

## United States Senate

February 17, 2022

The Honorable Miguel Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC, 20202

Dear Secretary Cardona:

I write in support of the U.S. Department of Education's (the Department) efforts to improve school climate and safety, consistent with civil rights laws. In that effort, I encourage the Department to develop and provide clear guidance and recommendations to state educational agencies, local educational agencies, and individual schools on policies on the use of school-based arrests, in addition to broader referrals of school disciplinary incidents to law enforcement authorities.

Arresting a child has a profoundly negative mental and physical health impact on the child's life, in addition to negative educational impacts.<sup>1</sup> In many instances, children who are involved in the justice system have unmet health or social needs that are better addressed through other interventions.<sup>2</sup> As one study of youth arrests in Michigan found, "Arrest can be traumatizing, creates stigma for youth, and can occasionally result in physical harm."<sup>3</sup> Arresting youth also has long-term impacts on their future education and employment opportunities.<sup>4</sup> As a result, arresting a child also perpetuates the school-to-prison pipeline, a process of criminalizing youth that is facilitated by school disciplinary practices and policies that put students in contact with law enforcement.<sup>5</sup>

In addition, school disciplinary policies also disproportionately impact students of color. According to the Department's own data, there is a notable disparity in the percentage of students referred to law enforcement or subjected to school-related arrests, by race. During the 2015-16 school year, African-American students represented 15 percent of the total student enrollment, yet made up 31 percent of students referred to law enforcement or arrested during that year.<sup>6</sup> This is a 16 percentage point disparity, and is 5 percentage points higher than data

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<sup>1</sup> Laura S. Abrams and Elizabeth S. Barnett, "Opinion: Children in distress aren't criminals. Stop handcuffing them." The Washington Post, 24 Feb. 2021, <https://www.washingtonpost.com/opinions/2021/02/24/children-distress-arent-criminals-stop-handcuffing-them/>.

<sup>2</sup> Ibid.

<sup>3</sup> Kim Gillhuly, Megan Gaydos, and Holly Avey, "Reducing Youth Arrests Keeps Kids Healthy and Successful," Human Impact Partners, June 2017, [https://humanimpact.org/wp-content/uploads/2018/10/HIP\\_MichYouthArrests\\_2017.06.pdf](https://humanimpact.org/wp-content/uploads/2018/10/HIP_MichYouthArrests_2017.06.pdf).

<sup>4</sup> Ibid.

<sup>5</sup> Nicki Lisa Cole, "Understanding the School-to-Prison Pipeline," ThoughtCo., 21 Oct. 2020, <https://www.thoughtco.com/school-to-prison-pipeline-4136170>.

<sup>6</sup> "School Climate and Safety: 2015-16 Civil Rights Data Collection," Office for Civil Rights, U.S. Department of Education, May 2019, <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

collected in the 2013-14 school year.<sup>7</sup> However, White students witnessed a two percentage drop during the same year.<sup>8</sup>

African-American students are not the only racial and ethnic groups affected, as others are also arrested at disproportionate rates in some states. For example, during the same school year, American Indian, Alaska Native, Native Hawaiian, and Pacific Islander students, as well as students of two or more races, were referred to law enforcement or arrested at rates exceeding their overall student enrollment. Accounting for only five percent of students in overall enrollment, these students represent almost eight percent of students who were referred to law enforcement or arrested.<sup>9</sup>

I applaud the recent request for information on school discipline aimed at improving school climate and safety from the Department's Office for Civil Rights.<sup>10</sup> It is imperative that the Department restart previous efforts to provide guidance and recommendations, such as by reinstating and updating the Department's 2014 joint "Dear Colleague" letter with the Department of Justice, which highlighted the disparate impact on people of color by school discipline policies.<sup>11</sup> In addition, the Department should maintain up-to-date data on school discipline, and referrals to law enforcement in particular, to ensure that the most recent information is available to policy makers and school administrators.

However, the Department should also issue clear guidance on school-based arrests. The long-term mental and socio-emotional impact that arrests have on children necessitate an analysis of school-based arrests by race, color, national origin, sexual orientation and gender identity, disability, as well as the impacts of the arrest on students' wellbeing and educational outcomes. Using that analysis, the Department should offer recommendations on when law enforcement referrals may be appropriate, and when alternative dispute resolution methods may be appropriate.

School-based arrests should be the last course of action taken only in extreme circumstances. The Department plays an important role in ensuring that schools have the necessary information to enforce policies that protect students while ensuring a safe learning environment. Thank you for your attention on this important issue, and I look forward to your written response.

Sincerely,

  
BRIAN SCHATZ  
United States Senator

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<sup>7</sup> "School Climate and Safety," Office for Civil Rights.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> "Request for Information Regarding the Nondiscriminatory Administration of School Discipline," Office for Civil Rights, U.S. Department of Education, 8 June 2021, <https://www.federalregister.gov/documents/2021/06/08/2021-11990/request-for-information-regarding-the-nondiscriminatory-administration-of-school-discipline>.

<sup>11</sup> "Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline," Office for Civil Rights, U.S. Department of Education, 8 Jan. 2014, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>.