

Guidance on Discrimination in School Discipline

Administrator's Cheat Sheet

The New Jersey Law Against Discrimination (LAD) prohibits discrimination and bias-based harassment based on actual or perceived race, religion, national origin, gender, sexual orientation, disability, gender identity or expression, and other protected characteristics in all schools that are not operated by a religious or sectarian institution.

Applied to student discipline, these protections:

Prohibit discrimination on the basis of race, national origin, religion, gender, disability, and other protected characteristics in the implementation of school discipline policies;

Protects students from discrimination at every stage of the disciplinary process, from behavior management in the classroom or hallways, to referrals to the principal or any other authority figure outside the classroom, to the imposition of discipline in any form, including detention, suspension, expulsion, alternative school placement, or any other disciplinary measure;

Apply to anyone whom the school or district authorizes to discipline students, including teachers, administrators, school staff, security guards, school resource officers or other officers authorized by the school to engage in formal or informal discipline, and other agents; and

Apply to discipline imposed by the school for conduct in any setting, including outside of school.

Under the LAD, there are two legal claims that may apply to discrimination or bias-based harassment in the administration of student discipline:

Differential Treatment: This claim applies where a student is disciplined differently because of their race or other protected characteristic, either because a policy explicitly treats students of different races differently or because authority figures apply a policy differently to students of different races or other protected characteristics.

Disparate Impact: This claim applies where a race-neutral practice or policy impacts students of one race more severely than it does students of another race, or students with disabilities more severely than students who do not have disabilities.

The LAD holds those in charge of administering student discipline accountable not only for disciplinary decisions that are made with an explicitly **discriminatory intent**, but also if their disciplinary decisions have a **discriminatory impact**. Schools have a responsibility to monitor for and address bias-based disparities in student discipline, and schools that fail to do so can be held accountable under New Jersey's Law Against Discrimination.

To ensure your school or district is in compliance with the LAD, have you:

- Read DCR's new [Guidance on Discrimination in School Discipline](#) in its entirety at least once?
- Familiarized yourself with the non-exhaustive list of policies or practices that evidence currently demonstrates may have a disparate impact?
- Implemented the prevention measures in the [Compliance Checklist](#)?



For More Information

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

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Compliance Checklist

To ensure that school discipline policies and practices comply with the LAD's prohibition against differential treatment, school administrators should:

- Review their schools' disciplinary policies to ensure no policy treats students differently based on race, national origin, gender, disability, or another protected characteristic.
- Review their schools' disciplinary policies to ensure that no policy penalizes students for something "inextricably intertwined or closely associated with" race, national origin, gender, disability, or another protected characteristic.
- Supervise the drafting and revision of school disciplinary policies to ensure that no policy is drafted or revised with the intent to target students based on race, national origin, gender, disability, or another protected characteristic.
- Monitor and review disciplinary decisions to ensure students receive the same or similar discipline for engaging in the same misconduct, unless the difference in discipline is the result of school officials' compliance with statutory or regulatory requirements when disciplining students with disabilities.
- Collect, monitor and review disciplinary data for disparities based on race, national origin, gender, disability, or any other protected characteristic, and consider whether any disparities identified are the result of inconsistent enforcement or inconsistent implementation of procedural safeguards.
- Collect, monitor, and review classroom referral data for each instructor to identify disparities based on race, national origin, gender, disability, or any other protected characteristic, consider whether any disparities identified are the result of inconsistent referrals, and take immediate and appropriate action if inconsistent referrals are found.
- Thoroughly investigate all allegations that employees or other individuals empowered by the school to discipline students have used bias-based slurs or other offensive language, or have allowed students or others in the school community to use bias-based slurs or other offensive language without consequence; take appropriate action based on the results of the investigation; and provide oversight and review of future disciplinary actions taken by employees or agents against whom such allegations have been raised.
- Regularly solicit feedback from students, parents, employees, and other school community members regarding observed discipline disparities and school culture and climate, and allow such feedback to be given anonymously.
- Require employees, including supervisors, to report to school administration any observed disparities, any use of bias-based slurs or offensive language by employees, and any observed failure by employees to address students' use of bias-based slurs.



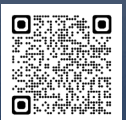
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- Require supervisors conducting staff assessments and evaluations to identify whether staff members have engaged in differential treatment or conduct that results in disparate impact, and consider these actions, omissions, and patterns in the overall assessment of the staff member.
- Ensure that all employees responsible for disciplining students, all supervisors of those employees, all HIB coordinators, and all employees who participate in drafting or revising disciplinary policies receive regular training on the non-discriminatory enforcement of school disciplinary policies, processes, and practices, including a discussion of the possible role of implicit or unconscious bias.
- Ensure that supervising administrators receive regular training on how to identify and address discriminatory enforcement of school disciplinary policies and differential treatment in school settings.
- Provide professional development opportunities for employees to further develop the skills to appropriately manage the use of bias-based slurs or other offensive language by students.

To ensure that their discipline policies and practices comply with the LAD’s prohibition against disparate impact discrimination, school administrators should:

- Ensure that all employees responsible for disciplining students receive regular, interactive training on the non-discriminatory enforcement of school disciplinary policies, processes, and practices, including a discussion of the possible role of implicit or unconscious bias.
- Research new discipline policies or practices before adopting them to determine whether research indicates they are likely to impact Black students, other students of color, students with disabilities, LGBTQ+ students, or students from any other protected class more severely than other students.
- Regularly monitor their school’s disciplinary data for disparities based on race, ethnicity, gender, disability, or any other protected category, and disaggregate the data to identify intersectional disparities, such as disparities impacting Black girls or Black students with disabilities.
- Identify any formal or informal policies or practices in use by the school that may be contributing to those disparities, and discontinue use of those practices unless empirical evidence demonstrates that they are necessary to achieve a substantial, legitimate, nondiscriminatory interest and there is no less discriminatory, equally effective alternative that would achieve the same interest.
- Proactively explore adoption of evidence-based alternatives to discipline policies that may be contributing to disparities, including trauma-informed and restorative justice practices.



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