



# Replacing School Police with Services that Work

Better Ways to Improve School Safety and Reduce Discipline Disparities

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*Schools should be safe places where all students can thrive. Instead of funding school-based police, we urge public officials to invest in positive and proven approaches to improving school safety. Placing police in schools does not improve school safety or student behavior, and it leads to increased arrests and removals from school. Students with disabilities, especially those of color, are disproportionately harmed.*

In the wake of George Floyd’s murder and protests and actions to “defund the police” communities and advocates, including the Bazelon Center, have condemned overreliance on the police and highlighted its disproportionate impact on people with disabilities, especially Black people and other people of color.<sup>1</sup> Police encounters with people with mental illness often end in death or serious injury. The Bazelon Center and others have urged states and localities to re-imagine the mental health system and rely on it, and not police, to respond when people with mental illness are experiencing a mental health crisis or otherwise need attention.<sup>2</sup>

School-based policing raises similar issues. Schools should be a safe place for students to learn and grow, but there is no evidence that schools are safer for students or staff when police are present in schools. School personnel, not police, should enforce school discipline. School personnel, not police, should respond to students with mental health needs. The ongoing presence of police in schools—typically referred to as School Resource Officers (SROs)<sup>3</sup>—increases school arrests, instances of physical restraint, and suspensions and expulsions, all of which are disproportionately experienced by students with disabilities, especially students of color.<sup>4</sup> Together, these outcomes help to widen the disparities in graduation rates and academic

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<sup>1</sup> See Wesley Lowery et al., *Distraught People, Deadly Results*, WASH. POST (June 30, 2015), <https://www.washingtonpost.com/sf/investigative/2015/06/30/distraught-people-deadly-results/> (finding that 27percent of people killed by police in the first half of 2015 were in crisis); Amam Z. Saleh et al., *Deaths of People with Mental Illness During Interactions with Law Enforcement*, 58 INT’L J. L. & PSYCHIATRY 110, 112-114 (2018) (estimating that 23percent of people killed by police have a psychiatric disability); see also DORIS A. FULLER ET AL., OVERLOOKED IN THE UNDERCOUNTED I (Treatment Advoc. Ctr., 2015), <https://www.treatmentadvocacycenter.org/overlooked-in-the-undercounted> (estimating the risk of death as sixteen times greater than for people without mental illness); Shaun King, *If You Are Black and in a Mental Health Crisis, 911 Can Be a Death Sentence*, THE INTERCEPT (Sept. 29, 2019), <https://theintercept.com/2019/09/29/police-shootings-mental-health/> (“Studies show that as many as 50 percent of people killed by American police had registered disabilities and that a huge percentage of those were people with mental illnesses.”); Robert Laonga, *Report: Mentally Ill are in Nearly 40 Percent of South Bay Police Shootings*, THE MERCURY NEWS, <https://www.mercurynews.com/2018/05/11/report-mentally-ill-are-in-nearly-40-percent-of-south-bay-police-shootings/> (last updated May 14, 2018, 9:03 AM) (“[A] new civil grand jury report reveals that nearly 40 percent of officer shootings in Santa Clara County involve someone who is mentally ill.”); See Camille A. Nelson, *Frontlines: Policing at the Nexus of Race and Mental Health*, 43 FORDHAM URB. L. REV. 615, 621 (2016) (finding that Black people report higher rates of serious psychological stress than White people, and “people who exhibit mental health challenges are more likely to attract heightened police scrutiny and reasonable suspicion; they are less likely to respond to police in ways that comport with police behavioral expectations and may, thereby, prompt unfortunate police escalation.”); King, *supra* note 1 (“[Y]oung black men with mental illnesses are in the single most at-risk category in the nation for fatal police violence.”); “DEFUNDING THE POLICE” AND PEOPLE WITH MENTAL ILLNESS, JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH L. 2 (2020) (“Because of over-policing, people with mental illness, especially those who are Black, have disproportionately suffered both needless death and high rates of incarceration.”).

<sup>2</sup> See ALTERNATIVES TO THE POLICE: RESPONDING TO PEOPLE WITH MENTAL ILLNESS, JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH L. (2020).

<sup>3</sup> SROs are “officers responsible for safety and crime prevention in schools” and act in a role “similar to regular police officers.” U.S. DEP’T OF JUST., *COPS Fact Sheet: School Resource Officers and School Based Policing* (2019), [https://cops.usdoj.gov/pdf/SRO\\_School\\_Policing\\_Factsheet.pdf](https://cops.usdoj.gov/pdf/SRO_School_Policing_Factsheet.pdf).

<sup>4</sup> See Amir Whitaker et al., *Cops and No Counselors: How the Lack of Mental Health Staff is Harming Students*, ACLU 15 (2019), [aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors](https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors).

achievement between students with mental health needs, especially those of color, and other students.<sup>5</sup>

The presence of police in schools contributes to and perpetuates the “school-to-prison pipeline,” a harsh reality for students with mental health needs and students of color.<sup>6</sup>

Kayleb M.R., an 11-year-old Black autistic student attending middle school in Lynchburg, Virginia, is a case in point.<sup>7</sup> Kayleb kicked over a trash can at school, and an SRO charged him with disorderly conduct. A few weeks later, Kayleb left a classroom without permission, and an SRO was alerted. As confirmed by his teacher, when the SRO grabbed Kayleb to stop him from leaving the classroom, Kayleb pushed back, and the officer slammed him to the ground, handcuffed him, and charged him with felony assault.<sup>8</sup>

Despite these problems, the number of SROs in schools has reached an all-time high. Fifty-two percent of public schools have SROs, including many elementary schools, and some 52,000 SROs worked in public schools during the 2016-2017 school year.<sup>9</sup> The greater the proportion of students of color, the more likely there are police based at the school.<sup>10</sup>

The cost of employing these SROs is high, as high as \$3 billion annually.<sup>11</sup> State and local governments foot most of this bill—money that could instead fund more effective interventions.

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<sup>5</sup> See Emily K. Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-term Education Outcomes*, 38 J. POL’Y ANALYSIS & MGMT. 338, 338 (2019) (“[E]xposure to a three-year federal grant for school police is associated with a 2.5 percent decrease in high school graduation rates and a 4 percent decrease in college enrollment rates.”).

<sup>6</sup> See NATIONAL COUNCIL ON DISABILITY, *Breaking the School to Prison Pipeline*, June 18, 2015, <https://www.ncd.gov/publications/2015/06182015> (“Studies show that 85 percent of youth in juvenile detention facilities have disabilities that make them eligible for special education services, yet only 37 percent receive these services while in school. A disproportionate percentage of these detained youth are youth of color.”); National Education Association, *Ending the School-to-Prison Pipeline*, The “school-to-prison pipeline” is examined at [https://neaedjustice.org/ending-the-school-to-prison-pipeline/?fbclid=IwAR2yrzLIZ1bR\\_mjqubJrmTc](https://neaedjustice.org/ending-the-school-to-prison-pipeline/?fbclid=IwAR2yrzLIZ1bR_mjqubJrmTc) (last visited Apr. 22, 2021).

<sup>7</sup> Susan Ferris, *Virginia Drops Felony Charges Against Sixth-grade Boy with Autism*, REVEAL (Mar. 15, 2016), <https://revealnews.org/article/virginia-drops-felony-charges-against-sixth-grade-boy-with-autism/>.

<sup>8</sup> A juvenile court later dismissed these charges. See *id.*

<sup>9</sup> Tbl. 233.70, *Percentage of public schools with security staff present at least once a week, and percentage with security staff routinely carrying a firearm, by selected school characteristics: 2005–06 through 2017-18*, NAT’L CEN. FOR EDUC. STAT. (2019), [https://nces.ed.gov/programs/digest/d19/tables/dt19\\_233.70.asp](https://nces.ed.gov/programs/digest/d19/tables/dt19_233.70.asp).

<sup>10</sup> Of high schools with less than 10 percent of Black and Hispanic students, 53 percent had at least 1 SRO. As the percentage of Black and Hispanic students increases to 25 to 50 percent, 76 percent had at least 1 SRO. See Constance A. Lindsay et al., *The Prevalence of Police Officers in US Schools*, URB. INST.: URB. WIRE (June 21, 2018), <https://www.urban.org/urban-wire/prevalence-police-officers-us-schools#:~:text=Inpercent20everypercent20statepercent20Cpercent20highpercent20school,schoolpercent20withpercent20apercent20policepercent20officer.>

<sup>11</sup> There is no Bureau of Labor Statistics salary table for SROs; this total uses the 2019 median annual wage for police and sheriff’s patrol officers, \$63,150. See JUSTICE POLICY INST., *EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS* 23 (2011), [https://mk0edsources0y23p672y.kinstacdn.com/wp-content/uploads/old/educationunderarrest\\_fullreport.pdf](https://mk0edsources0y23p672y.kinstacdn.com/wp-content/uploads/old/educationunderarrest_fullreport.pdf).

In Washington, a study of schools with SROs found “the average school district contribution per officer per year was approximately \$62,000, but the total costs to individual districts can be much higher. Throughout the state, school district contributions vary from \$10,000 to over \$120,000 per officer per year. At least 7 school districts pay \$100,000 or more per officer per year.” See ACLU WASHINGTON, *Students Not Suspects: The Need to Reform School Policing in Washington State* (Apr. 18, 2017), [https://www.aclu-wa.org/docs/students-not-suspects-need-reform-school-policing-washington-state#\\_ftn25](https://www.aclu-wa.org/docs/students-not-suspects-need-reform-school-policing-washington-state#_ftn25)

To correct the situation, we must end funding for school-based police and replace SROs with more effective approaches to school safety, which also promote student growth and learning.

## I. Police in Schools

Policing in schools came of age in 1948, with the formation of the Los Angeles School Police Department. School-based police increased in number following the Supreme Court’s decision in *Brown v. Board of Education*.<sup>12</sup> One constant has been their placement in schools with a significant number of low-income Black and Brown students.

The practice of deploying police in schools got a boost when in the 1990’s federal funding became available.<sup>13</sup> Widely-publicized school shootings also contributed to increased deployment of police in schools.<sup>14</sup>

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<sup>12</sup> In 1957, a grand jury recommended that police should be stationed in desegregating Brooklyn schools. A federal judge agreed, claiming that “undesirables” must be removed “from the company of these decent youngsters,” and warning “there are, in fact, dangerous delinquents in our public schools... corroding the school morale... gangsters and disturbers [who continue] to run amok.”<sup>12</sup> Even then, the New York Teachers Union reasoned that “the money... might better be spent to hire... teachers, psychologists, guidance counselors and others.” See ACLU, BULLIES IN BLUE: THE ORIGINS AND CONSEQUENCES OF SCHOOL POLICING 3 (2017), [https://www.aclu.org/sites/default/files/field\\_document/aclu\\_bullies\\_in\\_blue\\_4\\_11\\_17\\_final.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_bullies_in_blue_4_11_17_final.pdf); see Lawrence Fellows, *Jansen Opposes Police in Schools: Calls Proposal ‘Unthinkable’—Leibowitz Backs Idea*, N.Y. TIMES (Nov. 27, 1957).

By 1972, urban school districts across the country had a police presence – including in Washington, D.C., where “eight armed and 25 unarmed policemen undertook random check-ins at the city’s 136 elementary schools as part of their regular beats,” and in Chicago where CPD patrolled in “the South Side schools, cruising surrounding neighborhoods and sending plainclothes officers onto school campuses.” As a result, admissions to juvenile detention facilities increased by 600 percent from 1977 to 1986. While the media reported a rise in juvenile crime during this period, almost all of these juvenile detentions were based on “status offenses” like truancy, minor offenses, and other misdemeanors. See ACLU, BULLIES IN BLUE: THE ORIGINS AND CONSEQUENCES OF SCHOOL POLICING 6 (2017), [https://www.aclu.org/sites/default/files/field\\_document/aclu\\_bullies\\_in\\_blue\\_4\\_11\\_17\\_final.pdf](https://www.aclu.org/sites/default/files/field_document/aclu_bullies_in_blue_4_11_17_final.pdf).

<sup>13</sup> Since 1995, the U.S. Department of Justice’s Community-Oriented Policing Service (COPS) office has directed around \$300 million in federal dollars to school policing initiatives and SROs. In combination with other sources, Congress has invested more than \$1 billion in school policing. While designated federal funding for school police ended in 2005, general grant funds through the COPS Office remain available. The federal government has also funded SROs through Safe and Drug-Free Schools and Communities Act state sub-grants and Bureau of Justice Assistance Byrne Justice Assistance Grants. See *id.* at 11; see NATHAN JAMES & GAIL MCCALLION, CONG. RSCH. SERV., R43126, SCHOOL RESOURCE OFFICERS: LAW ENFORCEMENT OFFICERS IN SCHOOL 7–8 (2013); Counseling Not Criminalization in Schools Act, H.R. 7848, 116th Cong. § 5(a) (2020).

<sup>14</sup> According to a Washington Post investigative report tracking school shootings, nearly 200 incidents involving school shootings occurred on school grounds during or near school hours between 1999 and 2018. Of these schools, at least 68 employed an SRO or security guard. Of the incidents deemed the “worst rampages”, 4 of the 5 took place in a school with an SRO. According to a report by the U.S. Secret Service, most school shootings were stopped by means other than law enforcement, despite prompt police responses. After Florida passed the Marjory Stoneman Douglas Safety Act in 2018, which called for increases to school police and security presence in schools, the ACLU issued a report finding that arrests within schools increased by 8 percent, low-level behavioral incidents in schools increased by 19 percent, rates of referral to law enforcement increased by 25 percent, and the use of physical restraints increased fourfold. See John Woodrow Cox & Steven Rich, *Scarred by School Shootings*, WASH. POST (Mar. 25, 2018), <https://www.washingtonpost.com/graphics/2018/local/us-school-shootings-history>; see ACLU, THE COST OF SCHOOL POLICING: WHAT FLORIDA’S STUDENTS HAVE PAID FOR A PRETENSE OF SECURITY 5–6 (2019), [https://www.aclufl.org/sites/default/files/field\\_documents/school\\_policing\\_report\\_2018-19.pdf](https://www.aclufl.org/sites/default/files/field_documents/school_policing_report_2018-19.pdf) (discussing how the Act was passed without the input of current teachers, students, student organizations, or community organizations. The commission was not representative of Florida demographics, containing no people of color as voting members); see also JAMES & MCCALLION, *supra* note 12, at 11, 24–25.

As we are becoming increasingly aware, a greater police presence may not go hand-in-hand with safety. The research to date shows that deploying police to schools does not result in increased safety. Police in schools do not prevent school shootings or otherwise reduce violence in schools. The Congressional Research Service—a nonpartisan agency that provides research to Congress—concluded “the body of research on the effectiveness of SRO programs is noticeably limited, and the research that is available draws conflicting conclusions about whether SRO programs are effective at reducing school violence.”<sup>15</sup>

Although police in schools do not make schools safer, school-based police are associated with increased arrests, use of force, and school exclusions.<sup>16</sup> Schools with SROs report almost four times as many arrests as schools without SROs.<sup>17</sup> Children are five times more likely to be arrested and charged if they attend a school with an SRO.<sup>18</sup>

Moreover, SROs introduce firearms into the school; the great majority of SROs—the Department of Education reports 91 percent—carry a firearm.<sup>19</sup> The widespread deployment of weapons in environments serving school-aged children is serious cause for concern.

Schools with SROs suspend and expel students at higher rates than schools without police.<sup>20</sup> Students “lose important instructional time, are less likely to graduate on time, and more likely to repeat a grade, drop out of school, and become involved in the juvenile justice system.”<sup>21</sup> In schools with SROs, student absenteeism is higher and there are graduation rates.<sup>22</sup>

When police are in schools, conduct that is better addressed by school counselors or the school’s disciplinary process becomes criminalized. There are repeated accounts of police excesses. “Mouthing off” results in being tased, as does escaping the principal’s office.<sup>23</sup> A six-year-old is arrested after striking teachers during a tantrum.<sup>24</sup> A dispute over a milk carton results in charges

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<sup>15</sup> See JAMES & MCGALLION, *supra* note 14.

<sup>16</sup> See AMIR WHITAKER ET AL., ACLU, COPS AND NO COUNSELORS: HOW THE LACK OF MENTAL HEALTH STAFF IS HARMING STUDENTS 6–7 (ACLU 2019), [aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors](http://aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors).

<sup>17</sup> See *id.*

<sup>18</sup> Lauren Camera, *Federal Data Show Decreasing Rates of Bullying and Violence in Schools*, U.S. NEWS (Apr. 17, 2019), <https://www.usnews.com/news/education-news/articles/2019-04-17/20-years-after-columbine-shooting-federal-data-show-bullying-violence-and-crime-in-schools-is-down>; Press Release, Just. Pol’y Inst., *It’s time to remove cops from campuses and invest resources in teachers and students, not police* (June 18, 2020), <http://www.justicepolicy.org/news/12899>.

<sup>19</sup> AJMEL QUERESHI & JASON OKONOFUA, NAACP LEGAL DEF. AND EDUC. FUND, LOCKED OUT OF THE CLASSROOM: HOW IMPLICIT BIAS CONTRIBUTES TO DISPARITIES IN SCHOOL DISCIPLINE 9 (2017), [https://www.naacpldf.org/files/about-us/Bias\\_Reportv2017\\_30\\_11\\_FINAL.pdf](https://www.naacpldf.org/files/about-us/Bias_Reportv2017_30_11_FINAL.pdf).

<sup>20</sup> Benjamin W. Fisher & Emily A. Hennessy, *SROs and Exclusionary Discipline in U.S. High Schools: A Systematic Review and Meta-analysis*, 1 ADOLESCENT RES. REV. 217, 231 (2016); DANIEL J. LOSEN & AMIR WHITAKER, ACLU, 11 MILLION DAYS LOST: RACE, DISCIPLINE, AND SAFETY AT U.S. PUBLIC SCHOOLS 10–11 (2018), [https://www.aclu.org/sites/default/files/field\\_document/final\\_11-million-days\\_ucla\\_aclu.pdf](https://www.aclu.org/sites/default/files/field_document/final_11-million-days_ucla_aclu.pdf).

<sup>21</sup> U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-258, K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES, at 28 (2018), <http://www.gao.gov/assets/700/690828.pdf>.

<sup>22</sup> “[E]xposure to a three-year federal grant for school police is associated with a 2.5 percent decrease in high school graduation rates and a 4 percent decrease in college enrollment rates.” Emily K. Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-term Education Outcomes*, 38 J. OF POL’Y ANALYSIS & MGMT. 338, 338 (2019).

<sup>23</sup> QUERESHI & OKONOFUA, *supra* note 18, at 9.

<sup>24</sup> The charges were eventually dropped after a video capturing the event went viral. Allyson Chiu, *Florida officer fired for ‘traumatic’ arrests of two 6-year-old students at school*, WASH. POST (Sept. 23, 2019), <https://www.washingtonpost.com/nation/2019/09/23/girl-tantrum-orlando-classroom-arrested-battery-school-investigation/>.

of petty larceny.<sup>25</sup> Students are punched, choked, and “body-slammed” for conduct that threatens no one. Although corporal punishment in schools is widely prohibited, schools, it is regularly inflicted by SROs.<sup>26</sup>

In Chicago, Dnigma H., a 16-year-old Black student with an emotional disability was tackled, dragged down the stairs, and tasered while she laid on the ground for refusing to leave school, a punishment meted out for her use of a cell phone in class.<sup>27</sup>

In Alabama, Ashlynn A. receiving special education, was directed to go to the principal’s office after she dozed off at her desk while reading.<sup>28</sup> She resisted, and an SRO shoved, handcuffed, and arrested her.<sup>29</sup>

The presence of SROs in schools disproportionately harms students of color. Black students are twice as likely than are white students to be arrested.<sup>30</sup> And Black students are disciplined at far higher rates than their white peers.<sup>31</sup>

An analysis of one Texas school district found that Black students accounted for 46 percent of all SRO citations for “disrupting class” (a misdemeanor citation), although Black students were only 12percent of the student body.<sup>32</sup> When the Texas legislature prohibited such citations, the rate of Black student charged with “disorderly conduct” skyrocketed.<sup>33</sup>

SROs’ view of their mission is infected by bias. A survey of SROs found that in mostly white, affluent school districts, SROs viewed their role as protecting the school from outside threats. In schools with a substantial number of Black and Latinx students, SROs viewed their role as protecting against the students themselves.<sup>34</sup>

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<sup>25</sup> Breanna Edwards, *14-Year-Old Va. Boy Charged With Stealing 65-Cent Milk Carton to Face Trial*, THE ROOT (Oct. 6, 2016), <https://www.theroot.com/14-year-old-va-boy-charged-with-stealing-65-cent-milk-1790857110> (14-year-old student faced multiple charges and a trial after being accused of stealing a 65-cent milk carton, despite being enrolled in the free-lunch program).

<sup>26</sup> Elizabeth T. Gershoff & Sarah A. Font, *Corporal Punishment in U.S. Public Schools: Prevalence, Disparities in Use, and Status in State and Federal Policy*, SOC. POL’Y REP., Autumn 2016, at 1, 3.

<sup>27</sup> Erin Laviola, *Dnigma Howards: 5 Fast Facts You Need to Know*, HEAVY (Apr. 12, 2019), <https://heavy.com/news/2019/04/dnigma-howard/>; Heather Cherone, *Aldermen Recommend \$300K Payment to Marshall High Student Dragged Down Stairs, Tased by Police*, WTTW NEWS (Dec. 14, 2020), <https://news.wttw.com/2020/12/14/aldermen-recommend-300k-payment-marshall-high-student-dragged-down-stairs-tased-police>.

<sup>28</sup> *Avery v. City of Hoover*, No. 2:13-cv-00826-MHH, 2015 U.S. Dist. LEXIS 93085 (N.D. Al. 2015).

<sup>29</sup> *Id.*; Kelsey Stein, *Hoover student claims in lawsuit that she was injured, arrested after falling asleep at desk*, AL (Mar. 6, 2019), [https://www.al.com/spotnews/2013/05/hoover\\_student\\_claims\\_in\\_lawsu.html](https://www.al.com/spotnews/2013/05/hoover_student_claims_in_lawsu.html).

<sup>30</sup> Evie Blad & Alex Harwin, *Black Students More Likely to Be Arrested at School*, EDWEEK (Jan. 24, 2017), <https://www.edweek.org/leadership/black-students-more-likely-to-be-arrested-at-school/2017/01>.

<sup>31</sup> See generally Russel J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, 34 THE URB. REV. 317 (2002) (analyzing Nativ over one year for an urban school district and concluding that disproportionate discipline along racial lines was often the result of infractions that are subjective in interpretation); see also Julia Bryan et al., *The Disproportionality Dilemma: Patterns of Teacher Referrals to School Counselors for Disruptive Behavior*, 90 J. OF COUNS. AND DEV. 177, 187 (2012) (describing the implications that cultural differences between the home life and school life of African American children can have on disproportionate discipline related to subjective behaviors).

<sup>32</sup> QUERESHI & OKONOFUA, *supra* note 19, at 9; Jody Serrano, *School Officers Can No Longer Issue On-Campus Misdemeanor Citations*, TEX. TRIB. (Aug. 29, 2013), <https://www.texastribune.org/2013/08/29/class-disruption-cases-head-principals-office-not-/>.

<sup>33</sup> *Id.*

<sup>34</sup> Holly Kurtz, *Educators Support Black Lives Matter, But Still Want Police in Schools, Survey Shows*, EDWEEK (June 25, 2020), <https://www.edweek.org/leadership/educators-support-black-lives-matter-but-still-want-police-in-schools-survey-shows/2020/06>.

## II. Impact on Students with Disabilities

Almost seven million public school students receive special education services for an identified disability.<sup>35</sup> Over a million more receive services for a disability under the federal Rehabilitation Act.<sup>36</sup>

The data is clear that, like students of color, students with disabilities are disproportionately arrested in school. Students with disabilities make up about 14 percent of all students, but they account for 28 percent of all students who have been arrested at school. Students with disabilities are three times more likely to be referred to law enforcement<sup>37</sup> or arrested than their non-disabled peers.<sup>38</sup>

Moreover, students with disabilities are disproportionately punished by schools. In the 2017-2018 school year, students with disabilities accounted for close to 80 percent of students restrained and 77 percent of students placed in seclusion.<sup>39</sup> Students with disabilities disproportionately lost time in the classroom due to suspensions: for every 100 students receiving special education, 41 days of instruction were lost (compared to 19 days for general education students) and students with a mental health disability faced the highest risk of removal.<sup>40</sup>

The disparities are starker in the case of students with disabilities who are also students of color. Students of color with disabilities are far more likely to be referred to police than white peers with disabilities.<sup>41</sup> Black students with disabilities are twice as likely to be expelled and four times as likely to be repeatedly suspended as white students with disabilities.<sup>42</sup> Native American and Native Alaskan students with disabilities are three times more likely to be expelled than white students

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<sup>35</sup> Tbl. 204.3, *Children 3 to 21 years old served under Individuals with Disabilities Education Act (IDEA), Part B, by type of disability: Selected years, 1976-77 through 2017-18*, U.S. DEP'T OF EDUC. NAT'L CTR. FOR EDUC. STAT. (2019), [https://nces.ed.gov/programs/digest/d18/tables/dt18\\_204.30.asp?referrer=report](https://nces.ed.gov/programs/digest/d18/tables/dt18_204.30.asp?referrer=report).

<sup>36</sup> D.J. Losen, et al., *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies* (2021), p. 4, at <https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies/final-Report-03-22-21-v5-corrected.pdf>.

<sup>37</sup> The U.S. Department of Education's Office of Civil Rights defines "referral to law enforcement" as an action by which a student is reported to any law enforcement agency or official, including a school police unit, for an incident that occurs on school grounds, during school-related events, or while taking school transportation." See U.S. DEP'T OF EDUC., 2015-2016 CIVIL RIGHTS DATA COLLECTION: SCHOOL CLIMATE AND SAFETY 3 (2018), <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

<sup>38</sup> The U.S. Department of Education's Office of Civil Rights defines arrests as "an arrest of a student for any activity conducted on school grounds, during off-campus school activities (including while taking school transportation), or due to a referral by any school official." See *id.*; West Resendes, *Police in Schools Continue to Target Black, Brown, and Indigenous Students with Disabilities. The Trump Administration Has Data That's Likely to Prove It*, ACLU (July 9, 2020), <https://www.aclu.org/news/criminal-law-reform/police-in-schools-continue-to-target-black-brown-and-indigenous-students-with-disabilities-the-trump-administration-has-data-thats-likely-to-prove-it> (analyzing 2015-16 CRDC data).

<sup>39</sup> U.S. DEP'T OF EDUC., THE USE OF RESTRAINT AND SECLUSION ON CHILDREN WITH DISABILITIES IN K-12 SCHOOLS 6-7 (2020), <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>.

<sup>40</sup> D.J. Losen, et al., *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies* (2021), p. 25, at <https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies/final-Report-03-22-21-v5-corrected.pdf>.

<sup>41</sup> For example, in the 2017-18 school year, the Austin [Texas] Independent School District, referred 32 percent of Black students receiving special education compared to 11 percent of white students receiving special education. Lorelai Laird, *Students of color with disabilities are being pushed into the school-to-prison pipeline, study finds*, ABAJ. (July 24, 2019), <https://www.abajournal.com/web/article/report-finds-more-discipline-are-at-the-intersection-of-race-and-disability>.

<sup>42</sup> See *id.* at 36.

with disabilities.<sup>43</sup> In the 2017-2018 school year, Black students with disabilities made up just 18 percent of all disabled students nationally, yet represented 22 percent of students who experienced seclusion, 26 percent of disabled students subjected to physical restraint, and 34 percent of those subjected to mechanical restraint.<sup>44</sup>

### III. Better Approaches to School Safety

*“[I] am calling on state, district, and school leaders to reexamine school discipline [and] take deliberate steps to create the positive school climates that can help prevent and change inappropriate behaviors. Such steps include... engaging families and community partners, and deploying resources to help students develop the social, emotional, and conflict resolution skills needed to avoid and de-escalate problems. Targeting student supports also helps students address the underlying causes of misbehavior, such as trauma, substance abuse, and mental health issues.” – Arne Duncan, United States Secretary of Education<sup>45</sup>*

To advance school safety, we should invest in interventions that promote and support positive behavior. Effective models include positive behavioral interventions and supports (PBIS), restorative justice, trauma-informed approaches, and hiring social workers, counselors and other mental health providers.

#### (1) *Positive Behavioral Interventions and Supports (PBIS)*

PBIS, currently employed in thousands of schools, is a model for promoting and supporting positive student behavior.

PBIS framework has been shown to be effective in “improving academic, social, emotional, and behavioral outcomes for students” and “in reducing the need for disciplinary action.”<sup>46</sup> On average, schools implementing PBIS experience 20- to 60-percent reductions in disciplinary incidents and also reduced racial and ethnic disparities in discipline.<sup>47</sup> Studies also indicate that

<sup>43</sup> See *id.*

<sup>44</sup> U.S. DEP’T OF EDUC., THE USE OF RESTRAINT AND SECLUSION ON CHILDREN WITH DISABILITIES IN K-12 SCHOOLS 10–11 (2020), <https://www2.ed.gov/about/offices/list/ocr/docs/restraint-and-seclusion.pdf>;

<sup>45</sup> U.S. DEP’T OF EDUC., *Dear Colleague Letter from Secretary Arne Duncan*, (Jan. 8, 2014), <https://www2.ed.gov/policy/elsec/guid/secletter/140108.html>.

<sup>46</sup> U.S. DEPT’ OF EDUC., GUIDING PRINCIPLES: A RESOURCE FOR IMPROVING SCHOOL CLIMATE AND DISCIPLINE 7 (2014), <https://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>.

<sup>47</sup> JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH L., WAY TO GO FACT SHEET # 1 2 (2006), <http://www.bazelon.org/wp-content/uploads/2017/01/WayToGo1.pdf>; see Jessica Swain-Bradway et al., *Do Wisconsin Schools Implementing an Integrated Academic and Behavior Support Framework Improve Equity in Academic and School Discipline Outcomes?*, CTR. ON POSITIVE BEHAV. INTERVENTIONS AND SUPPORTS (2019), [https://assets-global.website-files.com/5d3725188825e071f1670246/5d82aa7feb813389e04fabad\\_Wisconsinpercent20Integratedpercent20Academicpercent20andpercent20Behaviorpercent20Supportpercent20Framework.pdf](https://assets-global.website-files.com/5d3725188825e071f1670246/5d82aa7feb813389e04fabad_Wisconsinpercent20Integratedpercent20Academicpercent20andpercent20Behaviorpercent20Supportpercent20Framework.pdf); See Michelle M. Masar et al., *Do Out-of-School Suspensions Prevent Future Exclusionary Discipline?*, CTR. ON POSITIVE BEHAV. INTERVENTIONS AND SUPPORTS (2015), <https://www.pbis.org/resource/do-out-of-school-suspensions-prevent-future-exclusionary-discipline>.

implementing PBIS is less expensive than exclusionary methods of discipline like suspensions and expulsions.<sup>48</sup>

PBIS typically consists of three tiers of response. The first tier integrates social skill development into school-wide curriculum. The second tier directs additional resources to students needing to improve their self-management and conflict resolution skills. The third tier is directed to students who need intensive services, which may include an individualized behavior support plan. Most “tier-three” students have mental health or other disabilities

Maryland has found PBIS led to reductions in suspensions and truancy rates and “improvements in reading and math proficiency”.<sup>49</sup> Even still, disproportionality remains a problem. Black students and students with disabilities are still overrepresented among students who are suspended.<sup>50</sup>

To reap rewards from PBIS, implementation must be consistent and focused on equipping adults at the school to support students in changing their behavior and expectations.<sup>51</sup>

## (2) *Restorative Justice*

Restorative justice focuses on teaching “students empathy and problem-solving skills that can help prevent inappropriate behavior in the future.”<sup>52</sup> Restorative justice supports students to “take ownership of their actions and work collaboratively” to repair relationships.<sup>53</sup> It emphasizes communication, problem solving, and the mediation of disputes.

Studies indicate that implementing schemes of restorative justice in schools reduces the use of discipline and racial inequities in discipline.<sup>54</sup> It also appears to reduce disparities between students with disabilities and students without disabilities.<sup>55</sup>

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<sup>48</sup> JESSICA SWAIN-BRADWAY ET AL., CTR. ON POSITIVE BEHAV. INTERVENTIONS & SUPPORTS, WHAT ARE THE ECONOMIC COSTS OF IMPLEMENTING SWPBIS IN COMPARISON TO THE BENEFITS FROM REDUCING SUSPENSIONS 6 (2017), [https://assets-global.website-files.com/5d3725188825e071f1670246/5d76c00cb9339d5f3f267ee7\\_economiccostsswpbis.pdf](https://assets-global.website-files.com/5d3725188825e071f1670246/5d76c00cb9339d5f3f267ee7_economiccostsswpbis.pdf).

<sup>49</sup> ELISA PAS ET AL., PBIS MARYLAND, TESTING THE EFFECTS OF SW-PBIS IN MARYLAND STATE (2017), [https://drive.google.com/file/d/1h\\_pgSPOWT6MoHhSr9hoJ77TzpGBoxbaO/view](https://drive.google.com/file/d/1h_pgSPOWT6MoHhSr9hoJ77TzpGBoxbaO/view).

<sup>50</sup> MARYLAND COMM’N ON THE SCHOOL-TO-PRISON PIPELINE & RESTORATIVE PRAC., FINAL REPORT AND COLLABORATIVE ACTION PLAN 24 (2018), <https://www.law.umaryland.edu/media/SOL/pdfs/Programs/ADR/STPPpercent20percent20RPpercent20Commissionpercent20Finalpercent20Report.pdf>.

<sup>51</sup> JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH L., WAY TO GO FACT SHEET # 1 2 (2006), <http://www.bazelon.org/wp-content/uploads/2017/01/WayToGo1.pdf>.

<sup>52</sup> U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-258, K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES, at 28 (2018).

<sup>53</sup> *Id.*

<sup>54</sup> MARYLAND COMM’N ON THE SCHOOL-TO-PRISON PIPELINE & RESTORATIVE PRAC., FINAL REPORT AND COLLABORATIVE ACTION PLAN 24 (2018), <https://www.law.umaryland.edu/media/SOL/pdfs/Programs/ADR/STPPpercent20percent20RPpercent20Commissionpercent20Finalpercent20Report.pdf>.

<sup>55</sup> See Tammy Potter, Effects of Restorative Practices on Students with Disabilities: A Quantitative Study, at 70 (2019) (Ed.D. dissertation, Carter & Moyers School of Education), <https://digitalcommons.lmunet.edu/cgi/viewcontent.cgi?article=1014&context=edddissertations> (indicating that restorative interventions showed a slight increase in students with disabilities’ attendance and GPA and a slight decrease in their suspensions. However, more research is needed on this topic to truly understand the potential).

Restorative justice is less widely used in schools than PBIS. But the reports of its success are compelling. Before instituting restorative justice practices, John Paul Jones Middle School in Philadelphia was known as “Jones Jail.”<sup>56</sup> The school, based on recommendations from the Alternatives to Violence Project, invested in teaching students “relationship building and anger management.”<sup>57</sup> The number of violent incidences on campus decreased by almost 90 percent.<sup>58</sup> Ultimately, the school removed the metal detectors in its entryways the grates from its windows, and eliminated altogether the school’s security guards.

Expulsions and dropouts were reduced by 70 percent after the Denver Public School System (DPS) implemented a Restorative Justice model.<sup>59</sup> Black students were being suspended at three times the rate of white students, but restorative justice “created a space for educators ...” to really tackle the equity challenge.<sup>60</sup> Likewise, a study of DPS and the Santa Fe Public Schools found “schools that had restorative programs reduced their existing Black student suspension disparity by about 4.6 percent, while the disparity increased ... in non-restorative schools.”<sup>61</sup>

### (3) *Trauma-Informed Schools*

Increasingly, it is understood that experiences of trauma affect and underlie much student behavior. Behaviors perceived as “defiance” or “disruptive” can be responses to past trauma.<sup>62</sup> The majority of students of color have experienced an Adverse Childhood Experience (ACE), which can be “traumatic events that occur in childhood such as experiencing violence, abuse, or neglect.”<sup>63</sup> Children with disabilities are also more likely to experience an ACE.<sup>64</sup> Students of color may also

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<sup>56</sup> Jeff Deeney, *How to Discipline Students Without Turning School into a Prison*, ATLANTIC (Jan. 9, 2014), <https://www.theatlantic.com/education/archive/2014/01/how-to-discipline-students-without-turning-school-into-a-prison/282944/>.

<sup>57</sup> *Id.*

<sup>58</sup> Jeff Deeney, *A Philadelphia Schools Big Bet on Nonviolence*, ATLANTIC (Jul. 18, 2013), <https://www.theatlantic.com/national/archive/2013/07/a-philadelphia-schools-big-bet-on-nonviolence/277893/>.

<sup>59</sup> CHILD. DEF. FUND, REFORMING DISCIPLINE IN DENVER PUBLIC SCHOOLS: THREE PRONGED APPROACH FOR EQUITY AND JUSTICE 2 (2018), [https://www.childrensdefense.org/wp-content/uploads/2018/08/Denver-Public-Schools-Profile\\_Final-PDF.pdf](https://www.childrensdefense.org/wp-content/uploads/2018/08/Denver-Public-Schools-Profile_Final-PDF.pdf).

<sup>60</sup> *Id.*

<sup>61</sup> Matt Barnum, *Major new study finds restorative justice led to safer schools, but hurt black students’ test scores*, CHALKBEAT (Jan. 4, 2019), <https://www.chalkbeat.org/2019/1/4/21106465/major-new-study-finds-restorative-justice-led-to-safer-schools-but-hurt-black-students-test-scores>.

In the Pittsburgh Public Schools, racial disparities in suspensions were lessened but continued to exist after implementing restorative justice. A similar result occurred in Los Angeles Unified Schools District, where suspension rates fell for all students, but disparities persisted for students of color and students with disabilities. Additional and complementary strategies may be required in such situations. Or it may be that it takes a sustained effort over many years to eliminate disparities altogether. See Matt Barnum, *Major new study finds restorative justice led to safer schools, but hurt black students’ test scores*, CHALKBEAT (Jan. 4, 2019), <https://www.chalkbeat.org/2019/1/4/21106465/major-new-study-finds-restorative-justice-led-to-safer-schools-but-hurt-black-students-test-scores>; FRONIUS ET AL., RESTORATIVE JUSTICE IN U.S. SCHOOLS: AN UPDATED RESEARCH REVIEW 19 (WestEd, 2019) (citing Katharine O. Strunk & Ayesha Hashim, *Justice for All? Suspension Bans and Restorative Justice Programs in the Los Angeles Unified School District*, 93 PEABODY J. OF EDUC. 174 (2018)).

<sup>62</sup> Jim Patterson, *Traumatic Experience - School’s and Researcher’s Reports Indicate Attention to Trauma Has Benefits, Especially in Student Behavior*, EDUC. WORLD, <https://www.educationworld.com/teachers/traumatic-experience-effects-student-misbehavior>.

<sup>63</sup> *Adverse Childhoods Experiences (ACEs)*, CTR. FOR DISEASE CONTROL AND PREVENTION, [https://www.cdc.gov/violenceprevention/aces/index.html?CDC\\_AA\\_refVal=https%3Apercent2Fpercent2Fwww.cdc.govpercent2Fviolencepreventionpercent2Faces/index.html?CDC\\_AA\\_refVal=https%3Apercent2Fpercent2Fwww.cdc.govpercent2Fviolencepreventionpercent2Faces/index.html](https://www.cdc.gov/violenceprevention/aces/index.html?CDC_AA_refVal=https%3Apercent2Fpercent2Fwww.cdc.govpercent2Fviolencepreventionpercent2Faces/index.html?CDC_AA_refVal=https%3Apercent2Fpercent2Fwww.cdc.govpercent2Fviolencepreventionpercent2Faces/index.html) (last visited Apr. 13, 2021).

<sup>64</sup> Jessica Vervoort-Schel et al., *Adverse Childhood Experiences in Children with Intellectual Disabilities: An Exploratory Case-File Study in Dutch Residential Care*, 15 INT’L J. ENV’T RSCH. & PUB. HEALTH 2136, 2136 (2018); Anna Austin et al., *Disability*

have experienced the “stressful impact or emotional pain of one’s experience with racism and discrimination.”<sup>65</sup>

Addressing students’ experiences of trauma is critical to fostering learning and improving student behavior. Trauma-informed schools are guided by a multidisciplinary team of trauma-informed staff, provide a range of trauma-informed support, and use a structured process for implementation and evaluation.<sup>66</sup>

Washington, Illinois, and Massachusetts have promoted trauma-informed practices in schools.<sup>67</sup> At Lincoln High School (WA), trauma-informed practices resulted in a drop in suspensions by 83 percent and expulsions by 40 percent.<sup>68</sup> The assistant principal at Lincoln High explained:

First, we adopted trauma-sensitive approaches to decrease the behaviors that lead to suspension. This involved improving our communication system and ... [allowing students to request] time outside the classroom to calm down. ... Second, we increased our use of alternatives to suspension whenever appropriate. ... . During the first year after we implemented ... trauma-sensitive changes, there were literally no suspensions or expulsions in the first three or four months, and for the remainder of the year the number was dramatically reduced from the previous year, when we had suspension numbers in the triple digits.”<sup>69</sup>

#### **(4) Investing in School Social Workers, Psychologists, and Counselors**

Social workers, psychologists, and counselors provide crucial direct services to students with mental health issues as well as provide expertise to teachers and principals in addressing behavior issues. Yet, ninety percent of students attend public schools where the number of social workers, psychologists, and counselors fall short of recommended standards.<sup>70</sup> More than fourteen million students attend schools with police, but no social worker, psychologist, or counselor.<sup>71</sup> Police “have taken the place of other critical school staff.”<sup>72</sup>

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*and Exposure to High Levels of Adverse Childhood Experiences: Effect on Health and Risk Behavior*, 77 N. CAROLINA MED. J. 30, 33 (2016).

<sup>65</sup> NAT’L CHILD TRAUMATIC STRESS NETWORK, ADDRESSING RACE AND TRAUMA IN THE CLASSROOM: A RESOURCE FOR EDUCATORS 3 (2017), <https://www.nctsn.org/resources/addressing-race-and-trauma-classroom-resource-educators>.

<sup>66</sup> *Trauma-sensitive Schools Require Whole School Transformation and Support*, NAT’L EDUC. ASS’N, [https://www.nea.org/sites/default/files/2020-07/Trauma\\_SensitiveSchools\\_WholeSchool\\_Transformation.pdf](https://www.nea.org/sites/default/files/2020-07/Trauma_SensitiveSchools_WholeSchool_Transformation.pdf); *see generally* SUBSTANCE ABUSE & MENTAL HEALTH ADMIN., HHS PUBLICATION NO. (SMA) 14-4884, CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA INFORMED APPROACH (2014); *see generally* KATHLEEN GUARINO & ELIZABETH CHAGNON, NAT’L CTR. ON SAFE SUPPORTIVE LEARNING ENV’T, TRAUMA SENSITIVE SCHOOLS TRAINING PACKAGE: IMPLEMENTATION GUIDE (2018), [https://safesupportivelearning.ed.gov/sites/default/files/TSS\\_Training\\_Package\\_Implementation\\_Guidefinal\\_0.pdf](https://safesupportivelearning.ed.gov/sites/default/files/TSS_Training_Package_Implementation_Guidefinal_0.pdf).

<sup>67</sup> *Unlocking the Door to Learning: Trauma-Informed Classrooms & Transformational Schools*, EDUCATION LAW CENTER (2014), <https://www.elc-pa.org/wp-content/uploads/2015/06/Trauma-Informed-in-Schools-Classrooms-FINAL-December2014-2.pdf>.

<sup>68</sup> *Id.*

<sup>69</sup> *Creating and Advocating for Trauma Sensitive Schools*, TRAUMA AND LEARNING POLICY INITIATIVE (2013), <https://traumasensitiveschools.org/wp-content/uploads/2013/11/HTCL-Vol-2-Creating-and-Advocating-for-TSS.pdf>

<sup>70</sup> *See* U.S. COMM’N ON C.R., BEYOND SUSPENSIONS: EXAMINING SCHOOL DISCIPLINE POLICIES AND CONNECTIONS TO THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS OF COLOR WITH DISABILITIES 61 (2019), <https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf?fbclid=IwAR2hbECW53li0Liva3jODOz2A4gdqXgeu5PFxzCclfKWBoXfHTeOR3MQXoA>.

<sup>71</sup> *Id.*

<sup>72</sup> *See* Nat’l Disability Rights Network, Press Release, School Resource Officers Do Not Belong in Our Nation’s Schools (July 24, 2020), <https://www.ndrn.org/resource/school-resource-officers-do-not-belong-in-our-nations-schools/>.

An effective way schools can increase access to mental health expertise is to collaborate with the community mental health system and community providers. Funding is available through the EPSDT program of Medicaid.<sup>73</sup> Mental health providers can deploy staff nearby or within schools. For example, the Boston Public Schools (BPS) provides school-based mental health services through a collaboration with Boston Children’s Hospital and 21 community agencies.<sup>74</sup> The Vida Clinic offers mental health services to more than 50 Texas schools.<sup>75</sup> Students at the Fannie Lou Hamer Freedom High School in New York City can get free counseling at a clinic three blocks from the school.<sup>76</sup> Local organizations also fund school-based family engagement and social work staff who help housing, immigration, and other issues.

Some states have funded state-wide school based mental health systems. According to SAMSHA, who along with the CDC and the U.S. Department of Education, offers grants for such programs, these systems “include evidence-based universal prevention efforts, training for school and community members to identify and respond to early warning signs of mental health difficulties, and targeted prevention and intervention programs and services supporting the mental health of students... includ[ing] integrating mental health care delivery within school settings.”<sup>77</sup> A national review found that such systems resulted in “fewer disciplinary actions, increased student engagement..., and higher graduation rates.”<sup>78</sup>

The Biden Administration has promoted doubling the number of mental health professionals in schools and issued an Executive Order signaling federal support for state efforts to meet this goal.<sup>79</sup> Additionally, the American Rescue Plan allocated more than \$120 billion in state grants for education that could be used by districts to provide mental health supports.<sup>80</sup>

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<sup>73</sup> U.S. DEP’T OF HEALTH & HUM. SERV., Substance Abuse and Mental Health Serv. Admin. & Ctr. Medicaid & CHIP Serv., *Joint Informational Bulletin from Assistant Secretary Eleanor McCance-Katz and Acting Deputy Director Calder Lynch*, at 2 (July 1, 2019).

<sup>74</sup> See generally BOSTON SCH. BASED BEHAV. HEALTH COLLABORATIVE, ANNUAL REPORT SCHOOL YEAR 2018-2019, <https://cbhmboston.com/school-based-mental-health-collaborative/> (providing a detailed overview of community collaborators and services offered to students).

<sup>75</sup> Kirsten Weir, *Safeguarding Student Mental Health*, MONITOR ON PSYCH., Sept. 2020, at 47, 49.

<sup>76</sup> Anna Maier et al., *Priority 8: Establish Community Schools and Wraparound Supports*, in RESTARTING AND REINVENTING SCHOOL: LEARNING IN THE TIME OF COVID AND BEYOND 80, 80 (2020), [https://restart-reinvent.learningpolicyinstitute.org/sites/default/files/product-files/Restart\\_Reinvent\\_Schools\\_COVID\\_Priority8\\_Community\\_Schools.pdf](https://restart-reinvent.learningpolicyinstitute.org/sites/default/files/product-files/Restart_Reinvent_Schools_COVID_Priority8_Community_Schools.pdf).

<sup>77</sup> *Guidance to States and School Systems on Addressing Mental Health and Substance Use Issues in Schools*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION (2019), <https://store.samhsa.gov/sites/default/files/d7/priv/pep19-school-guide.pdf>.

<sup>78</sup> Hoover, S., et al, *Advancing Comprehensive School Mental Health: Guidance from the Field*, NATIONAL CENTER FOR SCHOOL MENTAL HEALTH AT THE UNIV. OF MARYLAND (2019), [http://www.schoolmentalhealth.org/media/SOM/Microsites/NCSMH/Documents/Bainum/Advancing-CSMHS\\_September-2019.pdf](http://www.schoolmentalhealth.org/media/SOM/Microsites/NCSMH/Documents/Bainum/Advancing-CSMHS_September-2019.pdf)

<sup>79</sup> *Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers*, Jan. 21, 2021, available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-supporting-the-reopening-and-continuing-operation-of-schools-and-early-childhood-education-providers/>; Randi, Olivia, *State Approaches to Improve Comprehensive School Mental Health Systems*, NATIONAL ACADEMY FOR STATE HEALTH POLICY (2021), <https://www.nashp.org/state-approaches-to-improve-comprehensive-school-mental-health-systems/>.

<sup>80</sup> U.S. DEP’T OF EDUC., DEPARTMENT OF EDUCATION ANNOUNCES AMERICAN RESCUE PLAN FUNDS FOR ALL 50 STATES, PUERTO RICO, AND THE DISTRICT OF COLUMBIA TO HELP SCHOOLS REOPEN (March 17, 2021), <https://www.ed.gov/news/press-releases/departement-education-announces-american-rescue-plan-funds-all-50-states-puerto-rico-and-district-columbia-help-schools-reopen> (“The ARP ESSER funds may be used to address the many impacts of COVID-19 on pre-K through 12 education, including... Implementing strategies to meet the social, emotional, mental health, and academic needs of students

Like other school personnel, psychologists, social workers, and counselors should receive regular anti-bias training. According to the National Association for School Psychologists, “implicit bias is arguably one of the most significant challenges facing our profession.”<sup>81</sup>

## IV. Taking Action

Since June 2020, over 138 school districts have announced that they will remove police from schools. Most removals are permanent; some are on a trial basis.<sup>82</sup> The Oakland Unified School District (OUSD) was one of the first; committing to eliminate its school district’s police department and reinvest the funds.<sup>83</sup> Its “George Floyd District Safety Plan” removes police from schools, changes the district’s response to school-based mental health issues, strengthens linkages to community resources, and revises district policies and procedures.<sup>84</sup> Investments will instead be made in mental health and special education. An analysis conducted by Forward Change concluded that, after the plan’s implementation, police interactions would likely decline by 90 percent.<sup>85</sup>

At the request of the Black Organizing Project—an OUSD partner in developing the plan—the District will retain some school security personnel, predominantly people of color, who will focus on building relationships with families and students, de-escalation when incidents occur, and restorative justice.<sup>86</sup>

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hardest hit by the pandemic, including through evidence-based interventions and critical services...Hiring additional school personnel, such as nurses... to keep schools safe and healthy”).

<sup>81</sup> *Implicit bias: A foundation for school psychologists*, NAT’L ASS’N SCH. PSYCH. (2017), <https://www.nasponline.org/resources-and-publications/resources-and-podcasts/diversity-and-social-justice/social-justice/implicit-bias-a-foundation-for-school-psychologists>.

<sup>82</sup> *Removing Police from Schools - Resolution Tracking as of 7.14.20*, EDUC. C.R. ALL., <https://docs.google.com/spreadsheets/d/1nHH2VFQWurUak7NwTCgXihLg2d75nrpvZIAKjkhNkcU/edit#gid=1773366473> (last updated Mar. 8, 2021). The Education Civil Rights Alliance updates this Google Sheet regularly; numbers are subject to change.

<sup>83</sup> Julian Glover, *Oakland Unified to vote on phase 1 of George Floyd Safety Plan, outlines how officers will be removed from schools*, ABC 7 NEWS (Dec. 9, 2020), <https://abc7news.com/oakland-unified-school-district-ousd-george-floyd-safety-plan-ospd-police-officers-on-campus/8641145/>.

<sup>84</sup> See generally Memorandum from Oakland Unified Schools District (OUSD) Superintendent Kyla Johnson-Trammell, Chief of Staff Curtiss Sarikey, and Director of Black Organizing Project’s Black Sanctuary, Jessica Black, to OUSD Board of Education on George Floyd District Safety Plan Phase 1 (Nov. 12, 2020), <https://oaklandside.org/wp-content/uploads/2020/12/20-2147-Board-Memorandum-Resolution-Plan-George-Floyd-District-Safety-Plan-Phase-1-Second-Reading-1292020.pdf>.

<sup>85</sup> The study found that “police will be required” in only 6 percent of incidents which include: “911 Hang Up; Assault with a Deadly Weapon; Vehicle Collision; Gunshots; Rape; Assault or Robbery with a Firearm; Brandishing a Weapon; Firearms Possession; Hit and Run; Child Stealing.” Prior to implementation of the plan, the study also found that 68 percent of police response was inappropriate and could have been handled by “skilled non-police response” or administrators. See *id.*, p. 6.

<sup>86</sup> BLACK ORG. PROJECT, *THE PEOPLE’S PLAN FOR POLICE FREE SCHOOLS 4* (2019), [blackorganizingproject.org/wp-content/uploads/2019/11/The-Peoples-Plan-2019-Online-Reduced-Size.pdf](https://blackorganizingproject.org/wp-content/uploads/2019/11/The-Peoples-Plan-2019-Online-Reduced-Size.pdf).

Removing police from schools nationally will require a sustained effort. We must work for national, state, and local legislation to defund school-based police and, correspondingly, invest in efforts to improve public education, including better approaches to promoting and supporting positive behavior. There should also be funding for research and for evaluations of existing and new practices. Quality education and school safety should be national priorities, and we should invest in improving our knowledge of how to better achieve them.

Two Congressional proposals can help pave the way to police-free schools.

### **The Counseling Not Criminalization in Schools Act**

Introduced in Congress in 2020 and re-introduced in June 2021<sup>87</sup>, the Counseling Not Criminalization in Schools Act (CNCSA) limits the availability of federal funds to hire or train police officers based in schools. The Act prohibits schools from using federal funds to hire or train sworn law enforcement officers. It also bans the DOJ Community Oriented Policing Services (COPS) program from funding law enforcement in schools.<sup>88</sup>

Additionally, CNCSA creates a grant program to fund alternatives to SROs, including school efforts to reform disciplinary and safety policies. Priority is given to local education agencies that terminate contracts with law enforcement.<sup>89</sup> Grant funds can be used to hire and train new staff and implement positive behavioral supports like PBIS and restorative justice. Recipients of the grants are required to collect and report data on new models of support, including any disproportionality in discipline rates between students with disabilities, students of color, and their peers.<sup>90</sup>

If enacted, the bill would significantly reduce funding for SROs in schools and fund proven alternatives. As such, CNCSA has gained wide support among disability and racial justice advocates.

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<sup>87</sup> Counseling Not Criminalization in Schools Act, S. 2125, 117th Congress (2021). <https://www.govinfo.gov/app/details/BILLS-117s2125is>

<sup>88</sup> Further, the Act deletes paragraph 12 of § 1701 of Omnibus Crime Control and Safe Streets Act of 1968 which authorized grant funding to establish partnerships between local law enforcement agencies and local school systems. *See* Counseling not Criminalization in Schools Act, H.R. 7848, 116th Cong. § 5 (2020); *see* Omnibus Crime Control and Safe Streets Act of 1968 § 1701, 34 U.S.C. § 10381 (b)(12) (“to establish school-based partnerships between local law enforcement agencies and local school systems by using school resource officers who operate in and around elementary and secondary schools to combat school-related crime and disorder problems, gangs, and drug activities, including the training of school resource officers in the prevention of human trafficking offenses”).

<sup>89</sup> A behavior intervention plan (BIP) is a data-driven plan that describes the interventions school staff will use to support the student’s behavior, which should address the root causes of the concerning behaviors analyzed in the functional behavioral analysis. *See* WV Complaint. While there are no federal requirements for a BIP, they are required where an IEP determines that particular behavior is a manifestation of a child’s disability. 34 CFR § 300.530.

## **The Keeping All Students Safe Act**

Introduced in Congress in 2017 and re-introduced in May 2021<sup>91</sup>, the Keeping All Students Safe Act (KASSA) bans all seclusion and most restraint “by program personnel, a school resource officer, or a school security guard” of a student “while attending any program that receives Federal financial assistance.”<sup>92</sup> Restraint includes all mechanical or chemical restraints, which are prohibited when “contraindicated based on the student’s disability, health care needs, or medical or psychiatric condition.” Restraint may be used only to allay “an imminent danger of serious physical injury” to the student or another. The least amount of force necessary must be used, and in general, the person implementing the restraint must be trained and certified in crisis intervention.

KASSA would also provide funds to help implement its requirements and for other interventions like trauma-informed care, PBIS, and restorative justice. The 2021 version of the Act disallows funds from being spend to train law enforcement (an important improvement from the 2020 version), but funds can still be used to train security guards. Future versions of the bill should eliminate this provision.

Like CNCSA, KASSA has broad support among disability and racial justice advocates.

## **IV. Conclusion**

The presence of SROs is a form of over policing and leads to the criminalization of students, particularly students of color and students with disabilities.

Police should not be placed in schools in schools. To eliminate school-based police, the response must two-fold.

Local school districts must replace SROs with other interventions, including funding more social workers, school psychologists, and counselors. Further, districts should monitor and revise interventions as needed to ensure they do not result in disproportionate discipline based on color or disability.

The Federal government must encourage such change by eliminating federal funding for police in schools and providing additional funding for alternative approaches. Discrimination should be addressed through civil rights enforcement.

Students like Kayleb and Dnigma should be able to attend schools that foster learning and growth that are free from the fear and stigma induced by a permanent police presence.

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<sup>91</sup> U.S. Senate Committee on Health, Education, Labor & Pensions  
<https://www.help.senate.gov/chair/newsroom/press/murray-murphy-beyer-scott-mceachin-reintroduce-legislation-to-protect-students-from-dangerous-seclusion-and-restraint-practices>

<sup>92</sup> Keeping All Students Safe Act, H.R. 8782, 116th Cong. (2020).