

Key Takeaways—Education and School Board Law webinar Vol. 6 (President Trump’s School Discipline Executive Order)

The following are key takeaways from CALN’s Education and School Board Law webinar on May 29, 2025. The session covered President Trump’s April 23 executive order titled “Reinstating Common Sense School Discipline Policies.”

Please note: These summaries can provide you with helpful information, but they do not and are not intended to constitute legal advice or create an attorney-client relationship. Instead, they are for general informational purposes only. You are encouraged to contact your board attorney, or to hire a personal attorney, to obtain advice with respect to legal matters.

School discipline policies are a local issue

Sources of discipline policies:

- Policies established by the school board
- District-wide code of conduct
- School-specific code of conduct (may vary by elementary, middle, and high school)

Important provisions to consider:

- Categorization of types of conduct (minor infractions, moderate misbehavior, major or serious misconduct)
- Types and purpose of punishment (verbal warning, parent contact, suspension, etc.)
- “Progressive” discipline (establishing graduated consequences for misbehavior)
- Procedural protections (notice, opportunity to respond, fair hearing, written decision, opportunity to appeal)

What is a “disparate impact”?

A neutral policy or practice that disproportionately affects a protected group where there is no intent to discriminate (e.g., a school enforces a uniform zero-tolerance tardiness policy, and students from a particular racial group receive a higher rate of infractions than their peers).

Background

2014: Office for Civil Rights (OCR) Dear Colleague Letter states that it is a violation of Title

VI if race-neutral disciplinary policies, applied in an even-handed manner, nonetheless result in suspensions, expulsions, or referrals to law enforcement of racial groups that are at higher rates than others.

2018: As a result, the Federal Commission on School Safety found that “[S]chools 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.”

President Trump rescinded the 2014 Dear Colleague Letter.

2025: Trump administration moving to end the use of disparate impact liability, restore “common sense” in school discipline

- EO 14281 “Restoring Equality of Opportunity and Meritocracy (April 23, 2025)” ○
“[A]ll agencies shall deprioritize enforcement of all statutes and regulations to the extent they include disparate-impact liability.”
 - “[T]he Attorney General shall initiate appropriate action to repeal or amend the implementing regulations for Title VI of the Civil Rights Act of 1964 for all agencies to the extent they contemplate disparate-impact liability.”
- EO 14280 “Reinstating Common Sense School Discipline Policies” (April 23, 2025) ○
US Secretary of Education directed to issue new guidance to state and local education agencies regarding school discipline and their obligations not to engage in racial discrimination under Title VI in all contexts, including school discipline. And then take appropriate action against school boards that violate Title VI.
 - Initiate coordination with governors and state attorneys general regarding the prevention of racial discrimination in the application of school discipline

Helpful considerations for school board members

- 1) Strongly condemn intentional racial discrimination in all forms—within school discipline and elsewhere.
- 2) Ensure that board policies and district procedures do not include disparate-impact concepts, (i.e., prohibiting schools from having disproportionate statistics by race).
- 3) Ensure that policies and procedures are entirely focused on conduct, and not racial categories (i.e., illegal DEI).
- 4) Recognize that disciplinary data *can* be circumstantial evidence of intentional discrimination but resist calls to excessively focus on disciplinary data without more.