

ISSUE BRIEF

No. 4833 | MARCH 28, 2018

The U.S. Department of Education Should Rescind 2014 Federal School-Discipline Guidance

Jonathan Butcher

The Parkland school shooting was a heartbreaking, devastating tragedy. On February 14, former Marjory Stoneman Douglas High School student Nikolas Cruz allegedly fired at the school, killing 14 students and three school personnel.⁴ Cruz wounded at least 14 others. As reports uncovered more information about the accused shooter and his actions, the story became even graver: Cruz was an orphan with a history of troubling behavior.⁵ Today, families and policymakers must cope with this tragedy, and part of this recovery requires study of the school safety policies that were in place at the time of the disaster.

In 2013, Broward County School District, home to two of Cruz's former schools—Stoneman Douglas High School and Westglades Middle School—launched a high-profile school-safety program, Preventing Recidivism through Opportunities, Mentoring, Interventions, Support & Education (PROMISE).⁶ PROMISE received national attention, including praise from the Obama Administration.⁷

PROMISE is a school safety initiative with the goals of providing “safe, secure and supportive environments for all students” and reducing “external suspensions, expulsions, and arrests.”⁸ PROMISE attempted to prevent students from entering the juvenile justice system.⁹

The policies rely on restorative justice strategies, which “provide opportunities for students to be accountable to those they have harmed, and enable them to repair the harm they caused.”¹⁰ The interventions are “tiered,” and individuals from different offices including school personnel and counselors and law enforcement engage with a participating student at various points to respond to a student's action.¹¹ Local offices involved with student discipline, including law enforcement, agreed to “uniformity” in handling student misbehavior as they tried to provide a “safe” learning environment and limit the use of suspension, expulsion, and arrests.¹² In fact, local law enforcement and individuals in the justice system signed a memorandum of agreement with the Broward County School District outlining how the offices would work together to carry out PROMISE.¹³

Despite this commitment to safety, PROMISE and those who agreed to collaborate on school discipline issues using PROMISE failed to prevent the Parkland tragedy. Now, families, teachers, and policymakers are casting a critical eye toward this school-discipline policy.¹⁴

PROMISE and Nikolas Cruz

According to reports, Cruz was never referred to PROMISE or arrested, but a review of Cruz's record and PROMISE's guidelines suggest he may have engaged in PROMISE-eligible offenses. This activity raises questions about the relationship between the accused shooter and district policies.

According to a *Washington Post* timeline, Cruz left Westglades Middle School with a record that included 26 “disciplinary incidents.”¹⁵ In 2016, while

This paper, in its entirety, can be found at
<http://report.heritage.org/ib4833>

The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002
(202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

enrolled at Douglas High School, he made a threat online saying he “planned to shoot up the school.”¹⁶ Law enforcement provided this information to school officials. Notably, PROMISE includes threats as a behavior meriting intervention through the program, yet Cruz was not referred.¹⁷

Cruz also allegedly committed assault at Douglas High School in 2017, another action listed in the PROMISE matrix.¹⁸ Still, Broward officials say they have “no record of Nikolas Cruz committing a PROMISE-eligible infraction or being assigned the PROMISE while in high school [sic].”¹⁹

-
1. The White House, “President Donald J. Trump Is Taking Immediate Actions to Secure Our Schools,” Fact Sheet, March 12, 2018, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-taking-immediate-actions-secure-schools/> (accessed March 19, 2018).
 2. Kim Greene, “Leadership Profile: Robert Runcie,” Scholastic.com, Summer 2014, <http://www.scholastic.com/browse/article.jsp?id=3758419> (accessed March 19, 2018).
 3. News release, “Educators Gather at the White House to Rethink School Discipline,” U.S. Department of Education, July 22, 2015, <https://www.ed.gov/news/press-releases/educators-gather-white-house-rethink-school-discipline> (accessed March 19, 2018). In addition to the districts listed here, schools in Minnesota, Chicago, Boston, New York, and Connecticut are implementing such policies. See “Secretary DeVos, Stand Up for School Discipline Guidance,” Educators for Excellence blog, November 22, 2017, <https://e4e.org/blog-news/blog/secretary-devos-stand-school-discipline-guidance> (accessed March 19, 2018), and Paul Sperry, “Behind Cruz’s Florida Rampage, Obama’s School-Leniency Policy,” RealClearInvestigations, March 1, 2018, https://www.realclearinvestigations.com/articles/2018/02/28/obama-administration_school_discipline_policy_and_the_parkland_shooting.html (accessed March 20, 2018).
 4. “17 Killed in Mass Shooting at High School in Parkland, Florida,” NBC News, February 15, 2018, <https://www.nbcnews.com/news/us-news/police-respond-shooting-parkland-florida-high-school-n848101> (accessed March 21, 2018).
 5. Brittany Wallman et al., “School Shooter Nikolas Cruz: A Lost and Lonely Killer,” *Sun-Sentinel*, February 24, 2018, <http://www.sun-sentinel.com/local/broward/parkland/florida-school-shooting/fl-florida-school-shooting-nikolas-cruz-life-20180220-story.html> (accessed March 21, 2018).
 6. Greg Allen, “Fla. School District Trying to Curb School-to-Prison Pipeline,” NPR, November 5, 2013, <https://www.npr.org/sections/codeswitch/2013/11/05/243250817/fla-school-district-trying-to-curb-school-to-prison-pipeline> (accessed March 21, 2018).
 7. John O’Connor, “A Q&A with Federal Education Secretary Arne Duncan,” State Impact, July 30, 2015, <https://stateimpact.npr.org/florida/2015/07/30/a-q-a-with-federal-education-secretary-arne-duncan/> (accessed March 21, 2018), and news release, “Educators Gather at the White House to Rethink School Discipline.”
 8. Broward County Public Schools, PROMISE Program Manual 2013–2014, p. 2, <https://www.browardprevention.org/wp-content/uploads/2013/10/PROMISE-MANUAL-08.16.13.pdf> (accessed March 27, 2018).
 9. Ibid.
 10. Ibid., p. 26.
 11. Ibid., pp. 9, 10, 12, 36, and 50.
 12. Broward County School Board et al., “Collaborative Agreement on School Discipline,” October 5, 2016, <https://www.browardprevention.org/wp-content/uploads/2013/10/Fully-Executed-Collaborative-Agreement.pdf> (accessed March 19, 2018).
 13. Ibid.
 14. Jon Kamp and Michelle Hackman, “Lawmakers Focus on Obama-Era Discipline Policies After Florida School Shooting,” *The Wall Street Journal*, March 26, 2018, <https://www.wsj.com/articles/lawmakers-focus-on-obama-era-discipline-policies-after-florida-school-shooting-1522069200> (accessed March 28, 2018).
 15. “Red Flags: The Troubled Path of Accused Parkland Shooter Nikolas Cruz,” *The Washington Post*, March 10, 2018, https://www.washingtonpost.com/graphics/2018/national/timeline-parkland-shooter-nikolas-cruz/?utm_term=.77c09aadf0a0 (accessed March 19, 2018), and Curt Anderson, “Some Officials Wanted Florida School Shooting Suspect Forcibly Committed in 2016,” *USA Today*, March 19, 2018, <https://www.usatoday.com/story/news/nation/2018/03/19/some-officials-wanted-florida-school-shooting-suspect-forcibly-committed-2016/437615002/> (accessed March 20, 2018).
 16. “Red Flags: The Troubled Path of Accused Parkland Shooter Nikolas Cruz,” *The Washington Post*.
 17. PROMISE Program, <https://www.browardprevention.org/behavior/promise/> (accessed March 27, 2018), and Broward County Public Schools, PROMISE Program Manual, pp. 12 and 18.
 18. “Red Flags: The Troubled Path of Accused Parkland Shooter Nikolas Cruz,” *The Washington Post*, and *ibid*.
 19. Ryan Nicol, “Progressive PROMISE Program Still at Issue in the Making of Parkland Tragedy,” *Sunshine State News*, March 10, 2018, <http://sunshinestatenews.com/story/progressive-promise-program-still-issue-making-parkland-tragedy> (accessed March 20, 2018).
-

Furthermore, despite years of misbehavior, Cruz was never arrested or expelled, according to the *Miami Herald*.²⁰ CNN reports that law enforcement received 45 calls between 2008 and 2017 “related to the Cruz home, Nikolas Cruz or his brother.”²¹ *The Washington Post* and *USA Today* report that by the time of the tragedy, Cruz had acted in such ways that school officials, law enforcement, state welfare agency officials, the FBI, and school counselors had been involved in or notified of Cruz’s actions at different points in time.²²

The collaborative agreement that Broward officials signed in 2016 demonstrates that agencies were working together to implement PROMISE. Again, while one of PROMISE’s goals is safety (“The foundation of the PROMISE program” is “respect for community safety”), another is reducing “suspensions, expulsions, and arrests.”²³ Even in cases of “emergency” that “require the immediate involvement of law enforcement,” law enforcement, justice officials, and school personnel agreed to “ensure... [that] the least punitive means of discipline is being deployed.”²⁴

Parents and policymakers can ask, then, what constitutes a PROMISE-eligible infraction and why was Cruz not referred?

Federal Response to Parkland

Sun-Sentinel writer Ryan Nicol says, “It will be up to Broward County School Board members and other officials to determine what role the PROMISE program played in the Parkland tragedy, and whether schools are more dangerous because of it.”²⁵ Parents, school personnel, and policymakers around the country should reflect on this question, given that Washington’s 2014 guidelines on school discipline policy bear some of the same characteristics as Broward’s policies.²⁶

In 2014, the Obama Administration issued a “Dear Colleague” letter to all public schools with instructions on how to “reduce disruption” without discriminating against students according to “personal characteristics.”²⁷ The letter was in response to data demonstrating that minority students were more likely than their peers to be disciplined in school.²⁸ Indeed, no one should face discipline based on his or her race. However, Washington not only condemned such acts but issued recommendations to local schools for disciplining students that do not include suspension, expulsion, or law enforcement involvement.²⁹

The letter gives school officials specific guidelines to use in designing school discipline policies.³⁰ Such

-
20. Carol Marbin Miller and Kyra Gurney, “Parkland Shooter Always in Trouble, Never Expelled. Could School System Have Done More?” *Miami Herald*, February 21, 2018, <http://www.miamiherald.com/news/local/article201216104.html> (accessed March 20, 2018). The *Herald* explains that Cruz was a student with special needs, and that the district is required to provide a free and adequate public education. The district moved Cruz to different schools without expelling him from the district.
 21. Curt Devine and Jose Pagliery, “Sherriff Says He Got 23 Calls About Shooter’s Family, But Records Show More,” CNN, February 27, 2018, <https://www.cnn.com/2018/02/27/us/parkland-shooter-cruz-sheriff-calls-invs/index.html> (accessed March 20, 2018).
 22. “Red Flags: The Troubled Path of Accused Parkland Shooter Nikolas Cruz,” *The Washington Post*, and Anderson, “Some Officials Wanted Florida School Shooting Suspect Forcibly Committed in 2016.”
 23. Broward County Public Schools, PROMISE Program Manual, p. 2.
 24. Broward County School Board, et al., “Collaborative Agreement on School Discipline,” p. 6.
 25. Ryan Nicol, “Does Broward Schools’ Program Coddle Troubled Students and Excuse Dangerous Behavior?” *Sunshine State News*, February 28, 2018, <http://sunshinestatenews.com/story/does-broward-schools-program-coddle-troubled-students-and-excuse-dangerous-misbehavior> (accessed March 21, 2018).
 26. Greene, “Leadership Profile: Robert Runcie.”
 27. U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline.
 28. Kristen Harper, “The School-to-Prison Pipeline: The Intersections of Students of Color with Disabilities,” Child Trends Testimony delivered before the United States Commission on Civil Rights, December 8, 2017, <https://www.childtrends.org/publications/school-prison-pipeline-intersections-students-color-disabilities/> (accessed March 19, 2018).
 29. U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, January 8, 2014, Appendix, p. 6, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> (accessed March 28, 2018).
 30. U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, Appendix. See also the appendix to this *Issue Brief*.

policies are demonstrably similar to PROMISE (see appendix).³¹ The PROMISE agreement signed by law enforcement and the school district, the PROMISE guidelines, and the 2014 federal guidance have similar theoretical and practical ideas on school discipline: All of the documents call for a signed agreement between school officials and law enforcement on school safety; the use of restorative justice; and limiting the use of out-of-school placements (suspension or expulsion), the judicial system, and law enforcement in school discipline.³²

Furthermore, White House press releases, Broward County school and law enforcement officials' statements, and district and White House documents strengthen the connection between PROMISE and the 2014 federal guidance.³³

In 2014, Broward Superintendent Robert Runcie told Scholastic.com, "Some of my staff joke that the Obama administration might have taken our policies and framework and developed them into national guidelines.... What we've got is very aligned with that. We went out early on."³⁴ In January 2018, the Broad Center (an education and school leadership organization) reported that "the Obama administration took notice" of PROMISE and "PROMISE informed the White House's guidance on student disciplinary practices nationwide."³⁵

The Obama Administration would later praise Broward County for its school discipline policies, and stated in a 2015 press release that the district had "made progress in transforming policies and

school climate to support student learning."³⁶ Then-Secretary of Education Arne Duncan praised restorative justice activities and Runcie in 2015, saying, "So I'm very, very pleased with their work. We did a White House school discipline summit very recently and both districts [Broward and Miami-Dade] were there."³⁷

Following the 2014 federal school discipline guidance, schools across the country began using these federal guidelines. At least six large school districts were following the guidance by 2015, with schools in at least another five states participating today.³⁸ One report finds that at least 50 school districts have adopted these policies.³⁹

A tragic combination of personal, family, social, law enforcement, and judicial actors and circumstances share responsibility for the tragedy at Douglas High School, but that does not exonerate federal guidelines based on the types of policies in PROMISE—policies being used by other schools across the U.S.

Conclusion

On March 12, President Donald Trump's Administration announced that Education Secretary Betsy DeVos would lead a new Federal Commission on School Safety.⁴⁰ The Administration asked the committee to make recommendations regarding violence prevention strategies, including the repeal of the 2014 federal school discipline guidelines. Earlier this month, Senator Marco Rubio (R-FL) sent

31. Ibid.

32. Broward County School Board et al., "Collaborative Agreement on School Discipline"; U.S. Department of Justice and U.S. Department of Education, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline, Appendix, pp. 3, 6, and 21; and PROMISE Program. See appendix.

33. Caitlin Emma, "Rubio Renews Call for Review of School Discipline Policies," *Politico*, March 14, 2018, <https://www.politicopro.com/education/whiteboard/2018/03/rubio-renews-call-for-review-of-school-discipline-policies-800318> (accessed March 19, 2018).

34. Greene, "Leadership Profile: Robert Runcie."

35. "Robert Runcie: An Unconventional Path," The Broad Center blog, January 30, 2018, <https://www.broadcenter.org/blog/leadership-lessons-robert-runcie/> (accessed March 19, 2018).

36. News release, "Educators Gather at the White House to Rethink School Discipline."

37. John O'Connor, "A Q&A with Federal Education Secretary Arne Duncan," *State Impact*, July 30, 2015, <https://stateimpact.npr.org/florida/2015/07/30/a-q-a-with-federal-education-secretary-arne-duncan/> (accessed March 21, 2018).

38. News release, "Educators Gather at the White House to Rethink School Discipline." In addition to the districts listed here, schools in Minnesota, Chicago, Boston, New York, and Connecticut are implementing such policies. See "Secretary DeVos, Stand Up for School Discipline Guidance," Educators for Excellence blog.

39. Sperry, "Behind Cruz's Florida Rampage, Obama's School-Leniency Policy."

40. The White House, "President Donald J. Trump is Taking Immediate Actions to Secure Our Schools."

a letter to Secretary DeVos and Attorney General Jeff Sessions calling for an inquiry into the same guidelines.⁴¹

Media outlets such as *Politico* and *The New York Times* have reported criticism of the Trump Administration's call for repeal of this letter.⁴² Critics say the 2014 federal guidance is "an unrelated issue" and "there's no evidence to suggest that those policies had anything to do with the massacre."⁴³

Yet PROMISE and 2014 federal school discipline guidance share similar approaches to school discipline and limiting suspensions, expulsions, and arrests.⁴⁴ Reports of how district and law enforcement officials operating under PROMISE failed to intervene are troubling. Other school systems have adopted measures based on the federal guidance, making a repeal of the federal guidance a relevant and appropriate response to the Broward County tragedy.

—*Jonathan Butcher is Senior Policy Analyst in the Center for Education Policy, of the Institute for Family, Community, and Opportunity, at The Heritage Foundation.*

41. Office of Senator Marco Rubio, Letter to Education Secretary Betsy DeVos and Attorney General Jeff Sessions, March 5, 2018, https://www.rubio.senate.gov/public/_cache/files/19f88f3d-0f3c-4753-babe-43890c1bf7fa/6FE29ECD9BE495D655650802F6B5160F18.03.05.-letter-to-sec-devos-and-ag-sessions-2014-ed-directive-final.pdf (accessed March 19, 2018).

42. Erica L. Green, "Trump Finds Unlikely Culprit in School Shootings: Obama Discipline Policies," *The New York Times*, March 13, 2018, <https://www.nytimes.com/2018/03/13/us/politics/trump-school-shootings-obama-discipline-policies.html> (accessed March 19, 2018), and Caitlin Emma, "Trump School Safety Package Targets Obama School Discipline Policy," *Politico*, March 13, 2018, <https://www.politicopro.com/education/article/2018/03/trump-school-safety-package-targets-obama-school-discipline-policy-409623> (accessed March 20, 2018).

43. Emma, "Trump School Safety Package Targets Obama School Discipline Policy," and Green, "Trump Finds Unlikely Culprit in School Shootings: Obama Discipline Policies."

44. "Robert Runcie: An Unconventional Path," The Broad Center blog, and appendix.

APPENDIX TABLE 1

Parallel Ideas and Descriptions in PROMISE and the “Dear Colleague” Letter (Page 1 of 2)

The Obama Administration’s 2014 “Dear Colleague” letter recommends certain methods of disciplining students. These directions resemble the design and descriptions of the Broward County School District’s PROMISE program.

	PROMISE Manual/Broward County Agreement with Law Enforcement	Federal “Dear Colleague” Letter, 2014
School Discipline and Law Enforcement	“The combination of overly harsh school policies and an increased role of law enforcement in schools has created a ‘school-to-prison pipeline,’ in which punitive measures such as suspensions, expulsions, and school-based arrests are increasingly used to deal with student misbehavior, and huge numbers of youth are pushed out of school and into prisons and jails.” (PROMISE Manual, p. 1)	“The increasing use of disciplinary sanctions such as in-school and out-of-school suspensions, expulsions, or referrals to law enforcement authorities creates the potential for significant, negative educational and long-term outcomes, and can contribute to what has been termed the ‘school-to-prison pipeline.’” (“Dear Colleague” Letter, Appendix p. 4)
	“PROMISE involves systemic adaptation of the School Board of Broward County inclusive discipline matrix in order to significantly reduce the practice of linking an inappropriate behavior with a referral to law enforcement.” (PROMISE Manual, p. 20)	“Provide all school personnel, including teachers, administrators, support personnel, and school resource officers,” with training “on classroom management, conflict resolution, and deescalation approaches that decrease classroom disruptions and utilize exclusionary disciplinary sanctions as a last resort.” (“Dear Colleague” Letter, Appendix p. 2)
	“Out-of-school suspensions [are] only used for more severe behavioral infractions.” (Promise Manual, p. 55)	“Ensure that the school’s written discipline policy explicitly limits the use of out-of-school suspensions, expulsions, and alternative placements to the most severe disciplinary infractions that threaten school safety or to those circumstances where mandated by Federal or State law.” (“Dear Colleague” Letter, Appendix p. 2)
Restorative Justice	“Before making an arrest of a student for misbehavior on school grounds,” officials should “consider alternatives with the school principal or designee.” (PROMISE Manual pp. 30–31)	“Ensure that the school’s written discipline policies provide for alternatives to in-school and out-of-school suspensions and other exclusionary practices (i.e., expulsions),” (“Dear Colleague” Letter, Appendix p. 6)
	“Restorative justice involves both victim and offender and focuses on their personal needs.” (PROMISE Manual, p. 26)	“Involve students and student advocates in maintaining a safe, inclusive, and positive educational environment through programs such as peer mediation and restorative justice...” (“Dear Colleague” Letter, Appendix p. 2)

APPENDIX TABLE 1

Parallel Ideas and Descriptions in PROMISE and the “Dear Colleague” Letter (Page 2 of 2)

	PROMISE Manual/Broward County Agreement with Law Enforcement	Federal “Dear Colleague” Letter, 2014
School Personnel Responsible for Discipline	“In the event a student misbehaves, the school principal and/or their designees will be the primary source of intervention and disciplinary consequences.” (Runcie, p. 29)	“Ensure that school personnel understand that they, rather than school resource officers and other security or law enforcement personnel, are responsible for administering routine student discipline.” (“Dear Colleague” Letter, Appendix p. 3)
Memorandum Between School Officials and Law Enforcement	Signed November 5, 2013, and again on October 5, 2016.	“Document the roles and responsibilities of school resource officers and security or law enforcement personnel in a written agreement or memorandum of understanding between the school and appropriate law enforcement and/or related agencies.” (“Dear Colleague” Letter, Appendix p. 3)

NOTES: Emphasis added by author. While the memorandum between Broward County school officials and law enforcement was signed in 2016, Broward launched PROMISE in 2013. For more information, see Karen Yi, “Broward Sees Drops in Student Arrests, Rise in Suspensions,” *SunSentinel*, March 31, 2015, <http://www.sun-sentinel.com/local/broward/fl-broward-promise-program-youth-update-20150331-story.html> (accessed March 26, 2018), and The Broad Center, “The Real Promise of Broward County’s PROMISE Program,” Broad Center Blog, March 7, 2018, <https://www.broadcenter.org/blog/the-real-promise-of-broward-countys-promise-program/> (accessed March 26, 2018).

SOURCES:

- **PROMISE Manual:** Broward County Public Schools, “PROMISE: Program Manual,” 2013–2014, <https://www.browardprevention.org/wp-content/uploads/2013/10/PROMISE-MANUAL-08.16.13.pdf> (accessed March 26, 2018).
- **Dear Colleague Letter:** U.S. Department of Justice and U.S. Department of Education, “Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline,” January 8, 2014, <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.pdf> (accessed March 26, 2018).
- **Runcie:** Robert W. Runcie, “Eliminating the School-to-Prison Pipeline,” Broward County Public Schools, 2015, <https://www.browardprevention.org/wp-content/uploads/2016/07/SY-2016-Eliminating-School-to-Prison-Pipeline.pdf> (accessed March 26, 2018).
- Broward County School Board et al. “Collaborative Agreement on School Discipline,” October 5, 2016, <https://www.browardprevention.org/wp-content/uploads/2013/10/Fully-Executed-Collaborative-Agreement.pdf> (accessed March 26, 2018).
- Maggie Lee, “South Florida Squeezes School-to-Prison Pipeline,” Juvenile Justice Information Exchange, November 5, 2013.