

Guidance on Discrimination in School Discipline

Spotlight on Policies with a Disparate Impact

Under the LAD, schools cannot use a discipline policy that has a **disparate impact** on Black students, other students of color, students with disabilities, LGBTQ+ 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 may have a disparate impact when:

A school has **already implemented the policy** and its own discipline data reveals disparities, or

The school **adopts a new policy despite evidence** that shows that the policy or practice impacts students of one protected class more severely than another.

The following is a non-exhaustive list of policies or practices that evidence currently demonstrates may have a disparate impact on Black students, other students of color, students with disabilities, LGBTQ+ students, or students from any other protected classes:

- Zero-tolerance policies;
- Discipline policies that permit suspension or expulsion for minor or subjective infractions, such as "insubordination," "disrespect," or "misbehavior";
- A school's use of school resource officers or other law enforcement personnel to impose or enforce discipline, particularly for non-violent and non-drug related student misconduct;
- A school's use of restraint and seclusion, sometimes referred to as the use of "isolation rooms"; and
- A school's practice of making court or law enforcement referrals for students deemed truant without first following the procedures outlined in DOE's regulations, including making an individualized, case-by-case determination regarding the need for a court referral.



For More Information

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