



DISABLING PUNISHMENT:



The Need for Remedies to the Disparate Loss of Instruction Experienced by Black Students with Disabilities

By Daniel J. Losen

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Executive Summary

This report provides the first state-by-state estimate of lost instruction due to discipline for Black and White students with disabilities. These data on lost instruction are rarely reported. Although many could guess that the racially disparate impact is large, these dramatic disparities were derived from reliable publicly reported federal data, and they should be cause for alarm. Students with disabilities receive much more than classroom instruction when they are in school. For example, they often receive related counseling services, occupational and physical therapy as well as additional small group or one-on-one tutoring. Therefore, they lose much more when they are removed from school. That is why the huge racial difference in the amount of instruction time lost described in this report suggests that Black students with disabilities face an especially grave problem.

Among students with disabilities, Black students tend to be suspended many times more often than their White peers. Nationally, these disparate rates translate into approximately 77 more days of lost instruction for Black students with disabilities than their White counterparts. The difference in days of lost instruction means there are huge inequities in the opportunity to learn. Unfortunately, the impact disparate discipline has on instruction is usually overlooked in the discourse on federal and state policy. Although states are legally obligated to report this information to the public each year, federal enforcement of the public reporting requirement is very weak. To correct this information gap, the Center for Civil Rights Remedies estimated the racial

differences in lost instruction time due to disparate discipline for students with disabilities at the national and state levels.

The most disturbing findings include:

- **Blacks lost more than 107 days per 100 enrolled than their White peers in each of the five states with the largest differences in lost instruction.**
- **In Nevada, for example, in 2015-16, Black students with disabilities lost 209 days of instruction per 100 enrolled, which was 153 more than the number lost by White students with disabilities.**
- **According to the 2015-16 federal report, the racial discipline gap among students with disabilities increased between Blacks and Whites, and in at least 28 states.**

Fortunately, provisions of the Individuals with Disabilities Education Act (IDEA) require states to review racial discipline disparities at the district level and also require the state authorities to tell the districts flagged for discipline disparities to reserve 15% of their federal Part B IDEA funds for comprehensive coordinated early intervening services (CEIS), and to attempt to find and address the underlying issue(s). The statute allows each state to select the method used to determine racial disproportionality, as well as the threshold they will use to flag districts with problematic disparities.

Although the IDEA requires every state to review district-level racial disparities in discipline, the U.S. Department of Education's (DOED) own monitoring reports over the last two years reveal that:

- **Only 20 states identified any districts, most (30) identified no districts;**
- **As disparities appear to rise, the number of districts identified appears to be declining;**
- **Only one of the 8 states with the largest racial discipline disparities identified a single district as having a problem in 2015-16.**

This study was prompted by the DOED's decision in February, 2018, to seek comments on its intention to delay implementation of the IDEA regulations that pertain to racial disproportionality in special education, which include these disciplinary disparities. During the delay period, the DOED will decide whether to rescind or replace the regulations that were approved in 2016.

The 2016 IDEA regulations were meant to improve the way states address problematic disparities. They also make it clear that all states must use the same method to identify districts. Known as the risk ratio, the meth-

od was chosen in part because most states were already using it. Each state must describe its justification for its choice of risk ratio threshold and each state must submit an implementation plan for approval by the U.S. secretary of education. The 2016 IDEA regulations also clarified that students with IEPs, and those without, can now benefit when the states decide that expenditures to address the root causes are necessary.

This analysis of the disparate impact school discipline has on Black children with disabilities and their lost days of instruction also speaks to the need to retain the 2014 federal guidance regarding racial disparities in school discipline contained within the "Dear Colleague" letter issued jointly by the DOJ and OCR under the Obama administration. Unfortunately, the Trump administration intends to rescind the school discipline guidance as well as these IDEA regulations.

Given the Trump administration's position, the Center for Civil Rights Remedies and the Charles Hamilton Houston Institute for Race and Justice believe there is an urgent need to call attention to the disparate impact on the opportunity to learn.

Recommendations

We recommend that state-level stakeholders, education policymakers, and civil rights advocates, together with groups representing parent organizations and teachers unions, join together to pursue the following:

- **Identify districts in the state that have problematic racial and disability disparities in discipline and engage state level administrators in supporting districts to conduct root-cause analyses and redirect IDEA funds toward affecting a remedy;**
- **Revise codes of conduct and other disciplinary practices to reduce the use of removal from the classroom, except as a measure of last resort, and provide safeguards to ensure that implementation of the changes does not implicate safety.**
- **Set aside the resources needed for leadership and staff training and for intervention programs that will address the excessive and disparate loss of instruction;**
- **Use school climate surveys, behavior incident reports, and other monitoring to ensure that school reforms are improving the conditions of learning;**
- **Dedicate resources to evaluating reform efforts to distinguish the effective remedies from ineffective efforts;**
- **Invest in the collection and public reporting of accurate, timely data on discipline at the district and school levels, including disaggregating the days of lost instruction for all subgroups.**