

From: Roger Clegg [<mailto:rclegg@ceousa.org>]

Sent: Wednesday, March 29, 2017 12:52 PM

To: Wheeler, Tom (CRT) <Tom.Wheeler@crt.usdoj.gov>

Subject: Call to revoke Obama "Dear Colleague" letter on school discipline

Dear Mr. Wheeler,

Let me reassure you that this email is not really as long as it looks! My bottom line is simply that the Trump administration should consider sooner rather than later the withdrawal of the January 8, 2014 "Dear Colleague" letter (from the Civil Rights Division and OCR) on school discipline, which relies heavily on a "disparate impact" approach to civil-rights enforcement. It is unsound as a matter of both law and policy.

I've appended below a variety of sources that have criticized the letter, again from both policy and legal perspectives. Note that the guidance is still up on the Civil Rights Division's web site for its Education Opportunities Section.

Many thanks,

Roger Clegg
President and General Counsel
Center for Equal Opportunity
(and former DAAG in the Civil Rights Division, 1987-1991)

SOURCES:

In addition to five pieces reproduced in their entirety below, there are these additional sources:

- George Leef of the John W. Pope Center for Higher Education Policy, has criticized the guidance at *Forbes*: <https://www.forbes.com/sites/georgeleef/2014/02/20/obama-administration-takes-grouphink-to-absurd-lengths-school-discipline-rates-must-be-oriortuibate/#7cbbd5c8506e>
- The Fordham Institute's Michael Petrilli has also suggested that the Trump administration "rescind the policy guidance promulgated by the Obama team that applied 'disparate impact theory' to the issue of school discipline" to instead "say to districts: If you treat kids differently because of their race, gender, etc., we will sue you for discrimination. But we won't assume discrimination just because of disparate rates of suspensions or expulsions." See Michael J. Petrilli, "Now what?," Fordham Institute's EdExcellence Blog, November 9, 2016, available at <https://edexcellence.net/articles/now-what>.
- A well-known education expert criticized this "guidance" in National Affairs -- see goo.gl/oLLjle -- as did the Richmond Times-Dispatch in 2016, see its editorial, "The

Education Department's double standard on school discipline," Our Opinion, July 22, 2016, goo.gl/vN4qXL .

- The Obama guidance was unpopular in a poll conducted to see whether the public agreed with the Obama administration's disparate impact push. Even liberal *Education Week* admits that the Obama administration's school discipline "disparate impact" guidance was unpopular. As the staunchly liberal Evie Blad of *Education Week* – a supporter of the guidance – conceded, the guidance was unpopular: "Do teachers, parents, and the general public support district and federal efforts" to get rid of racial disparities in discipline? "A poll released this week by *Education Next* found high rates of opposition in all categories of respondents...It asked a nationally representative sample of 4,000 respondents if they support or oppose 'school district policies that prevent schools from expelling or suspending black and Hispanic students at higher rates than other students.'" Evie Blad, "Disparate Impact in School Discipline: What Does the Public Think?," *Education Week*, August 19, 2015, available at http://blogs.edweek.org/edweek/rulesforengagement/2015/08/disparate_impact_in_school_discipline_what_does_the_public_think.html.
- Similarly, education blogger Joanne Jacobs, a skeptic of the Obama assault on school discipline, noted that based on the poll, "The federal push for "no-disparate-impact" disciplinary policies — linking suspension and expulsion rates to race and ethnicity — is unpopular with the public and teachers." Joanne Jacobs, "Support slips for Core, other reforms," JoanneJacobs.com, August 19, 2015, available at <http://www.joannejacobs.com/2015/08/support-slips-for-core-other-reforms/>.