

A HEALTH JUSTICE RESPONSE TO SCHOOL DISCIPLINE AND POLICING

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Inequities in school discipline and policing have been long documented by researchers and advocates. Longitudinal data is clear that Black, Indigenous, people of color (BIPOC) students are punished and policed at higher rates than their white classmates. For students who have disabilities, especially those with intersectional identities, the impact of school discipline and policing is amplified, with disparities existing at some of the highest rates across multiple categories. And this disproportionality has not diminished during short- and long-term school closures resulting from the COVID-19 pandemic. In fact, schools have employed new models of exclusion in the pandemic setting that operate simultaneously with “traditional” punitive responses, e.g., suspensions and expulsions. This raises significant concerns that in a time of heightened vulnerability resulting from COVID-19, discipline disparities and educational inequities are not only being replicated but exacerbated, and in some cases, escalated. Despite evidence of the significant co-influential nature of health and education, school policies and practices have not been deemed public health priorities. Too often, the operation of such policies and practices are narrated and re-narrated as falling outside health law and policy. This Article aims to alter this current pathway by examining two overused, yet underexamined drivers of health inequities—school discipline and policing—through the health justice framework. The application of health justice to discipline and policing is an essential first step to developing a more comprehensive approach to

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eliminating entrenched health inequities that have affected BIPOC students and students who have disabilities before, during, as well as beyond the COVID-19 pandemic. In a time of increasing race-conscious approaches to public health and recognition that “all policy is health policy”¹ the urgency to address the two-tiered system of racialized and gendered discipline and policing in the U.S. education system as a health justice priority is clear. From evidence of direct individual negative health outcomes to potential indirect adverse health consequences for peers, families, and communities, the predictable patterns of exposure and risk for diminished health status of marginalized students during key stages of development underscores the importance of dismantling legal, political, and social structures that drive health injustice.

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1. Rachel R. Hardeman et al., *Stolen Breaths*, 383 NEW ENG. J. MED. 197, 198 (2020).

INTRODUCTION

COVID-19 has taught us many things—chief among them that health is neither a matter of individual choice nor a matter of individual consequence.² Not only are health outcomes deeply influenced by institutional and structural forces³ that shape access to opportunities and resources needed to thrive, but when individual populations suffer, society as a whole suffers. In this moment of increased calls for race-conscious approaches⁴ to transform our public

2. Angela Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 67 UCLA L. REV. 758, 762, 771, 774, 777 (2020) (noting how social determinants of health largely impact the health of the individual, and how population, geography, and access to power all play a role in shaping an individual's health over their individual choices); *Health Equity Considerations and Racial and Ethnic Minority Groups*, CTR. DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html> [<https://perma.cc/52NC-44XJ>]; see also Dorothy Roberts, *What's Wrong with Race-Based Medicine?: Genes, Drugs, and Health Disparities*, 21 MINN. J.L. SCI. & TECH 1, 15 (2011) (“It is implausible that one race of people evolved to have a genetic predisposition to heart failure, hypertension, infant mortality, diabetes and asthma. There is no evolutionary theory that can explain why African ancestry would be genetically prone to practically every major common illness.”).

3. See, e.g., Paula Braveman, *Health Disparities and Health Equity: Concepts and Measurement*, 27 ANN. REV. PUB. HEALTH, 167, 167, 169–71 (2006) (defining several structural realities that generate disparities in health care and health equity); Janice Sabin et al., *Physicians' Implicit and Explicit Attitudes About Race by MD Race, Ethnicity, and Gender*, 20 J. HEALTH CARE POOR & UNDERSERVED, 896, 901–03 (2009); Scott Burris, *Law in a Social Determinants Strategy: A Public Health Law Research Perspective*, 126 PUB. HEALTH REPS., 22–23 (2011) (examining how socioeconomic, cultural, and environmental conditions all serve a role in determining health outcomes for populations within the United States); Lawrence O. Gostin et al., *The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development*, 393 LANCET 1857, 1857 (2019); Ruqaiijah Yearby, *Structural Racism and Health Disparities: Reconfiguring the Social Determinants of Health Framework to Include the Root Cause*, 48 J.L. MED. & ETHICS 518, 520–21 (2020) [hereinafter Yearby, *Structural Racism and Health Disparities*] (asserting that discrimination was a significant cause of health care disparities and that health care disparities were of particular relevance to social justice initiatives due to their relation to overt and covert discrimination); Ruqaiijah Yearby, *Internalized Oppression: The Impact of Gender and Racial Bias in Employment on the Health Status of Women of Color*, 49 SETON HALL L. REV. 1038, 1039 (2019) (asserting that structural discrimination results in significantly worse health outcomes for women of color in the United States).

4. AM. PUB. HEALTH ASS'N, *Structural Racism Is a Public Health Crisis: Impact on the Black Community* (Oct. 24, 2020), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/13/structural-racism-is-a-public-health-crisis> [<https://perma.cc/5DQB-AK7U>] (outlining the APHA's recent and varied public statements made in support of initiatives recognizing the impact of race and other social determinants on health).

and private systems, it is crucial that public health and health law communities more closely examine the role that law and policy⁵ have played in enabling, sustaining, and exacerbating deeply-rooted injustices and take action to develop law and policy solutions that eliminate those inequities.⁶ Within what we have defined in other work as the antiracist health equity movement,⁷ a growing body of scholarship—health justice—sits at this critical nexus and offers a roadmap for eradicating inequities closely linked to measures of health and justice⁸ and rooted in discrimination.⁹

Health justice as a framework or approach presents both theoretical and practical applications for targeting law and policy reforms to eliminate health disparities.¹⁰ Health justice scholars place

5. CHANGE LAB SOLS., *A Blueprint for Changemakers: Achieving Health Equity Through Law & Policy* 3, <https://www.changelabsolutions.org/product/blueprint-changemakers> [<https://perma.cc/YV4A-88B3>] (asserting that issues of discrimination will require affirmative government actions and changes in the law to undo target discrimination that has occurred through our policies and laws); Emily A. Benfer et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, 19 YALE J. HEALTH POL'Y & ETHICS 122, 135 (2020) (examining poverty's influence on education, health care, and employment and its value as evidence of institutional and interpersonal discrimination).

6. Health inequities are systematic differences in the opportunities that groups have to achieve optimal health, leading to disparate and avoidable differences in health outcomes. See Braveman, *supra* note 3, at 167, 180–81 (defining health inequities and further highlighting their unjust and avoidable nature that stems from their discriminatory origin).

7. Thalia González et al., *An Antiracist Health Equity Agenda for Education*, forthcoming J. L. MED. & ETHICS (2022).

8. Sheila Foster et al., *Health Justice Is Racial Justice: A Legal Action Agenda for Health Disparities*, HEALTH AFF. BLOG (2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200701.242395/full> [<https://perma.cc/3XK3-BP2M>] (arguing that targeted advocacy efforts using both existing law and new measures to confront the direct effects of discrimination are necessary to deal with disparities that are evident in health care and quality of life).

9. See, e.g., Benfer et al., *supra* note 5, at 130–34 (describing the relationship between interpersonal, institutional, and structural discrimination and health); Yearby, *Structural Racism and Health Disparities*, *supra* note 3, at 518, 520–21 (defining structural racism as the root cause of health inequities within a revised social determinants of health framework).

10. See, e.g., Benfer et al., *supra* note 5, at 136–37; Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 AM. U. L. REV. 275, 306–07 (2015) (presenting health justice as a model to address health inequity and social injustice in vulnerable communities through the examination of disparities in legal proceedings); Yael Cannon, *The Kids Are Not Alright: Leveraging Existing Health Law to Attack the Opioid Crisis Upstream*, 71 FLA. L. REV. 765, 779 (2019) [hereinafter Cannon, *The Kids Are Not Alright*] (arguing for the adoption

“subordination at the center of the problem of health disparities”¹¹ and embrace an expanded conceptualization of discrimination as “not limited to what courts recognize as a basis for legal remedies; it also includes actions described as discrimination, bias, and unfair treatment in public health and sociology literature, even though they may not be deemed legally actionable by US courts.”¹² As such, the framework of health justice elevates how racism, social control, bias, privilege, as well as the political and legal systems in which they are embedded, influence the social determinants of health (SDH).¹³

The health justice framework extends what has been previously accepted within the health domain beyond traditional health care settings, systems, or laws.¹⁴ This broad applicability creates a ripe opportunity to extend the framework’s approach to a broad range of health-impacting laws, policies, and systems that may not be designed or previously conceptualized as public health.¹⁵

of a health justice framework to assess public commitments to meet the needs of people with adverse childhood experiences); Yael Cannon, *Injustice Is an Underlying Condition*, 6 U. PA. J.L. & PUB. AFF. 201, 204–06 (2020) [hereinafter Cannon, *Injustice*] (applying a health justice approach to food insecurity and housing); Barbara Ferrer, *Immigrant Health: Anchoring Public Health Practice in a Justice Framework*, 109 AM. J. PUB. HEALTH 1156 (2019) (exploring the health justice framework for immigrant health); Matthew B. Lawrence, *Against the “Safety Net”*, 72 FLA. L. REV. 49, 65–67 (2020) (utilizing a health justice approach to examine public benefits); Medha D. Makhlof, *Health Justice for Immigrants*, 4 U. PA. J.L. & PUB. AFF. 235, 283–285 (2019) (applying health justice to access to health care for immigrant communities); Lindsay F. Wiley, *Health Law as Social Justice*, 24 CORNELL J.L. & PUB. POL’Y 47, 47 (2014) (introducing health justice as a framework for the use of law to reduce health disparities); Lindsay F. Wiley, *From Patient Rights to Health Justice: Securing the Public’s Interest in Affordable, High-Quality Health Care*, 37 CARDOZO L. REV. 833, 862, 872–74 (2016) (introducing the health justice approach as a means of increasing health care quality and reducing disparities).

11. Harris & Pamukcu, *supra* note 2, at 806.

12. Benfer et al., *supra* note 5, at 130 (examining discrimination in relation to social and intermediate determinants of health and stating that a framework of health justice defines discrimination in terms broader than what would simply be legally actionable).

13. *See id.* at 126–27 (asserting that social determinants of health are the full set of social and environmental conditions in which people live).

14. *See, e.g.*, Elizabeth Tyler-Tobin & Joel Teitelbaum, *Medical-Legal Partnership: A Powerful Tool for Public Health and Health Justice*, 134 PUB. HEALTH REP. 201, 202–03 (2019) (highlighting how partnerships between legal and medical professionals aimed at preventing health care abuses and mitigating civil liability can be useful in helping alleviate the discrimination rampant in the various social determinants of health).

15. For example, health justice as a framework has been applied across multiple determinants of health encompassing specific populations (e.g., people with disabilities and immigrants) and different systems (e.g., health care, employment,

In the case of school discipline and policing, application of the health justice framework is a two-step approach: first, to understand discipline and policing as a significant public health and health law problem; and second, to identify legal and policy interventions that are “structural, supportive, and empowering”¹⁶ to ensure that every student has an opportunity to attain their full potential free of disadvantage due to their social circumstances. In extending the current legal scholarship on health justice to education, this Article proceeds in two Parts.

Part I advances the argument that school discipline and policing are public health issues. It begins by identifying the co-influential nature of education and health under the SDH framework. It then examines patterns in empirical research on school discipline and policing disparities before and during COVID-19. Next, it reviews the associated negative mental health and physical health outcomes and risks of school discipline and policing. Part I also exposes the relationship between health and school-based discipline and policing in the historic and contemporary social context of subordination and racism. Part II then applies three prongs of the health justice framework to school discipline and policing. Part II offers examples of specific short- and long-term legal and policy interventions to begin to address the ways that school-based violence¹⁷ produces and exploits the differentiated vulnerabilities of BIPOC students and students who have disabilities.

housing, and food insecurity). *See, e.g.*, Benfer et al., *supra* note 5, at 137 (arguing for the framework’s adoption in the context of the COVID-19 pandemic); Lindsey Wiley, *Applying the Health Justice Framework to Diabetes as a Community-Managed Social Phenomenon*, 16 HOUS. J. HEALTH L. & POL’Y 193, 210 (2016) (applying the framework to diabetes using individual expectations in managing the disease as well as its disproportionate societal effects that are better handled using a communal approach); Robyn M. Powell, *Applying the Health Justice Framework to Address Health and Health Care Inequities Experienced by People with Disabilities During and After COVID-19*, 96 WASH. L. REV. 93, 96, 122, 135 (2021) (expanding the framework to the disabled in the context of the looming pandemic while asserting that a less individualized approach would best produce equitable health outcomes in times of significant declines in all social determinants of health).

16. Benfer et al., *supra* note 5, at 137; *see* discussion *infra* Part II.

17. We argue that school discipline and policing exist within a larger domain of violence that is not exclusive to physical harm. Discipline and policing practices in schools independently and co-influentially create learning environments marked by discrimination, fear, and trauma.

I. SCHOOL DISCIPLINE AND POLICING: AN ISSUE OF HEALTH JUSTICE?

To conceptualize U.S. education laws and policies, and more specifically school discipline and policing, as a matter of public health—and by extension health justice—is more than asserting education is a central social determinant. It is a nuanced inquiry that requires responsiveness to a series of layered questions. As a primary matter one must ask, what is the relationship between education and health? From there a logical question follows: are there predictable patterns of disparate outcomes in educational experiences for specific individuals or populations that might put them at greater risk for poor health outcomes? Put more directly, is school discipline and policing experienced in a disparate manner when comparing peer student groups? Lastly, how is the health of these student populations impacted by such practices and policies?

A. *Education and Health*

Since the 1980s, public health and health law advocates have clearly recognized the impact the SDH have had in shaping health outcomes and driving health disparities.¹⁸ By 2010, key public health institutions in the United States began to fully center the SDH in their approaches to public health¹⁹ and named the SDH as “the conditions in which people are born, grow, work, live, and age, and the wider set of forces and systems shaping the conditions of daily life”²⁰ with specific attention to five key determinants: “(1) Economic Stability, (2)

18. SAMANTHA ARTIGA & ELIZABETH HINTON, *BEYOND HEALTH CARE: THE ROLE OF SOCIAL DETERMINANTS IN PROMOTING HEALTH AND HEALTH EQUITY* 2–3 (2018) (arguing that addressing social determinants of health is necessary in order to address health disparities and that government action in the sector will be required to achieve that goal); see also Paula Braveman et al., *The Social Determinants of Health: Coming of Age*, 32 ANN. REV. PUB. HEALTH 381, 382 (2011) (providing a history of the rise of the focus on the social determinants of health that form the basis of the modern health justice framework).

19. Ford and Airhihenbuwa define public health as the “[t]he art (i.e., practice) and science (i.e., research) of protecting and improving the health of communities.” Chandra L. Ford & Collins O. Airhihenbuwa, *Critical Race Theory, Race Equity, and Public Health: Toward Antiracism Praxis*, 100 AM. J. PUB. HEALTH S30, S31 (2010).

20. WORLD HEALTH ORG., *Social Determinants of Health*, https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1 [https://perma.cc/Z8AN-YLWY].

Education, (3) Health and Health Care, (4) Neighborhood and Built Environment, and (5) Social and Community Context.”²¹

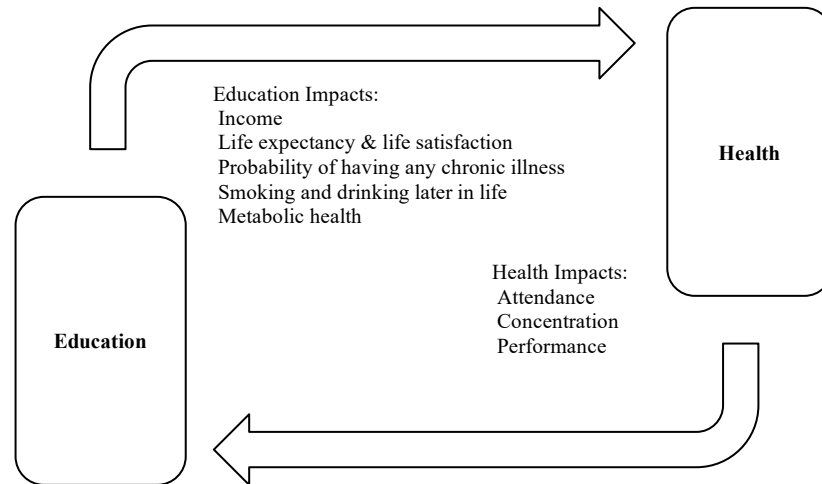
As a fundamental SDH, education functions as a strong predictor of both positive and negative health outcomes at individual- and community-levels, including disease, disability, mental health, substance abuse, morbidity, and mortality.²² Figure 1 illustrates the co-influential linkage between education and health.²³

21. *Social Determinants of Health: Interventions and Resources*, HEALTHY PEOPLE <https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources> [<https://perma.cc/7V97-5SJP>].

22. HEALTHY PEOPLE 2030, <https://health.gov/healthypeople> [<https://perma.cc/C9TH-MB3B>] (illustrating the government’s view that SHDs remain important by releasing and conducting extensive, data-driven research on SHDs including education); CTR. DISEASE CONTROL & PREVENTION, *About Social Determinants of Health: What Are Social Determinants of Health?* (2021), <https://www.cdc.gov/socialdeterminants/about.html> [<https://perma.cc/2R6V-WSDE>] (highlighting the CDCs view that SDH are critically important criteria that require study and focus and that have significant impact on the health of each citizen); S. Jay Olshansky et al., *Differences in Life Expectancy Due to Race and Educational Differences Are Widening, and Many May Not Catch Up*, 31 HEALTH AFFS. 1803, 1805–06 (2012) (noting that education highly impacts health outcomes, and that on average the more education obtained by people of color and Black Americans, the higher their expected lifespan); Brita Roy et al., *Education, Race/Ethnicity, and Causes of Premature Mortality Among Middle-Aged Adults in 4 US Urban Communities: Results From CARDIA, 1985–2017*, 110 AM. J. PUB. HEALTH 530, 533 (2020) (highlighting how educational disparities are linked with racial health disparities present in the United States that have only entrenched in the past four decades).

23. See CTR. SOC’Y & HEALTH, VA. COMMONWEALTH UNIV., *WHY EDUCATION MATTERS TO HEALTH: EXPLORING THE CAUSES* 1, 2–4 (2015) (asserting that education impacts several important life metrics include economic potential, social status, and material resources); Viju Raghupathi & Wullianallur Raghupathi, *The Influence of Education on Health: An Empirical Assessment of OECD Countries for the Period 1995–2015*, 78 ARCH. PUB. HEALTH 20, 26 (2020) (arguing that education and mortality are linked and that governments should be making affirmative policy decisions to account for this empirical reality); Beverly Bradley & Amy C. Greene, *Do Health and Education Agencies in the United States Share Responsibility for Academic Achievement and Health? A Review of 25 Years of Evidence About the Relationship of Adolescents’ Academic Achievement and Health Behaviors*, 52 J. ADOLESCENT HEALTH 523, 528 (2013) (arguing that educational and health improvements should not be viewed as independent goals handled by separate agencies, but rather as interconnected issues requiring analysis and solutions that encompass both goals).

Figure 1 Education and Health Pathways



For example, by age twenty-five individuals with a high school degree can expect to live over ten years longer than those without one.²⁴ One additional year of schooling is associated with 6.85 percentage points (“pp”) reduction in poor health and 3.8 pp and 4.6 pp reduction in difficulty completing activities of daily living (i.e., bathing, dressing, eating, getting in and out of bed, and walking across a room) and instrumental activities of daily living (i.e., making meals, shopping, making phone calls, taking medications, and managing money), respectively.²⁵ Higher levels of education influence income and resources, social and psychological health, health literacy, and overall health of neighborhoods.²⁶ The inverse relationship is also true: poor

24. Brian L. Rostron, John L. Boies & Elizabeth Arias, *Education Reporting and Classification on Death Certificates in the United States*, 151 VITAL HEALTH STAT. 1, 7 (May 2010).

25. Raquel Fonesca, Pierre-Carl Michaud & Yuhui Zheng, *The Effect of Education on Health: Evidence from National Compulsory Schooling Reforms*, 11 SERIES 83, 84 (2019).

26. ARTIGA & HINTON, *supra* note 18, at 1–2; Lawrence St Leger, *Schools, Health Literacy and Public Health: Possibilities and Challenges*, 16 HEALTH PROMOTION INT’L 197, 204 (2001) (concluding that school provides a critical platform for promoting and teaching health literacy and that by providing support for more robust health literacy in schools, these issues can be handled); Natalie McGill, *Education Attainment Linked to Health Throughout Lifespan: Exploring Social Determinants of Health*, 46 THE NATION 1, 1 (2016) (noting that education remains the single most important identifiable SDH and that the failure to obtain a high school degree can be an indicator of decreased lifespan).

health can influence educational attainment. As education and health have a co-influential relationship, diminished health can be the result of low educational attainment and induce educational setbacks.²⁷ For example, if a child has asthma, they might have difficulty focusing in school or even take more absences.²⁸ This can produce a negative feedback loop of decreased educational performance and attainment and amplified adverse health consequences.²⁹ It is important to understand the impact of intermediary determinants of health (e.g., material, environmental, and social conditions) in shaping educational and health experiences. Children from low-income families, students who have disabilities, and students who are subjected to systemic, structural, and interpersonal discrimination are more likely to struggle with math and reading and are less likely to graduate from high school.³⁰ They are also at greater risk to suffer from heart disease, diabetes, and depression.³¹ Additionally, educational attainment and experiences (in particular vis-à-vis the school-to-prison pipeline) are predictors of and risks for incarceration,³² which is widely recognized as a causal pathway for increased exposure to health harming conditions, poor health outcomes, and racial health disparities.³³

27. McGill, *supra* note 26 (asserting that addressing SDH helps prevent children from falling behind, arguing that the participation in health justice focused programs can prevent developmental delays caused by illness).

28. Sara B. Johnson et al., *Asthma and Attendance in Urban Schools*, 16 *PREV. CHRONIC DIS.* 1, 1(2019) (noting that asthma provides a significant source of student absenteeism and that causes for asthma are racialized and dependent on SDH like race, geography, and class).

29. ARTIGA & HINTON, *supra* note 18, at 1, 3 (noting that the failure to address SDH can create potentially harmful generational effects that compound as the social determinants overlap).

30. HEALTHY PEOPLE 2030, *Education Access and Quality* <https://health.gov/healthypeople/objectives-and-data/browse-objectives/education-access-and-quality> [<https://perma.cc/Z7AD-J83J>].

31. *Id.*

32. *Id.*

33. See, e.g., JULIA ACKER ET AL., ROBERT WOOD JOHNSON FOUND. & UNIV. OF CAL. S.F., *MASS INCARCERATION THREATENS HEALTH EQUITY IN AMERICA* 10 (2019); Brian Houle, *The Effect of Incarceration on Adult Male BMI Trajectories, United States, 1981-2006*, 1 *J. RACIAL & ETHNIC HEALTH DISPARITIES* 21 (2014); Michael Massoglia, *Incarceration, Health, and Racial Disparities in Health*, 42 *L. & SOC'Y REV.* 275 (2008); ASHLEY NELLIS, THE SENTENCING PROJECT, *THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS* 4 (2016); SARA WAKEFIELD & CHRISTOPHER WILDEMAN, *CHILDREN OF THE PRISON BOOM: MASS INCARCERATION AND THE FUTURE OF AMERICAN INEQUALITY* (2013).

The nexus between education and health is also inclusive of the social and environmental context and key protective health factors, such as school connectedness, peer connectedness, and positive school climate, which support healthy development in childhood, adolescence, and young adulthood. These protective health factors can serve to diminish risks of health-harming behaviors for youth in both individual and cumulative capacities.³⁴

B. Patterns of Disparities in School Discipline and Policing

Inequities across race and gender in school discipline and policing have been the subject of research by academics and advocates for decades.³⁵ When compared to their white peers, longitudinal data is

34. CTR. DISEASE CONTROL & PREVENTION, *Adolescent & Sch. Health*, <https://www.cdc.gov/healthyyouth/index.htm> [<https://perma.cc/WUM8-HSSU>] (e.g., early sexual initiation, drug use, emotional distress, suicide ideation and attempts, and violence).

35. *See, e.g.*, U.S. DEP'T OF EDUC. OFF. CIV. RTS., TRANSFORMED CIV. RTS. DATA COLLECTION, REVEALING NEW TRUTHS ABOUT OUR NATION'S SCHOOL 1, 3 (2012) (highlighting disparities between white and Black students in regard to discipline and expulsion, with Black students being disproportionately disciplined and expelled in relation to their white peers); U.S. DEP'T OF EDUC. OFF. CIV. RTS., CIV. RTS. DATA COLLECTION, DATA SNAPSHOT: SCH. DISCIPLINE 1, 1–3, 5–6 (2014) (noting significant gender discrepancies in children's disciplinary suspensions and expulsions); U.S. DEP'T OF EDUC. OFF. CIV. RTS., CIV. RTS. DATA COLLECTION, KEY DATA HIGHLIGHTS ON EQUITY AND OPPORTUNITY GAPS IN OUR NATION'S PUBLIC SCHOOLS 1, 3 (2016) [hereinafter KEY DATA HIGHLIGHTS ON EQUITY AND OPPORTUNITY GAPS IN OUR NATION'S PUBLIC SCHOOLS] (indicating that Black children are more than three times as likely to be suspended as their white peers, and that boys represent nearly eighty percent of suspensions despite being only fifty-four percent of the population); Elana Needle, *National Racial Justice Coalition Renews Demand that Schools Address Racial Disparities in Discipline and that OCR, U.S. Department of Education, Enforce Laws Prohibiting Discrimination in Student Discipline*, ADVANCEMENT PROJECT (Aug. 5, 2019), <https://advancementproject.org/news/national-racial-justice-coalition-renews-demand-that-schools-address-racial-disparities-in-discipline-and-that-ocr-u-s-department-of-education-enforce-laws-prohibiting-discrimination-in-student-dis> [<https://perma.cc/ZMK3-6D2V>] (reporting that the U.S. Commission on Civil Rights had found significant discrepancies in the educational and disciplinary experiences between children of color, primarily Black children, and their white peers); DANIEL J. LOSEN & AMIR WHITAKER, 11 MILLION DAYS LOST: RACE, DISCIPLINE AND SAFETY AT U.S. PUBLIC SCHOOLS 2, 4, 11 (2018) (arguing that suspensions accounted for approximately twenty percent of disparities in Black and white educational performance before concluding that lawmakers should be paying special attention to the disparate effect discriminatory disciplinary measures can have on educational outcomes); ADVANCEMENT PROJECT, EDUCATION LOCKDOWN: THE SCHOOLHOUSE TO JAILHOUSE TRACK 15–16, 24 (2005) (noting that the rise of zero-tolerance policies in

clear that BIPOC students are punished and policed at higher rates.³⁶ Given the significance of disproportionality in school-based discipline and policing and far-reaching collateral consequences, a growing body of literature has sought to expose how both racial and gender bias³⁷

conjunction with further entrenching racial disparities has resulted in an educational situation in which Black children suffer more from disproportionate exclusion from the classroom than their white peers); FACT SHEET, DSC FACT SHEETS ON SCHOOL PUSHOUT: DIGNITY IN SCHOOLS, WHAT IS SCHOOL PUSHOUT (2016), <https://dignityinschools.org/resources/dsc-created-fact-sheets> [<https://perma.cc/8GD8-3E6Q>] (emphasizing the importance that children not suffer from “pushout” or their exclusion from the class room); S. POVERTY L. CTR., EFFECTIVE DISCIPLINE FOR STUDENT SUCCESS REDUCING STUDENT AND TEACHER DROPOUTS RATES IN MISSISSIPPI 1, 6 (2009) (arguing that schools should embrace a Positive Behavioral Interventions and Supports (PBIS) model, which relies on data and focused responses to reduce referral rates and the overall use of more draconian disciplinary measures).

36. See AMIR WHITAKER ET AL., COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS 24 (2019) (noting that Black students and disabled students are disproportionately arrested by the police at their school relative to their peers); U.S. DEP’T OF EDUC. OFF. CIV. RTS., CIV. RTS. DATA COLLECTION: A FIRST LOOK 4 (2016) (asserting that Black children are more than twice as likely than their white peers to be disciplined directly by law enforcement over an infraction that began at school); U.S. DEP’T OF EDUC. OFF. CIV. RTS., CIV. RTS. DATA COLLECTION: SCHOOL CLIMATE AND SAFETY 3 (2018) (noting that between 2015 and 2016, Black students were disproportionately reported to the police for school infractions); U.S. DEP’T OF EDUC. OFF. CIV. RTS., CIV. RTS. DATA COLLECTION: AN OVERVIEW OF EXCLUSIONARY DISCIPLINE PRACTICES IN PUBLIC SCHOOLS FOR THE 2017-18 SCHOOL YEAR 21 (2021) [hereinafter CIV. RTS. DATA COLLECTION (2021)] (illustrating similar phenomena in schools during the 2017 to 2018 school years); see also Thalia González, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 J.L. & EDUC. 281, 282, 328 (2012) (arguing that the increased use of exclusionary measures and zero-tolerance policies has resulted in our children being bereft of their education before concluding that the implantation of restorative disciplinary methods was better suited to building healthy and positive interactions between the schools and their populations).

37. MONIQUE W. MORRIS, PUSHOUT: THE CRIMINALIZATION OF BLACK GIRLS IN SCHOOLS 34 (2016) (highlighting the continued history of disparity that Black women have faced in education as a result of segregation and gender bias that still persists to this day); KIMBERLÉ WILLIAMS CRENSHAW, PRISCILLA OCEAN & JYOTI NANDA, BLACK GIRLS MATTER: PUSHED OUT, OVERPOLICED AND UNDERPROTECTED 16–17 (2015) (noting that while Black girls are less likely to be punished than Black boys, they are nonetheless six times more likely to be punished than their white female counterparts); CHERYL STAATS, IMPLICIT RACIAL BIAS AND SCHOOL DISCIPLINE DISPARITIES: EXPLORING THE CONNECTION 1, 4–5 (2014) (reiterating that Black students face unjust discrimination in regards to punishment and that the punishment of Black students is driven primarily by the subjectivity of the adults responsible and the discretionary nature of the offenses are enforced); REBECCA EPSTEIN, JAMILIA J. BLAKE & THALIA GONZALEZ,

contribute to the likelihood of students' disproportionate experiences with harsh disciplinary practices and police.³⁸

GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS' CHILDHOOD 1, 9 (2017) (asserting that Black girls are likely to be incorrectly perceived as guilty, and that as a result of these perceptions, they are more likely to be punished and more likely to be punished more severely); Jamilia J. Blake et al., *Unmasking the Inequitable Discipline Experiences of Urban Black Girls: Implications for Urban Education Stakeholders*, 43 URB. REV. 90, 97 (2010) (noting that Black girls were over represented in every cross section of their disciplinary study and that they were nearly twice as likely to suffer from exclusionary punishment, either in school or out of school, than their white peers); Jamilia J. Blake et al., *The Role of Colorism in Explaining African American Females' Suspension Risk*, 32 SCH. PSYCH. Q. 118, 121 (2017); JAMILIA J. BLAKE, BETTIE RAY BUTLER & DANIELLE SMITH, *Challenging Middle-Class Notions of Femininity: The Cause of Black Females' Disproportionate Suspension Rates*, in CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION 75, 76 (Daniel J. Losen ed., 2015) (asserting that teachers tend to have lower perceptions of Black children that create a negative feedback loop that ultimately disproportionately harms Black children generally and Black girls specifically); Subini A. Annamma et al., *Black Girls and School Discipline: The Complexities of Being Overrepresented and Understudied*, 54 URB. EDUC. 211, 230–31 (2016) (arguing that in instances of punishment, racist perceptions cloud the discipline of Black girls and that subjective views of compliance, injury, and proper behavior are all influenced by dominant stereotypes surrounding Black women that influence adult actors to discriminate against Black children); NATHAN BARRETT ET AL., DISPARITIES IN STUDENT DISCIPLINE BY RACE AND FAMILY INCOME 1, 30–32 (2017) (evidencing the disproportionately high rate of Black students suspended and expelled through an analysis of disciplinary practices in Louisiana schools); *Seth Gershenson & Thomas S. Dee, The Insidiousness of Unconscious Bias in Schools*, BROOKINGS INST. (2017), <https://www.brookings.edu/blog/brown-center-chalkboard/2017/03/20/the-insidiousness-of-unconscious-bias-in-schools> [<https://perma.cc/N7ZP-VD4D>] (asserting that the role of unconscious bias in discrimination is heightened in the hierarchal setting of school, and that disparities are the natural result of this bias); Russell J. Skiba et al., *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 SCH. PSYCH. REV. 85, 86 (2011) (arguing that for over twenty-five years, students of color have been subjected to disproportionate disciplinary measures); AJMEL QUERESH & JASON OKONOFUA, LOCKED OUT OF THE CLASSROOM: HOW IMPLICIT BIAS CONTRIBUTES TO DISPARITIES IN SCHOOL DISCIPLINE 5–6 (2017) (asserting that implicit bias on behalf of educators stem from and perpetuate negative racial stereotypes that become generationally impactful due to their ability to reduce education outcomes for Black children); Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 EMORY L.J. 765, 784–85, 789–92 (2017) (arguing that increased and heavy handed surveillance measures perpetuate mistrust within the students, fail to achieve their goals of lessening student violence, and react to stereotypes which hold little basis in empirical data).

38. See, e.g., CIV. RTS. DATA COLLECTION (2021), *supra* note 36, at 21 (illustrating the discrepancies in police involvement regarding white and Black children); SARAH E. REDFIELD & JASON P. NANCE, THE AMERICAN BAR ASSOCIATION JOINT TASK FORCE ON REVERSING THE SCHOOL-TO-PRISON PIPELINE PRELIMINARY REPORT 30–34 (2016) (highlighting that Black students are less likely to graduate high school and face more

According to the Government Accountability Office, for example, “Black students accounted for 15.5 percent of all public school students, but represented about 39 percent of students suspended from school—an overrepresentation of about 23 percentage points.”³⁹ Examination of U.S. Department of Education’s Office for Civil Rights Data Collection (CRDC) for the 2015 to 2016 school year revealed consistency in a racial and gender gap between white boys and their Black (2.25 times the risk) and Latinx peers (1.25 times the risk) for a referral to law enforcement.⁴⁰ Data also showed that American Indian⁴¹ and Alaskan Native students were at twice the risk for a referral to law enforcement.⁴² Findings of disproportionality are consistent across multiple years. Analysis of the most recent CRDC data, for example,

discipline than their peers, in addition to suffering from further victimization that occurs as a result of being overlooked); Maithreyi Gopalan & Ashlyn Aiko Nelson, *Understanding the Racial Discipline Gap in Schools*, 5 AM. EDUC. RSCH. ASS’N 2, 4 (2019) (noting, as an example, that between 2008 and 2014, roughly twenty-two percent of Black students in Indiana were suspended or excluded for disciplinary reasons as compared to their eight percent of white peers); Janel A. George, *Stereotype and School Pushout: Race, Gender, and Discipline Disparities*, 68 ARK. L. REV. 101, 109–12 (2015) (arguing that the subjectivity that teachers are allowed to use in discipline allows for rampant implicit and explicit bias to disproportionately impact students of color).

39. Black students were also overrepresented in referrals to law enforcement by about ten percentage points. U.S. GOVERNMENT ACCOUNTABILITY OFFICE K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES 1, 20 (2018).

40. American Indian and Alaskan Native students were two times more at risk for experiencing a school-related arrest. CRDC 2015, *supra* note 36 (asserting that Black students accounted for roughly one third of all referrals to police despite only being fifteen percent of the total population in comparison to their white peers who similarly make up one third of referrals despite being nearly half of the population). Additionally, when examining lost instruction time for secondary school students, CRDC data (2015 to 2016) indicates that Black boys lost 132 days of instruction time due to exclusionary school discipline, compared to white students, who only lost around 21 days of instruction time at the secondary level. See DANIEL J. LOSEN & PAUL MARTINEZ, *LOST OPPORTUNITIES: HOW DISPARATE SCHOOL DISCIPLINE CONTINUES TO DRIVE DIFFERENCES IN THE OPPORTUNITY TO LEARN* vi (2020).

41. We wish to acknowledge the United States as a settler colonialism society and the dispossession and domination of Indigenous populations. See, e.g., Eric Kades, *History and Interpretation of the Great Case of Johnson v. M’Intosh*, 19 L. & HIST. REV. 67, 72 (2001); Natsu Taylor Saito, *Tales of Color and Colonialism: Racial Realism and Settler Colonial Theory*, 10 FLA. A&M U. L. REV. 1, 48-53 (2014); Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RES. 387, 388, 402 (2006). We use the terms “American Indian and Alaskan Native” for consistency with the Civil Rights Data Collection.

42. American Indian and Alaskan Native students were 2.00 times more at risk for experiencing a school-related arrest. CRDC 2015, *supra* note 36.

shows that Black girls are 4.19 times more likely to be suspended and 3.66 times more likely to be arrested at school.⁴³ Similar patterns exist for Black boys—they are 2.44 times more likely to be arrested at school.⁴⁴

For students who have disabilities, the impact of school discipline and policing is amplified with high stakes consequences⁴⁵ and disparities existing at some of the highest rates across multiple categories for this already vulnerable population.⁴⁶ National data shows that schools suspend students who have disabilities two to three times more often than their non-disabled peers.⁴⁷ And even though students who have disabilities represent only twelve percent of the total student population, they constitute twenty-five percent of all student arrests and referrals to law enforcement.⁴⁸ Such inequities are not isolated to one academic year. Data released by the CRDC in 2020⁴⁹ reveals that students who have disabilities continue to experience higher rates across all categories of discipline and policing (e.g., suspension, expulsion, referrals to law enforcement, and school-based arrests) than their non-disabled peers.⁵⁰ The risk of exposure to these practices is most acute for BIPOC students who have disabilities. In the 2017 to 2018 school year, Black students who have disabilities were four times more likely to be subject to school-related arrests as compared to their non-disabled white peers, and Native Hawaiian and Pacific Islander

43. GEO. L. CTR. POVERTY & INEQUAL., DATA SNAPSHOT: 2017-2018—NATIONAL DATA ON SCHOOL DISCIPLINE BY RACE AND GENDER 1-4 (2020); CIV. RTS. DATA COLLECTION (2021), *supra* note 36, at 19, 21–22 (highlighting the disparity in suspensions and police interaction that Black children face).

44. CIV. RTS. DATA COLLECTION (2021), *supra* note 36, at 11–12, 21–22 (highlighting that Black children were more likely than their peers to be suspended, and that Black boys faced higher rates of arrest at school and in general).

45. *Id.*; LOSEN, *supra* note 40, at vi (finding that students with disabilities at the secondary level lose nearly double the amount of instruction time due to disciplinary removal than their non-disabled peers, which in turn increases the overall education gap).

46. LOSEN, *supra* note 40, at vi–viii.

47. LOSEN ET AL., ARE WE CLOSING THE SCHOOL DISCIPLINE GAP 6 (2015).

48. U.S. DEP'T OF EDUC. OFF. CIV. RTS., CIV. RTS. DATA COLLECTION, DATA SNAPSHOT: SCHOOL DISCIPLINE ISSUE BRIEF NO. 17 (2014).

49. CIV. RTS DATA COLLECTION (2021), *supra* note 36.

50. While the overall rate of suspension for all students was 5.1% in the 2017 to 2018 school year, 10.5% of students who have disabilities were suspended. Students who have disabilities were also two times more likely to be expelled, referred to law enforcement, or subjected to school related arrests as compared to their non-disabled peers. *Id.*

students who have disabilities were five times more likely.⁵¹ Disaggregation of data by gender reveals that Black girls who have disabilities represent the most significantly impacted student population—they are five times more likely to be suspended than their white, non-disabled female peers.⁵² Black females who have disabilities also experience the highest disparity for rates of referrals to law enforcement: six times more than white, non-disabled female students.⁵³ A gender gap also exists for Black boys who have disabilities who are almost 2.8 times more likely to be suspended.⁵⁴

Experts on school discipline have raised concerns that the disproportionate use of discipline practices against BIPOC students and students who have disabilities has not abated during short- and long-term school closures due to the COVID-19 pandemic.⁵⁵ Rather, new models of exclusion have emerged operating simultaneously with “traditional” suspensions and expulsions⁵⁶ through several mechanisms.⁵⁷

First, the digital tools of virtual learning “invisibilize” exclusion and punishment.⁵⁸ No longer do teachers send students physically outside of classrooms—where their absence is clear, noticeable by others, and required to be recorded; they instead place specific students in waiting

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. NAT'L SCHOOL BDS. ASS'N, *Online Discipline Gap* (Apr. 1, 2021), <https://nsba.org/ASBJ/2021/April/online-discipline-gap> [<https://perma.cc/WUU8-NDRS>].

56. See Jodi S. Cohen, *A Teenager Didn't Do Her Online Schoolwork. So a Judge Sent Her to Juvenile Detention*, PROPUBLICA (July 14, 2020, 5:00 AM), <https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention> [<https://perma.cc/MQT9-47BG>] (describing how a fifteen-year-old student was incarcerated for violating probation because she did not complete her online schoolwork); Rebecca Klein, *The New School Suspension: Blocked From Online Classrooms*, HUFFPOST (Aug. 11, 2020, 10:45 AM), https://www.huffpost.com/entry/school-discipline-remote-learning_n_5f329829c5b64cc99fde4d64 [<https://perma.cc/7J3Y-SJHT>] (detailing how a student was blocked from their school email account because of accidental tech support requests); Evan Schreiber, *Staff Says Discipline in Distance Learning Differs Little from In-Person Classes*, KATU (Sept. 2, 2020) <https://katu.com/news/return-to-learn/discipline-in-distance-learning-staff-says-very-little-difference> [<https://perma.cc/5W7S-RWCV>] (explaining that a particular school district does not plan on changing its disciplinary practices while online).

57. Interview with Paige Joki, Staff Attorney, Educ. L. Ctr., in L.A., Cal. (July 16, 2021) (on file with authors).

58. *Id.*

rooms, mute them, and even isolate them in breakout rooms without having to account for their exclusion.⁵⁹ During the 2020 to 2021 school year, the Education Law Center documented multiple cases of students living in congregate care shelters who were excluded from fully participating in class and kept on mute based on a teacher's interpretation that the background was "too distracting."⁶⁰ Given the existing evidence linking race, gender, disability, and other identity categories with bias and disproportionality in traditional classroom exclusion,⁶¹ coupled with increased levels of discretion, lack of accountability, and potential plausible deniability, the use of exclusionary practices against marginalized students in schools and districts across the country is likely quite high.⁶²

Second, and relatedly, when excluded, students face the potential consequence of being counted as absent from class, which in turn can lead to truancy status.⁶³ Education law attorneys have documented

59. *Id.*

60. Instead of meeting families with support, some school officials took issue with the background noise, people who were not assigned to a particular classroom being visible in the zoom frame, and activity taking place around a student. *Id.*

61. KEY DATA HIGHLIGHTS ON EQUITY AND OPPORTUNITY GAPS IN OUR NATION'S PUBLIC SCHOOLS, *supra* note 35, at 3–5.

62. NAT'L SCHOOL BDS. ASS'N, *supra* note 55. Given the lack of national statistics on school discipline during the pandemic, parents, advocates, policymakers, and researchers are forced to rely on an ad hoc approach to data collection of virtual practices.

63. *Id.* In multiple jurisdictions advocates have found students counted as truant or absent when they experience insufficient internet connection, lack of access to devices, distracting home environments, increased family responsibilities, and homelessness with the impact felt most acutely by BIPOC students. *Id.*; *see also* OFF. FOR CIV. RTS., EDUCATION IN A PANDEMIC: THE DISPARATE IMPACTS OF COVID-19 ON AMERICA'S STUDENTS 12, 13 (2021) (describing how factors such as homelessness and technology access have disproportionately impacted BIPOC students during the pandemic); Caroline Preston & Sarah Butrymowicz, *How the Pandemic Has Altered School Discipline—Perhaps Forever*, HECHINGER REP. (Feb. 20, 2021), <https://hechingerreport.org/how-the-pandemic-has-altered-school-discipline-perhaps-forever> [<https://perma.cc/9TAD-P5DP>] (explaining how students are being disciplined for circumstances outside of their control, like living in a noisy environment or signing on to class late); Bianca Vázquez Toness, *Your Child's a No-Show at Virtual School? You May Get a Call from the State's Foster Care Agency*, BOSTON GLOBE (Aug 15, 2020, 4:07 PM), <https://www.bostonglobe.com/2020/08/15/metro/your-childs-no-show-virtual-school-you-may-get-call-states-foster-care-agency> [<https://perma.cc/4R42-JGMV>] (detailing how Massachusetts school officials have reported several families to state social workers for neglect charges stemming from their children's participation in remote classes); MASS. DEP'T OF CHILD. & FAMS., A TIP SHEET FOR EDUCATORS (2020) (a report suggesting that teachers report to the

multiple instances of students remaining in Zoom waiting rooms during instructional time, resulting in unexcused absences, learning loss, and eventually truancy prosecution.⁶⁴ As past data have affirmed, disparities exist in truancy for BIPOC students and students who have disabilities putting them at a higher risk than their peers for educational inequities.⁶⁵

Third, virtual learning environments allow for “policing” of families and homes by teachers and school officials. Though no national data exists, attorneys at the Education Law Center have documented referrals to police and the Department of Human Services when teachers viewed Black and Latinx parents napping or dancing in the background of their child’s Zoom.⁶⁶ Additionally, the National Education Policy Center reported that Black students have been punished for eating or drinking on camera,⁶⁷ and police were called to the homes of children for having a “zombie hunter” toy gun in the background of their Zoom.⁶⁸

C. *Health and School Discipline and Policing*

Despite the limited number of studies examining associations between school discipline and policing and health, the extant literature confirms a relationship.⁶⁹ Figure 2 presents the five main

Department of Children and Families if students are not participating in remote learning).

64. NAT’L SCHOOL BDS. ASS’N, *supra* note 55; *see also* Interview with Paige Joki, Staff Attorney, Educ. L. Ctr., in L.A., Cal. (July 16, 2021) (on file with authors).

65. *See* U.S. DEP’T OF EDUC., CHRONIC ABSENTEEISM IN OUR NATION’S SCHOOLS—A HIDDEN CRISIS (2016) (showing that, compared to white students, American Indian and Pacific Islander students are over fifty percent more likely to lose three or more weeks of school, Black students are forty percent more likely to do the same, and Latinx students are seventeen percent more likely to do the same); Sarah Tully, *Report: Low-Income, Black, Disabled Students Miss School More Often*, EDSOURCE (2015) <https://edsources.org/2015/report-low-income-black-disabled-students-miss-school-more-often/85917> [<https://perma.cc/SWM2-2APW>] (detailing how Black and disabled students are more likely to miss school frequently).

66. Interview with Paige Joki, Staff Attorney, Educ. L. Ctr., in L.A., Cal. (July 16, 2021) (on file with authors).

67. NAT’L EDUC. POL’Y CTR., THE PANDEMIC TO PRISON PIPELINE: A TIMELY Q&A 2 (2020).

68. *Id.* at 1; Jaclyn Peiser, *A Black Seventh-Grader Played with a Toy Gun During a Virtual Class. His School Called the Police*, WASH. POST (Sept. 8, 2020), <https://www.washingtonpost.com/nation/2020/09/08/black-student-suspended-police-toy-gun>.

69. There is a significant need for a data collection in this area. Future research examining the effect of school discipline and police interactions on the mental and physical health of marginalized students would benefit from a longitudinal study

categories of outcomes: lower educational attainment, impacted mental health, diminished health protective factors, physical violence, and risk of justice system involvement.⁷⁰ Though not examined in any study designs, we posit there is high likelihood of a co-influential relationship between disciplinary practices and policing behaviors that may operate to create a dose effect for those students who experience higher levels of exposure to *both* compared to their peers.⁷¹ Consider, for example, the measures of low academic performance, reduced educational attainment, and delayed graduation. Research shows that students in schools that receive federal funding for school police are significantly less likely to graduate from high school and enroll in college than their peers in schools without such funding.⁷² Further, students who experience punitive and exclusionary discipline have lower academic engagement and performance and are at greater risk of failing to graduate on time or dropping out of school.⁷³ And, the

design. Additionally, new studies are needed to understand the differential outcomes of distinct forms of discipline and policing behaviors. Data should be collected in larger sample populations to consider how specific student populations are affected by discipline and policing in school settings.

70. While we have grouped the outcomes of discipline and policing into five subcategories, we argue there is likely a co-influential relationship between these practices that could lead to an exposure-response relationship for students who experience multiple forms of discipline and interactions with school police.

71. *See supra* Section I.B (indicating that the population demographics of students most impacted by school discipline represent racialized outcomes across non-disabled and disabled students with the highest levels of disparities for Black students).

72. *See, e.g.*, 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, 339 (2019) (finding evidence suggesting that “exposure to a three-year federal grant for school police decreases high school graduation rates by approximately 2.5 percent and college enrollment rates by 4 percent”).

73. *See, e.g.*, TR. FOR AM.'S HEALTH, PAIN IN THE NATION: THE DRUG, ALCOHOL, AND SUICIDE CRISES AND THE NEED FOR A NATIONAL RESILIENCE STRATEGY 132 (2017), <https://www.tfah.org/report-details/pain-in-the-nation> [<https://perma.cc/P6BX-2LW8>] (describing how traditional punitive discipline methods are associated with lower academic performance, lower engagement, chronic absenteeism, higher dropout rates, lower graduation rates, and higher rates of future disciplinary actions); Amity L. Noltemeyer et al., *Relationship Between School Suspension and Student Outcomes: A Meta-Analysis*, 44 SCH. PSYCH. REV. 224, 234 (2015) (analyzing data showing that there is a significant inverse relationship between suspensions and academic achievement); JASMINE TUCKER & NEENA CHAUDHRY, LET HER LEARN: STOPPING SCHOOL PUSHOUT FOR GIRLS OF COLOR 1 (2017) (explaining that discriminatory disciplinary practices are pushing female students out of school); RUSSELL SKIBA ET AL., AM. PSYCH. ASS'N., ARE ZERO TOLERANCE POLICIES EFFECTIVE IN THE SCHOOLS? AN EVIDENTIARY REVIEW AND RECOMMENDATIONS 5 (2006) (detailing how school suspensions are moderately

effects of exclusion can be cumulative, with each additional suspension increasing dropout risk by ten percent.⁷⁴

A similar overlap exists for negative mental health with findings indicating school police interactions and punitive discipline each produce stress, depression, distress, post-traumatic stress, and trauma symptoms.⁷⁵ When one factors in racism's effect on children's health⁷⁶ as an independent factor—given the clear evidence of racialized disparities across all measures of discipline and policing data⁷⁷—the potential compounding effect of these practices in the short- and long-term is significant.

associated with a higher likelihood of dropping out or failing to graduate on time); Christine A. Christle et al., *School Characteristics Related to High School Dropout Rates*, 28 REMEDIAL & SPECIAL EDUC. 325, 329 (2007) (illustrating the significant positive correlations between suspensions and dropout rates). Research has also linked differential rates of discipline to developing negative academic self-concepts, which is associated with achievement disparities. See Laramie D Taylor et al., *Self-Esteem, Academic Self-Concept, and Aggression at School*, 33 AGGRESSIVE BEHAVIOR 130, 131 (2007) (finding that self-concept on academic ability and aggression may arise out of common causes).

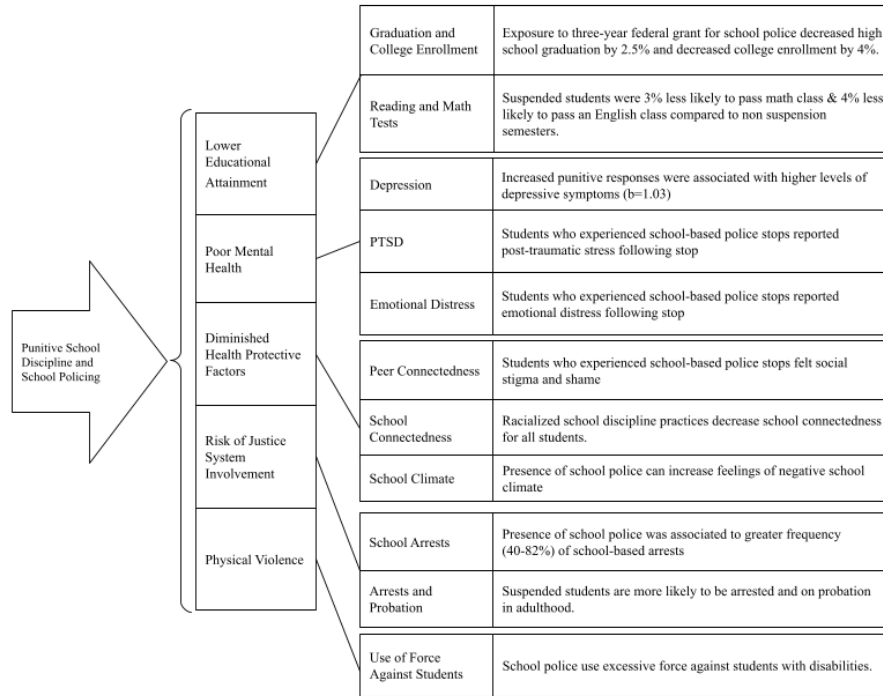
74. Robert Balfanz, Vaughan Byrnes & Joanna Fox, *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, 5 J. APPLIED RSCH. ON CHILD.: INFORMING POL'Y FOR CHILD. AT RISK 1, 7–8 (2014).

75. See, e.g., Mark Cameron & Sandra M. Sheppard, *School Discipline and Social Work Practice: Application of Research and Theory to Intervention*, 28 CHILD. & SCH. 15, 16–17 (2006) (explaining how school discipline results in students feeling anger, shame, humiliation, and anxiety); Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. ADOLESCENT HEALTH 627, 631 (2019) (detailing the range of emotions and stigma felt by youth who are frequently stopped by police); MEGAN FRENCH-MARCELIN & SARAH HINGER, BULLIES IN BLUE, THE ORIGINS AND CONSEQUENCES OF SCHOOL POLICING 30–31 (2017) (describing how exclusionary punishments of students, including arrests, lead to alienation, anxiety, rejection, and distrust); HUMAN IMPACT PARTNERS & FRESNO BARRIOS UNIDOS, HEALTH AND CULTURAL WEALTH: STUDENT PERSPECTIVES ON POLICE-FREE SCHOOLS IN FRESNO, CALIFORNIA 6 (2021) (finding that young men who were frequently stopped by police had higher levels of anxiety and trauma).

76. See Maria Trent, Danielle G. Dooley & Jacqueline Dougé, *The Impact of Racism on Child and Adolescent Health*, 144 PEDIATRICS 1, 2 (2019) (expounding on the role racism plays in health disparities for people of color); see also Yin Paradies et al., *Racism as a Determinant of Health: A Systematic Review and Meta-Analysis*, PLOS ONE 1 (Sept. 23, 2015) (a systematic review of nearly 300 studies that associate racism with health and mental health, finding that racism diminished mental health and health).

77. See *supra* Section I.B (exploring these disparities in detail).

Figure 2. School Discipline and Policing and Health⁷⁸



78. See Yolanda Anyon et al., *Race, Exclusionary Discipline, and Connectedness to Adults in Secondary Schools*, 57 AM. J. CMTY. PSYCH. 342, 342 (2016) (detailing how students of color are less likely to feel connected to school adults than their white peers and the role that school discipline plays in that disparity); Elizabeth M. Chu & Douglas D. Ready, *Exclusion and Urban Public High Schools: Short-and Long-Term Consequences of School Suspensions*, 124 AM. J. EDUC. 479, 494 (2018) (finding that, on average, suspended students passed three percent fewer math and four percent fewer English credits); F. CHRIS CURRAN, UNIV. FLA. EDUC. POL'Y RSCH. CTR., *THE EXPANDING PRESENCE OF LAW ENFORCEMENT IN FLORIDA SCHOOLS 2* (2020) (noting how the presence of law enforcement resulted in forty to eighty-two percent more school arrests); Mara Eyllon et al., *Exclusionary School Discipline Policies and Mental Health in a National Sample of Adolescents Without Histories of Suspension or Expulsion*, 54 YOUTH & SOC'Y 84, 84 (2022) (observing that exclusionary school policies were associated with higher levels of depressive symptoms); Jackson et al., *supra* note 75, at 627 (describing how youth who have been subject to frequent police stops are more likely to report heightened emotional distress, post-traumatic stress symptoms, shame, embarrassment, and social stigma); AARON KUPCHIK, *HOMEROOM SECURITY: SCHOOL DISCIPLINE IN AN AGE OF FEAR* 115 (2010) (finding that having officers in schools can escalate disciplinary situations, increase likelihood of arrests, and turn discipline into a criminal justice rather than an educational issue); Janet Rosenbaum, *Educational and Criminal Justice Outcomes 12 Years*

Discipline and policing not only directly impact the health status of BIPOC students and students who have disabilities, but they also reduce key protective health factors (e.g., school climate, school connectedness, and peer connectedness). Recognized as some of the most critical elements of healthy childhood development, a large body of research associates school-based protective health factors with mitigating or exacerbating absenteeism, low academic engagement, and dropout,⁷⁹ as well as buffering against trauma, emotional distress, suicidal ideation, and other health harming behaviors.⁸⁰ Thus, for students who disproportionately experience school policing and discipline, they face a double burden—health harms and a diminished ability to thrive.

The consequences of discipline and policing in schools, however, are not limited to specific health symptomologies or risk factors for future negative educational, professional, socioeconomic, and criminal justice outcomes. Policing practices, in particular, also

After School Suspension, 52 YOUTH & SOC'Y 515, 515 (2020) (noticing that twelve years later, students who were suspended in school were more likely to have been arrested and on probation than their peers); Elizabeth A. Shaver & Janet R. Decker, *Handcuffing a Third Grader? Interactions Between School Resource Officers and Students with Disabilities*, 2 UTAH L. REV. 229, 266–69 (2017) (recounting several instances of unnecessary use of force by School Resource Officers against students); Weisburst, *supra* note 72, at 339 (noting that schools with three-year federal grants for school police reduced graduation rates by 2.5% and college enrollment rates by 4%).

79. See TR. FOR AM.'S HEALTH, *supra* note 73, at 132 (concluding that suspensions and expulsions result in negative, rather than positive, long-term outcomes for the punished students); Chu & Ready, *supra* note 78, at 479–89 (noting that suspended students are more likely to fail classes than their peers); see also *supra* Section I.A (describing findings linking these factors).

80. CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUM. SERVS., SCHOOL CONNECTEDNESS: STRATEGIES FOR INCREASING PROTECTIVE FACTORS AMONG YOUTH 3, 5, 7 (2009) (showing the importance of active participation in school activities and connectedness in school in buffering the harmful effects of negative school situations); Clea A. McNeely, James M. Nonnemaker & Robert W. Blum, *Promoting School Connectedness: Evidence from the National Longitudinal Study of Adolescent Health*, 72 J. SCH. HEALTH 138, 138 (2002) (describing how students who feel cared for by people in their school are less likely to use substances or engage in violence); DAVID OSHER & JULIETTE BERG, EDNA BENNET PIERCE PREVENTION RSCH. CTR., PA. STATE UNIV., SCHOOL CLIMATE AND SOCIAL EMOTIONAL LEARNING: THE INTEGRATION OF TWO APPROACHES 8 (2018) (explaining how fostering a sense of belonging in students can reduce depression, increase self-efficacy, and provide opportunities to build self-confidence and relationship building skills); see also Gwendolyn Puryear Keita, *Improving School Climate to Reduce Student Health Risks*, 46 MONITOR ON PSYCH. 54, 54–55 (2015) (detailing how supportive school environments result in less substance abuse and violence in students).

contribute to physically unsafe and unsupportive school environments and learning contexts.⁸¹ During a two-year period, the American Civil Liberties Union identified 141 reports of school police using abusive force, including the use of pepper spray, Tasers, and chokeholds, among other forms of physical violence across the country.⁸² In addition to the health harms of direct physical violence,⁸³ advocates assert that the presence of police in educational settings stigmatizes youth, fosters feelings of distrust and disconnection, and has indirect effects on peers and families.⁸⁴

Given the overall lack of data on the impact of discipline and policing on the health status of BIPOC students and students who have disabilities, a significant challenge exists to fully understanding the short- and long-term public health implications. For example, in addition to what we have identified *infra*, we draw attention to the potential deleterious health impacts on the peers and families of students who have experienced school-based discipline and policing including emotional and psychological stress.⁸⁵ Moreover, for students who have been exposed to community police encounters and police violence, the use of punitive discipline and policing practices within their school community operates to amplify those external early-life adversities. Research on the effect of community-based police violence and educational attainment shows that ninth-grade students exposed to an incidence of police violence resulting in death are 3.5% less likely to graduate and 2.5% less likely to enroll in college.⁸⁶ Additionally,

81. AARON KUPCHIK, *supra* note 78, at 115–16.

82. FRENCH-MARCELIN & HINGER, *supra* note 75, at 23; *see also* ADVANCEMENT PROJECT, *supra* note 35, at 31–35. A systematic review of police stops and Black Americans' mental health found that being stopped by police can lead to "emotional trauma, stress responses, and depressive symptoms if they are treated aggressively." Melissa N. McLeod et al., *Police Interactions and the Mental Health of Black Americans: A Systematic Review*, 7 J. RACIAL & ETHNIC DISPARITIES 10, 10 (2019).

83. Shaver & Decker, *supra* note 78, at 229–31.

84. *See* FRENCH-MARCELIN & HINGER, *supra* note 75, at 30–31 (establishing that punitive environments produce feelings of distrust and disconnection); *see also* Letter from Community-Based Youth Organizing Leaders to Gavin Newsom, Governor, State of California (June 9, 2020) (finding that police in schools creates a climate of fear and anxiety for students of color).

85. This is similar to the indirect effects of policing and police violence in community contexts. *See, e.g.*, Sirry Alang et al., *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 662, 663 (2017) (emphasizing that exposure to, or fear of, police brutality is a stressor).

86. Desmond Ang, *The Effects of Police Violence on Inner-City Students*, 136 Q.J. ECON. 115, 117 (2021).

such students are fifteen percent more likely to be diagnosed with an emotional disturbance and twice as likely to report feeling unsafe in their neighborhood.⁸⁷ Thus, from a public health perspective it is essential to examine the intersection of drivers inside and outside schools that may expose marginalized students to health harming conditions and simultaneously nest them within environmental and social contexts of high levels of stress,⁸⁸ complex trauma,⁸⁹ and adverse childhood experiences,⁹⁰ all of which independently contribute to poor health.

Further, we argue it is essential to position the relationship between health and school-based discipline and policing in the historic and contemporary social context of subordination and racism (systemic and structural).⁹¹ As a robust body of research has affirmed, racism produces and sustains health disparities.⁹² On almost all major

87. *Id.*

88. O. Kenrik Duru et al., *Allostatic Load Burden and Racial Disparities in Mortality*, 104 J. NAT'L MED. ASS'N 89, 94 (2012); COMM. ON POPULATION, NAT'L RSCH. COUNCIL, UNDERSTANDING RACIAL AND ETHNIC DIFFERENCES IN HEALTH IN LATE LIFE: A RESEARCH AGENDA 83–84 (Rudolfo A. Bulatao & Norman B. Anderson eds., 2004).

89. COMPLEX TRAUMA TREATMENT NETWORK, NAT'L CHILD TRAUMATIC STRESS NETWORK, COMPLEX TRAUMA: IN URBAN AFRICAN-AMERICAN CHILDREN, YOUTH, AND FAMILIES 2 (2017); Rachel Wamser-Nanney et al., *Racial Differences in Children's Trauma Symptoms Following Complex Trauma Exposure*, 36 J. INTERPERSONAL VIOLENCE 2498, 2502 (2018).

90. VANESSA SACKS & DAVID MURPHEY, THE PREVALENCE OF ADVERSE CHILDHOOD EXPERIENCES, NATIONALLY, BY STATE, AND BY RACE/ETHNICITY 2 (2018); Zachary Giano, Denna L. Wheeler & Randolph D. Hubach, *The Frequencies and Disparities of Adverse Childhood Experiences in the U.S.*, 20 BMC PUB. HEALTH 1327, 1327 (2020).

91. See, e.g., Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 THEORY INTO PRAC. 11, 16 (2016) (situating education policy as a site of antiblackness); Myra C. Glenn, *School Discipline and Punishment in Antebellum America*, 1 J. EARLY REPUBLIC, 395, 407 (1981) (noting how social class influenced antebellum educators' views on corporal punishment); Megan Ming Francis, *Ida B. Wells and the Economics of Racial Violence*, SOC. SCI. RSCH. COUNCIL (Jan. 24, 2017), <https://items.ssrc.org/reading-racial-conflict/ida-b-wells-and-the-economics-of-racial-violence> [<https://perma.cc/L5L5-GRFG>] (emphasizing how racial violence “was a means to keep [B]lack in their place and stymie their economic advancement”); Connie Wun, *Against Captivity: Black Girls and School Discipline Policies in the Afterlife of Slavery*, 30 EDUC. POL'Y 171, 173, 179 (2016); FRENCH-MARCELIN & HINGER, *supra* note 75, at 3–10 (contending that school discipline “operates as an instrument in the ‘afterlife of slavery’ that positions the Black girl as perpetually and involuntarily open to surveillance and control”).

92. See, e.g., David R. Williams et al., *Understanding How Discrimination Can Affect Health*, 54 HEALTH SERVS. RSCH. 1374, 1386–87 (2019) (concluding that discrimination is a “newly emerging risk factor for a broad range of health outcomes”); Gene H. Brody

indicators of health, Black Americans have poorer outcomes, with studies attributing such differences to their allostatic load (e.g., chronic exposure to discriminatory experiences)⁹³ regardless of socioeconomic status, educational attainment, or access to care.⁹⁴ As such, for Black students, direct and indirect experiences with interlocking forms of racial discrimination outside school may heighten their overall risk for and/or compound the negative health outcomes produced by the racialized policies, practices, and norms inside their schools.

II. A HEALTH JUSTICE APPROACH TO SCHOOL DISCIPLINE AND POLICING

Having established the relationship between school discipline and policing and health, we shift our attention directly to the health justice framework and its application to discriminatory school policies and practices. To do so, it is important to acknowledge that, within the

et al., *Perceived Discrimination Among African American Adolescents and Allostatic Load: A Longitudinal Analysis with Buffering Effects*, 85 CHILD DEV. 989, 998 (2014) (finding that perceived racial discrimination was associated positively with allostatic load). In fact, racism “operates independently of class, helping explain why racial health inequities persist even after controlling for socio-economic status.” Brian Smedley et al., *Race, Racial Inequality and Health Inequities: Separating Myth from Fact*, OPPORTUNITY AGENDA & CALIFORNIA NEWSREEL, https://unnaturalcauses.org/assets/uploads/file/Race_Racial_Inequality_Health.pdf [<https://perma.cc/28CA-J2J7>]; see also Edith Chen, Andrew D. Martin & Karen A. Matthews, *Understanding Health Disparities: The Role of Race and Socioeconomic Status in Children’s Health*, 96 AM. J. PUB. HEALTH, 702, 702 (2006) (finding that racial differences are reflected in health disparities).

93. See, e.g., Miriam Van Dyke et al., *Pervasive Discrimination and Allostatic Load in African American and White Adults*, 82 PSYCHOSOMATIC MED. 316, 316–17, 322 (2020) (finding that “[o]n almost every major indicator of poor health, African Americans fare worse than their white counterparts”); Jenny Guidi et al., *Allostatic Load and Its Impact on Health: A Systematic Review*, 90 PSYCHOTHERAPY & PSYCHOSOMATICS 11, 11–12 (2021) (explaining how allostatic load impacts health outcomes); Arline T. Geronimus et al., “Weathering” and Age Patterns of Allostatic Load Scores Among Blacks and Whites in the United States, 96 AM. J. PUB. HEALTH 826, 826–27 (2006) (examining gender and race differences in allostatic load scores); Jamila K. Taylor, *Structural Racism and Maternal Health Among Black Women*, 48 J.L., MED. & ETHICS 506, 506–07 (2020) (exploring how structural racism affects maternal health outcomes); Bryn Nelson, *How Structural Racism Can Kill Cancer Patients*, 128 CANCER CYTOPATHOLOGY 83, 83–84 (2020) (exploring the same in the context of Black patients with breast cancer); Rachel R. Hardeman, Eduardo M. Medina, & Katy B. Kozhimannil, *Structural Racism and Supporting Black Lives—The Role of Health Professionals*, 375 NEW ENG. J. MED. 2113, 2113–15 (2016) (finding that structural racism leads to “increased rates of premature death and reduced levels of overall health and well-being”).

94. Taylor, *supra* note 93, at 506; Chen et al., *supra* note 92, at 5702.

health justice framework, law assumes a dual positionality. First, law is accepted as “one of the tools used to structure society in a discriminatory way, while institutional and interpersonal discrimination reinforce the discriminatory structure of our society.”⁹⁵ Second, law is a key intervention that can address structural determinants of health inequity.⁹⁶ Thus, health justice approaches simultaneously seek to dismantle unjust laws to address systematic barriers to health and develop new (or leverage existing but previously overlooked) laws to promote health equity.⁹⁷

In the context of education, specifically discipline and policing, we must look at each of these in turn. To do so, we first examine the relationship between law, disparate discipline and policing outcomes, and the negative health effects of these experiences on BIPOC students and students who have disabilities. We then apply the first two prongs of the health justice framework⁹⁸ to identify what legal, policy, and practice interventions can be developed to redress existing, and mitigate future, inequities. And finally, under the third prong of health justice, we explore how health justice interventions in education should prioritize, engage, and shift power to students, families, and communities that have been most impacted by the reliance on discriminatory policies and practices.⁹⁹

A. *Education, Law, and the Revised Social Determinants of Health*

To conceptualize the role that law and policy play in shaping health inequities¹⁰⁰—and illuminate applicability of health justice to

95. Benfer et al., *supra* note 5, at 132.

96. *Id.* at 137.

97. *Id.* at 130–34. The application of health justice to food insecurity and public benefits laws, for example, calls for remediation of enforcement deficiencies of the substantive and procedural elements of SNAP laws that harms the health of families. See Cannon, *Injustice is an Underlying Condition*, *supra* note 10, at 226–29 (criticizing the current SNAP framework for creating unnecessary barriers to beneficiaries).

98. See *infra* Section II.B–D.

99. Benfer et al., *supra* note 5, at 138 (“[L]ow-income communities and communities of color must be engaged and empowered as leaders in the development and implementation of laws, policies, or other interventions aimed at protecting or promoting health.”).

100. Law reinforces discrimination, protects white privilege, and places those at the margins at the greatest risk. See, e.g., Yearby, *Structural Racism and Health Disparities*, *supra* note 3, at 524; Angela P. Harris, *Equality Trouble: Sameness and Difference in Twentieth-Century Race Law*, 88 CALIF. L. REV. 1923, 1925–27 (2000); Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242 (1991).

education—we first turn to the revised SDH framework developed by public health law scholar Professor Ruqaiijah Yearby.¹⁰¹ Under the revised SDH framework, structural discrimination¹⁰² is the root cause of health inequities, which operates through political and legal “tools”¹⁰³ that shape social determinant systems (e.g., housing, education, and health care) in ways that produce differential health outcomes. Figure 3 illustrates this connection in the context of school discipline and policing.¹⁰⁴

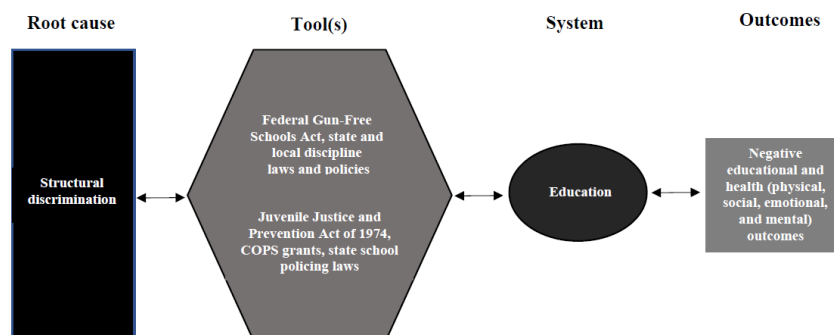
101. Yearby, *Structural Racism and Health Disparities*, *supra* note 3, at 519; *see also* Thalia González, *Race, School Policing, and Public Health*, 73 STAN. L. REV. ONLINE 180, 184 (2021).

102. While Professor Yearby presents structural discrimination as inclusive of racism, sexism, ableism, and classism, she identifies racism as the most significant operant force. Yearby, *Structural Racism and Health Disparities*, *supra* note 3, at 523–24 fig.3

103. These “tools” are named as legal and political determinants in other health law and public health law literature. *See* Benfer et al., *supra* note 5, at 135; *see also* Emily A. Benfer et al., *Health Justice Strategies to Combat the Pandemic: Eliminating Discrimination, Poverty, and Health Disparities During and After COVID-19*, 19 YALE J. HEALTH POL’Y, L., & ETHICS 122, 132 (2020); John Coggon, *Legal, Moral and Political Determinants Within the Social Determinants of Health: Approaching Transdisciplinary Challenges Through Intradisciplinary Reflection*, 13 PUB. HEALTH ETHICS, 41, 41–45 (2020); Lawrence O. Gostin et al., *The Legal Determinants of Health: Harnessing the Power of Law for Global Health and Sustainable Development*, 393 LANCET 1857, 1857 (2019); Joel B. Teitelbaum et al., *Striving for Health Equity Through Medical, Public Health, and Legal Collaboration*, 42 J.L., MED. & ETHICS, 104, 104–05 (2019).

104. Figure 3 is not intended to be a comprehensive account of the laws and policies that drive school discipline and policing disparities, and in turn, health disparities, but rather illustrate how the revised SDH framework can be applied to education.

Figure 3. *The Revised SDH Framework and School Discipline and Policing*¹⁰⁵



As Figure 3 shows, structural discrimination in education¹⁰⁶—as manifested in historic and contemporary reliance on policing tactics and punitive and exclusionary practices¹⁰⁷—is the primary driver of “political process, statutes, regulations, policies, guidance, advisory opinions, cases, budgetary decisions, . . . [and] enforce[ment].”¹⁰⁸ These all shape learning environments, which are marked disproportionately in discipline and policing outcomes for BIPOC students and students who have disabilities.¹⁰⁹ Additionally, these same students also experience disparities in health outcomes.

105. 42 U.S.C. § 13701 (repealed 2013); Juvenile Justice and Delinquency Prevention Act, Pub. L. No. 93-415, 88 Stat. 1109 (codified at 42 U.S.C. §§ 5601-5603); Pub. Law No. 105-302, 112 Stat. 2841 (codified at 34 U.S.C. §§ 10382-10389); *see also* THALIA GONZÁLEZ ET AL., GEO. L. CTR. POVERTY & INEQ., EXCLUSIONARY SCHOOL DISCIPLINE TRENDS (2020) (providing a legislative summary of state exclusionary school discipline laws); CURRAN, *supra* note 78, at 9 (studying school-based law enforcement in Florida and associating the passage of the 2018 Marjory Stoneman Douglas High School Public Safety Act with increasing law enforcement presence).

106. A general discussion of structural racism, education, and Black children’s wellbeing is presented in the October 2020 statement of the American Public Health Association. *See Structural Racism is a Public Health Crisis: Impact on the Black Community*, AM. PUB. HEALTH ASS’N (Oct. 24, 2020), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/13/structural-racism-is-a-public-health-crisis> [<https://perma.cc/M95E-TU7B>] (identifying three areas of structural racism and racial inequality in education).

107. *See supra* note 91 and accompanying text; *see also* FRENCH-MARCELIN & HINGER, *supra* note 75, at 2.

108. We adopt Yearby’s broad definition of law. Yearby, *Structural Racism and Health Disparities*, *supra* note 3, at 521.

109. *See supra* Section I.B–C.

The revised SDH framework is also central to approaching discriminatory school policies from a health justice framework as it uplifts how education concurrently drives health promoting opportunities and health harming practices.¹¹⁰ This dual functionality underscores how health justice approaches systems-level transformation: to dismantle health-harming laws and promulgate health-affirming laws.¹¹¹ To disrupt legal pathways that perpetuate education and health inequities, health law scholars define three primary operational health justice principles.¹¹² First, legal and policy responses must address the “social and political mechanisms that generate, configure and maintain social hierarchies.”¹¹³ Second, health interventions should be holistic and supportive—offering legal protections, financial supports, and material and environmental contexts that facilitate compliance and minimize harms.¹¹⁴ And third, frontline communities must be prioritized as critical partners in the development and implementation of health interventions.¹¹⁵ Together these principles offer a multi-layered model that is accessible to a diverse set of stakeholders (e.g., advocates, policymakers, courts, government officials, and community organizers) committed to eliminating health disparities. By applying these principles to education—specifically school discipline and policing—the health justice framework can translate from the academic to the practical. This strengthens law, policy, and community expertise to fight the conditions that create and recreate differential health outcomes.

B. Health Justice Reforms to Education Law and Policy

Law affects health by structuring, perpetuating, and mediating the SDH and functions in two key ways: health-harming or health-affirming. Health-harming laws are laws that exacerbate negative health outcomes through direct or indirect impact on the SDH, such

110. See *supra* Section I.A.

111. See *infra* notes 120–21 and accompanying text; see also CHANGE LAB SOLS., *supra* note 5.

112. Benfer et al., *supra* note 5, at 137–38.

113. *Id.* at 137 (quoting ORIELLE SOLAR & ALEC IRWIN, WORLD HEALTH ORG., A CONCEPTUAL FRAMEWORK FOR ACTION ON THE SOCIAL DETERMINANTS OF HEALTH 5 (2010)).

114. Benfer et al., *supra* note 5, at 138.

115. *Id.* at 138–39.

as access to care¹¹⁶ and housing.¹¹⁷ In this case, one can examine health-harming laws in the context of nuisance laws¹¹⁸ and redlining,¹¹⁹ both of which have externalities with far-reaching health impacts. Conversely, health-affirming laws, such as paid family leave¹²⁰ and the earned income tax credit,¹²¹ protect and promote health.

School discipline and policing laws and policies have led to racial disparities that produce deleterious health effects on students. In this

116. Health-harming laws are often discussed in conjunction with health-harming legal needs, which further explains that economic and social legal instability leads to negative health outcomes and that the introduction of negative health outcomes leads to legal issues. See Hazel Genn, *When Law Is Good for Your Health: Mitigating the Social Determinants of Health Through Access to Justice*, 72 CURRENT LEGAL PROBS. 159, 166, 173 (2019); Cannon, *Injustice Is an Underlying Condition*, *supra* note 10, at 218; Jodi Siegal et al., *Benefits of Pediatric Medical-Legal Partnerships*, 71 FLA. L. REV. F. 145, 146 (2019); Daphne McGee & Drew Stevens, *Law as a Social Determinant of Health and the Pursuit of Health Justice*, AM. HEALTH L. ASS'N: HEALTH L. WKLY. (Aug. 21, 2020), <https://www.americanhealthlaw.org/content-library/health-law-weekly/article/15c99fb3-64ad-4035-8902-038c34ff5165/law-as-a-social-determinant-of-health-and-the-purs> [https://perma.cc/7GTP-8XZB].

117. Cannon, *Injustice Is an Underlying Condition*, *supra* note 10, at 218.

118. While nuisance laws are local ordinances that are meant to curb excessive noise, hazardous waste, or criminal activity in the interest of public health and safety, they can have the opposite effect as penalties can disproportionately impact individuals with fewer resources via mechanisms such as inequitable enforcement. *10 Local Laws That May Be Doing More Harm Than Good*, CHANGELAB SOLS., <https://www.changelabsolutions.org/blog/10-harmful-local-laws> [https://perma.cc/MSP6-YCFE]; *I Am Not a Nuisance: Local Ordinances Punish Victims of Crime*, ACLU, <https://www.aclu.org/other/i-am-not-nuisance-local-ordinances-punish-victims-crime> [https://perma.cc/B7KK-KZ9N].

119. Families who are subject to redlining were more likely to be exposed to environmental health risks associated with poor housing stock such as deteriorating lead-based paint. *Health Disparity vs Health Inequity*, CTR. FOR URB. POPULATION HEALTH, <https://www.cuph.org/health-equity.html> [https://perma.cc/45TH-9AHN].

120. Paid family leave has been shown to be beneficial to the health of mothers, children, and families via increased benefits associated with breastfeeding, better mother-child interactions, and decreased stress. *Paid Family Leave Ensures Health Equity for All*, CHANGELAB SOLS., <https://www.changelabsolutions.org/product/paid-family-leave-ensures-health-equity-all> [https://perma.cc/MWR9-KLBV]; MAYA ROSSIN-SLATER & LINDSEY UNIAT, HEALTH AFFS., PAID FAMILY LEAVE POLICIES AND POPULATION HEALTH 4 (2019).

121. The earned income tax credit decreases the incidence of low birthweight births, particularly among Black mothers, and is associated with overall improved maternal and child health. *Earned Income Tax Credit*, CNTY. HEALTH RANKINGS & ROADMAPS, <https://www.countyhealthrankings.org/take-action-to-improve-health/what-works-for-health/strategies/earned-income-tax-credit-eitc> [https://perma.cc/9R49-R63B].

sense, they are analogous to the laws and policies that established redlining and restrictive covenants, which led to residential segregation, limited home ownership, and wealth accumulation. Ultimately, both series of laws and policies allowed for the onset of negative conditions that harm health.¹²²

In identifying structural reform pathways, scholars utilize the first two prongs of the health justice framework¹²³ to pair (1) examination of the harms of law¹²⁴ with (2) legislative and policy changes to close health gaps and promote “health in all policies.”¹²⁵ As such, health justice approaches seek to eliminate or reform health-harming laws and policies and advance health-promoting laws and policies, providing a multi-tiered, scaffolded approach to individual and community-wide health.

When applied to school discipline and policing, a principal site for health justice guided reforms is at the state level.¹²⁶ Existing state-level

122. David R. Williams, et al., *Racism and Health: Evidence and Needed Research*, 40 ANN. REV. PUB. HEALTH 105, 106–07 (2019); David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 PUB. HEALTH REPS. 404, 405 (2001).

123. Benfer et al., *supra* note 5, at 137–38 (presenting prongs one and two of the health justice framework).

124. For example, scholars examine the harms of law limiting access to health services, under enforcement of law resulting in health-harming legal needs, and lack of public funding for health laws. *Id.* at 136–38 (mapping out the health justice framework as a pandemic response to health care, housing, and employment); Makhlof, *supra* note 10, at 282–85 (analyzing the lack of immigrant access to publicly funded health care through a health justice framework); *see, e.g.*, Cannon, *Injustice is an Underlying Condition*, *supra* note 10, at 218 (describing how the under enforcement of housing and public benefits laws can result in several health-harming legal needs related to eviction, housing conditions, housing discrimination, and food/income insecurity).

125. *See supra* note 10 and accompanying text (highlighting several examples of how scholars have advocated for legislative and policy changes to close health gaps in various contexts). A “health in all policies” approach focuses on “improved health for all and the closing of health gaps as goals to be shared across all areas of government.” Off. Disease Prevention & Health Promotion, *Social Determinants of Health*, HEALTHYPEOPLE.GOV, <https://www.healthypeople.gov/node/3499/closer-look> [<https://perma.cc/4G3M-96Y4>].

126. Education is primarily controlled at state and local levels in the United States. *The Federal Role in Education*, U.S. DEP’T ED., <https://www2.ed.gov/about/overview/fed/role.html> [<https://perma.cc/L8BN-V5QL>]. As such, this Article focuses on state and local policy opportunities. However, there are opportunities to expand and strengthen existing federal policies (e.g., the Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1802, and the Individuals with Disabilities Education Improvement Act of 2004, Pub. L. No. 108-446, 118 Stat. 2647) to more

discipline laws and regulations control the forms and uses of exclusionary, punitive, and zero tolerance discipline practices from pre-kindergarten to grade twelve, as well as data collection and reporting mechanisms.¹²⁷ The current scheme is not consolidated or consistent across the states and is best characterized as highly localized and discretionary. In response to decades of civil rights and racial justice reform efforts, some states have reduced their reliance on exclusionary school discipline (“ESD”) policies. However, the statutory limits on differing forms of ESD varies widely with respect to the strength of their protections. For example, only nineteen jurisdictions have amended their laws specific to behavior-based restrictions, thirteen limit ESD by some form of grade level, and twenty consider alternatives to ESD.¹²⁸ School officials in California, the District of Columbia, Louisiana, and South Carolina are among the few that have limited suspensions or expulsions of students for minor and subjective offenses,¹²⁹ such as willful defiance, disruption, insubordination, dress code, or even a failure to address school officials with courtesy.¹³⁰

Unfortunately, such reforms have not protected students equally, as evidenced by the persistence of racial disparities in suspensions, expulsions, office referrals, and referrals to law enforcement.¹³¹ And most state statutes do not even extend the limits on ESD use to adolescents—grades nine through twelve.¹³² This fragmentation in law, among other things, runs counter to public health research that recognizes that adolescents are at a high risk for poor mental health

comprehensively and effectively address discriminatory school discipline and policing practices. The examination of federal education law through a health justice framework warrants further inquiry.

127. GONZÁLEZ ET AL., *supra* note 105; *see also* NAT’L CTR. ON SAFE & SUPPORTIVE LEARNING ENV’TS, COMPENDIUM OF SCHOOL DISCIPLINE LAWS AND REGULATIONS (2019), <https://safesupportivelearning.ed.gov/school-discipline-compendium> [<https://perma.cc/DQ4V-Z9ZF>] (compiling information on school discipline laws and administrative regulations for all fifty states, Washington, D.C., and the U.S. territories).

128. GONZÁLEZ ET AL., *supra* note 105.

129. Studies indicate that the use of ESD for such behaviors reinforce racial and gender stereotypes. *Supra* notes 37–38 and accompanying text.

130. CAL. EDUC. CODE § 48900(k) (West 2021); D.C. CODE § 38-236.04(a)(2)(B) (2021); D.C. CODE § 38-236.04(a)(2)(A) (2021); LA. STAT. ANN. § 17:416.12D (2021); S.C. CODE ANN. § 59-17-135(F) (2019).

131. *See supra* Section I.B (cataloging racial disparities in school discipline measures).

132. *See, e.g.*, MINN. STAT. § 121A.425 (2021) (limiting the use of expulsion and exclusion for students in pre-school and pre-kindergarten).

outcomes, including feelings of hopelessness and suicidal ideation.¹³³ Adolescents who feel connected to their schools, peers, and families were forty-eight to sixty-six percent less likely to: “[h]ave mental health issues[,] [e]xperience violence[,] [e]ngage in risky sexual behavior[,] and] [u]se substances.”¹³⁴ Further, as identified in Part I, unmitigated health and behavioral risks negatively impact other health-promoting factors, including academic achievement and economic security.¹³⁵ A health justice response thus must (1) center racism and discrimination and (2) link ESD laws with SDH to begin dismantling the laws, policies, and norms that sustain systemic inequities in health outcomes.

In addition to deploying health justice strategies to remedy deficiencies in the state-level ESD scheme, such as protecting students at all grade levels from health-harming practices, there is ripe opportunity to build a greater culture of health and public support for equity-based policies to promote local level changes. For example, individuals and organizations have pivotal roles to play in ensuring increased transparency and accountability, as well as identifying what is and is not working on-the-ground. School districts should also become aligned partners in reducing the health harms of long-standing inequitable policies, practices, and enforcement. Practically speaking, this means mutually reinforcing actions from school-level antiracist initiatives to leveraging policymaking authority to enact health-promoting policies. In the immediate term, districts and individual schools should divest from overreliance on punitive policies and practices and increase investment in multi-layered approaches to support student health and well-being. This is particularly acute in

133. *Adolescent Connectedness*, CTRS. DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/healthyyouth/protective/youth-connectedness-important-protective-factor-for-health-well-being.htm> [https://perma.cc/53XZ-XJC2] (last updated Oct. 8, 2020); *see also supra* note 34 and accompanying text (noting the individual and cumulative importance of protective health factors, including connectedness, in diminishing the risk of poor mental health).

134. *Adolescent Connectedness*, CTRS. DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/healthyyouth/protective/youth-connectedness-important-protective-factor-for-health-well-being.htm> [https://perma.cc/D6WQ-59AB] (last updated Oct. 8, 2020).

135. CTRS. DISEASE CONTROL & PREVENTION, NAT’L CTR. FOR HIV/AIDS, VIRAL HEPATITIS, STD, AND TB PREVENTION, DIV. OF ADOLESCENT AND SCH. HEALTH, YOUTH RISK BEHAVIOR SURVEY DATA SUMMARY & TRENDS REPORT: 2009-2019 4 (2020), <https://www.cdc.gov/healthy-youth/data/yrbs/pdf/YRBSDataSummaryTrendsReport2019-508.pdf> [https://perma.cc/37QG-LMML].

light of increasing evidence of the deleterious health effects of school closures and the COVID-19 pandemic on students.¹³⁶ Additionally, schools should not widen the discipline net through the continued use of virtual punishment and policing as identified *supra*, as well as the use of Zoom “detention rooms” and “segregated waiting rooms” that limit students’ visual participation and effectively eject students from online class.¹³⁷ Further, parents should not be penalized or sanctioned for appearing in their child’s background or punished for conditions that may arise when children must learn in an environment shared by others.¹³⁸ Despite the fact that COVID-19 is transforming from an acute pandemic to endemic, a full departure from virtual learning tools and contexts in the U.S. educational system is unlikely. Accordingly, school policies, including codes of conduct and student handbooks, must limit structural barriers to student participation in all forms of learning environments. For example, such policies should ensure that students understand their right to access their education as well as limit the discretion and authority of teachers to punish and police inside

136. See U.S. DEP’T EDUC., OFF. CIV. RTS., EDUCATION IN A PANDEMIC: THE DISPARATE IMPACTS OF COVID-19 ON AMERICA’S STUDENTS iii–v (June 9, 2021), <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf> [<https://perma.cc/ZP75-UUE3>] (comprehensively detailing the pandemic-caused disparities in education in the United States for K through twelve and post-secondary students, relating to mental health, academic achievement, instructional time, and access); *Adverse Consequences of School Closures*, UNESCO, <https://en.unesco.org/covid19/educationresponse/consequences> [<https://perma.cc/CDC7-FJGG>] (describing how school closures have resulted in poor nutrition and social isolation of students); Sonia Chabaane et al., *The Impact of COVID-19 School Closure on Child and Adolescent Health: A Rapid Systematic Review*, 8 CHILD. 415, 1, 5 (2021) (finding an increase in feelings of frustration, anxiety, depression, and hyperactivity amongst students due to COVID-19, and concluding that longer school closures create increased risks for childhood obesity); JENNIFER L. DEPAOLI ET AL., LEARNING POL’Y INST., A RESTORATIVE APPROACH FOR EQUITABLE EDUCATION 1 (2021) (“[C]ollective and individual trauma [] has deep implications for the mental health, wellness, and opportunities to learn for youth across the nation.”); Erika G. Martin & Lucy C. Sorensen, *Protecting the Health of Vulnerable Children and Adolescents During COVID-19–Related K-12 School Closures in the US*, JAMA HEALTH F., at 1 (2020) (noting that children quarantined are more likely to experience post-traumatic stress disorder).

137. See *supra* note 59 and accompanying text (describing the distinctive harms and lack of accountability associated with virtual classroom exclusions); Email from Paige Joki, Staff Att’y, Ed. L. Ctr., to Alexis Etow, Cesar De La Vega, Emma Burrows, & Cassiopedia Land (July 18, 2021, 1:17 PM) (on file with authors).

138. See *supra* note 60 and accompanying text (noting that students in congregate care shelters have recently been excluded from full class participation because of their “distracting” backgrounds).

students' homes. The use of health damaging practices against students who are in learning contexts and environments beyond their control, (e.g., background noise, rooms or spaces with others present, etc.)¹³⁹ may serve to amplify inequitable access to education and result in increased health harms and risks. School districts should also prioritize oversight and accountability for all forms of discipline and policing, with critical attention to virtual contexts. This could include, but not be limited to, an accessible complaint mechanism for students and families to report virtual school discipline practices and parental sanctioning—similar to forms used to report and generate data in the bullying and harassment context.¹⁴⁰ Lastly, consistent with calls for health justice reform in other social determinant systems, school-based staff must be trained to address bias, prejudice, and discrimination.¹⁴¹ Without such actions, a key principle of health justice—interrogation of the effects and persistence of social and cultural discrimination—will be overlooked.

Equally important to limiting health-harming policies, health justice approaches prioritize leveraging laws and policies that institutionalize health-promoting practices.¹⁴² This includes scaling up comprehensive upstream multi-tiered systems of support in schools. Several evidence-based practices fall into this category: school-based restorative justice practices, social and emotional learning, trauma-informed approaches, and mental health supports and services. Research has shown they independently and cumulatively help address childhood adversity and trauma and improve school climate and connectedness, all of which are instrumental to positive physical health and mental wellbeing.¹⁴³ Within the health justice paradigm, all these approaches

139. E-mail from Paige Joki, Staff Att’y, Ed. L. Ctr., to Alexis Etow, Cesar De La Vega, Emma Burrows, & Cassiopedia Land (July 18, 2021, 1:17 PM) (on file with authors).

140. *Id.*

141. Benfer et al., *supra* note 5, at 146; Braveman, *supra* note 3, at 176; *cf.* Cannon, *The Kids Are Not Alright*, *supra* note 10, at 815 (explaining the importance of cultural competency training for physicians). Discrimination in education—specifically, policies and practices that restrict and criminalize youth behaviors—are sustained by interpersonal, institutional, and structural discrimination.

142. Benfer et al., *supra* note 5, at 138 (defining prong two of the health justice framework).

143. LINDA DUSENBURY & ROGER P. WEISSBERG, PENN. STATE UNIV., EDNA BENNETT PIERCE PREVENTION RSCH. CTR., SOCIAL EMOTIONAL LEARNING IN ELEMENTARY SCHOOL: PREPARATION FOR SUCCESS 5 (2017) (noting that students who engage in social emotional learning have shown an eleven percent increase in academic achievement); COLO. DEP’T OF ED., TRAUMA-INFORMED APPROACHES IN SCHOOLS: KEY TO SUCCESSFUL

and laws¹⁴⁴ are important tools to limit health inequities and fight against the direct and indirect effects of structural discrimination in the U.S. educational system.

A focus on upstream health-supporting law and policy interventions in education is especially critical at a time when BIPOC students and communities face the steepest challenges from pandemic-related trauma and adversity.¹⁴⁵ The literature is clear that youth respond to traumatic experiences and environments by developing adaptive behaviors to survive, such as dissociation or aggression.¹⁴⁶ As prior

IMPLEMENTATION IN COLORADO 2–3 (2018) (explaining how trauma-informed approaches improve educational attainment and reduce negative health outcomes); Damon E. Jones, Mark Greenberg & Max Crowley, *Early Social-Emotional Functioning and Public Health: The Relationship Between Kindergarten Social Competence and Future Wellness*, 105 AM. J. PUB. HEALTH 2283, 2283, 2286–87 (2015) (finding that social-emotional competence at kindergarten predicts a lower likelihood of interaction with the police and the justice system before adulthood); Lisa V. Blitz et al., *Bringing Sanctuary to School: Assessing School Climate as a Foundation for Culturally Responsive Trauma-Informed Approaches for Urban Schools*, 55 URB. EDUC. 95, 114 (2020) (explaining that trauma-informed approaches contribute to healthy and supportive school climates and communities). See generally Thalia González et al., *Restorative Justice, School Reopenings and Educational Equity: A Contemporary Mapping and Analysis of State Law*, 55 U.C. DAVIS L. REV. ONLINE 43 (2021) [hereinafter González et al., *Restorative Justice*] (reviewing school-based restorative practices outcomes across the United States); Jelena Todić et al., *Reframing School-based Restorative Justice as a Structural Population Health Equity Intervention*, 62 HEALTH & PLACE 102, 289 (2020) (conducting a cross-comparative analysis of California Healthy Kids data and schools that have implemented restorative practices); Thalia González & Rebecca Epstein, GEO. UNIV. L. CTR., CTR. ON POVERTY & INEQUALITY, BUILDING FOUNDATIONS OF HEALTH AND WELLBEING IN SCHOOLS: A STUDY OF RESTORATIVE PRACTICES AND GIRLS OF COLOR (2021) (examining the protective health factor benefits of non-disciplinary school-based restorative practices for girls of color).

144. See González et al., *Restorative Justice*, *supra* note 143, at 52–56 (cataloging state-level laws embracing some form of restorative justice); DUSENBURY & WEISSBERG, *supra* note 143, at 2 (concluding that “[eleven] states . . . have articulated explicit goals with developmental benchmarks for student [social and emotional learning] at the elementary level”); NAT’L CONF. STATE LEGS., EDUC. BILL TRACKING AND DATABASES (Dec. 13, 2021), <https://www.ncsl.org/research/education/education-bill-tracking-and-databases.aspx> [<https://perma.cc/P9MY-8QFU>] (repository of several types of education bill tracking databases).

145. *Supra* note 136.

146. Tenah K. A. Hunt et al., *Adverse Childhood Experiences and Behavioral Problems in Middle Childhood*, 67 CHILD ABUSE & NEGLECT 391, 399 (2017) (analysis of children with adverse childhood experiences and how they internalize and externalize negative aggression behaviors); Julian D. Ford et al., *Complex Trauma and Aggression in Secure Juvenile Justice Settings*, 39 CRIM. JUST. BEHAVIOR 694, 698–700 (2012) (summarizing scholarship on the relationship between youth trauma and aggression in carceral

examples illustrate, most significantly Hurricane Katrina,¹⁴⁷ such trauma-influenced behaviors can be misinterpreted by school officials who then employ punitive approaches to suspend, expel, or even refer students to law enforcement under justifications of safety and control.¹⁴⁸ Yet, as Part I of this Article makes clear, these policies and actions are counterproductive to developing and sustaining positive learning environments and result in direct and indirect health harms.¹⁴⁹

When assessing, revising, or creating laws and school-based policies, health justice advocates, policymakers, school leaders, and teachers must transition away from reactionary—and most often racialized—responses toward preventative, healing, equity-centered, and culturally competent practices that diminish the health risks for BIPOC students and students who have disabilities. Instead, the central focus of

settings and describing how aggressive acts can serve as coping and protective mechanisms for individuals who have experienced significant trauma); *How Early Childhood Trauma Is Unique*, NAT'L CHILD TRAUMATIC STRESS NETWORK, <https://www.nctsn.org/what-is-child-trauma/trauma-types/early-childhood-trauma/effects> [<https://perma.cc/T5BE-CQ7U>] (describing negative youth responses to trauma).

147. Manny Otiko, *10 Years Later: Children Traumatized by Katrina Are Still Struggling in School*, ATLANTA BLACK STAR (Aug. 24, 2015), <https://atlantablackstar.com/2015/08/24/10-years-later-children-traumatized-by-katrina-are-still-struggling-in-school> [<https://perma.cc/9M48-862C>] (discussing the rates of suspension and school-based arrests in New Orleans public schools and explaining how school officials use these tactics to “push out” troubled students who have experienced the trauma of Hurricane Katrina); Xian-Liang Tian & Xian Guan, *The Impact of Hurricane Katrina on Students' Behavioral Disorder: A Difference-in-Difference Analysis*, 12 INT. J. ENV'T RSCH. & PUB. HEALTH 5540, 5555–56 (2015) (difference-in-difference analysis demonstrating that students who were displaced as a result of Hurricane Katrina were 7.3% more likely to be punished in school relative to their non-displaced peers).

148. Jennifer Coco et al., *Returning to School in the Wake of Disaster: Post-Katrina Lessons for the COVID Era*, CTR. FOR LEARNER EQUITY (Oct. 8, 2020), <https://www.centerforlearnerequity.org/news/returning-to-school-in-the-wake-of-disaster-post-katrina-lessons-for-the-covid-era> [<https://perma.cc/N4R7-BR23>] (arguing that the “no-excuses” model should not be rationalized as a mechanism for safety and control and that zero tolerance policies do not create positive school climates or promote safety and control); ELIZABETH SULLIVAN & DAMEKIA MORGAN, *PUSHED OUT: HARSH DISCIPLINE IN LOUISIANA SCHOOLS DENIES THE RIGHT TO EDUCATION* ii (2010) (“[H]arsh discipline and safety policies contribute to a range of factors that push young people out of school and down a pipeline to dropout, unemployment and prison.”).

149. A body of research shows zero tolerance, ESD, and school policing do not necessarily improve school safety or foster healthier classrooms. *Supra* note 75 and accompanying text.

education in the immediately COVID-impacted era, and beyond, should be increased implementation of health-affirming policies and scaling up of school-based health and mental health supports. In addition to prevention approaches, educators and health justice scholars must work to transform current understandings of the scope and scale of discipline and policing across one's lifespan. Ongoing research is central to guiding legal and policy reforms as well as building capacity for advocacy. Public health and medical communities—including local health departments—are well-positioned to immediately engage with state and local education leaders to identify the negative impacts of school-based racism and trauma on healthy development and reform laws, policies, and institutional norms that sustain health inequities. They also have an important role to play as partners in the expansion of legal and policy interventions under the first two prongs of the health justice framework. Applying and expanding health justice to be inclusive of education, and more specifically, discipline and policing, is a critical first step in dismantling a pathway of negative individual and community health and well-being. To approach school discipline and policing as a health justice issue will serve to not only address the immediate health harms and risks of these policies and practices, but also diminish their functionality as upstream drivers of health inequities across other SDH. As a primary SDH, education is foundationally connected to other systems and pathways that disproportionately impact the health status and well-being of BIPOC communities.

C. Operationalizing Resolutions Declaring Racism a Public Health Crisis

Expanding the health justice framework to education law and policy is also of particular importance as state and local governments,¹⁵⁰

150. See *Racism Is a Public Health Crisis*, AM. PUB. HEALTH ASS'N, <https://www.apha.org/topics-and-issues/health-equity/racism-and-health/racism-declarations> [<https://perma.cc/3749-TPPC>] (database of governmental declarations of racism as a public health crisis).

community-based organizations,¹⁵¹ policymakers,¹⁵² and health organizations¹⁵³ across the country continue to advance racism as a public health crisis, and concretize action plans.¹⁵⁴ Moving from simply affirming that racism is a public health crisis to operationalizing these commitments requires examining several gaps in the 200-plus declarations issued to date.¹⁵⁵ For example, despite evidence of the intrinsic links between education and health,¹⁵⁶ very few declarations address racism in education, and more specifically racialized disparities in education policies and practices.¹⁵⁷ In most declarations, education is only mentioned alongside a list of other system-level social determinants. For example, one county-level resolution states, without further explication, that “racism causes persistent discrimination and disparate outcomes in many areas of life, including housing, *education*, employment and criminal justice; and an emerging body of research

151. See, e.g., *Sign-on: Racism Is a Public Health Crisis in Wisconsin*, POPULATION HEALTH INST., UNIV. OF WISCONSIN-MADISON, <https://uwphi.pophealth.wisc.edu/match/match-wisconsin-healthiest-state-initiative/racism-is-a-public-health-crisis-in-wisconsin/#current-list-of-organizational-signers> [<https://perma.cc/UC7K-5XN6>] (listing dozens of grassroots and community-based organizations that have signed onto a declaration in Wisconsin).

152. See, e.g., HARV. T.H. CHAN SCH. PUB. HEALTH, *Why Declaring Racism a Public Health Crisis Matters* (Sept. 22, 2020), <https://www.hsph.harvard.edu/news/hsph-in-the-news/racism-public-health-crisis-bassett> [<https://perma.cc/5GTT-6DP3>] (arguing that declaring racism as a public health crisis is an important first step that “focus[es] on systems and structures” rather than “dismiss[ing] inequalities as the fault of individuals”).

153. See, e.g., Kevin B. O’Reilly, *AMA: Racism Is a Threat to Public Health*, AM. MED. ASS’N (Nov. 16, 2020), <https://www.ama-assn.org/delivering-care/health-equity/ama-racism-threat-public-health> [<https://perma.cc/X6S2-J2Z9>] (summarizing the steps that the American Medical Association has taken to recognize racism as a threat to public health).

154. The movement to declare racism a public health crisis began in 2018 and has expanded most significantly in 2020. The American Public Health Association maintains the most comprehensive database documenting the movement. *Supra* note 150.

155. Presently, there are 233 declarations distributed at the city (n=128), state (n=18), and county (n=87) levels. *Supra* note 150.

156. See *supra* Section I.A (detailing the role that law and policy play in shaping health inequities); see also *Education: A Neglected Social Determinant of Health*, 5 LANCET PUB. HEALTH e361 (2020) (“Education and health and wellbeing are intrinsically linked. . . . Education is strongly associated with life expectancy, morbidity, health behaviours, and educational attainment plays an important role in health by shaping opportunities, employment, and income.”).

157. The body of declarations also fails to address the relationship between racialized school policies and health status.

demonstrates that racism itself is a social determinant of health” without further explication.¹⁵⁸ Even in declarations that identify adverse childhood experiences (“ACE”s)—which are closely related to ESD¹⁵⁹—as a priority, they only contain general language, without any mention of discriminatory and health-harming school discipline and policing policies.¹⁶⁰ For example, the Buncombe County Health and Human Services Board¹⁶¹ and Dekalb County¹⁶² commit to “always promote and support all policies that prioritize the health of all people, especially people of color by mitigating exposure to” ACEs and trauma in childhood.¹⁶³

Under a health justice approach, a key starting point for localities that have declared racism a public health crisis is to actively and specifically expose, and then address, how systemic and structural discrimination have fueled disparities and deepened the persistence of health inequities. Some educational entities have included such

158. FRANKLIN CNTY. BD. COMM’RS, Res. No. 0341-20 (2020) (emphasis added); *see also* INDIO CTY. COUNCIL, Res. No. 10177, at 1 (2020); MILWAUKEE CNTY. BD. OF SUPERVISORS, Res. No. 19-397 (2019) (emphasis added) (“[R]acism causes persistent racial discrimination in housing, *education*, employment, transportation, and criminal justice and an emerging body of research demonstrates that racism is a social determinant of health.”). There is a small subset of declarations that mention disciplinary disparities in schools in relationship to racism, but these represent an outlier trend. *See, e.g.*, CHATTANOOGA CTY. COUNCIL, Res. No. 30407, at 2 (2020) (“Black children are viewed as older than their White counterparts, receive harsher punishments in both the education and juvenile justice systems than their White counterparts, they are more often subject to punitive methods versus therapeutic methods than their White counterparts regarding alleged behavioral issues. This treatment follows Black Americans into adulthood through the court system via cash bail, longer jail sentences, inadequate venues for voting, purging of voter rolls affecting Black Americans in greater numbers than their White counterparts.”); CTY. COUNCIL OF SAN BUENAVENTURA, Res. No. 2020-___, at 3 (2020) (discussing the existence of the school-to-prison pipeline and reinforcing the City Council’s “policy to not use law enforcement personnel for student disciplinary purposes”).

159. CESAR DE LA VEGA & ALEXIS ETOW, CHANGE LAB SOLS., SCHOOL DISCIPLINE PRACTICES: A PUBLIC HEALTH CRISIS AND AN OPPORTUNITY FOR REFORM 2–4 (2019), <https://www.changelabsolutions.org/sites/default/files/SchoolDisciplineAndPublicHealth-IssueBrief-FINAL-20190128.pdf> [<https://perma.cc/DB72-WTF7>].

160. *Supra* Section I.B.

161. BUNCOMBE CNTY. HEALTH & HUM. SERV., HEALTH & HUMAN SERVICES BOARD DECLARING RACISM A PUBLIC HEALTH CRISIS (2020).

162. Tyler Estep, *DeKalb County Declares Racism a Public Health Crisis*, ATLANTA J. CONST. (July 22, 2020), <https://www.ajc.com/news/atlanta-news/dekalb-county-declares-racism-a-public-health-crisis/QPDAOVI36VCW3D4XD4MXVN3WOM> [<https://perma.cc/LE5M-FK8H>].

163.

language in their declarations and can serve as a guide.¹⁶⁴ In contrast to the more generalized city, county, and state declarations, these declarations identify not only the connection between racism and education, but also action items and/or remedial steps relevant to their local educational constituencies. The Rialto Unified School District’s resolution, for example, identifies the “prioritiz[ation of] the *health* of all Black people and people of color, and support [of] local, state, regional, and federal initiatives that advance efforts to dismantle systematic racism and trauma in the school climate such as: [*e]motional and psychological harm created from exposure to criminalizing practices in school that disproportionately impact students of color.*”¹⁶⁵ The Champaign Unit School District #4 recommends “a revised discipline and safety system that protects the *physical, mental, and social health* of students and staff . . . that prioritizes the goal of involving the Champaign Police Department only in emergent violent crises.”¹⁶⁶ The Ferndale Public School District “authorizes the Superintendent to work directly with the Ferndale, Oak Park and Pleasant Ridge Police Departments, who provide services within [the] schools, to review . . . standards and expectations to further promote a culturally affirming climate.”¹⁶⁷ And, lastly, the Decatur Public School District #61 explicitly calls for “a revised discipline and safety system that protects the physical, mental, and social health of students and staff through a culturally responsive,

164. See, e.g., Letter from Dr. Joel D. Boyd, Superintendent, Lowell Pub. Sch., to Lowell Pub. Sch. Cmty. (June 19, 2020) <https://www.lowell.k12.ma.us/cms/lib/MA01907636/Centricity/Domain/4/LPS%20Ongoing%20Efforts%20to%20Combat%20Racism%206-19-20.pdf> [<https://perma.cc/QE3J-G3FT>] (“uncovering and addressing systemic biases”); FERNDALE PUB. SCH. DIST., RESOLUTION TO DECLARE RACISM AS A PUBLIC HEALTH CRISIS (2020), <http://oaklandcounty115.com/wp-content/uploads/2020/06/RESOLUTION-for-Racism-as-Public-Health-Issue.pdf> [<https://perma.cc/5TPW-ET8V>] (“[R]esearch confirms that this history has had a lasting detrimental impact . . .”); Bd. EDUC. CHAMPAIGN UNIT SCH. DIST. #4, RESOLUTION TO DECLARE RACISM AS A PUBLIC HEALTH CRISIS (2020), https://p19cdn4static.sharpschool.com/UserFiles/Servers/Server_24115139/Image/About/District/Anti%20Racism%20Resolution/2020-06-24-Unit-4BOE-Resolution-regarding-racism.pdf [<https://perma.cc/6BXM-KBS6>] (“develop or revise policies and protocols”); DECATUR PUB. SCH. DIST. #61 Bd. EDUC., RESOLUTION TO DECLARE RACISM AS A PUBLIC HEALTH CRISIS (2020), <https://www.dps61.org/cms/lib/IL01000592/Centricity/Domain/20/SIGNED%20Resolution%20on%20Racism%2008.04.2020.pdf> [<https://perma.cc/ADH4-TBPH>] (“develop a racial equity policy”).

165. Bd. EDUC. RIALTO UNIFIED SCH. DIST., RES. NO. 19-20-65 (2020) (emphasis added).

166. CHAMPAIGN UNIT SCH. DIST. #4, *supra* note 164 (emphasis added).

167. FERNDALE PUB. SCH. DIST., *supra* note 164.

restorative justice model that prioritizes the goal of involving the Decatur Police Department only in emergent violent crises.”¹⁶⁸

As the movement to declare racism a public health crisis continues to grow, cities, counties, and states are key stakeholders and should support health-promoting structural changes within schools and districts. Additionally, public health professionals, school-based health-care providers, and lawyers alike can apply their expertise to advance race-conscious health approaches to school policies and practices. Such cross-sectoral attention will ensure the first two prongs of the health justice framework move from theory to practice. Indeed, it is antithetical for a locality to declare racism a public health crisis and commit to mitigating BIPOC children’s exposure to ACEs yet continue to target them with school discipline and policing policies.¹⁶⁹ Similarly, to promote structural change to structural and intermediary determinants of health without reforming laws and policies in schools would not only limit the efficacy of the declarations, but also stand in sharp contrast to the call from health justice scholars to have a “structural understanding of health disparities and their roots in the social determinants of health.”¹⁷⁰

D. Center and Uplift the Experiences and Expertise of Frontline Communities

Critical to health justice reforms are the processes in which these policy solutions are devised and implemented. Under the third prong of health justice, frontline communities most impacted by discriminatory policies and practices must be engaged and empowered in the development and implementation of health-affirming laws and policies in schools. As health justice scholars have noted, “[i]nterventions adopted under the banner of public health—including interventions expressly aimed at eliminating disparities—are often tainted by racism, classism, and other forms of subordination.”¹⁷¹ Thus, health justice as a framework and as a central element of the antiracist health equity agenda requires that individuals and communities most affected by structural discrimination and subordination are leaders in policy-making process and interventions. Increasing individuals’ agency and ensuring that health-harmed communities can fully exercise self-determination is not only a central

168. DECATUR PUB. SCH. DIST. #61, *supra* note 164, § IX.

169. *Supra* Sections I.B–C.

170. Cannon, *Injustice is an Underlying Condition*, *supra* note 10, at 208.

171. Benfer et al., *supra* note 5, at 139.

commitment of health justice, but also itself positively impacts health.¹⁷²

Despite this foundational principle,¹⁷³ however, existing health justice scholarship articulating *how* to concretely empower communities is sparse. In exploring some of the ways that the application of the third prong of health justice can advance health equity in schools, we offer concrete strategies for how health justice scholars and practitioners can *prioritize*, *engage*, and *shift* power to communities within the growing multi-sectoral movement to uproot structural discrimination and address health disparities that existed before, during, and beyond COVID-19.

1. *Prioritize frontline communities*

The prioritization of the voices of students, families, and community partners, who—along with civil rights, disability rights, and social justice advocates—have long advocated for dismantling discriminatory school discipline and policing practices¹⁷⁴ is central to any health

172. See, e.g., Ginny Brunton et al., *Narratives of Community Engagement: A Systematic Review-Derived Conceptual Framework for Public Health Interventions*, 17 BMC PUB. HEALTH 944 (2017) (conducting a multi-method systematic review of community engagement approaches that improve the health of disadvantaged populations or reduce inequalities in health); Johan Y. Y. Ng et al., *Self-Determination Theory Applied to Health Contexts: A Meta-Analysis*, 7 PERSPECT. PSYCH. SCI. 325 (2012) (providing a meta-analysis of self-determination theory and positive outcomes on health).

173. Wiley, *Health Law as Social Justice*, *supra* note 10, at 95–96.

174. See, e.g., ADVANCEMENT PROJECT, <https://advancementproject.org/about-advancement-project> [<https://perma.cc/2HBE-6EFP>] (discussing a desire to provide a quality education that is free from criminalization); COMMUNITY ASSET DEV. REDEFINING EDUC. (CADRE), <http://www.cadre-la.org> [<https://perma.cc/CFA4-SK5Q>] (affirming a desire to give parents a voice during a time of great racial disparity); DIGNITY IN SCHS. CAMPAIGN, <https://dignityinschools.org> [<https://perma.cc/2NJ8-VL93>] (claiming that school policing is systemically racist); *End the School to Jail Track*, PADRES Y JOVENES UNIDOS, <https://padresunidos.org/?v=402f03a963ba>; POWER U. CTR. FOR SOC. CHANGE, <https://www.poweru.org> [<https://perma.cc/W2AH-78MM>] (expressing desire to smash what it terms a pipeline from schools to prisons); POSITIVE YOUTH JUST. INITIATIVE, *Disrupting the School-to-Prison Pipeline*, https://www.shfcenter.org/assets/PYJI/PYJI_Disrupting_SPP_Brief_December_2019_web.pdf (last visited Aug. 12, 2021) (claiming that Black students are disciplined more frequently than other races, such as Asian and white students); *About Us*, BLACK ORG. PROJECT, <http://blackorganizingproject.org/our-work> [<https://perma.cc/K8PR-4SMC>] (affirming its desire to abolish the police and to find alternatives to school safety by police); RYSE CTR., POLICY WINS & CAMPAIGNS, <https://static1.squarespace.com/static/58ece61644024383be911a95/t/5d4dc16c34c15d0001d9e27b/1565376878390/Policy+Wins+%26+Campaigns+8.9.19.pdf> [<https://perma.cc/W22U-6JTQ>] (stating its goal to find an alternative to school-

justice approach. This prioritization includes bringing public-health methodologies¹⁷⁵ and health-law responses¹⁷⁶ to bear in response to COVID-19 pandemic-driven calls for reform, such as moratoriums on suspensions to “help minimize the additional trauma, stigma, and social isolation for students”¹⁷⁷ both during periods of virtual learning and as students continue to transition to in-person and hybrid learning. Even though these calls to action went largely unheeded during the 2020 to 2021 academic year, they are no less salient today and present a ripe opportunity for a health justice intervention with long-term health-positive effects. From a health justice perspective, a moratorium is an immediate and critical safeguard for students who are experiencing unprecedented trauma and, as importantly, to minimize the negative health outcomes defined *infra*. We cannot overstate the importance of the need for a collective and participatory response by public-health-law professionals to amplify the voices of impacted communities by bringing the health-harming effects of school discipline and policing into the political, legal, and social domains.

2. *Engage frontline communities*

In addition to prioritizing the voices and needs of frontline communities, health justice efforts must engage students, families, and communities throughout the policy-making process. This engagement requires public health professionals to become more deeply integrated with community-driven movements, such as Black Lives Matter, that seek to reduce school-police budgets or remove the presence of police in school altogether.¹⁷⁸ Importantly, however, public-health-law professionals should not assume leadership roles in these movements.

suspensions); AM. C.L. UNION, BULLIES IN BLUE: ORIGINS AND CONSEQUENCES OF SCHOOL POLICING (Apr. 2017), https://www.aclu.org/sites/default/files/field_document/aclu_bullies_in_blue_4_11_17_final.pdf [<https://perma.cc/R5C8-3LFN>].

175. See, e.g., Ford & Airhihenbuwa, *supra* note 19, at S34 (arguing for the use of critical race theory as a public-health methodology); Harris & Pamukcu, *supra* note 2, at 825 (arguing for the combination of civil-rights protections with research on social detriments to health).

176. See, e.g., NETWORK PUB. HEALTH L., <https://www.networkforphl.org> [<https://perma.cc/4W4S-RPV2>] (an organization seeking to change health laws to improve “health equity”).

177. Solutions Not Suspensions Coalition, Letter to Chancellor Betty A. Rosa, New York C.L. Union, (April 16, 2020), https://www.nyclu.org/sites/default/files/20201604_snsletter_regentrosa_discipline_during_covid-19.pdf [<https://perma.cc/P6RK-JYHR>].

178. Thalia González & Emma Kaeser, *School Police Reform: A Public Health Imperative*, 74 SMU L. REV. F. 118, 122 (2021).

To do so would be counter to health justice—which makes clear that shifting power to affected communities is a critical component to beginning to remedy the harms of long-standing disinvestment, discrimination, and disenfranchisement in frontline communities.¹⁷⁹ Rather, public-health-law professionals can serve as collaborative partners or conduits to help elevate the often-overlooked public-health implications of racialized school policies and practices. One example of such a partnership is youth participatory action research (“YPAR”), an “innovative approach to positive youth and community development in which young people are trained to conduct systematic research to improve their lives, their communities, and the institutions intended to serve them.”¹⁸⁰ YPAR has been utilized to evaluate programs, policies, and practices that affect youth and to identify resources and solutions to support them.¹⁸¹ As part of a health justice response to discriminatory laws and policies in schools, YPAR could be employed to build a new evidence base of the health harms of school discipline and policing and to identify alternative policies and approaches to school safety that are health-affirming.¹⁸² YPAR can also expose students to the life-cycle of the policy-making process and ensure their involvement, from issue identification through implementation and evaluation. Finally, a critical component to YPAR is power-sharing.¹⁸³ By exposing adults to processes where they play a more supportive role, YPAR may prime them to feel more comfortable engaging in power-sharing with students in other contexts, such as making budgetary decisions.

3. *Shift decision-making power to frontline communities*

Finally, health justice necessitates a shift in power to frontline communities. We draw attention to one of many potential examples

179. Harris & Pamukcu, *supra* note 2, at 765; Wiley, *Health Law as Social Justice*, *supra* note 10, at 101.

180. *Learn About YPAR*, YPAR HUB, <http://yparhub.berkeley.edu/learn-about-ypar> [<https://perma.cc/69L5-YZRF>].

181. *Id.* The processes of YPAR have been shown to positively impact on youth development. EMILY J. OZER, *Youth-Led Participatory Action Research: Overview and Potential for Enhancing Adolescent Development*, 113 *CHILD DEVELOP. PERSPECT.* 173 (2017).

182. Robin Lindquist-Grantz & Michelle Abraczinskas, *Using Youth Participatory Action Research as a Health Intervention in Community Settings*, 21 *HEALTH. PROM. PRAC.* 573 (presenting YPAR applications and arguing YPAR is a powerful health intervention strategy that produces research relevant to youth).

183. YPAR HUB, *supra* note 180.

for change: participatory budgeting. Participatory budgeting is a practice “that invites individuals to directly decide how to allocate money from public budgets into projects that benefit their communities.”¹⁸⁴ Applied to the education context, students and families become active stakeholders and participants in the budgetary process for school safety. Utilizing a participatory process creates space from which to draw directly on students’ and caregivers’ lived experiences and apply that expertise to a collective equity-grounded decision-making process on how to invest limited resources in a responsive, community-driven manner.¹⁸⁵ As communities around the nation continue to focus on investment in health-promoting resources and practices and divestment from police and policing practices, a participatory budgeting process promotes transparency and health-promoting policies and practices that center a culture of health and dismantle entrenched discriminatory beliefs that underpin disparate punitive responses to student behavior. Beyond participatory budgeting, school districts can explore other methods of power-sharing, such as having students serve on school boards or “[s]tudent [a]dvisory [p]anel[s].”¹⁸⁶ Power-sharing in education is still a novel concept;¹⁸⁷ however, the application of the health justice framework may support the growth of this movement by bringing to light the necessity to dismantle racialized health-harming practices and policies while simultaneously helping ensure that frontline communities are no longer marginalized or ignored in the policy-making process. Power-sharing should be viewed not only as a democratic tool to mitigate racialized disparities in education, but also as an upstream intervention to ensure that the historical and present-day inequities of the U.S. education system’s laws and policies are neither replicated nor entrenched in future policy decisions.

184. THEA CRUM ET AL., PARTICIPATORY BUDGETING IN SCHOOLS: A TOOLKIT FOR YOUTH DEMOCRATIC ACTION, GREAT CITIES INSTITUTE (2020).

185. This is particularly relevant during COVID-19, as schools, districts, and states have engaged in budgetary decision-making specific to federal assistance. *See, e.g., Federal Stimulus Funding*, CAL. DEP’T EDUC., <https://www.cde.ca.gov/fg/cr> [<https://perma.cc/6G33-7JTN>] (discussing plans requiring local educational agencies to consult with “specified stakeholders” and to “provide opportunity for public input”).

186. Jinghong Cai, *Students Serving on School Boards: Democratic Education in Action*, NAT’L SCH. BDS. ASS’N (February 4, 2021), <https://www.nsba.org/Perspectives/2021/Students-Serving-on-School-Boards> [<https://perma.cc/W7UE-ATE8>].

187. “[A]s of January 2021, 67 out of [the] 495 [largest public] school districts (14%) have students serving on their governing boards.” *Id.*

E. Training the Next Generation of Health Justice Advocates

Coupled with direct systemic reforms, it is essential to health justice that a new generation of advocates are trained to address creatively and collaboratively health disparities across the SDH. One such model is medical-legal partnerships (“MLP”s). Over the past several decades, the MLP movement served as a key strategy for identifying and addressing SDH through a health justice frame.¹⁸⁸ Law-school MLPs, for example, have recognized how pediatricians may witness the health-harming effects of social and legal problems on children but not possess the training and tools to systemically address those issues.¹⁸⁹ And, inversely, law students and lawyers can see how racism, trauma, and adversity can influence legal outcomes, but may have limited capacity to respond to these needs. Thus, MLPs fill a critical gap by facilitating multidisciplinary partnerships to holistically support at-risk youth and their families.¹⁹⁰

MLPs, while growing across the country, are an under-utilized health justice opportunity for transdisciplinary engagement and leveraging of diverse expertise (e.g., law students, lawyers, and health and public-health professionals) to address discriminatory school discipline and policing laws, policies, and practices. For example, in review of law-school MLPs, nearly half identify education as a SDH that they seek to shape¹⁹¹ yet do not address school discipline. Instead, the majority of law-school MLPs that name education as an area of emphasis focus on special education and the needs and rights of students who have disabilities to educational services.¹⁹² This focus, is of course, a significant area of attention and need but limits the potential for holistically addressing health disparities and improving the health status of marginalized youth. To expand MLPs’ focus to discipline and

188. Elizabeth Tobin-Tyler & Joel B. Teitelbaum, *Medical-Legal Partnership: A Powerful Tool for Public Health and Health Justice*, 134 PUB. HEALTH REP. 201, 201–03, 205 (2019).

189. Yael Cannon & Andrew Hsi, *Disrupting the Path from Childhood Trauma to Juvenile Justice: An Upstream Health and Justice Approach*, 43 FORDHAM URB. L.J. 425, 481–82 (2016).

190. *Id.*

191. See, e.g., *Medical-Legal Partnership Projects Enhance Patient Care*, YALE NEW HAVEN HOSP. (Oct. 26, 2017), <https://www.ynhh.org/publications/bulletin/102617/medical-legal-partnership-projects-enhance-patient-care.aspx> [<https://perma.cc/5CRY-2L7J>] (identifying education as an area of focus for the pediatric MLP).

192. See, e.g., *The Medical-Legal Partnership for Families in Durham*, DUKE LAW, <https://law.duke.edu/partnershipforfamilies> [<https://perma.cc/UUN9-MYQT>] (listing special education as a legal topic addressed by the MLP).

policing practices is a foundational step to combating systemic barriers to health, addressing racism, and leverages a key tool of the antiracist health equity movement.

The fact that education functions independently as a SDH and in relationship to other social and intermediate determinants of health further supports our call for expansion of MLPs and a more comprehensive approach to addressing the health-harming legal needs of vulnerable individuals and communities. For example, many MLPs provide essential legal services to patients in the area of poverty law and public benefits to mitigate the negative health effects associated with socioeconomic status. Given the concurrence of legal needs associated with poverty, housing insecurity, and school discipline,¹⁹³ addressing these discriminatory practices and policies simultaneously is an untapped upstream intervention that furthers the fundamental goals of health justice. Moreover, addressing poor mental health and chronic illness associated with unequal access to distribution of resources and health-care access aligns with a public-health and health justice response to discriminatory education policies, especially given that poor mental health is a direct outcome of school discipline and policing¹⁹⁴ and that risks for chronic illness are associated with low educational attainment.¹⁹⁵

CONCLUSION

As BIPOC families and communities continue to face steep health, mental health, and structural challenges illuminated and amplified by the COVID-19 pandemic, the work of health justice is vital. No longer is it tenable to operate as if racial disparities outside of traditional health-care settings, systems, or laws are unique phenomena to be remedied by individual claims grounded in constitutional principles. Instead, as this Article argues, we must recognize such outcomes as public-health priorities, and craft legal and policy responses not only through the lens of civil rights or racial justice, but also with public-health implications in mind.

To achieve health justice, dismantle racism and discrimination, and disrupt the pathways that lead to health inequities, ending school

193. CARMEN DENAVAS-WALT & BERNADETTE D. PROCTOR, CURRENT POPULATION REPORTS: INCOME AND POVERTY IN THE UNITED STATES: 2014. U.S. CENSUS BUREAU 16 (2015), www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf [<https://perma.cc/5HGY-8CRK>].

194. Section I.C.

195. CTR. ON SOC. & HEALTH, *supra* note 23, at 6.

discipline and policing policies is a concrete and fundamental next step. In applying the health justice framework to education law, policy and practice, this Article not only places the health-harming effects of school discipline and policing squarely in the domain of public health law, but also, just as importantly, prioritizes legal and policy responses with health equity at the forefront. It also lifts up the significance of the deeply rooted racialized nature of school discipline and policing within the broader antiracist health equity movement. There is little dispute that racism produces and sustains health disparities. In advancing a health justice response to education, policymakers, education leaders, and health justice advocates must begin to work alongside frontline communities to radically rethink and restructure education laws and policies to dismantle the legal, political, and social structures that drive health inequities.