March 13, 2025

The Honorable Linda McMahon
Secretary of Education
United States Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

VIA EMAIL

Re: Legality of "Dear Colleague" Letter on K-12 School Discipline Policies

Dear Madame Secretary:

Parents Defending Education is a nationwide, nonpartisan, grassroots organization whose members are primarily parents of school-aged children. We understand that you are reviewing policies adopted by the Biden administration and assessing their impact on states. We write to respectfully request that your review include the joint "Dear Colleague" letter regarding school disciplinary policies issued by the Department of Education and Department of Justice in May 2023 (the "School Discipline Letter").[1] As explained below, the School Discipline Letter exceeds the Department's authority under Title VI,[2] is likely unconstitutional, and is harming students and teachers alike. The Department should rescind it as soon as possible.[3]

Despite clear Supreme Court precedent holding that disparate impact alone cannot support a Title VI violation,[4] the School Discipline Letter states that racial disparities in school discipline outcomes are prima facie evidence of racial discrimination, even when a school's disciplinary code is race neutral. Moreover, the letter threatens school districts with the loss of federal funds if they do not adjust their procedures to eliminate such disparities.[5] This position goes "well beyond [the] purpose" of Title VI[6] and is no

[1] Dep't of Educ. & Dep't of Justice, *Resource on Confronting Racial Discrimination in School Discipline* (2023) ("School Discipline Letter").
[2] *See* 5 U.S.C. §706(2)(A), (C) (requiring courts to set aside agency actions that are "in excess of statutory jurisdiction [or] authority" or otherwise "not in accordance with law").
[3] *See, e.g.*, Dep't of Educ. & Dep't of Justice, *"Dear Colleague" Letter Rescinding 2014 'Nondiscriminatory Administration of School Discipline' Policy*, (2018) ("2018 Dear Colleague Letter") (rescinding Obama-era "Guidance and associated documents" because they "advance[d] policy preferences and positions not required or contemplated by Title IV or Title VI").
[4] *See Alexander v. Sandoval*, 532 U.S. 275, 280 (2011).
[5] Dep't of Educ. & Dep't of Justice, *Resource on Confronting Racial Discrimination in School Discipline* (2023).
[6] *Sandoval*, 532 U.S. at 286 n.6.

different from the Obama administration policy the Department repudiated during President Trump's first term.[7] The School Discipline Letter also pressures school districts to violate the Equal Protection Clause of the Fourteenth Amendment by coercing them to adopt rules that, according to the Seventh Circuit, invariably require "systematically overpunishing the innocent or systematically underpunishing the guilty" on the basis of race.[8]

Besides being unlawful and unconstitutional, the Department's current approach is indefensible as a matter of public policy. It forces school districts, by threat of financial pain, to abandon equal-handed policies that promote student safety and preserve an orderly learning environment. Put simply, the School Discipline Letter undermines teachers' authority at a time when they need it the most. Violence and disruptive behavior have increased in K-12 schools over the past few years, harming students and teachers alike. There were at least 857,500 violent incidents in public schools during the 2021-22 school year, the most recent year for which data from the National Center for Education Statistics is available.[9] A 2024 report by the American Psychological Association described "school violence" as an "epidemic."[10] According to the APA, teachers have reported a "sharp rise" in "rates of verbal and threatening aggression" and "physical violence" in their classrooms, with nearly 80% of survey respondents agreeing that misconduct is becoming more prevalent.[11]

PDE believes that teachers and principals at the local level are best situated to address disciplinary issues and ensure the well-being of their communities, and that every student is a unique individual and should be treated as such, no matter his or her race. PDE is confident that the Department's new leadership agrees.

BACKGROUND

The School Discipline Letter is the latest salvo in a decades-long campaign by ideologues to rewrite federal antidiscrimination law under the guise of "equity." Fully understanding the problem requires a brief review of the Department's prior positions and the comprehensive assessment that the Federal Commission on School Safety already made on this issue during President Trump's first term.

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[7] Dep't of Educ. & Dep't of Justice, *"Dear Colleague" Letter Rescinding 2014 'Nondiscriminatory Administration of School Discipline' Policy*, (2018) ("2018 Dear Colleague Letter").
[8] *People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205*, 111 F.3d 528, 538 (7th Cir. 1997).
[9] National Center for Education Statistics, *New Schools Data Examine Violent Incidents, Bullying, Drug Possession, 'Restorative' Practices, Security Staff, and More*, (Jan. 17, 2024), perma.cc/835J-LX3D.
[10] American Psychological Association, *Violence and Aggression Against Educators and School Personnel*, https://perma.cc/8PP7-VJ4H.
[11] *Id.*

The 2014 Obama Administration Dear Colleague Letter. Until recently, rules for student behavior in K-12 hallways and classrooms were understood to be local issues, absent evidence of intentional discrimination. The federal government expanded its involvement in these decisions in 2014, when, under the Obama administration, the Department of Education and Department of Justice announced that they would treat statistical differences in disciplinary rates between students of different races as de facto discrimination. Like the current Department policy, that change was announced in a "Dear Colleague" letter to every public school district in the country.[12] The letter was accompanied by several supporting documents[13] and contained what purported to be "guidance" to "ensure that all students have an equal opportunity to learn and grow in school."[14] It warned schools that they could be found liable for violating federal law if their disciplinary data revealed a "disparate impact, *i.e.*, a disproportionate and unjustified effect on students of a particular race."[15]

The 2014 Dear Colleague letter deemed a policy "unjustified" if the policy was not "necessary to meet an important educational goal," if there were "comparably effective alternative policies or practices that would meet the school's stated educational goal with less of a burden or adverse impact on the disproportionately affected racial group," or if "the school's proffered justification [was] a pretext for discrimination."[16] The letter labeled rules "that impose mandatory suspension, expulsion, or citation … upon any student who commits a specified offense" as "examples of policies that can raise disparate impact concerns."[17] Finally, it not-so-subtly advised local school officials that they could avoid potential investigations by revising their policies to make "exclusionary discipline" (*e.g.*, "in-school suspensions," where a misbehaving student is briefly removed from the classroom) a "last resort" and eliminating any so-called "subjectively-defined" offenses like "disrespect" and "insubordination." In short, if a school district's disciplinary policy allowed school officials to make judgment calls about whether behavior is "disruptive" or a student is "disrespectful," and students of a particular race are overrepresented among those disciplined for such offenses, then the Department considered the policy racially discriminatory.

The Federal Commission on School Safety and 2018 Trump Dear Colleague Letter. On March 12, 2018, President Trump created a Federal Commission on School Safety to study and make recommendations regarding several issues, including whether

[12] Dep't of Educ. & Dep't of Justice, *Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline*, (2014) ("2014 Dear Colleague Letter").
[13] These documents are collectively referred to as the "2014 Guidance."
[14] 2014 Dear Colleague Letter at 1.
[15] *Id.* at 7.
[16] *Id.* at 11.
[17] *Id.* at 12.

the 2014 Dear Colleague letter and associated guidance should be rescinded.[18] The Commission conducted an exhaustive review of all available evidence and peer-reviewed literature, met several times over nine months, and issued its report on December 18, 2021. The Commission noted that the 2014 Guidance relied on "a disparate impact legal theory to Title VI" that was "dubious, at best."[19] Unsurprisingly, it also found that the 2014 Guidance "create[d] a chilling effect on classroom teachers' and administrators' use of discipline by improperly imposing through the threat of investigation and potential loss of federal funding, a forceful federal role in what is inherently a local issue."[20] Finally, it concluded that this chilling effect, in turn, "likely had a strong, negative impact on school discipline."[21] Accordingly, the Commission recommended that the 2014 Guidance be rescinded.

President Trump accepted the Commission's recommendations. On December 21, 2018, the Departments issued a new "Dear Colleague" letter "withdraw[ing] the statements of policy and guidance" in the 2014 Guidance and all subsequent documents that relied on it. The 2018 Dear Colleague letter emphasized that "States and local school districts play the primary role in establishing educational policy, including how to handle specific instances of student misconduct and discipline." The Department concluded that the 2014 Guidance "advance[d] policy preferences and positions not required or contemplated by Title IV or Title VI."

2021 Biden Administration Request for Information. Under the Biden administration, the Department quickly reverted to the interpretation that the Commission on School Safety found "legally dubious" only three years before. On June 8, 2021, the Biden Administration issued a Request for Information ("RFI") soliciting comments about whether to restore the 2014 Guidance.[22] The RFI heavily emphasized President Biden's Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government," which the RFI described as a directive "to pursu[e] 'a comprehensive approach to advancing equity for all.'"[23]

The premise of the RFI was the Department's assertion that "[s]tudents of color as a whole, as well as by individual racial group, do not commit more disciplinable offenses than their white peers—but black students, Latino students, and Native American students in the aggregate receive substantially more school discipline than

[18] 2018 Dear Colleague Letter at 2.
[19] Final Report of the Federal Commission on School Safety, 67 (2018).
[20] *Id.*
[21] *Id.*
[22] *See Request for Information Regarding the Nondiscriminatory Administration of School Discipline*, 86 Fed. Reg. 30,449, Docket ID ED-2021-OCR-0068 (June 8, 2021) ("2021 RFI").
[23] 2021 RFI, 86 Fed. Reg. at 30,449.

their white peers and receive harsher and longer punishments than their white peers receive for like offenses."[24] As PDE pointed out at the time, that premise was flawed on several levels and could not be reconciled with the subsequent findings from the Commission on School Safety.[25]

PDE was hardly alone in its opposition to reinstating the 2014 Guidance. The public response to the RFI was overwhelmingly critical of the Education Department's proposed action. A comment portal hosted on PDE's website facilitated 2,771 unique comments opposing changes to the 2018 guidance. Thousands of other individuals and organizations submitted similar comments independently.

2023 Biden Administration Dear Colleague Letter. On May 26, 2023, the Biden administration Department of Education and the Department of Justice jointly issued the School Discipline Letter. Like the Obama-era guidance before it, the letter contains a thinly veiled warning that the Departments will investigate and punish school districts for racial discrimination under Title VI if the percentage of disciplinary incidents involving students from certain racial or ethnic demographics exceeds the racial or ethnic groups' percentage of the overall student body. The presumption of discrimination will be especially heavy if those districts' disciplinary codes include so-called "subjective" offenses such as "classroom disruption" or "disrespect."

The School Discipline Letter asserts that "[s]ignificant disparities by race—beginning as early as preschool—have persisted in the application of student discipline in schools," and "*courts* have concluded that violations of [Title VI] underlie these disparities."[26] Yet the letter does not cite a single "court" ruling to support this claim. Instead, it lists three examples of *the Department's* own enforcement actions—and the binding settlements that followed—where it accused school districts of violating the law because it observed "statistical disparities" in misconduct offenses between students of certain races "without a legitimate explanation."[27] And the letter simply repeats the flawed premise of the 2021 RFI—that students of certain races are punished more frequently and severely than students of other races despite engaging in misconduct at the same rates—without providing any evidence or addressing the detailed factual findings issued by the Commission on School Safety.

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[24] 2021 RFI, 86 Fed. Reg. at 30,450-51.

[25] *See* Parents Defending Education's Comments on the Office of Civil Rights, Department of Education, Request for Information, "*Request for Information Regarding the Nondiscriminatory Administration of School Discipline*," 86 Fed. Reg. 30449, Docket ID ED-2021-OCR-0068 (June 8, 2021), 2-5; *see also* Dissenting Statement of Commissioner Gail Heriot, U.S. Comm'n on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connection to School to Prison Pipeline for Students of Color with Disabilities*, 177, 186 (2019) ("no evidence" for the "sweeping assertion").

[26] 2023 Dear Colleague Letter at ii & n.ii (emphasis added).

[27] *See id.* at iv, n.ii, 4.

The letter bluntly warns school districts that the Department "refer[s] to data" of a district's disciplinary outcomes by race when assessing the district's compliance with Title VI.[28] In the very next sentence, the Department "offer[s] information about [its] enforcement efforts in this area." This "information" is a set of eight "examples of investigations" where the Department found school districts liable for discrimination due to statistical disparities, or the districts signed binding settlement agreements requiring them to eliminate "subjective" offenses and otherwise revise their disciplinary policies in exchange for keeping federal funding.[29] The implication is unmistakable: if similar rules and statistical disparities exist in your district, we will come after you.

How should school districts avoid liability under the School Discipline Letter? By taking the same steps that the districts in the "examples" agreed to take to settle the Department's investigations against them. The School Discipline Letter pointedly suggests that the steps outlined in the various settlement agreements "demonstrate ways in which school districts can take steps to proactively improve the administration of student discipline."[30] School districts must either eliminate any racial disparities and punish an equal percentage of students of each race, or they must remove educators' and school officials' freedom to make judgment calls about what constitutes misconduct.

The real-world examples cited in the School Discipline Letter and the investigations the Department has opened in the 18 months since it was published show that letter's promise of disparate-impact enforcement was no idle threat. Take the Department's 2022 finding of liability against Victor Valley Union High School District, a majority-Latino district in which the Department listed as one of the "examples" in the letter. The finding of liability noted that, to "evaluate whether the District discriminated against African American students in the administration of discipline, OCR examined discipline data at the district and school levels."[31] Even though Victor Valley's "enrollment is majority Latino," the Department did not investigate discrimination against Latino students because "publicly available statistical data did not indicate that Latino students were overrepresented among out-of-school suspensions or expulsions as compared to their enrollment in the District."[32] In other words, the Department's evidence of wrongdoing was based only on raw, unexamined statistics. Even so, those statistical disparities were sufficient for a finding of liability when coupled with the district's enforcement of "discretionary and subjective infractions such as 'defiance,' 'disruption,' and 'inappropriate behavior,'" all of which the Department

[28] *Id.* at i.
[29] *Id.* at iii, 2-17.
[30] *Id.* at 1.
[31] U.S. Dep't of Educ., OCR, Letter to Elvin Momon, Superintendent, Victor Valley Union High School District, 5 (Aug. 16, 2022) ("Victor Valley Letter").
[32] *Id.*

considers "infractions that are more susceptible to racial bias than are objective infractions."[33]

The Department's disparate-impact enforcement appears to have soared in the 18 months since the School Discipline Letter was published. A review of "pending cases currently under investigation" listed on the website of the Office of Civil Rights shows an astounding 197 investigations have been opened for the "Title VI – Discipline" category of racial discrimination since May 2023, with K-12 school districts comprising most of the targets.[34]

ANALYSIS

I. The School Discipline Letter exceeds the Department's authority under Title VI and raises grave constitutional concerns.

The Department should rescind the School Discipline Letter for a host of reasons, but two are particularly important. First, the policy espoused in the letter is an unlawful expansion of federal law—it stretches the meaning of "racial discrimination" under Title VI well past its breaking point. Rather than enforcing Title VI to prohibit malicious behavior and intentional mistreatment, the School Discipline Letter uses the law as a blunt force instrument in the name of "equity." Second, by threatening to investigate school districts if their discipline statistics are not racially balanced, the School Discipline Letter impermissibly pressures officials to adopt racial quotas in disciplinary outcomes.

Title VI. The policy is unlawful and exceeds the Department's statutory authority under Title VI because it "forbid[s] conduct [Title VI] permits." punishing schools for enacting race-neutral disciplinary codes the law allows. Title VI prohibits "only intentional discrimination" based on race.[35] While the government may prove intentional discrimination through circumstantial evidence, statistical disparities alone do not meet that standard. [36]And the mere existence of "subjective offenses," combined with the Departments' presumption of "implicit bias" by school administrators, is also

[33] *Id.* at 2.

[34] *See* Office of Civil Rights, "Pending Cases Currently Under Investigation at Elementary-Secondary and Post-Secondary Schools," https://perma.cc/MMX4-B7RP (last accessed January 8, 2025).

[35] *Sandoval,* 532 U.S. at 280.

[36] *See, e.g.*, *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 540 (2015) (rejecting liability "based solely on a showing of statistical disparity"); *Vitolo v. Guzman*, 999 F.3d 353, 361 (6th Cir. 2021) ("The broad statistical disparities cited by the government are not nearly enough…. [W]hen it comes to general social disparities, there are simply too many variables to support inferences of intentional discrimination.").

insufficient. Courts "ordinarily assume innocence, not bigotry. Plaintiffs must typically prove, not presume, discrimination."[37]

It is true that the Supreme Court's decision in *Sandoval* only addressed Title VI's general ban on racial discrimination by federal funding recipients under Section 601,[38] and not Section 602's provision authorizing federal agencies to promulgate regulations giving effect to Section 601's provisions,[39] but that is a distinction without a difference. The Court's opinion made clear that it omitted Section 602 from its holding only because the "petitioners have not challenged the regulations here," and that the Court's reasoning applied equally to agency action.[40] Indeed, the Court rejected the "strange" notion that "disparate impact regulations," which are purportedly "inspired by, at the service of, and inseparably intertwined with §601," could somehow "forbid" the "very behavior" that Section 601 permits.[41] Were that the case, the Title VI's implementing regulations would "not simply 'further' the purpose of Title VI; they [would] go well beyond that purpose."[42]

But the School Discipline Letter attempts exactly that. Under the Disciplinary Policy, a school district can be liable for Title VI violations based only on statistical disparities and the fact that its student code of conduct contains "subjective" offenses, like "disrespect" or "classroom disruption," that allow teachers to make case-specific determinations. That is plainly incompatible with Section 601's targeted ban on "intentional discrimination."[43]

Fourteenth Amendment. The School Discipline Letter effectively compels school districts to discriminate on the basis of race. As Justice Scalia observed in *Ricci v. Destafano*, disparate-impact requirements "not only permi[t] but affirmatively *requir[e]* [race-based discrimination] when a disparate impact violation would otherwise result."[44] Under the regulatory regime enacted by the Biden administration, school districts that have demographic disparities in disciplinary outcomes and wish to avoid crippling liability under Title VI have few options that do not violate the Equal Protection Clause of the Fourteenth Amendment. The current rule invites—indeed, requires—school officials to do what it purports to oppose: adopt disciplinary policies that discriminate against students based on race, regardless of individual circumstances. As the

[37] *Rollerson v. Brazos River Harbor Navigation Dist. of Brazoria Cnty.*, 6 F.4th 633, 648 (5th Cir. 2021) (Ho, J., concurring).
[38] *See* 42 U.S.C. §2000d.
[39] *See* 42 U.S.C. §2000d-1.
[40] *See Sandoval*, 532 U.S. at 285-86 & n.6.
[41] *Id.* at 286 n.6.
[42] *Id.*
[43] *Id.* at 280.
[44] *Ricci v. DeStefano,* 557 U.S. 557, 594 (2009) (Scalia, J., concurring).

Commission on School Safety recognized, the theory of Title VI "discrimination" advanced by the School Discipline Letter "may lead schools to adopt racial quotas or proportionality requirements" that violate the Fourteenth Amendment.

The Seventh Circuit's decision in *People Who Care v. Rockford Board of Education* is directly on point.[45] There, the district court entered an order pursuant to a desegregation decree that forbade an Illinois school district from "refer[ring] a higher percentage of minority students than of white students for discipline unless the district purge[d] all 'subjective' criteria from its disciplinary code."[46] As the court noted, the district's "decree require[d] this even though important disciplinary criteria (such as disrupting classes) are unavoidably judgmental and hence 'subjective' within the sense of the decree."[47] The Seventh Circuit held the policy unconstitutional because "[r]acial disciplinary quotas violate equity in its root sense. They entail either systematically overpunishing the innocent or systematically underpunishing the guilty. They place race at war with justice."[48] And, the court held, such data-driven quotas "cannot stand" because they are "inconsistent" with the "require[ment] that discipline be administered without regard to race or ethnicity."[49] So too here.

That local school officials regulated by the Department act as the boots on the ground in this discriminatory campaign does not relieve the Department of responsibility. After all, "if the Federal Government is prohibited from discriminating on the basis of race, then surely it is also prohibited from enacting laws mandating that third parties—*e.g.,* employers, whether private, State, or municipal—discriminate on the basis of race."[50]

This principle is reflected in several of President Trump's recent executive orders addressing racial discrimination. To start, President Trump rescinded Biden-era executive orders instructing agencies to pursue racial balancing under the guise of "equity."[51] President Trump also directed the termination of "all discriminatory programs, including illegal DEI and 'diversity, equity, inclusion, and accessibility' (DEIA)" policies[52] and policies "allowing or encouraging" third parties "to engage in workforce balancing based on race."[53] Finally—and most importantly—President Trump directed the Department to "issue guidance to all State and local education

[45] *See* 111 F.3d at 538.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Ricci*, 557 U.S. at 594 (Scalia, J., concurring in judgment (cleaned up)).
[51] *See Initial Rescissions of Harmful Executive Orders and Actions* (Jan. 20, 2025).
[52] *Ending Radical and Wasteful Government DEI Programs and Preferencing* (Jan. 20, 2025).
[53] *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025).

agencies that receive Federal funds" requiring them "to comply with *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023)."[54] In *Harvard*, the Court reaffirmed that "outright racial balancing is patently unconstitutional," because "at the heart of the Constitution's guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual, or national class."[55] That command applies to school discipline with equal force as it does to any other government program.

II. The School Discipline Letter is threatening school safety and undermining productive learning environments.

The School Discipline Letter should be rescinded because it is unlawful and unconstitutional. But even if that were not the case, rescinding the letter would be appropriate because it is counterproductive to the goal of building safe and educational learning environments.

Parents should not have to worry whether their children will be safe when they drop them off at school or walk them to the bus stop each morning. Nor should teachers fear for their safety when they stand in front of a classroom. Unfortunately, those concerns are becoming increasingly common for parents and educators of K-12 schoolchildren across the country. As mentioned above, an APA survey of nearly 12,000 teachers found appalling increases in violence and threats directed against educators during the school day.[56] Based on these results, the Association concluded that "[a]ggression and violence against educators and school staff are pressing issues that affect not only their well-being, but also the students and families they serve."[57]

The APA study is hardly an outlier. In May 2024, an Orlando ABC affiliate surveyed "8,000 teachers nationwide," with downright chilling results.[58] "Many of them told [surveyors], they're afraid to go to school and have considered quitting because of violence from students."[59] For example, one teacher told ABC "I was punched in the face by a student last year. Not only was the student NOT disciplined, he was back in my class before I left to go to the nearest workers comp doctor. I was even blamed for

[54] *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* (Jan. 21, 2025).
[55] *Harvard*, 600 U.S. at 223.
[56] *See* American Psychological Association, *supra* n.10. For in depth results of the APA survey, *see Violence and Aggression Against Educators and School Personnel, Retention, Stress, and Training Needs: National Survey Results*, Am. Psychologist (2024).
[57] National Center for Education Statistics, *New Schools Data Examine Violent Incidents, Bullying, Drug Possession, 'Restorative' Practices, Security Staff, and More*, (Jan. 17, 2024), perma.cc/835J-LX3D.
[58] Ashlyn Webb, *Study Reveals Increase in Violence Against Teachers from Students, Parents Post-Pandemic*, Yahoo News, (May 31, 2024), bit.ly/40noHe9.
[59] *Id.*

'not following his behavior plan.'"[60] The full ABC report, *Teachers Under Attack*, is filled with similar stories.[61] As one might expect—and the National Center for Education Statistics data cited at the beginning of this letter makes painfully clear—students are equally at risk from the escalating rates of misconduct by their classmates.

In the face of this trend, the School Discipline Letter hamstrings educators' ability to teach their students by taking decision-making power out of their hands and placing it in the hands of government officials in Washington D.C. Simply put, it is undermining teachers' efforts to maintain order in the classroom by forbidding them from making judgment calls—which the Policy euphemistically labels "subjective decisions"—about the severity of student offenses or the best methods for handling them. That is because, as the Federal Commission on School Safety observed when it studied this issue at length in 2018, "[t]eachers are often best positioned to identify and address disorderly conduct at school. They have an understanding of the students entrusted to their care and can see behavioral patterns on an ongoing basis."[62] That is why a steady stream of education experts called to testify at the Commission's July 2018 hearing repeatedly emphasized "the need for more local flexibility in handling student discipline" and that "that federal intervention in day-to-day disciplinary matters undermines local decision-making."[63]

The School Discipline Letter is also making K-12 schools less safe by inducing administrators to overlook or excuse student misconduct solely because of the offenders' race, so their disciplinary ledgers remain equally balanced by skin color. Tellingly, not even the most ardent defenders of the policy espoused by the letter claim that it increases student safety or protects kids from violence. As Commission noted in its report, "[t]hose who spoke in support" of the identical Obama-era policy at the Commission's July 2018 hearing "focused on reducing the racial disparities in the discipline numbers without addressing the adverse consequences of the [policy] on school safety and climate."[64] Those adverse consequences include fewer interventions against dangerous or threatening behavior, and widespread perceptions of impunity for even the most severe offenses.[65]

The Biden administration knew—or should have known—all of these consequences, because educators and experts in student behavioral problems testified about them to the Commission. And because the Commission itself published a 180-page report on this issue and related topics. Sadly, it appears that the previous administration

[60] *Id.*
[61] *Id.* (collecting examples).
[62] Final Report of the Federal Commission on School Safety, 67 (2018).
[63] *Id.* at 68.
[64] *Id.* at 69.
[65] *See id.* (quoting public school teacher, who stated "policymakers have made it so we have no authority. Only perceived authority. Only as much power as you get your kids to believe. Once the kid finds out he can say 'F*** you,' flip over a table, and he won't get suspended, that's that.").

gave greater priority to left-wing social causes than to common sense and school safety. As parents, we ask the Department's new leadership to change course.

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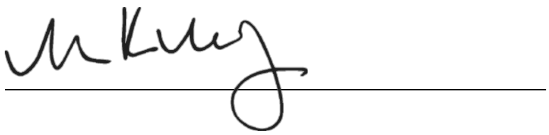
For these reasons, PDE respectfully asks the Department to rescind the School Discipline Letter.

Sincerely,



Nicole Neily
President
Parents Defending Education