

Project 21 comments on Regarding the Nondiscriminatory Administration of School Discipline

(Docket ID ED-2021-OCR-0068)

To take the Biden Administration's assumptions on school discipline seriously, teachers unions will be like foxes guarding the henhouse.

To comply with an executive order demanding racial equity, the Departments of Justice and Education are planning to reinstate – and possibly strengthen – Obama Administration [rules](#) for public schools which judge punishments for student misbehavior by quantity rather than context. As such, mere numerical race disparities become de facto discrimination.

This standard puts teachers in a tenuous position. While American Federation of Teachers President Randi Weingarten may [publicly support](#) a social justice agenda embracing critical race theory, she must also have the backs of members who will be judged by metrics to make them out to be vicious racists. Yet a union's first obligation is supposed to be [protecting](#) dues-paying members.

Weingarten risks becoming – as the woke folk say – [“literally Hitler.”](#)

Even though teaching is among the most woke vocations, applying statistics to race-neutral discipline policies will make monsters out of one of this White House's most loyal and fervent constituencies. It will also spoil educational opportunities for the innocent children whom this president says he cares about so much.

The root of the problem is reliance on a disparate-impact approach to analyzing student discipline. It is essentially setting up racial quotas on how many members of a particular minority can receive appropriate punishment at a given school. This creates a death spiral for quality-of-life in schools with large minority student bodies. When students are less likely to receive punishment for their misbehavior, the students around them are impacted. The more unruly these students get, the more everybody suffers.

Under this proposal, discipline means disparity, and disparity means discrimination. And that's what teachers and administrators will seek to avoid.

In the White House announcement of its intent to resurrect disciplinary quotas, it cited a report on such alleged disparities from the U.S. Commission on Civil Rights. It failed to note this report was rebutted by Commissioner Gail L. Heriot. In her first dissent to a report in her 14 years of service on the Commission, Heriot [wrote](#) that her colleagues “seriously misunderstood the research that purportedly forms the basis for its conclusions.”

The Commission's report alleged students of color "do not commit more disciplinary offenses than their white peers." But Heriot noted her colleagues "provide[d] no evidence to support this sweeping assertion and there is abundant evidence to the contrary," and "is a slap in the face to teachers."

Heriot concluded:

I can only surmise that the Commissioners who voted in favor of the Finding have misread the studies that purport to find that discrimination *may* account for *some portion* of the differences in the rate of discipline imposed on African American students. Somehow they have conflated that with a finding that *all* of the differences in rates of school discipline are caused by discrimination or by some factor other than differing behaviors. To my knowledge, no researcher makes such a claim.

Factors in increased disciplinary problems affecting minority schools include disproportionately higher [reports](#) of gangs, guns and drugs and that fights are common.

It's wise to incorporate Heriot's warning when crafting any new rules. Or, perhaps, this idea should be abandoned altogether since it will likely lead to chaos in the classrooms and destroy the reputations of well-meaning educators.

To improve disciplinary numbers, consider school choice options. In minority communities with disproportionate disciplinary problems, zip codes and property lines dictate enrollment and limit access to schools with programs that fit needs of their children. When families have choices, they will demand – and get – safer schools. Proper discipline will be rewarded rather than vilified. And students with special needs like behavioral disorders can go to places better serving their conditions rather than forced mainstreaming to the detriment of all.

Former Education Secretary Betsy DeVos [asserted](#) that the Obama-Biden rules caused "statistics [to] become more important than the safety of students and teachers," and that "discipline is a matter which classroom teachers and local school leaders deserve and need autonomy." Why are the Biden-Harris rules expected to fare any better?

Teachers shouldn't be judged by statistics. Students deserve better classroom environments. That's why the disparate-impact domination of discipline deserves a failing grade.

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