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# Ideas for the New Administration: *Public Education*

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The coronavirus has profoundly disrupted American public education and substantially harmed the learning trajectories of tens of millions of students. The incoming administration will have its hands full trying to get schools reopened and students back on track. As it does so, it may feel tempted to use this crisis to consolidate federal control or may perceive that the election has given it the mandate to make “systemic” changes to public schools. There will undoubtedly be many groups calling for it to do just that. For the sake of national cohesion, this paper recommends three broad policy areas where the Biden administration should tread lightly:

- *Federalism*
- *School discipline*
- *The culture wars*

## 1. *Federalism*

*The new administration should respect the wide diversity of state and local efforts and policies to improve their schools.*

Many intractable controversies in education policy over the past several decades are the consequence of an overactive federal government and the sense among some reformers that large-scale, uniform solutions are necessary for improving American schooling. From “No Child Left Behind” to “Race to the Top,” and from “Common Core” to “Dear Colleague” guidance letters, major Washington initiatives have failed to appreciate American pluralism and the importance of decentralized decision-making in K–12 education.

America’s schools reflect the nation’s vast diversity in geography, history, culture, race, income, and more. One-size-fits-all approaches don’t work. Parents and citizens want to have control of their local schools;

they don't appreciate faraway individuals and institutions having too much power over them. This is the reason the country has a history of thousands of school districts and a robust system of private education. The healthy—and inevitable—variation in political and policy preferences means that there will always be differences of opinion about what makes for great schooling.

In recent decades, each new administration is tempted to force its priorities on the entire nation, utterly convinced that its views are right for everyone. The result is frustration among parents and educators and a never-ending cycle of new mandates from Washington.

State leaders, however, have the responsibility under state constitutions to ensure that students have access to high-quality schools. State governments have countless policies—often shaped by court cases going back generations—on funding formulas, discipline, transportation, testing, teacher certification, choice, special education, and much more. These leaders also know that their states comprise rural, urban, suburban, and exurban areas; areas of wealth and poverty; areas where families are satisfied with their schools and areas where families are not. State leaders are better positioned than Washington-based bureaucrats to understand what their states need. Local leaders responsible for the day-to-day management of schools are far more aware of the needs and desires of students and their families.

In light of this reality, the Biden administration would do a great service to America's schools by acting modestly. As a general rule, Biden's administration, as well as the administrations that follow, should defer to state governors, boards of education and superintendents, and legislatures on what is needed to improve schooling and how best to accomplish it. To be sure, the new administration should advocate the reforms that it prefers. But it should also recognize that federal policies related to schools seldom make room for the kind of differentiation that most Americans want. In instances where the administration believes that a nationwide policy is necessary, it should pursue policy changes through congressional action, not via executive orders and other administrative actions that remove deliberative democracy from the process.

## 2. School discipline

*The Biden administration should not coerce school districts into implementing “restorative justice.”*

In December 2018, the Trump administration rescinded the Obama administration's 2014 Dear Colleague Letter (DCL) on school discipline. Many journalists evinced outrage that the Trump administration decided to scrap this allegedly “nonbinding guidance.”<sup>1</sup> If that guidance letter were truly just a reminder to school districts not to discriminate, coupled with kind words about its favored progressive approach to school safety and order, the case for scrapping it would not have been strong. But contrary to reporting, that DCL was anything but nonbinding.

The DCL on school discipline changed the standard of civil rights enforcement from disparate treatment to disparate impact. Before the DCL, a school district could be held liable for violating civil rights law and potentially lose all federal funding if a white student and a black student were punished differently for the same offense.<sup>2</sup> After the DCL, school districts could also be held liable and potentially lose all federal funding if students of different races were disciplined at substantially different rates—even if every individual student was treated entirely fairly and consistently.<sup>3</sup> Statistical differentials were enough to trigger and sustain invasive investigations; whether direct discrimination against students based on race was ever found was immaterial to the course of these investigations.<sup>4</sup>

The investigations that occurred under the Obama-era DCL were not forensic efforts to identify and address discrimination; instead, they were enforcement actions. Internal guidance circulated to investigators at the Department of Education's Office for Civil Rights (OCR) stipulated that the investigations, which were described by superintendents as unprecedentedly intrusive, could end only after school districts agreed to adopt the administration's preferred policies.<sup>5</sup>

The research on the effects of aggressive efforts to reduce suspensions and implement restorative justice is disconcerting. Restorative justice, which eschews traditional consequences for misbehavior in favor

of guided dialogue intended to address the harm that the student has caused and address the root causes of misbehavior, sounds appealing in theory. But in practice, it often amounts to little more than principals refusing to discipline students in order to satisfy the implicit suspension quotas set by school district administrators. This provides a substantial subsidy for student misbehavior and harms learning environments. In Philadelphia, a suspension ban reduced academic achievement by 3% in reading and 7% in math.<sup>6</sup> In Pittsburgh, “restorative justice” discipline policies had a disproportionately negative effect on test scores for African-American students.<sup>7</sup> Qualitative research suggests that these negative effects may be attributable to school leaders prioritizing lowering suspension statistics above maintaining safe and orderly classrooms.<sup>8</sup>

When school district leaders feel pressure to reduce their disciplinary statistics, this dynamic becomes so inevitable that it’s hard to even deem it an “unintended consequence.” But words on paper, without the threat of coercive enforcement, would not necessarily have this negative effect. The Biden campaign committed to reinstating the 2014 DCL. While it would be foolish to ask the Biden administration to break a promise, it would be a grave mistake to follow in the Obama administration’s footsteps by using OCR investigations as a legal cudgel to pressure school districts into adopting their preferred discipline policy. The reinstated DCL should be what journalists incorrectly claimed it was: nonbinding guidance, just words on paper.

### 3. *The culture wars*

*The Department of Education must not pressure school districts to indoctrinate teachers and students in “critical race theory.”*

Joe Biden has promised to “put away the harsh rhetoric, to lower the temperature” and has insisted that “we must stop treating our opponents as enemies.”<sup>9</sup> If he truly intends his presidency to be a time of “unity and healing,” he should ensure that the Department of Education’s OCR returns to its historical role: a neutral arbiter and enforcer of last resort for students who feel that their rights, as enumerated by federal law, have been violated. Under the Obama administration, however, OCR disregarded the law, expanding the definition of rights and enforcing new social norms. It used DCLs to declare that long-standing law now had an entirely new substantive definition, and then used the apparatus of civil rights enforcement to coerce schools to follow their new dictates under threat of losing federal funding.

This sparked many of the most divisive culture-war fights of the past decade. From changing how colleges handled allegations of sexual assault, to how public schools manage disruptive students, to requiring schools to manage bathrooms and locker rooms for students based on gender identity rather than biological sex, the Obama administration effectuated an aggressive policy and cultural shift. Anyone who was opposed to, or skeptical of, their new rules was denounced. If one objected that new discipline policies were creating more disruption, one was branded a racist;<sup>10</sup> if one objected that new sexual assault adjudication procedures lacked due process, one was branded a sexist—or even a rape apologist;<sup>11</sup> if one noted that many teenage girls were uncomfortable disrobing next to a biological male, one was labeled a transphobe or anti-LGBT.<sup>12</sup>

The Biden campaign promised to restore the Obama-era approach to all these policy issues.<sup>13</sup> What’s more, on his first day in office, President Biden rescinded<sup>14</sup> the Trump administration’s executive order banning training that ascribes “character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex” and/or assign “fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex.”<sup>15</sup> In the same way that the Obama administration used a DCL to require school districts to change their discipline policies, a Biden administration might be tempted to employ a DCL to require school districts to hire critical race theory consultants to conduct “antiracist audits” and establish new bureaucratic positions dedicated to advancing critical race theory ideology. Such “audits” are already being conducted in school districts around Washington, D.C.<sup>16</sup> Critical race theory-motivated school administrators are conducting a concerted, assault on magnet and selective admissions high schools,<sup>17</sup> embracing highly politicized authors and books,<sup>18</sup> and even proposing to punish teachers for privately expressing any reservation about their school district’s “equity” proposals.<sup>19</sup>

If the administration were to pursue this agenda, the backlash against the Common Core that the country experienced during the second term of the Obama administration would pale in comparison. The alarm that parents felt when their kids came home with math homework that they could not understand (thanks to an act of federal pressure that they had no say in)<sup>20</sup> will seem small next to the outrage that parents will feel when their kids come home and say that they learned a lesson about “dismantling whiteness,” that all white Americans are inherent “oppressors,” and that their parents’ values are part of a system of “white supremacy.”<sup>21</sup>

Public schools should reflect and uphold the values of the communities that they serve. If parents come to view their public schools as vehicles for the indoctrination of their children into an ideology that holds them in contempt, Biden’s presidency will not be, nor will it be remembered as, a time of unity and healing.

### [Read more](#)

**Max Eden, “Enforcing Classroom Disorder: Trump Has Not Called Off Obama’s War on Discipline,”** Manhattan Institute, August 2018

**Eden, “Safe and Orderly Schools: Updated Guidance on School Discipline,”** Manhattan Institute, March 2019

**Michael Petrilli, “Why Disparate Impact Is a Bad Fit for School Discipline,”** Ahead of the News (blog), *Education Next*, Jan. 11, 2018

**John Murawski, “Post George Floyd, a Wave of ‘Anti-Racist’ Teaching Sweeps K–12 Schools, Targeting ‘Whiteness,’ ”** RealClearInvestigations, Nov. 24, 2020

## Endnotes

- 1 See, e.g., Adam Harris, “Trump’s School Safety Commission’s Strange Focus on Discipline,” *Atlantic*, Dec. 18, 2018.
  - 2 Mark Keierleber, “Is DeVos Near Ending School Discipline Reform After Talks on Race, Safety?” *The74*, Nov. 20, 2017.
  - 3 Under the disparate impact standard set by the Obama DCL, statistical disparities in the punishment could be considered sufficient evidence of racial discrimination to justify a “system-wide” investigation of the school district and potentially a conclusion that the district was violating civil rights law. Allegations of individual discrimination, whether or not they were found to have merit, triggered a broad, system-wide investigation if the ratio of minority students suspended was 2x or more the ratio of white students suspended. (see the final section, “Determining the Scope of OCR’s Investigation,” in “OCR’s Approach to the Evaluation, Investigation, and Resolution of Title VI Discipline Complaints,” Feb. 12, 2014).
- For example, if a school district was 50% black and 50% white, and three students—two black and one white—had been suspended, the district could be subjected to a federal investigation and potential loss of federal funds. If, on the other hand, the school district was 51% black and 49% white, then it would pass the test set by the DCL and not be subject to district-wide scrutiny because that would push the ratio to under 2x. See “Determining the scope of OCR’s Investigation.”
- 4 Max Eden, “Enforcing Classroom Disorder: Trump Administration Has Not Called Off Obama’s War on Discipline,” Manhattan Institute, August 2018.
  - 5 “OCR’s Approach to the Evaluation, Investigation, and Resolution of Title VI Discipline Complaints,” Feb. 12, 2014.
  - 6 Matthew P. Steinberg and Johanna Lacoce, “The Academic and Behavioral Consequences of Discipline Policy Reform,” Thomas B. Fordham Institute, Dec. 5, 2017.
  - 7 Catherine Augustine et al., “Can Restorative Practices Improve School Climate and Curb Suspensions?” RAND Corporation, Dec. 27, 2018.
  - 8 Abigail Gray et al., “Discipline in Context: Suspension, Climate, and PBIS in the School District of Philadelphia,” University of Pennsylvania’s Consortium for Policy Research in Education Research Reports, Oct. 23, 2017.
  - 9 Ted Johnson and Dominic Patten, “Joe Biden Pledges to Be a President Who ‘Will Not Seek to Divide, but Unify,’ in Victory Speech After Winning White House,” *Yahoo News*, Nov. 7, 2020.
  - 10 Erica Green, “Why Are Black Students Punished So Often? Minnesota Confronts a National Quandary,” *New York Times*, Mar. 18, 2018.
  - 11 Jennifer Kabbany, “Heather Mac Donald Defends Due Process, Debunks 1-in-5 Rape State as Hostile Crowd Shrieks in Protest,” *The College Fix*, Feb. 24, 2020.
  - 12 German Lopez, “Anti-Transgender Bathroom Hysteria, Explained,” *Vox*, Feb. 22, 2017.
  - 13 Laura Meckler et al., “With DeVos Out, Biden Plans Series of Reversals on Education,” *Washington Post*, Nov. 9, 2020.
  - 14 Jessica Guynn, “President Joe Biden Executive Order Reverses Donald Trump Ban on Race and Gender Diversity Training,” *USA Today*, Jan. 21, 2021.
  - 15 Donald J. Trump, “Executive Order on Combating Race and Sex Stereotyping,” White House, Sept. 22, 2020.
  - 16 Chrissy Clark, “Maryland School District Requests ‘Anti-Racist Audit’ to Help Students ‘Resist Systems of Oppression,’ ” *Free Beacon*, Oct. 9, 2020.
  - 17 Vince Bielski, “The Racial Justice War on Merit-Based Schools: It’s an Injustice Against Excellence, Critics Say,” *RealClearInvestigations*, Nov. 2, 2020.
  - 18 Corinne Murdock, “Fairfax County Public Schools Paid ‘Critical Race’ and ‘Antiracism’ Theorist Ibram Kendi \$20,000 for One-Hour Virtual Presentation,” *Tennessee Star*, Sept. 25, 2020.
  - 19 Emma Colton, “Virginia School District Proposal Would Penalize Teachers Who Criticize Critical Race Theory,” *Washington Examiner*, Oct. 1, 2020.
  - 20 Liana Loewus, “Common-Core Survey: Math Teachers Say Parents Are Struggling to Reinforce Skills,” *Education Week*, June 23, 2016.
  - 21 John Murawski, “Post George Floyd, a Wave of ‘Anti-Racist’ Teaching Sweeps K–12 Schools, Targeting ‘Whiteness,’ ” *RealClearInvestigations*, Nov. 24, 2020; Max Eden, “Critical Race Theory in American Classrooms,” *Eye on the News*, *City Journal*, Sept. 18, 2020.

## ***About Transition 2021***

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As President Biden assumes office, his administration and the 117<sup>th</sup> Congress face several pressing tasks. Among them: accelerating the pace of recovery from the pandemic, helping to get schools reopened and students back on track, and restoring safety to the many American cities afflicted by unrest and rising violence. In these briefs, Manhattan Institute fellows offer actionable ideas for the new government— proposals for educational pluralism, executive branch prudence, economic revitalization, evidence-based criminal justice reform, fair and efficient health care, near-term fiscal relief, and long-term fiscal discipline. Each brief contains specific recommendations for Congress or the new administration, along with links to further reading. Taken together, these recommendations represent an agenda for fostering the growth and opportunity that America desperately needs in the wake of the pandemic.

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