

# Guidance on Discrimination in School Discipline

## *Spotlight on Disparate Impact Analysis*

Under the LAD, schools cannot use a discipline policy that has a **disparate impact** on Black students, other students of color, students with disabilities, LGBTQIA+ students, or students from any other protected class unless the school can show that the practice or policy is **necessary to achieve a substantial, legitimate, nondiscriminatory interest**. Even then, a school's discipline policy may still be prohibited under the LAD if the complainant shows that there is a **less discriminatory, equally effective alternative** means of achieving the substantial, legitimate, nondiscriminatory interest. This is known as **disparate impact** discrimination.

A policy or practice has a **disparate impact** if it actually or predictably results in disproportionately negative effects on members of a protected class (i.e., it impacts students with a protected characteristic more severely than it does other students).

For example:

A significant body of evidence demonstrates that “zero tolerance” school discipline policies consistently lead to unequal rates of suspension and expulsions for Black students and other students of color as compared to their white peers. In light of that evidence, a school's decision to adopt a zero-tolerance policy could itself have a disparate impact.

A school's interest is **substantial** when it is a core interest that has a direct relationship to the function of the school. A school's interest is **legitimate** when it is genuine and not false or pretextual. And a school's interest is **nondiscriminatory** when the justification does not itself discriminate based on a protected characteristic.

For example:

Schools have a substantial, legitimate, non-discriminatory interest in creating a safe learning environment for all students and teachers.

A policy or practice is only **necessary** to achieve a school's interest in creating a safe learning environment for all students and teachers if it effectively carries out the goal of achieving a safe learning environment for all students and teachers. Moreover, a school's justification for a practice or policy that has a disparate impact must be supported by empirical evidence (i.e., evidence that is not hypothetical or speculative).

For example:

If a school asserted that its policy or practice of taking a “zero tolerance” approach to student insubordination was necessary to create a safe learning environment, it would have to point to empirical evidence that a zero tolerance policy effectively creates a safe learning environment for students and teachers.



For More Information

Read DCR's new [Guidance on Discrimination in School Discipline](#) or access our series of one-pagers.