

THE SPOKESMAN-REVIEW

January 21, 2014

Mona Charen: Feds' take on unruly students means all lose

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The departments of Education and Justice have teamed up to make the lives of students in tough neighborhoods even tougher. Framed as a measure to combat discrimination against black and Hispanic children, the guidelines issued by the Obama administration about school discipline will actually encourage racial discrimination, undermine the learning environments of classrooms and contribute to an unjust race-consciousness in meting out discipline.

Claiming that African-American and Hispanic students are more harshly disciplined than whites for the same infractions, the Obama administration now advises that any disciplinary rule that results in a “disparate impact” on these groups will be challenged by the government.

“Disparate impact” analysis, as we’ve seen in employment law, does not require any intentional discrimination. It means, for example, that if an employer asks job seekers to take a test, and a larger percentage of one ethnic group fails the test than another, that the test is de facto discriminatory because it has a “disparate impact.”

In the school context, the federal government is now arguing that if a disciplinary rule results in more black, Hispanic or special education kids being suspended or otherwise sanctioned, the rule must be suspect. The “Dear Colleague” letter explains that a disciplinary policy can be unlawful discrimination, even if the rule is “neutral on its face ... and is administered in an evenhanded manner,” if it has a “disparate impact” on certain ethnic and other groups.

The inclusion of special education students is particularly perverse, as special ed students frequently get that designation because their emotional disturbances cause them to misbehave in various ways. So if a rule against, say, knocking over desks, is found to be violated more frequently by special ed than regular ed students, then the rule must be questioned? That’s circular.

As the CATO Institute’s Walter Olson notes, the federal guidelines pass over one example of disparate impact with no comment – namely that dramatically more males than females face disciplinary action nationwide. If we are to judge a rule’s lawfulness by the disparate impact on males, no rule would survive the inquiry. Is it possible that more boys misbehave in the classroom than girls? To ask this question is to venture into an area the federal government would have us avoid. Actual infractions by individuals are not the issue. We must have group justice, not individual justice.

We've actually been down this road many times before. Various state and federal agencies have raised concerns about the large numbers of black and Hispanic students facing disciplinary action. Such concerns helped to generate the rigid "zero tolerance" policies the administration now condemns. Zero tolerance is a brainless approach to a subject that requires considerable finesse and deliberation, but the disparate impact rule is even more pernicious.

Under the new dispensation, teachers, principals and other officials will have to pause before they discipline, say, the fourth black student in a month. "How will this look to the feds?" they'll ask themselves. Will the student's family be able to sue us? A variety of solutions to the federally created problem will present themselves. School officials can search out offenses by white and Asian students to make the numbers come out right. Asian students are disciplined at rates far below any other ethnic group. Is this due to pro-Asian bias in our schools, or is it because Asians commit many fewer infractions? Oops, there we go into territory forbidden by the federal guidelines.

Another solution will be to ignore misbehavior by blacks and Hispanics. For classes with large numbers of minority students, this guarantees that the learning environment for the kids who actually want to learn will be impaired as teachers – reluctant to remove troublesome students – expend precious time on kids who are rude, threatening, loud or otherwise disruptive. Every minute of the school day taken up by bad kids is taken away from good kids. It's a true zero-sum game.

So the Obama administration's pursuit of group justice actually leads to injustice to individual students. Whites and Asians will be disciplined more than they merit it by their conduct, and fewer students of all groups will get the kind of classroom atmosphere that is conducive to learning. Even the students who get a pass on their bad conduct are disserved, as they will not have learned that disrespectful language, tardiness and even violence are unacceptable in society.

Everyone loses. Obama strikes again.