'COMMON SENSE DISCIPLINE' IS NOT EVIDENCE-BASED SCHOOL DISCIPLINE: THE MISALIGNMENT OF EXECUTIVE ORDER 14280 AND EDUCATION RESEARCH

For more than three decades, multidisciplinary research has shown how the pervasive use of exclusionary school discipline has limited thousands of children's access to essential learning opportunities in K-12 public schools across the country.

In recognition of the severity and prevalence of harms of exclusionary school discipline for Black, Latina/o/x and American Indian/Alaska Native students, students with disabilities, multilingual learners, LGBTQ+ students, and students who experience living in poverty (often called "low socioeconomic status") ¹—from barriers to high school graduation² to negative health and mental health outcomes³ to entry into criminal legal systems⁴—for the last ten years lawmakers and education leaders have enacted evidence-based reforms to state policies and local school discipline practices.⁵ In fact, since 2014, more than half the states and the District of Columbia have legislatively reduced reliance on exclusionary discipline and codified non-exclusionary practices in K-12 public schools.⁶ At the local level, school boards have prioritized investments in discrimination-free learning through strategic plans⁷, revised discipline policies⁸, and research and evaluation⁹ to ensure all students experience safe, supportive, and inclusive learning environments.

In July 2025, the Illinois Board of Education issued guidances that reinforce the need to reduce reliance on exclusionary discipline techniques and continue to implement field-based best practices to provide safe and supportive environments for students and educators. ¹⁰ In the same month, the California School Boards Association released field guides to advance and maintain equitable and supportive discipline, including key decisions that school boards can make. ¹¹

1

As part of a larger education policy agenda aimed at reducing all students' right to access education fully and fairly, on April 23, 2025, President Trump issued <u>Executive Order 14280</u> ("Reinstating Common Sense School Discipline Policies"). Relying on unsubstantiated claims about school discipline policy and practice as "discriminatory equity ideology based," the Executive Order's primary goal is to reduce states' adoption of evidence-based best practices and discipline policy reforms.

As the federal education policy landscape continues to shift under the Trump Administration, it is key that state lawmakers and local education leaders continue to advance investments in evidence-based discipline policies and practices. To support this leadership, this research brief presents analysis of Executive Order 14280 and education research—finding clear misalignment between Executive Order 14280 and field evidence. In prioritizing transparent information about school discipline and federal actions, this brief also provides an introductory primer on understanding key federal documents referenced in the Executive Order (January 2014 Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline and May 2023 Resource on Confronting Racial Discrimination in Student Discipline) whose intent is to promote equitable access to learning and positive and safe school climates.

Examining Executive Order 14280 and Education Research

* * *

Executive Order 14280	Education Research
"[B]ecause of the 2014 letter, schools ignored or covered up — rather than disciplined — student misconduct in order to avoid any purported racial disparity in discipline numbers that might catch the eye of the federal government."	This claim is unsubstantiated 12 and is contrary to publicly available federal data, including the U.S. Department of Education Office of Civil Rights Data Collection (2015–22), the 2018 U.S. Government Accountability Office report, K-12 Education Discipline Disparities for Black Students, Boys, and Students with Disabilities, and the 2024 U.S. Government Accountability Office report, K-12 Education Nationally, Black Girls Receive More Frequent and More Severe Discipline in School Than Other Girls. 13 ♦ In school year 2015–16, Black boys represented 8% of enrolled students, but 25% of students who schools issued an out-of-school suspension, and 23% of students who schools expelled.

- ♦ In school year 2017–18, Black students with disabilities represented about 19% of all K-12 students with disabilities and accounted for nearly 36% of students with disabilities who schools suspended.
- ♦ In school year 2021–22, Black boys represented 8% of students enrolled, but 22% of students who schools issued an out-of-school suspension, and 21% of students who schools expelled. Black girls represented 7% of students enrolled but accounted for 13% of students who schools issued an out-of-school suspension and 13% of students who schools expelled.

Because of the 2014 letter, "students who should have been suspended or expelled for dangerous behavior remained in the classroom, making all students less safe."

This claim is unsubstantiated and is contrary to two decades of empirical research finding that the use of exclusionary discipline does not make students and schools safer.¹⁴

- Schools with higher school suspension and expulsion rates have less satisfactory school climate ratings and school governance structures and spend a disproportionate amount of time on disciplinary matters.
- Exclusion does not teach students behavioral skills or effective conflict resolution strategies, both of which are features of positive school climates.

"When school leaders focus on aggregate school discipline numbers rather than the specific circumstances and conduct that underlie each matter, schools become less safe, and research clearly indicates that the failure of schools to appropriately discipline disruptive students has consequences for overall student achievement."

This claim is unsubstantiated and is contrary to both (1) state law and local district policies which differentiate student behaviors¹⁵ and (2) more than eight studies on the implementation of non-exclusionary school discipline practices and outcome measures of positive school safety, school, peer, and familial connectedness, academic achievement, health and wellbeing, and school attendance.¹⁶

- Research indicates a negative relationship between school's use of school suspension and expulsion and schoolwide academic achievement.
- Implementation of restorative practices resulted in increased associations of safety, trust, supportive relationships for all students, and has specific positive

- learning environments for Black and Latina girls, who are most often subject to and harmed by discriminatory enforcement of racist and sexist school rules.
- Schools report reductions in chronic absenteeism (often called "truancy") and tardiness after implementing restorative justice programs.

"[D]isciplinary decisions are best left in the hands of classroom teachers and administrators and should be based on student behavior, rather than racial statistics." State laws and local policy set forth: (1) disciplinary decisions are state and locally controlled and (2) provisions requiring data collection do not remove administrative decision-making authority and are not based on racial statistics. Additionally, administrators and teachers are often identified in school policies and discipline matrices as designated school-based disciplinarians. No federal guidance, including any executive order, has removed state and local control over school discipline policy and practices. ¹⁷ For example, see:

- ♦ 105 ILL. COMP. STAT. 5/10-20.14 (2024) requires the Illinois State Board of Education to draft and publish guidance for evidence-based intervention procedures in consultation with behavioral health experts.
- ♦ 2023 Minn. Laws 2497 requires schools to measure the number of restorative-justice interventions and the number of suspensions and expulsions per school.
- ♦ TEX. EDUC. CODE ANN. § 37.0013 (2019) allows school districts to provide restorative justice as an alternative to exclusionary school discipline for students below third grade.

"As a consequence of [the 2023 guidance], teachers and students are suffering increased levels of classroom disorder and school violence."

This claim is unsubstantiated. Empirical research evidences an association between the beginning of the COVID-19 pandemic in 2020 and school closures and student and teacher stress, trauma, and behavior outcomes.¹⁸

 During the pandemic, teachers reported a greater prevalence of anxiety symptoms when compared to

	healthcare and office workers, and remote teachers reported significantly higher levels of distress than those
	teaching in person.
\Diamond	Since the pandemic, at least 40% of high school students
	reported experiencing depressive symptoms, and almost
	a third experienced poor mental health.

* * *

Understanding the January 2014 Dear Colleague Letter

Executive Order 14280 mischaracterizes the impacts of the January 2014 <u>Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline</u>. The Letter was jointly issued by the U.S. Department of Education's Office for Civil Rights and U.S. Department of Justice's Civil Rights Division. The Letter was rescinded by the first Trump administration in 2018.

What did the 2014 Dear Colleague Letter say and do?

- ♦ Encouraged the use of non-exclusionary school discipline to promote "safe, inclusive, and positive educational environments" for students, recommending the use of social and emotional learning and restorative justice practices.¹9
- Strongly discouraged the use of exclusionary school discipline because it does not "cultivate an environment in which all students are safe and have equal educational opportunities."²⁰
- Detailed an overview of racial disparities in the administration of school discipline as demonstrated by the publicly available Civil Rights Data Collection.
- ♦ Emphasized schools' obligations to avoid and redress racial discrimination in the administration of school discipline.
- ♦ Explained the Departments' investigative process under Title IV and Title VI, including the legal framework within which the Departments consider allegations of racially discriminatory student discipline practices.
- Provided examples of school disciplinary policies and practices that may violate civil rights laws.

Understanding the May 2023 Guidance

Executive Order 14280 mischaracterizes the impacts of the May 2023 Resource on Confronting Racial Discrimination in Student Discipline. The guidance was jointly issued by the U.S. Department of Education's Office for Civil Rights and U.S. Department of Justice's Civil Rights

Division. The guidance was removed from the U.S. Department of Education's website by the second Trump administration in 2025.

What did the 2023 Guidance say and do?

- ♦ Exposed the significant racial disparities in the application of student discipline, finding that "more than one third of high school students reported during the pandemic that they had faced bad or unfair treatment because of their race or ethnicity."²¹
- ♦ Emphasized the negative impact of the pandemic on students' mental health and academic achievement.
- Spotlighted fourteen investigations conducted by the Departments involving schools' discriminatory student discipline policies or practices.
- ♦ Continually recommended the use of non-exclusionary discipline, including behavioral support plans, reflective writing assignments, conflict resolution, and restorative practices.
- ♦ Discouraged the use of exclusionary school discipline because it does not cultivate "welcoming, supportive, and safe educational environments for all students."²²

Additional resources examining the January 2014 Dear Colleague Letter and the May 2023 Guidance can be found below:

- ♦ <u>ACLU Comment on Groundbreaking Federal School Discipline Guidance</u>, ACLU (Jan. 8, 2014).
- ♦ LDF Commends DOJ and DOE's Acknowledgment That Racial Discrimination in School Discipline is a Serious Issue, NAACP LEGAL DEF. & EDUC. FUND (Jan. 8, 2014).
- ♦ Harold Jordan, Why School Discipline Reform Still Matters, ACLU (Oct. 19, 2023).
- **Rachel M. Perera & Jon Valant,** *The Biden Administration's Updated School Discipline Guidelines Fail to Meet the Moment*, BROOKINGS INST. (June 28, 2023).

* * *

Key Terms and Definitions

The following terms and concepts are used in Executive Order 14280 and commonly presented in school discipline research and education law and policy. These definitions are presented to clarify meaning and content presented.

<u>Executive Order:</u> A written directive signed by the president that orders the government to take specific actions to ensure the laws be faithfully executed. Federal executive orders do not immediately remove state authority and control over education law and policy.²³

<u>Dear Colleague Letter:</u> Guidance issued by federal agencies to signal or give notice about how the agency interprets existing law. Dear Colleague Letters do not "have the force and effect of law and does not bind the public or create new legal standards."²⁴

<u>School Safety:</u> Measured by the absence of a negative, such as the absence of violence, bullying and harassment, or substance use.²⁵ Often conflated with school discipline within policy, practice, and public discussion, but is empirically distinct.

<u>School Discipline:</u> The rules and strategies applied in school to manage student behavior and practices used to encourage self-discipline.²⁶

<u>Exclusionary School Discipline:</u> Any type of school disciplinary action that removes or excludes a student from their learning environment or educational setting.²⁷

<u>Non-Exclusionary School Discipline:</u> Provides consequences to address behavior but does not remove students from the learning environment or educational setting ²⁸, examples include restorative justice practices, social-emotional learning, and positive behavioral interventions and supports. ²⁹

<u>Discriminatory Equity Ideology School Discipline:</u> There is no recognized empirical definition for school discipline based on "discriminatory equity ideology."

Citation: Thalia González & Aidan Tomlinson, 'Common Sense Discipline' is Not Evidence-Based School Discipline: The Misalignment of Executive Order 14280 and Education Research, Center for Racial and Economic Justice, UC Law SF (2025).

About the Center for Racial and Economic Justice at UC Law SF: The Center for Racial and Economic Justice (CREJ) works to advance equity and justice through legal education, research and scholarship, and academic-community partnerships and collaborations. To learn more about CREJ visit: https://www.uclawsf.edu/academics/centers/center-racial-economic-justice/.

¹ Melanie Leung-Gagné et al., Pushed Out: Trends and Disparities in Out-of-School Suspension (2022).

² U.S. COMM'N ON C.R., BEYOND SUSPENSIONS: EXAMINING SCHOOL DISCIPLINE POLICIES AND CONNECTIONS TO THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS OF COLOR WITH DISABILITIES (2019); CHRISTINA LICALSI, DAVID OSHER & PAUL BAILEY, AM. INSTS. FOR RSCH., AN EMPIRICAL EXAMINATION OF THE EFFECTS OF SUSPENSION AND SUSPENSION SEVERITY ON BEHAVIORAL AND ACADEMIC OUTCOMES (2021).

³ Thalia González, Ctr. for Racial & Econ. Just., UC L. SF, Exclusionary School Discipline and Student Health and Wellbeing: A Research Spotlight Brief (2025).

⁴ THE COUNCIL OF STATE GOV'TS JUST. CTR. & PUB. POL'Y RSCH. INST., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT (2011).

⁵ ALYSSA RAFA, EDUC. COMM'N STATES, THE STATUS OF SCHOOL DISCIPLINE IN STATE POLICY (2019); Thalia González et al., Restorative Justice, School Reopenings and Educational Equity: A Contemporary Mapping and Analysis of State

Law, 55 U.C. Davis L. Rev. Online 43 (2021); Initiative on Gender Just. & Opportunity, Geo. L. Ctr. on Poverty & Ineq., School-Based Restorative Justice Legislative Trends (2020).

- ⁶ RAFA, EDUC. COMM'N STATES, *supra* note 5; SCHOOL-BASED RESTORATIVE JUSTICE LEGISLATIVE TRENDS, *supra* note 5; González et al., *supra* note 5; Thalia González & Kaitlin Browne, State Restorative Justice Legislation 2020 2025 (July 16, 2025) (unpublished data) (on file with author).
- ⁷ Strategic Plan Goal 2 Safe, Supported, Included, and Empowered, FAIRFAX CNTY. PUB. SCHS., https://www.fcps.edu/about-fcps/leadership/strategic-plan/goal-2-safe-supported-included-and-empowered#:~:text=Goal%202%20%2D%20Description:%20Safe%2C,plan%20work%20in%20the%20future (last visited July 29, 2025).
- ⁸ DENV. SCHOOL-BASED RESTORATIVE PRACS. P'SHIP, SCHOOL-WIDE RESTORATIVE PRACTICES: STEP BY STEP (2017); Thalia González, Restorative Justice From the Margins to the Center: The Emergence of a New Norm in School Discipline, 60 How. L. J. 267 (2016).
- ⁹ Cal. Sch. Bds. Ass'n, Practical Steps Toward Advancing Equitable and Supportive Discipline: A Guide for School Boards (2025); Trevor Fronius et al., WestEd Just. & Prevention Rsch. Ctr., Restorative Justice in U.S. Schools: An Updated Research Review 29–30 (2019).
- ¹⁰ ILL. STATE BD. OF EDUC., SB 1400 SCHOOL DISCIPLINE GUIDANCE (2025), https://www.isbe.net/discipline.
- ¹¹ CAL. SCH. BDS. ASS'N, *supra* note 9.
- ¹² Fed. Comm'n on Sch. Safety, Final Report of the Federal Commission on School Safety 68 (2018) (citing to anecdotal reports with no evidentiary basis).
- ¹³ U.S. Dep't of Educ., Off. for C.R., 2015-16 Civil Rights Data Collection: School Climate and Safety 13–16 (2018); U.S. Dep't of Educ., Off. for C.R., An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-2018 School Year (2021); U.S. Dep't of Educ., Off. for C.R., 2020-21 Civil Rights Data Collection A First Look: Students' Access to Educational Opportunities in U.S. Public Schools (2023); U.S. Dep't of Educ., Off. for C.R., 2021-22 Civil Rights Data Collection A First Look: Students' Access to Educational Opportunities in U.S. Public Schools (2025); U.S. Gov't Accountability Off., GAO-18-258, K-12 Education Discipline Disparities for Black Students, Boys, and Students with Disabilities (2018); U.S. Gov't Accountability Off., GAO-24-106787, K-12 Education Nationally, Black Girls Receive More Frequent and More Severe Discipline in School than Other Girls (2024).
- ¹⁴ Am. Psych. Ass'n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 Am. Psych. 852; Child.'s Def. Fund-Ohio, Zero Tolerance and Exclusionary School Discipline Policies Harm Students and Contribute to the Cradle to Prison Pipeline (2012); Daniel J. Losen & The Civil Rights Project/Proyecto Derechos Civiles at UCLA, Discipline Policies, Successful Schools, and Racial Justice (2011); Johanna Wald & Daniel J. Losen, *Defining and Redirecting a School-to-Prison Pipeline*, 2003 New Directions for Youth Dev. 9; Linda Darling-Hammond & Jennifer DePaoli, *Why School Climate Matters and What Can Be Done to Improve It*, 20 State Educ. Standard 7 (2020).
- ¹⁵ Denv. Pub. Schs., Discipline Matrix (2024); Hou. Indep. Sch. Dist., 2024-2025 Student Code of Conduct (2024).
- ¹⁶ Am. Psych. Ass'n Zero Tolerance Task Force, *supra* note 14, at 854; Thalia González & Rebecca Epstein, *Critical Race Feminism, Health, and Restorative Practices in Schools: Centering the Experiences of Black and Latina Girls*, 29 MICH. J. GENDER & L. 409 (2022); Thalia González, *Restorative Justice From the Margins to the Center: The Emergence of a New Norm in School Discipline*, 60 How. L. J. 267 (2016); Thalia González, Heather Sattler & Annalise J. Buth, *New Directions in Whole-School Restorative Justice Implementation*, 36 Conflict Resol. Q. 207 (2019); Jelena Todić et al., *Reframing School-Based Restorative Justice as a Structural Population Health Intervention*, 62 Health & Place 102289 (2020); Jelena Todić, Catherine Cubbin & Marilyn Armour, *Restorative Justice in K-12 Schools as a Structural Health Equity Intervention*, *in* ROUTLEDGE INTERNATIONAL HANDBOOK OF DELINQUENCY AND HEALTH 269 (Michael G. Vaughn, Christopher P. Salas-Wright & Dylan B. Jackson eds., 2019); LAMA HASSOUN AYOUB ET AL., RESTORATIVE JUSTICE IN NYC HIGH SCHOOLS: PERCEIVED IMPACT AND MIXED FINDINGS FROM A RANDOMIZED CONTROLLED TRIAL (2022); TREVOR FRONIUS ET AL., WESTED JUST. & PREVENTION RSCH. CTR., *supra* note 9, at 29–30.
- ¹⁷ Nat'l Ctr. on Safe Supportive Learning Env'ts, *School Discipline Laws & Regulations by State*, https://safesupportivelearning.ed.gov/school-discipline-laws-regulations-state (last visited July 5, 2025); 105 ILL.

COMP. STAT. 5/10-20.14 (2024); 2023 Minn. Laws 2497; Tex. Educ. Code Ann. § 37.0013 (2019).

¹⁸ CTRS. FOR DISEASE CONTROL & PREVENTION, YOUTH RISK BEHAVIOR SURVEY DATA SUMMARY & TRENDS REPORT: 2013-2023 53–67 (2024); Joseph M. Kush et al., *Teachers' Mental Health During the COVID-19 Pandemic*, 51 Educ. Res. 593 (2022); Andrea Westphal et al., *K–12 Teachers' Stress and Burnout During the COVID-19 Pandemic: A Systematic Review*, 13 Front. Psych. 920326 (2022).

¹⁹ U.S. DEP'T OF EDUC., OFF. FOR C.R. & U.S. DEP'T OF JUST., C.R. DIV., APPENDIX – DEAR COLLEAGUE LETTER: NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE 2 (2014).

²⁰ U.S. DEP'T OF EDUC., OFF. FOR C.R. & U.S. DEP'T OF JUST., C.R. DIV., DEAR COLLEAGUE LETTER: NONDISCRIMINATORY ADMINISTRATION OF SCHOOL DISCIPLINE 5 (2014).

²¹ U.S. DEP'T OF EDUC., OFF. FOR C.R. & U.S. DEP'T OF JUST., C.R. DIV., RESOURCE ON CONFRONTING RACIAL DISCRIMINATION IN STUDENT DISCIPLINE i (2023).

²² *Id.* at iii.

²³ Christopher Anders, *What Is an Executive Order and How Does it Work*, ACLU (Feb. 4, 2025), https://www.aclu.org/news/privacy-technology/what-is-an-executive-order-and-how-does-it-work.

²⁴ UVA Sch. L. Educ. Rts. Inst., Understanding the February 14, 2025, Dear Colleague Letter from the Office for Civil Rights Regarding Title VI and Race Discrimination in Schools (2025).

²⁵ RICHARD O. WELSH & KATHRYN J. McGraw, STUCK BETWEEN A ROCK AND A HARD PLACE? DISENTANGLING THE INTERSECTIONS OF STUDENT BEHAVIOR, SCHOOL DISCIPLINE, AND SCHOOL SAFETY IN THE POST-COVID Era 7 (2025).

²⁶ Nat'l Ctr. on Safe Supportive Learning Env'ts, *Environment Topics: Discipline*, https://safesupportivelearning.ed.gov/topic-research/environment/discipline (last visited July 5, 2025).

²⁷ Sch. Discipline Support Initiative, *Exclusionary Discipline*, https://supportiveschooldiscipline.org/exclusionary-discipline/ (last visited July 5, 2025).

²⁸ U.S. Gov't Accountability Off., GAO-24-106787, K-12 Education Nationally, Black Girls Receive More Frequent and More Severe Discipline in School than Other Girls (2024).

²⁹ For additional resources on restorative justice practices, social—emotional learning, and positive behavioral interventions and supports, see LEARNING POL'Y INST., IMPROVING STUDENT OUTCOMES THROUGH RESTORATIVE PRACTICES (2023); COLLABORATIVE FOR ACAD., SOC., AND EMOTIONAL LEARNING (CASEL), *Fundamentals of SEL*, https://casel.org/fundamentals-of-sel/ (last visited July 15, 2025); CTR. ON PBIS, *What is PBIS?*, https://www.pbis.org/pbis/what-is-pbis (last visited July 15, 2025).