

New Guidelines Address School Discipline Disparities

By Jazelle Hunt

NNPA Washington Correspondent

WASHINGTON (NNPA) - In the 2011-2012 school year, black students without disabilities were more than three times as likely to be expelled or suspended as their white counterparts, according to data from the Department of Education's Civil Rights Data Collection (CRDC).

During the 2009-2010 school year, black students made up 32 percent of students without disabilities arrested - despite the fact that black students, with and without disabilities, only make up 16 percent of the school population.

Attorney General Eric Holder and Secretary of Education Arne Duncan have decided to do something about those disparities. They recently unveiled a school discipline guidance package to assist schools in putting a stop to statistics like these.

The guidance package also tied to President Obama's "Now is the Time" proposal to reduce gun violence.

These school discipline guidelines are divided into five components. The Dear Colleague letter explains how schools can craft discipline protocols that don't discriminate against students or infringe on civil rights.

The Guiding Principles document offers best practices for effective discipline standards and improved school climate. Finally, there are the Directory of Federal School Climate and Discipline Resources, and the state-by-state Compendium of School Discipline Laws and Regulations. The package also includes an overview of the SSDI for reference.

Although the package offers 101 pages of information plus an online legislation database, much of the focus has been on the eight-page Dear Colleague letter. Critics assert that it calls for schools to dole out discipline in proportion to demographics, pointing to the "disparate impact" section of the letter, which begins this way:

"Schools also violate Federal law when they evenhandedly implement facially neutral policies and practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as a disparate impact."

The Dear Colleague letter comes as a direct response to the disproportionate discipline among black, brown, disabled, LGBTIQ, and special education students, as compared to white students without disabilities. According to CRDC data for the 2011-2012 school year, black students are 15 percent of the population, yet they make up 35 percent of students suspended once, 44 percent of those suspended more than once, and 36 percent of students expelled.

Further, black and Latino students make up more than half of all students turned over to law-enforcement or involved in school-related arrests. As a result, there's a growing phenomenon of school incidences that become run-ins with the law, tarnishing students' legal records. According to Mo Canady, executive director of the National Association of School Resource Officers (NASRO), it should rarely, if ever, come to that.

"We have struggled, as an association and as a profession, with some things being said about the school-to-prison pipeline. A majority of the officers I deal with have never put a student in jail," he says. "That does not mean there aren't arrest problems in certain areas. I don't deny that. But we as an association strive to make sure matters of school discipline don't become criminal issues. We want to deescalate those incidents."

Canady retired from the Hoover, Ala. police department in 2011 after a 25-year career, the last 12 of which were spent as the commander of the School Services Division. He asserts that the trend of in-school arrests is the result of poorly trained law enforcement personnel, misunderstandings about the role of police officers in schools, and a lack of relationship building between students, officers, and administrators.

"In the past there have been times when an administrator tries to encourage me to arrest a student," Canady shares. "And I have to explain to them that there's not criminal infraction to warrant arrest, and also I have the discretion in that area. I don't always have to arrest someone."

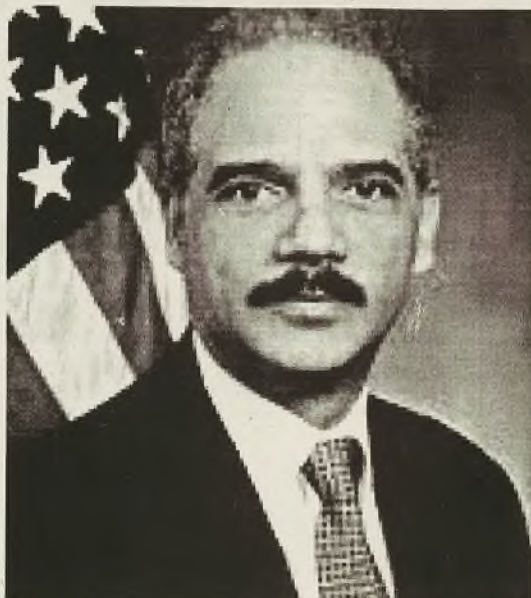
NASRO's primary message when training officers is that school discipline is not only outside their purview, but also counterproductive to their mission. Instead, a school resource officer's responsibilities are to keep unauthorized people off the property, keep drugs and weapons out of schools, and foster positive connections with students and staff on behalf of all law enforcement.

According to Canady, the need for federal guidelines is warranted because professionals on all sides of the issue are ill-prepared for their jobs.

Bernard Hamilton, president of the National Alliance of Black School Educators, agrees.

"Teachers have their hands tied behind their backs with no tools in their tool kit to actually work with kids," says Hamilton, who has served as a bus driver, teacher, counselor, principal, coach, superintendent, interim superintendent, college professor, and associate commissioner of education in his 35-year career. "There's not enough professional development - not just ten hours and check a box, but meaningful development that models strategies and checks on the teachers' understanding."

He goes on to stress that this professional development should include diversity training as well as behavioral management skills. Additionally, most teachers-in-



Attorney General Eric Holder

training do not have requirements that speak to inclusion, or bridging cultural gaps. In the wake of such training, many teachers and/or administrators fall back on discipline.

"I do think we need some [guidelines], especially when schools are getting federal money for students. If you get to a situation when kids have to be removed, that's the extreme. But there's a gamut of referral situations," Hamilton says. "A lot of kids are not out of school, but are sitting in the hallway, the cafeteria, the principal's office when they should be in the classroom."

The other portions of the guidelines address the need for building positive and supportive school environments and keeping students within these environments, even when discipline is needed. The Guiding Principles resource draws from research and best-practices to provide a set of actions a school can take to improve its climate.

The Directory of Federal School Climate and Discipline Resources offers brief explanations and links to those best practices. And the law Compendium and accompanying database allow schools to check if their plans are comparable to those of other states, and in line with federal law.

Harry Lawson, Jr., associate director for the Human and Civil Rights Department of the National Education Association, believes that the guidelines will jog the necessary work.

"It's a really good start to help guide the discussion about what's in place currently, and what we will be able to put in place. But we still have a lot of work to do on the back end."

He's referring to the concern that the package doesn't get to the nitty-gritty of how to implement them - especially where finances are concerned. Will the necessary professional development come from federal or state funding? How will schools hire new support staff to make sure counselor-to-student ratios are compliant? Will schools have to pull resources from other areas to follow these guidelines?

These are all concerns that Lawson believes will be raised. NEA members are being encouraged to view the package as an opportunity to properly collect and analyze data on their discipline practices, identify problem areas, and then collaborate with school-community stakeholders to devise a plan of attack.

Because education governance is shared between states and the federal government, these guidelines are only suggestions, not mandates. Still, there's anticipation that they may not sit well in some districts.

"It's going to be a mixed bag reaction, and it depends on where a school or district has been on the spectrum in terms of discipline," Lawson says. "But if [schools] have not been paying attention, or if [they] have challenges and don't know it, [they] might have a negative response. There are always districts that think they don't have a problem."

Hamilton agrees. "Most systems are pretty confident in what they do, and don't seem concerned about federal suggestions. But hopefully [the guidelines] are implemented. If students get to stay in classrooms longer, they have better results for learning."

'Disrespected' Obama

(Continued From Front)

nominees. Forty percent of President Obama's district court picks have waited more than 100 days for a vote on the Senate floor, compared to 8 percent of President Bush's nominations. Sixty-nine percent of President Obama's circuit court judicial nominations have waited more than 100 days for a vote on the Senate floor. Only 15 percent of President Bush's circuit court nominations waited that long. Meanwhile, the problem of judicial vacancies is getting worse. During President George W. Bush's sixth year, there were only 48 judicial vacancies. By 2013, however, there were 91 vacancies.

The slow churn in the Senate's judicial confirmation process continues to strain resources. By 2010, civil litigants were waiting more than two years (25.3 months) for a jury trial. That same year, the federal government spent \$1.4 billion to house prisoners before the start of their trial, due in part to the lack of judges to hear cases, according to the Justice Department.

"It's been a countdown process since the president took office. They were counting down his first [term] in hopes that he wouldn't have a second [term]. Now they're counting down his second [term] because they know he can't run again," said Arwin. "And that's the game they've been playing."

Arwin added: "This political gaming results in damage to the American public."

Senate Republicans are gaming the judicial nomination process, utilizing a tradition that began nearly 60 years ago, when a segregationist led the Senate Judiciary Committee. The "blue slip" policy enabled a senator's objection to a president's judicial pick from his or her home state.

GOP Senators from Georgia have used the "blue slip" practice to delay some of President Obama's nominees for Georgia's northern district for years.

In an effort to fill those judicial vacancies in Georgia's northern district, President Obama worked with Republican Senators John Isakson and Saxby Chambliss of Georgia, striking a deal that has drawn sharp criticism from some of President Obama's long-time supporters and Democrats from the state.

According to Rep. David Scott (D-Ga.) and other Democrats who objected to President Obama's judicial selections for Georgia district a deal was struck without consulting with civic groups that normally vet judicial nominees in that state.

Scott expressed his concerns about the nominees in a recent letter to Patrick Leahy (D-Vt.), chairman of the Senate Judiciary Committee.

Scott wrote: "If confirmed, the federal bench in Georgia will not reflect the current demographics of the state for at least another generation. There will soon be only one active African-American district court judge in Georgia. In addition, the views of some of these nominees reflect the regressive politics of the past. I want to share some very important and critical background information with the Committee before these nominations are considered."

Scott added: "It is an abomination that these nominees for lifetime appointment were drafted in secret, not vetted by any legal group among the President's supporters, and announced on a holiday weekend. We must not allow lifetime appointed judges to be rammed through the hearing process without sufficient input from the people who will be affected by their future judicial actions."

Rep. John Lewis (D-Ga.) Lewis, former chairman of the Student Nonviolent Coordinating Committee (SNCC), a former Atlanta-based civil rights group, said he and other black leaders object to some of the Obama appointment of federal judges in Georgia.

"The group cites serious concerns that the proposed candidates do not adequately reflect the diversity of the northern district and that the selection process lacked meaningful community input," Lewis said in a statement. "Additionally, the coalition finds it troubling that several nominees include persons who have advocated in favor of Georgia's voter ID laws and for including the Confederate Battle Emblem as part of the Georgia State Flag."

Mark Cohen defended Georgia's restrictive voter ID laws that some civil rights leaders say discriminate against the poor and minorities. As a Georgia state legislator, Michael Boggs voted in favor of keeping the Georgia state flag that was based on the Confederate flag. Georgia's black population is 31 percent, twice the national average. In Alabama blacks account for nearly 27 percent of the state's population and roughly 17 percent of Florida's state population. Only one of the judges currently serving on the 11th circuit court responsible for those states is black and only one out of six of President Obama's nominees for that circuit is black.

After years of blocked nominations and procedural delays employed by the Republicans, who are in the minority in the Senate, Democrats, headed by Senate Majority Leader Harry Reid (D-Nev.) pushed the button on the "nuclear option" last November that allowed them to cease debate on a particular issue with a simple majority. The historic move cleared the way for some of President Obama's judicial nominations and executive-level positions to be confirmed.

"The [Obama] administration has really had a difficult row to hoe because of the difficulties in the Senate," said Arwin of the Lawyers' Committee for Civil Rights Under Law. "The Senate has accorded this president less respect, less deference, and less cooperation than any president I've seen."

The Obama administration's success in the federal judiciary has not come without sacrifice. President Obama has been forced to withdraw five black judicial nominations, most recently, William Thomas, an openly gay black judge in Florida, because of a lack of support from Republican senators.

Members of the Congressional black Caucus are calling on Senator Patrick Leahy, who chairs the Senate Judiciary Committee, to reform the "blue slip" process.

Rep. G.K. Butterfield (D-N.C.) said that the "blue slip" process is being abused and that is having a chilling effect on qualified black judicial candidates.

"The reform that we pressed so hard for in the filibuster-reform process itself will be still-born if the 'blue slip' process is not also reformed," said Rep. Eleanor Holmes Norton (D-Washington, D.C.).

Rep. Butterfield said that no one is letting the president off the hook, because more diversity is still needed in the 11th circuit where Cohen and Boggs, two white male judges, were just nominated.

Butterfield said that the 11th circuit serves a large population of African Americans, that's why the region needs more black judges on the bench.

"It's the Deep South and we must have some movement," said Butterfield. "If it means repealing the blue slip process that has been observed for years, then the blue slip needs to be discarded."