teams are implementing these processes correctly. We urge any forthcoming discipline guidance to include best practices that support the *appropriate implementation* of BTAM and provide resources to help schools improve their practices so that these processes are not used to exclude students from school or deny them access to FAPE.

(j) *Use of surveillance technologies in a discriminatory manner*

NASP opposes the overhardening of schools in which surveillance and facial recognition technology is utilized, as these technologies can be detrimental to the psychological safety of students and can negatively impact overall school climate.

(k) *School policies or practices related to teacher and staff training related to discipline, the role teachers play in referrals of students for discipline, and the role of implicit bias in disciplinary decisions.*

It is imperative that teachers, administrators, and other educators receive ongoing, job embedded professional development on appropriate behavioral management and effective discipline strategies (e.g. restorative practices, culturally responsive classroom management, positive behavioral interventions and supports) that includes ways to mitigate bias in discipline practices and awareness and knowledge of privilege, racism, and implicit bias and their impact on school discipline. Ideally this training is provided to students during their educator preparation programs and continued as they progress through their career.

(n) *Zero tolerance or strict, three-strike policies.*

NASP opposes the use of zero tolerance policies. Zero tolerance policies negatively impact a disproportionately large number of minority students, and empirical evidence has not shown zero tolerance policies to be effective in reducing violence or promoting learning. In fact, they can inhibit academic achievement and increase problem behaviors and dropout rates among middle and secondary school students.

(p) *Discipline issues relating to virtual learning*

NASP is concerned with reports of students being disciplined, and in some cases, excluded from virtual instruction, for infractions that include not sharing their screen, being tardy to class, and for not maintaining a clean and tidy workspace at home. In other cases, districts simply applied their discipline policies without consideration of how certain policies would and would not translate to the online environment. Students, families, and teachers quickly pivoted to the realities of online learning, some without adequate access to childcare or technology to facilitate fully engaged participation in school activities. Punishing children for minor "offenses" that do not negatively impact the virtual learning environment is inappropriate, harmful and robs students of valuable instructional time. We urge OCR to include guidance on how to appropriately alter and enforce reasonable and equitable discipline polices for students participating virtually, with careful attention paid to ensure that students are not penalized for differences in technology access, adult supervision, clothing, and other environmental factors that exist between school and home settings (e.g. use of webcam, inconsistent internet access, dress code, background noise, etc.).

(q) *Discipline issues relating to returning to in person instruction.*

NASP is concerned with reports that students are being moved into remote instruction as a form of discipline, without following the IDEA process for removal from in person instruction. That issue needs to be monitored and addressed.

5. **What types of guidance and technical assistance can OCR provide to best help SEAs and LEAs create positive, inclusive, safe, and supportive school climates and identify, address, and remedy discriminatory student discipline policies and practices (for example, Dear Colleague letters, Frequently Asked Questions documents, fact sheets, tool kits, videos on the nondiscriminatory administration of school discipline or positive school climate, and guidance on returning students to in-person instruction)?**

   NASP Response
   NASP strongly encourages OCR to reinstate the 2014 Discipline Guidance Package, with the additions noted in this document. In addition to formal guidance, we suggest the following:
   - Dissemination of best practice resources intended to help schools design and implement multi-tiered systems of support. Many resources currently exist within the Center on PBIS, the National Center for Safe and Supportive Learning Environments and other federally funded TA centers. In addition, many national professional associations (including NASP) have a wealth of resources specifically geared towards educators, school mental health professionals, and other specialized instructional support personnel. OCR should solicit evidence-based resources and disseminate them to school leaders.
   - Fact sheets clearly outlining the various legal and regulatory obligations schools and districts must meet regarding addressing discipline disparities and upholding the civil rights of students
   - Provide guidance and resources to help teacher and educator preparation programs incorporate effective discipline strategies into their training programs
   - Support explicit examination of the role of implicit bias in disciplinary decisions and provide resources and technical assistance to facilitate the work in school districts
   - Improve enforcement of accurate data reporting to the Civil Rights Data Collection
   - Release guidance on how schools can most effectively utilize school employed mental health professionals and other specialized instructional support personnel in the development and implementation of effective discipline strategies
   - Provide technical assistance in the development of data collection systems that help schools and districts identify and remedy disparities in discipline including the impact of vulnerable decision points.

6. **What promising practices that have reduced the use of discipline or the disparities in the use of discipline between different groups of students (including promising evidence-based programs and success stories from particular school districts) should OCR consider highlighting in any future guidance or resource materials?**

   NASP Response
   OCR should highlight the following in future guidance or resource materials:
   - The importance of adequate access to school employed mental health professionals (e.g., school psychologists, school counselors, school social workers) who have specialized training in school-wide prevention, early identification, and early intervention efforts to address student behavior within the school setting. Importantly, these professionals have knowledge and understanding of the various influences on student behavior and can help properly address the root causes while also addressing systemic variables that contribute to the behavior.

- Practical suggestions that facilitate the implementation of restorative practices, social emotional learning, and positive behavioral interventions and supports. All examples should stress the importance of implementation fidelity and offer strategies to ensure proper implementation of any intervention or strategy.

7. **How do school discipline policies impact:**

NASP Response
(a) students' opportunity to learn; (b) academic achievement, and (d) drop out and graduation rates;

Discipline policies have a direct and detrimental impact on academic achievement. Since students lose instructional time, negative impact on academic achievement is to be expected. Furthermore, exclusionary discipline practices can decrease the likelihood of graduation and increase the chances of dropping out Effective discipline approaches, as outlined in NASP's Framework for Effective Discipline, can help prevent these negative outcomes and improve the school climate for all students.

(c) students' mental health;

Students who participate in school-based social and emotional learning programs show significant improvement in social and emotional skills and positive social behaviors, and a decline in disruptive behavior. Further, social and emotional learning programs have significant preventive effects on rates of aggression in the elementary school years.

(e) school climate and safety;

Positive and effective discipline strategies are associated with a reduction in student suspension, bullying, and feelings of rejection among students. Further, harsh discipline policies, such as "zero tolerance" have not been shown to have a positive impact on school climate or safety. This finding should be communicated in OCR guidance.

(f) teacher retention and satisfaction;

Exclusionary discipline is associated with a host of negative consequences for teachers and schools including loss of instructional time, teacher burnout and attrition.

(h) the rates at which staff refer students for formal discipline; and (l) life outcomes (for example, earnings, reliance on public support, income, employment opportunities, and housing)?

Exclusionary discipline is associated with reduction in life-long earnings, increased health care and social welfare needs and increased chances of being involved in the criminal justice system.

8. **To what extent can hiring and professional development practices be designed and aligned to ensure that teachers and staff are adequately prepared to manage classrooms and work with students in a fair and equitable manner?**

NASP Response
As noted above, teachers, educators, administrators, specialized instructional support personnel and other staff must receive ongoing and job embedded professional development on appropriate behavioral management and effective discipline strategies. In addition, this professional development must include ongoing examination of the root causes of disparities, and the role of systemic racism and bias in decision making, particularly in disciplinary decisions.

9. **Describe any data collection, analysis, or recordkeeping practices that you believe are helpful in identifying and addressing disparities in discipline. Conversely, describe any barriers or limitations in these areas, and any ideas you may have on how to overcome them.**

NASP Response
In addition to reviewing academic and discipline data, schools should examine other indicators such as attendance, graduation and dropout rates, and perceptions of school climate. This data must be disaggregated and cross tabulated to examine disparities among specific groups and the intersection of specific identities. In order to do this accurately and effectively, schools and districts must have the tools to build appropriate behavioral data bases that allow for this kind of analysis.

Thank you for the opportunity to provide comments on this important topic. Please contact Dr. Kelly Vaillancourt Strobach, NASP Director of Policy and Advocacy (kvaillancourt@naspweb.org) with any questions or for additional information.

Sincerely,

Kathleen Minke

Kathleen Minke, PhD, NCSP
Executive Director

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