

Wisconsin Institute for Law & Liberty: WILL, state legal groups warn Education Sec. DeVos

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Letter explains how Obama-era suspension policy violates federal law, must be rescinded

June 12, 2018 – Milwaukee, WI – Today conservative leaders across the country sent a letter, to U.S. Department of Education Secretary Betsy DeVos, explaining that the Obama-era “Dear Colleague” letter on suspension policy is an illegal federal intrusion into local K-12 public schools. According to the coalition letter, authored by WILL, the unlawful “Dear Colleague” letter continues to be used by career bureaucrats and others to impose unwarranted legal obligations resulting in bad disciplinary policy. WILL was joined in the letter by the Center for Equal Opportunity, Goldwater Institute, Mackinac Center, Civitas Institute, MacIver Institute and leading conservative groups.

In January 2014, the Obama Administration issued a “Dear Colleague” letter intended to influence school suspension policies by threatening federal action if discipline policies resulted in a “disparate impact” on racial minorities. Today, conservative attorneys across the country are urging Secretary DeVos to rescind it. As explained by WILL President Rick Esenberg:

“In Milwaukee, we have witnessed first-hand how the Department of Education is still enforcing Obama’s ‘Dear Colleague’ letter. The Department reportedly pressured Milwaukee Public Schools to enter into a resolution agreement that

requires MPS to adjust their discipline policies if data indicates minority students are disproportionately impacted by disciplinary policies. This has had a negative impact on children at Milwaukee Public Schools and teachers who just want to attend safe schools.

The Trump Administration deserves credit for continuing to roll back Obama-era regulations. But there is more to be done and it starts here. Secretary DeVos should formally rescind the 2014 'Dear Colleague' letter and reduce federal involvement in the classroom. School leaders and local officials deserve the authority and trust to create and implement discipline policies without worrying about legal threats from bureaucrats in Washington D.C."

The conservative coalition letter explains how the Obama "Dear Colleague" letter is an illegal exercise of federal administrative power. The "Dear Colleague" letter relies, not on the text of Title VI of the Civil Rights Act of 1964, but on a regulation that prohibits federal funding recipients under certain circumstances from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin." Yet as the Supreme Court of the United States has recognized, the relevant provision of Title VI forbids only intentional discrimination, not nondiscriminatory actions with a disparate impact on different racial groups. Federal regulation cannot create authority that does not exist in the authorizing federal law, and thus the rights and duties the Department of Education purported to establish in the "Dear Colleague" letter are built on sand.

There has been a nationwide debate about whether the Obama "Dear Colleague" letter should be rescinded. It's deeply unpopular and the public desires for local officials to control discipline policy and not bureaucrats in Washington D.C.

It's also poor education policy. A 2018 WILL study revealed the Obama-era suspension policies imposed on Wisconsin schools resulted in a negative impact on academic performance. Using 7 years of data from over 2,000 Wisconsin public schools, WILL found lower math and reading proficiency in Wisconsin schools that implemented the Positive Behavioral Intervention and Supports (PBIS) system, a federally funded program the Obama Administration pressured districts to implement. PBIS encourages softer discipline policies to address student behavior, such as pro-active interventions, rather than suspensions.

We are confident that Secretary DeVos, who we understand to be considering

rescission of the letter, will do the right thing and restore school discipline policy to the place it belongs: local schools and school districts.