"No-Racially-Disparate-Discipline" Policies Opposed by Both Teachers and General Public

IN 2014 THE U.S. DEPARTMENT OF EDUCATION and the U.S. Department of Justice, acting together, sent every school district a letter asking local officials to avoid racial bias when suspending or expelling students. District officials were advised that they risk legal action if school disciplinary policies have "a disparate impact, i.e., a disproportionate and unjustified effect on students of a particular race." Even before this letter was mailed, the school district in Oakland, California, had settled charges of bias brought by the federal department of education by agreeing to "targeted reductions in the overall use of…suspensions for African American students, Latino students, and students receiving special education services." In the Fall 2014 issue of *Education Next,* Richard Epstein, a University of Chicago law professor, questioned the departments' action for forcing "school districts to comply with a substantive rule of dubious legal validity and practical soundness." But in June 2015 the Supreme Court, in a Texas housing case, bolstered the departments' position by holding that statistical evidence of "disparate impact" of policies across racial groups could be used as evidence of racial discrimination by a government agency. Joshua Dunn analyzes the ramifications of the decision in this issue (see "Disparate Impact Indeed," *legal beat,* Fall 2015).
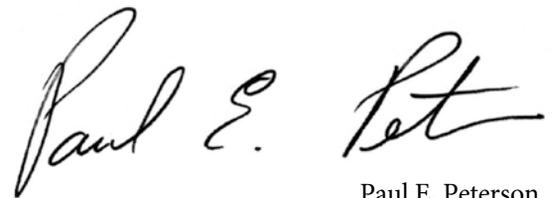
What does the public—and what do teachers—think of "no disparate impact" disciplinary policies? And what do they think of federal efforts to mandate them? To find out, the 2015 *Education Next* poll asked a nationally representative sample of some 4000 adults and an additional sample of some 700 teachers what they thought about policies ensuring equal rates of suspension and expulsion across racial and ethnic groups. The poll randomly divided both the public sample and the teacher sample into two groups. We asked members of one group whether they support or oppose "school district policies that prevent schools from expelling or suspending black and Hispanic students at higher rates than other students?" Half of the public opposes "no disparate impact" policies, while just 19 percent back the idea, with the remaining 32 percent taking no position one way or the other. That division of opinion is essentially the same among the second group, which was asked about a federal "no disparate impact" policy. By a large margin, the public opposes "no disparate impact" policies, regardless of whether the federal government or the local school district formulates them.

The division of opinion within the teaching profession is broadly similar to that of the public as a whole. No less than 59 percent of teachers oppose "no disparate impact" policies, while only 23 percent are in favor, with 18 percent of teachers taking the neutral position.

Higher levels of support for a "no disparate impact" policy are observed among African Americans— 41 percent are in favor, while 23 percent oppose it. Only 31 percent of Hispanic respondents like the policy, however, with 44 percent in opposition.

Given the opposition among both teachers and the general public, one suspects that federal efforts to impose racially equal suspension and expulsion rates will be tempered by political realities. But if the civil rights attorneys inside the departments of justice and education are eager to press forward, and if school districts resist such pressures, the latter are likely to find a sympathetic audience both within and outside the teaching profession.

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