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 with 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 in light of school closures during COVID-19. In fact, schools have employed new models of exclusion that operate simultaneously with "traditional" suspensions and expulsions. This has led to significant concerns that discipline disparities and educational inequities are not only being replicated but exacerbated during a time of heightened vulnerability resulting from the pandemic. Despite evidence of the significant co-influential nature of health and education, school policies and practices have not been 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 eliminating entrenched health inequities that have affected BIPOC students and students with 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 discipline and school-based policing 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

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

key stages of developments underscores the importance of dismantling legal, political, and social structures that drive health injustice.

Introduction

COVID-19 has taught us many things—chief among them that health is not a matter of individual choice nor of individual consequence.[2] Not only are

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[2] Angela Harris & Aysha Pamukcu, *The Civil Rights of Health: A New Approach to Challenging Structural Inequality*, 758 UCLA L. Rev. 762, 771- 777 (2020); Health Equity Considerations and Racial and Ethnic Minority Groups, CTR. DISEASE CONTROL, (last visited July 22, 2021) https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html; *See also*, Dorothy Roberts, *Debating the Cause of Health* Disparities*: Implications for Bioethics and Racial Equality*, 21 CAMBRIDGE Q. HEALTHCARE ETHICS 332, 333-34 (2012)("[i]t is implausible that one race of people evolved to have 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.").

health outcomes deeply influenced by institutional and structural forces[3] that shape access to opportunities and resources needed to thrive, but when individual populations suffer, society as a whole suffers. In this moment of heightened calls for race-conscious approaches[4] to transform our public and private systems, it is increasingly crucial that public health and health law communities more closely examine the role that law and policy[5] 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 across measures of health and justice[8] and rooted in discrimination.[9]

Health justice as a framework or approach represents both theoretical and practical applications for targeting law and policy reforms to eliminate health

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[3] *See, e.g*., Paula, *Health disparities and health equity: Concepts and measurement*, 27 ANN. REV. PUB. HEALTH, 167, 167, 169- 171 (2006); Sabin J, Nosek &, Greenwald A, Rivara FP, *Physicians' implicit and explicit attitudes about race by MD race, ethnicity, and gende*r, 20(3) J. HEALTH CARE POOR UNDERSERVED, 1, 6- 8(2009); Scott Burris, *Law in a Social Determinants Strategy: A Public Health Law Research Perspective*, 126 PUB. HEALTH REPS., 22, 23 (2011); 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); 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, 1038 (2019).

[4] AM. PUB. HEALTH ASS'N, https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/13/structural-racism-is-a-public-health-crisis (last visited Jul 22, 2021).

[5] CHANGELAB SOLUTIONS, https://www.changelabsolutions.org/product/blueprint-changemakers (last visited Jul. 22, 2021); 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).

[6] Health inequities are systematic differences in the opportunities groups have to achieve optimal health, leading to disparate and *avoidable* differences in health outcomes. *See* Braveman, *supra* 2 at 167, 180–1.

[7] Thalia González et al., *An Antiracist Health Equity Agenda for Education,* forthcoming J. L. MEDICINE & 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/do/10.1377/hblog20200701.242395/full/.

[9] See, e.g., Benfer, et al. *supra* note 5, at 130 – 4 (describing the relationship between interpersonal, institutional, and structural discrimination and health); Yearby, *supra* note 3 at 518, 520– 21 (defining structural discrimination as the root cause of health inequities within a revised social determinants of health framework).

disparities.[10] Health justice scholars place "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]

As a framework, health justice functions to extend what has been previously accepted as within the health domain beyond traditional health care settings, systems, or laws.[14] This broad applicability leaves ripe the opportunity to employ it to a broad range of health-impacting laws, policies, and systems that may not be designed or previously conceptualized as public health.[15] In the case

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[10] See, e.g., Benfer, et al. *supra* note 5, at 136 – 7; 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- 320 (2015) (presenting health justice as a model to address health inequity and social injustice in vulnerable communities); Yael Cannon, *The Kids Are Not Alright: Leveraging Existing Health Law to Attack the Opioid Crisis Upstream*, 71 FLA. L. REV. 765, 779 (2019) (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. L. J. & PUB. AFF. 201, 204 – 6 (2020) (applying health justice 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. Makhlouf, *Health Justice for Immigrants*, 4 U. PA. J.L. & PUB. AFF. 235, 883- 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*, 37 CARDOZO L. REV. 833, 862, 872- 75 (2016) (a health justice approach to health care quality).
[11] Harris & Pamukcu, *supra* note 2, at 762, 806.
[12] Benfer, et al. *supra* note 5, at 130 – 2 (examining discrimination in relationship to social and intermediate determinants of health).
[13] *Id*. at 127.
[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- 3(2019).
[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, housing and food insecurity). See, e.g., Benfer, et al. *supra* note 5 at 137; Lindsey Wiley, *Applying the Health Justice Framework to Diabetes as a Community-Managed Social Phenomenon*, 16 HOUS, J. HEALTH L. & POL'Y 102, 110- 112 (2016); Robyn M. Powell, *Applying the Health Justice Framework to Address Health and Health Care Inequities Experienced by People with Disabilities During and Before COVID-19*, 96 WASH. L. REV. 3, 31, 44- 50 (2021).

of school discipline and policing, to apply 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, identify legal and policy interventions that are "structural, supportive, and empowering"[16] to ensure that every student has the "opportunity to attain his or her full health potential and no one is disadvantaged from achieving this potential because of social position or any other socially determined circumstance."[17] 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 a public health issue. It begins with 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 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 maps the three-prongs of health justice and directly applies this framework to school discipline and policing. As such, Part II offers specific short- and long-term legal and policy interventions to begin to address the ways in which school-based violence[18] produces and exploits the differentiated vulnerabilities of BIPOC students and students with disabilities consistent with the commitments of health justice and overarching goals of public health.

I.   School Discipline and Policing: An Issue of Health Justice?

To conceptualize 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

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[16] Benfer, et al. *supra* note 5, at 137. See discussion *infra*, Part II.

[17] CTR. FOR DISEASE CONTROL & PREVENTION, *Health Equity*, (2020), https://www.cdc.gov/chronicdisease/healthequity/index.htm.

[18] 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 to create learning environments marked by discrimination, fear, and trauma.

when comparing peer student groups? Lastly, the focus turns to 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 recognized the SDH in shaping health outcomes and driving health disparities.[19] By 2010, key public health institutions in the United States began to fully center the SDH in their approaches to public health[20] 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"[21] with specific attention to five key determinants: "economic stability, education, social and community context, health and health care, and neighborhood and built environment."[22]

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.[23] Figure 1 illustrates the co-influential linkage between education and health.[24]

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[19] SAMANTHA ET AL., BEYOND HEALTH CARE: THE ROLE OF SOCIAL DETERMINANTS IN PROMOTING HEALTH AND HEALTH EQUITY 2 – 3 (2018); Paula Braveman, et al., *The Social Determinants of Health: Coming of Age*, 32 ANN. REV. PUB. HEALTH 381, 382 (2011) (history on the rise of focus on the social determinants of health).

[20] 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).

[21] WORLD HEALTH ORGANZ., https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1 (last visited July 22, 2021)
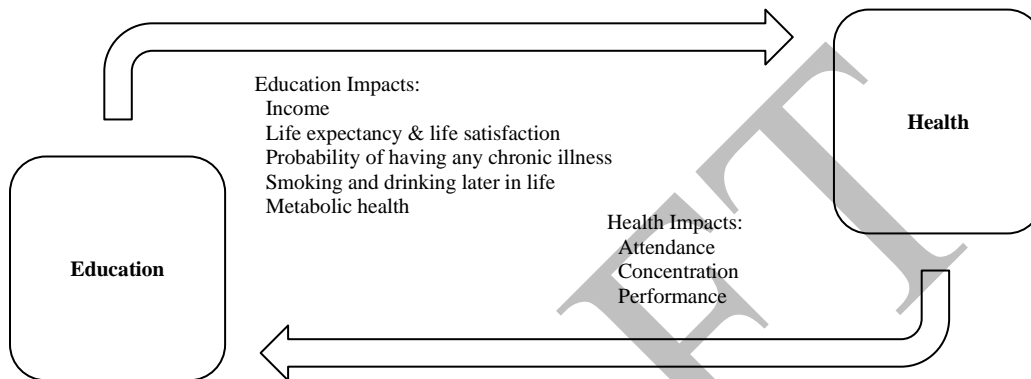
[22] HEALTHY PEOPLE, *Social Determinants of Health: Interventions and Resources*, https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-health/interventions-resources [https://perma.cc/7V97-5SJP]..

[23] HEALTHY PEOPLE 2030, https://health.gov/healthypeople, (Last Visited July 28, 2021); CTRS. FOR DISEASE CONTROL AND PREVENTION (2021), https://www.cdc.gov/socialdeterminants/about.html (Last visited Jul 21, 2021); 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).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 530–536 (2020).

[24] CTR. ON SOCIETY AND HEALTH, VIRGINIA COMMONWEALTH UNIVERSITY, WHY EDUCATION MATTERS TO HEALTH: EXPLORING THE CAUSES 1, 2–4 (2015); Raghupathi, V., Raghupathi, W. *The influence of education on health: an empirical assessment of OECD countries for the period 1995–2015.* ARCH PUBLIC HEALTH 78, 20 (2020).; Bradley, B. J., & Greene, A. C. *Do Health and Education Agencies in the United States Share Responsibility for Academic Achievement and Health?* 52 J. ADOLESCENT HEALTH 523 (2013).

Figure 1. Education and Health Pathways

Education Impacts:
   Income
   Life expectancy & life satisfaction
   Probability of having any chronic illness
   Smoking and drinking later in life
   Metabolic health

Health Impacts:
   Attendance
   Concentration
   Performance

Education

Health

For example, by age 25 individuals with a high school degree can expect to live over 10 years longer than those without one.[25] 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.[26] Higher levels of education influence income and resources, social and psychological health, health literacy, and overall health of neighborhoods.[27] The inverse relationship is also true: poor 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.[28] For example, if a child has asthma, they might have difficulty focusing in school or even take more absences.[29] This can result in decreased educational performance and attainment, which in turn may lead to additional adverse health consequences,[30] creating a negative feedback loop. It is important to emphasize the role that social conditions play in shaping educational and health experiences. Children from low-income families, students with disabilities, and students who

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[25] Brian L. Rostron, John L. Boies & Elizabeth Arias, *Education Reporting and Classification on Death Certificates in the United States*, 151 VITAL HEALTH STAT. 2, 1, 7 (May 2010).
[26] Raquel Fronesca, Pierre-Carl Michaud &Yuhui Zheng, *The Effect of Education on Health: Evidence From National Compulsory Schooling Reforms*, 11 SERIES, 83, 84- 85 (August 2019).
[27] ARTIGA, *supra* note 23, at 1, 2- 3; Lawrence St Leger, *Schools, Health Literacy and Public Health: Possibilities and Challenges*, 16 HEALTH PROMOTION INT'L 197, 197 – 202 (2001); Natalie McGill, *Educational Attainment Linked to Health Throughout Lifespan: Exploring Social Determinants of Health*, 46 THE NATION 1–19 (August, 2016).
[28] McGill, *supra* note 31.
[29] Sara B. Johnson, *Asthma and Attendance in Urban Schools*, 16 PREV. CHRONIC DIS. (2019).
[30] ARTIGA, *supra* note 23 at 1, 3.

are subjected to social discrimination are more likely to struggle with math and reading and are less likely to graduate from high school.[31] In turn, these children are at greater risk to suffer from heart disease, diabetes, and depression.[32] Additionally, education is a predictor of and risk for incarceration.[33]

The relationship between school environments and health also includes key protective health factors, such as school connectedness, peer connectedness, and positive school climate, that support healthy development in childhood, adolescence, and young adulthood. Each of these protective health factors individually, and as importantly cumulatively, serve to diminish risks of health-harming behaviors for youth (e.g., early sexual initiation, drug use, emotional distress, suicide ideation and attempts, and violence).[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 clear that BIPOC students are punished and policed at higher rates.[36] Given the significance of

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[31] HEALTHY PEOPLE 2030, *Education Access and Quality* https://health.gov/healthypeople/objectives-and-data/browse-objectives/education-access-and-quality (last visited Jul 21, 2021).

[32] *Id* HEALTHY PEOPLE 2030 (last visited Jul 21, 2021).

[33] *Id*., at 1–9.

[34] CTR. DISEASE CONTROL & PREVENTION, https://www.cdc.gov/healthyyouth/index.htm (last visited July 22, 2021).

[35] U.S. DEPARTMENT OF ED. OFFICE CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION, REVEALING NEW TRUTHS ABOUT OUR NATION'S SCHOOL, 1, 3 – 7 (2012); U.S. DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS, DATA SNAPSHOT: SCHOOL DISCIPLINE, 1, 2 – 6 (2014); U.S. DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS, KEY DATA HIGHLIGHTS ON EQUITY AND OPPORTUNITY GAPS IN OUR NATION'S PUBLIC SCHOOLS, 1, 1 – 5 (2016); 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* (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/; DANIEL J. LOSEN & AMIR WHITAKER, 11 MILLION DAYS LOST, RACE, DISCIPLINE AND SAFETY AT U.S PUBLIC SCHOOLS, 1, 5, 10- 12 (2018); ADVANCEMENT PROJECT, EDUCATION LOCKDOWN: SCHOOLHOUSE TO JAILHOUSE TRACK, 1, 15- 16, 24 (2005); FACT SHEET, DSC FACT SHEETS ON SCHOOL PUSHOUT: DIGNITY IN SCHOOLS CAMPAIGN, (2016) https://dignityinschools.org/resources/dsc-created-fact-sheets/; SOUTHERN POVERTY LAW CENTER, EFFECTIVE DISCIPLINE FOR STUDENT SUCCESS REDUCING STUDENT AND TEACHER DROPOUTS IN MISSISSIPPI, 1, 7- 12 (2009).

[36] AMIR WHITAKER, ET AL., COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS, 1, 24 (2019); U.S. DEPARTMENT OF ED. OFFICE CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION (2013) (Last visited July 9. 2021); U.S. DEPARTMENT OF ED. OFFICE CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION (2015) (Last visited July 9. 2021);

disproportionality in school-based discipline and policing and far-reaching collateral consequences, a growing body of literature has sought to expose how racial and gender bias[37] contributes to the likelihood of students' disproportionate experiences with harsh disciplinary practices and police.[38]

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 US Department of Education's Office for Civil Rights Data Collection (CRDC) for the 2015 – 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

U.S. DEPARTMENT OF ED. OFFICE CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION (2017) (Last visited July 9. 2020); *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).

[37] MONIQUE W. MORRIS, THE CRIMINALIZATION OF BLACK GIRLS IN SCHOOLS, 1, 34 (2016); Kimberlé Williams Crenshaw et al., *Black Girls Matter: Pushed Out, Overpoliced And Underprotected*, COLUMBIA L., 1, 16- 18 (2015); CHERYL STAATS, IMPLICIT RACIAL BIAS, AND SCHOOL DISCIPLINE DISPARITIES EXPLORING THE CONNECTION, 1, 4- 8 (2014); REBECCA EPSTEIN ET AL., GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS' CHILDHOOD, 1, 9- 11 (2017); Jamilia Blake et al., *Unmasking the Inequitable Discipline Experiences of Urb. Black Girls: Implications for Urb. Educ. Stakeholders*, 43 URB. REV.,90, 90- 106 (2011); Jamilia J. Blake et al., *The Role of Colorism in Explaining African Am. Females' Suspension Risk*, 32 SCH. PSYCH. Q. 118, 118- 130 (2017); JAMILIA J. BLAKE ET AL., 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 (2015); Subini A. Annamma, *Black Girls & School Discipline: The Complexities of Being Overrepresented & Understudied*, 22 URB. EDUC., 1, 19 – 20 (2016); NATHAN BARRETT ET AL., DISPARITIES IN STUDENT DISCIPLINE BY RACE AND FAMILY INCOME, 1, 30 – 32 (2017); Seth Gershenson and Thomas S. Dee, *The insidiousness of unconscious bias in schools*, (2017) https://www.brookings.edu/blog/brown-center-chalkboard/2017/03/20/the-insidiousness-of-unconscious-bias-in-schools/; Russell Skiba, et al., *Race is not neutral: A national investigation of African American and Latino disproportionality in school discipline*, 40 SCH. PSYCH. REV. 85, 85- 89 (2011); AJMEL QUERESH & JASON OKONOFUA, LOCKED OUT OF THE CLASSROOM: HOW IMPLICIT BIAS CONTRIBUTES TO DISPARITIES IN SCHOOL DISCIPLINE, 1, 4 – 6 (2017); *Jason P. Nance, Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 EMORY L. J. 765, 784 – 795 (2017)

[38] *See* e.g., U.S. DEP'T OF EDUC. OFF. OF C.R., AN OVERVIEW OF EXCLUSIONARY DISCIPLINE PRACTICES IN PUBLIC SCHOOLS FOR THE 2017-18 SCHOOL YEAR 1, 10- 17 (2021); SARAH E. REDFIELD & JASON P. NANCE, THE AMERICAN BAR ASSOCIATION JOINT TASK FORCE ON REVERSING THE SCHOOL-TO-PRISON PIPELINE PRELIMINARY REPORT 1, 30- 34 (2016); Maithreyi Gopalan & Ashlyn Aiko Nelson, *Understanding the Racial Discipline Gap in Schools*, 5 AM. EDUC. RESEARCH ASSN., 1, 4 – 6 (2019); Janel A. George, *Stereotype and School Pushout: Race, Gender, and Discipline Disparities*, 68 ARK. L. REV., 102, 109 – 112 (2015).

[39] Black students were also overrepresented in referrals to law enforcement by about 10 percentage points. U.S. GOVERNMENT ACCOUNTABILITY OFFICE K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES 1, 7, 20 (2018).

law enforcement.[40] Data also showed that American Indian and Alaskan Native students were at twice the risk for a referral to law enforcement.[41] Findings of disproportionality are consistent across multiple years. Analysis of the most recent CRDC data, for example, shows that Black girls are 4.19 times more likely to be suspended and 3.66 times more likely to be arrested at school.[42] Similar patterns exist for Black boys—they are 2.44 times more likely to be arrested at school.[43]

For students with disabilities, the impact of school discipline and policing is amplified with high stakes consequences for this already vulnerable population[44] and disparities existing at some of the highest rates across multiple categories.[45] National data shows that schools suspend students with disabilities two to three times more often than their non-disabled peers.[46] And even though students with disabilities represent only 12 percent of the total student population, they constitute 25 percent of all student arrests and referrals to law enforcement.[47] Such inequities are not isolated to one academic year. Data released by the CRDC in 2020[48] reveals that students with 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.[49] The risk of exposure to these practices is most acute for BIPOC students

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[40] American Indian and Alaskan Native students were 2.00 more at risk for experiencing a school-related arrest. CRDC 2015 *supra* note 40. Additionally, when examining lost instruction time for secondary school students, CRDC data (2015 – 2016) indicates that Black boys lost 132 days of instruction time due to exclusionary school discipline, compared to white students, who only lost 32 days of instruction time. *See*, DANIEL J. LOSEN AND PAUL MARTINEZ, LOST OPPORTUNITIES: HOW DISPARATE SCHOOL DISCIPLINE CONTINUES TO DRIVE DIFFERENCES IN THE OPPORTUNITY TO LEARN, 8 – 20 (2020).

[41] American Indian and Alaskan Native students were 2.00 more at risk for experiencing a school-related arrest. CRDC 2015 *supra* note 40.

[42] GEORGETOWN L. CTR. ON POVERTY & INEQUAL., DATA SNAPSHOT: 2017-2018—NATIONAL DATA ON SCHOOL DISCIPLINE BY RACE AND GENDER 1-4 (2020); Civil Rights Data Collection *supra* note 39.

[43] CIVIL RIGHTS DATA COLLECTION (2017), *supra* note 40.

[44] *Id*.; Losen *supra* note 44, 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 nondisabled peers, which in turn increases the overall education gap).

[45] Losen *supra* note 44, at vi – x.

[46] LOSEN ET AL., ARE WE CLOSING THE SCHOOL DISCIPLINE GAP 7 (2015).

[47] *Id.* at 6 – 7.

[48] CIVIL RIGHTS DATA COLLECTION, DATA SNAPSHOT: SCHOOL DISCIPLINE ISSUE BRIEF NO. 1 U.S. DEPARTMENT OF EDUCATION OFFICE FOR CIVIL RIGHTS (2014).

[49] While the overall rate of suspension for all students was 5.1% in the 2017-2018 school year, 10.5% of students with disabilities were suspended. Students with disabilities were also two times more likely to be expelled, referred to law enforcement, or subjected to school related arrests as compared to their nondisabled peers. CRDC, *supra* note 47.

with disabilities. In 2017 – 2018, Black students with 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 students with disabilities were five times more likely.[50] Disaggregation of data by gender reveals that Black girls with disabilities represent the most significantly impacted student population—they are five times more likely to be suspended than their white, nondisabled female students.[51] Black girls with disabilities also experience the highest disparity for rates of referrals to law enforcement: six times more than white, non-disabled female students.[52] A gender gap also exists for Black boys with disabilities who are almost 2.8 times more likely to be suspended.[53]

The disproportionate use of school discipline against BIPOC students and students with disabilities have not diminished in light of school closures[54] due to the COVID-19 pandemic. Rather, new models of exclusion have emerged operating simultaneously with "traditional" suspensions and expulsions.[55] This has led to significant concerns that discipline disparities and educational inequities are not only being replicated, but in fact exacerbated[56] through several mechanisms.

First, the digital tools of virtual learning "invisiblize" exclusion and punishment.[57] 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 rooms, mute them, and even isolate them in breakout rooms without having to account for their exclusion.[58] During the 2020 – 2021 school year, the Education Law Center documented multiple cases of students living in congregate care shelters who

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[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] NATIONAL SCHOOL BOARDS ASSOCIATION, *Online Discipline Gap* (2021), https://nsba.org/ASBJ/2021/April/online-discipline-gap (last visited July 28, 2021).

[55] Jodi S. Cohen, *A Teenager Didn't Do Her Online Schoolwork. So a Judge Sent Her to Juvenile Detention*, (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; Rebecca Klein, *The New School Suspension: Blocked From Online Classrooms*, (Aug 11, 2020, 10:45 am) https://www.huffpost.com/entry/school-discipline-remote-learning_n_5f329829c5b64cc99fde4d64; Evan Schreiber, *Staff says discipline in distance learning differs little from in-person classes*, (Sept 2, 2020) https://katu.com/news/return-to-learn/discipline-in-distance-learning-staff-says-very-little-difference (last visited August 11, 2021).

[56] *Online Discipline Gap, supra* note 58.

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

[58] *Id.*

were excluded from fully participating in class and kept on mute based on a teacher's interpretation that the background was "too distracting."[59] Given the existing evidence base linking race, gender, disability, and other identity categories with bias and disproportionality in traditional classroom exclusion[60] 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.[61]

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.[62] Education law attorneys have documented multiple instances of students remaining in Zoom waiting rooms during instructional time, resulting in unexcused absences, learning loss, and eventually truancy prosecution.[63] As past data has affirmed, disparities exist in truancy for BIPOC students and students with disabilities putting them at a higher risk than their peers for educational inequities.[64]

Third, virtual learning environments allows 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.[65] Additionally, the National Education Policy Center reported that Black students have been

[59] *Id.*

[60] KEY DATA HIGHLIGHTS ON EQUITY AND OPPORTUNITY GAPS IN OUR NATION'S PUBLIC SCHOOLS, *supra* note 39, at 3 – 5.

[61] NATIONAL SCHOOL BOARDS ASSOCIATION *supra* note 58. Given the lack of national statistics on school discipline during the pandemic, parents, advocates, policy makers, and researchers are forced to rely on an ad hoc approach to data collection of virtual practices.

[62] *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,* OFFICE FOR CIVIL RIGHTS, EDUCATION IN A PANDEMIC: THE DISPARATE IMPACTS OF COVID-19 ON AMERICA'S STUDENTS, 5, 11, 48, 49 (2021); Caroline Preston and Sarah Butrymowicz, *How the pandemic has altered school discipline- perhaps forever*, THE HECHINGER REPORT (2021); Bianca Vázquez Toness, *Your child's a no-show at virtual school? You may get a call from the state's foster care agency*, THE BOSTON GLOBE (Aug 15, 2020, 4:07 pm); MASSACHUSETTS DEPARTMENT OF CHILDREN & FAMILIES, *A Tip Sheet for Educators,* (2020).

[63] *Online Discipline Gap, supra* note 58.

[64] U.S DEP'T OF EDUC., Chronic Absenteeism in our Nation's Schools- a Hidden Crisis, (2016); Sarah Tully, *Report: Low-income, black, disabled students miss school more often*, (2015) https://edsource.org/2015/report-low-income-black-disabled-students-miss-school-more-often/85917.

[65] *Online Discipline Gap, supra* note 58.

punished for eating or drinking on camera[66] and police called to the homes of children for having a "zombie hunter" toy gun in the background of their Zoom.[67]

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.[68] Figure 2 presents the five main categories of outcomes: lower educational attainment, impacted mental health, diminished health protective factors, physical violence, and risk of justice system involvement.[69] 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* than their peers.[70] 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[71] and students who experience punitive and exclusionary discipline have lower academic engagement and performance, are at greater risk of failure to graduate on time, as

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[66] NAT'L EDUC. POLICY CTR., *The Pandemic to Prison Pipeline: A timely Q&A*, 1, (2020)

[67] *Supra note* [National Education Policy Center]; Jaclyn Peiser, *A Black seventh-grader played with a toy gun during a virtual class. His school called the police*, (2020).

[68] 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 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.

[69] 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 exposure-response relationship for students who experience multiple forms of discipline and interactions with school police.

[70] As Part I.B. indicates 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.

[71] *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).

well as drop out of school.[72] And, the effects of exclusion can be cumulative, with each additional suspension increasing dropout risk by 10 percent.[73]

A similar overlap exists for negative mental health with findings indicating both school police interactions and punitive discipline each produce stress, depression, distress, post-traumatic stress and trauma symptoms.[74] When one factors in racism's effect on children's health[75] as an independent factor—given the clear evidence of racialized disparities across all measures of discipline and policing data[76]—the potential compounding effect of these practices in the short- and long-term is significant.

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[72] *See, e.g.,* TRUST FOR AMERICA'S HEALTH. PAIN IN THE NATION: THE DRUG, ALCOHOL, AND SUICIDE CRISES AND THE NEED FOR A NATIONAL RESILIENCE STRATEGY (2017), http://wellbeingtrust.org/for-media/pain-in-the-nation-report (last visited July 28, 2021); Amity L. Noltemeyer et al., *Relationship Between School Suspension and Student Outcomes: A Meta-Analysis*, 44 SCH. PSYCHOLOGY REVIEW 224–240 (2015); LET HER LEARN, https://nwlc.org/wp-content/uploads/2017/04/final_nwlc_Gates_OverviewKeyFindings.pdf; AM. PYSCH. ASS'N., https://www.apa.org/pubs/info/reports/zero-tolerance-report.pdf; Christine A. Christle et al., *School Characteristics Related to High School Dropout Rate*s. 28 REMEDIAL AND SPECIAL EDUC., 325 (2007); 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 (2007).
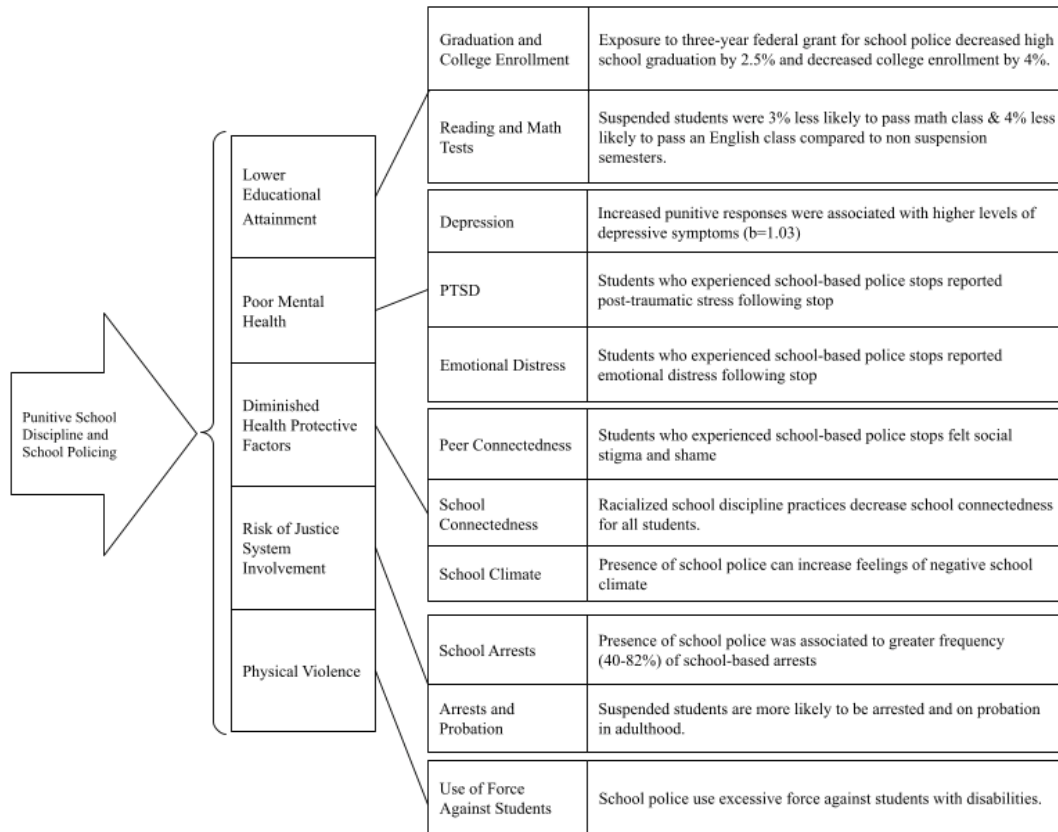
[73] Robert Balfanz, vaughes byrnes & Johanna Fox, *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, 5 J. APPLIED RESEARCH ON CHILDREN: INFORMING POL'Y FOR CHILDREN AT RISK 1, 8 (2014).

[74] *See, e.g.*, Mark Cameron & Sandra M. Sheppard, *School Discipline and Social Work Practice: Application of Research and Theory to Intervention,* 28 CHILDREN & SCH. 15 (2006); Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. JOURNAL OF ADOLECENT HEALTH 627, 631 (2019); FRENCH-MARCELIN & HINGER BULLIES IN BLUE, at 30 – 1 (2017); HEALTH IMPACT PARTNERS AND FRESNO BARRIOS UNIDOS, *Health and Cultural Wealth: Student Perspectives on Police-Free Schools in Fresno, California* (2021).

[75] Maria Trent, Danielle G. Dooley & Jacqueline Dougé, *The Impact of Racism on Child and Adolescent Health*, PEDIATRICS, (2019); *See also*, Yin Paradies, et al. *Racism as a Determinant of Health: A Systematic Review and Meta-Analysis*, PLOS ONE, (2015) (a systematic review of nearly 300 studies that associate racism with health and mental health, finding that racism diminished mental health and health).

[76] See *infra* Part I.B.

Figure 2. School Discipline and Policing and Health[77]

Lower Educational Attainment	Graduation and College Enrollment	Exposure to three-year federal grant for school police decreased high school graduation by 2.5% and decreased college enrollment by 4%.
	Reading and Math Tests	Suspended students were 3% less likely to pass math class & 4% less likely to pass an English class compared to non suspension semesters.
Poor Mental Health	Depression	Increased punitive responses were associated with higher levels of depressive symptoms (b=1.03)
	PTSD	Students who experienced school-based police stops reported post-traumatic stress following stop
	Emotional Distress	Students who experienced school-based police stops reported emotional distress following stop
Diminished Health Protective Factors	Peer Connectedness	Students who experienced school-based police stops felt social stigma and shame
	School Connectedness	Racialized school discipline practices decrease school connectedness for all students.
	School Climate	Presence of school police can increase feelings of negative school climate
Risk of Justice System Involvement	School Arrests	Presence of school police was associated to greater frequency (40-82%) of school-based arrests
	Arrests and Probation	Suspended students are more likely to be arrested and on probation in adulthood.
Physical Violence	Use of Force Against Students	School police use excessive force against students with disabilities.

(Punitive School Discipline and School Policing)

Discipline and policing not only directly impact the health status of BIPOC and disabled students, they also reduce key protective health factors (e.g.,

[77] Yolanda Anyon et al., *Race, Exclusionary Discipline, and Connectedness to Adults in Secondary Schools*, 57 AM. J. CMT'Y PYSCH. 342 (2016); Elizabeth M. Chu, Douglas D. Ready, *Exclusion and Urban Public High Schools: Short- and Long-Term Consequences of School Suspensions*, 124 J. AM. 479 (2018); Chris. F Curran, *The Expanding Presence of Law Enforcement in Florida Schools* UNIV. OF FLORIDA EDUC. POL'Y CTR. 1–58 (2020); Mara Eyllon et al., *Exclusionary School Discipline Policies and Mental Health in a National Sample of Adolescents without Histories of Suspension or Expulsion*, YOUTH & SOCIETY (2020); Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. ADOLESC. HEALTH 627 (2019); Aaron Kupchik. *Homeroom Security: School Discipline in an Age of Fear*. NEW YORK UNIVERSITY PRESS, (2012).; Janet Rosenbaum, *Educational and Criminal Justice Outcomes 12 Years After School Suspension*, YOUTH & SOCIETY, 52 no. 4, 515-547 (2018); Elizabeth A. Shaver & Janet R. Decker, *Handcuffing a Third Grader? Interactions Between School Resource Officers and Students with Disabilities* 2 UTAH L. REV. 229 (2017); 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 MANAGEMENT 338 (2019).

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[78] as well as buffering against trauma, emotional distress, suicidal ideation, and other health harming behaviors.[79] 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 school discipline and policing, however, are not simply about specific health symptomologies or risk factors for future negative educational, professional, socioeconomic, and criminal justice outcomes. School policing practices, in particular, also contribute to physically unsafe and unsupportive school environments.[80] 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.[81] In addition to the health harms of direct physical violence[82], advocates assert that the presence of police in educational settings stigmatizes youth, fostering feelings of distrust, disconnection, and has indirect effects on peers and families.[83]

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[78] TR. FOR AMERICA'S HEALTH, THE PAIN IN THE NATION: THE DRUG, ALCOHOL, AND SUICIDE CRISES AND THE NEED FOR A NATIONAL RESILIENCE STRATEGY 132 (2017); Elizabeth M. Chu & Douglas D. Ready, *Exclusion and Urban Public High Schools: Short- and Long-Term Consequences of School Suspensions*, 124 AM. J. ED. 479, 479–489; *See also*, *infra* Part I.A.

[79] 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); Clea A. McNeely, et al., *Promoting School Connectedness: Evidence from the National Longitudinal Study of Adolescent Health*, 72 J. SCH. HEALTH 138, 138 (2002); 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); *see also* Gwendolyn Puryear Keita, *Improving School Climate to Reduce Student Health Risks*, 46 MONITOR ON PSYCH. 54, 540 – 55 (2015).

[80] AARON KUPCHIK, HOMEROOM SECURITY: SCHOOL DISCIPLINE IN AN AGE OF FEAR 115-16 (2010).

[81] FRENCH-MARCELIN & HINGER, *supra* note 78, at 23. *See also* ADVANCEMENT PROJECT, *supra* note 36, at 31 – 32. A systematic review of police stops and Black Americans mental health founds that being stopped by police can lead to "emotional trauma, stress, response, and depressive symptoms if they are treated aggressively." Melissa McLeod et al., *Police Interactions and the Mental Health of Black Americans: A Systematic Review*, 27 J. RACIAL & ETHNIC DISPARITIES 10, 10 (2019).

[82] Shaver, *supra* note 82, at 229 –31

[83] FRENCH-MARCELIN & HINGER, *supra* note 78, at 30 – 1. *See also* LETTER FROM YOUTH ORG. LEADERS ON FIGHT FOR BLACK YOUTH IN CALIFORNIA TO GOVERNOR GAVIN NEWSOM (June 9, 2020).

Given the overall lack of data on the impact of discipline and policing and the health status of BIPOC students and students with disabilities a significant challenge exists to fully understanding the long- and short-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.[84] Moreover, for students who have been exposed to community police encounters and police violence, school-based discipline and policing operate to amplify those external early-life adversities. For example, research on the effect of community-based police violence and educational attainment shows that high school students living in close proximity to an incidence of police violence resulting in death are 2.5 percent less likely to graduate and 2 percent less likely to enroll in college.[85] Additionally, 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.[86] Thus, from a public health perspective it is essential to view the intersection of the forces inside and outside schools that may produce health harm and nest them in community contexts of high levels of stress[87], complex trauma[88], and adverse childhood experiences[89], 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.[90] As a robust body of research has affirmed,

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[84] Similar to the indirect effects of policing and police violence in community contexts. *See, e.g.,* Sirry Alang, *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 662, 663 (2017).

[85] Ang, Desmond, *The Effects of Police Violence on Inner-City Students*, HKS FACULTY RESEARCH WORKING PAPER SERIES RWP20-016, 3 – 4, (2020).

[86] *Id.* at 3.

[87] O. Kenrik Duru et al., *Allostatic Load Burden and Racial Disparities in Mortality*, 104 no. JOURNAL OF THE NATIONAL MEDICAL ASSOCIATION 89–95 (2012); RODOLFO A. BULATAO, NORMAN B. ANDERSON & ETHNICITY NATIONAL RESEARCH COUNCIL (US) PANEL ON RACE, UNDERSTANDING RACIAL AND ETHNIC DIFFERENCES IN HEALTH IN LATE LIFE: A RESEARCH AGENDA, 83, (2004).

[88] COMPLEX TRAUMA TREATMENT NETWORK, *Complex Trauma: In Urban African-American Children, Youth, and Families*, 2, NAT'L CTR. FOR CHILD TRAUMATIC STRESS. (2016); Rachel Wamser-Nanney et al., *Racial Differences in Children's Trauma Symptoms Following Complex Trauma Exposure*, 36 J. INTERPERSONAL VIOLENCE 2498 (2021).

[89] Vanessa Sacks & David Murphey, *The Prevalence of Adverse Childhood Experiences, Nationally, by State, and by Race/Ethnicity*, CHILD TRENDS, (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 (2020).

[90] *See, e.g.,* Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 THEORY INTO PRAC. 11, 16 (2016); Myra Glenn, *School Discipline and Punishment in Antebellum America*, 1 J. EARLY REP., 395, 407 (1981); Ming Francis, *M. Ida B. Wells and the*

racism produces and sustains health disparities.[91] On almost all major indicators of health, Black Americans have poorer outcomes, with studies attributing such differences to their allostatic load (e.g., chronic exposure to discriminatory experiences)[92] regardless of socioeconomic status, educational attainment or access to care.[93] As such, for Black students, direct and indirect experiences with racism outside school may heighten their overall risk for and/or compound the negative health outcomes produced by the racialized policies and practices 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 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."[94] Second, law is a key intervention that can address structural determinants of health

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Economics of Racial Violence, BROOKLYN, NY: SOCIAL SCIENCE RESEARCH COUNCIL (2017); 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 78, at 3-10.

[91] *See, e.g.,* David R. Williams, et al., *Understanding How Discrimination Can Affect Health*, HEALTH SERV. RESEARCH 1374 (2019); Gene H. Brody, *Perceived Discrimination among African American Adolescents and Allostatic Load: A Longitudinal Analysis with Buffering Effects*, 85 CHILD DEVELOPMENT 989 (2014). In fact, racism "operates independently of class, helping explain why racial health inequities persist even after controlling for socio-economic status." 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).

[92] *See, e.g.,* Miriam Van Dyke, et al., *Pervasive Discrimination and Allostatic Load in African American and White Adults*, 82 PSYCHOSOMATIC MED. 316, 316 (2020); Jenny Guidi et al., *Allostatic Load and Its Impact on Health: A Systematic Review*, 90 PSYCHOTHER PSYCHOSOM 11, 11 – 12 (2021); 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, 826-831 (2006); Jamila K. Taylor, *Structural Racism and Maternal Health Among Black Women*, 48 J. L. MED. ETHICS 506, 506 (2020); Bryn Nelson, *How structural racism can kill cancer patients*, 128 CANCER CYTOPATHOLOGY 83–84 (2020); Rachel R. Hardeman, Eduardo M. Medina & Katy B. Kozhimannil, *Structural Racism and Supporting Black Lives — The Role of Health Professionals*, 375 NEW ENGLAND J. MED. 2113–2115 (2016).

[93] Taylor *supra* note 97, at 506; 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).

[94] Benfer, et al. *supra* note 5, at 132.

inequity.[95] 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.[96]

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 by BIPOC students and students with disabilities. We then apply the first two prongs of the health justice framework[97] 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.[98]

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

To conceptualize the role that law and policy play in shaping health inequities[99]— and illuminate applicability of health justice to education—we first turn to the revised SDH framework developed by public health law scholar Professor Ruqaiijah Yearby.[100] Under the revised SDH framework, structural discrimination[101] is the root cause of health inequities, which operates through political and legal "tools"[102] that shape social determinant systems (e.g., housing,

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[95] *Id*. at 137.

[96] Benfer, et al. *supra* note 5, at 130– 4. 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 226–40.

[97] See *infra* Part II.B.–D.

[98] Benfer, et al. *supra* note 5, at 138 ("low-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.")

[99] Law reinforces discrimination and protects white privilege and places those at the margins at the greatest risk. See e.g, Yearby, *supra* note 3, at 524; Angela P. Harris, *Equality Trouble: Sameness and Difference in Twentieth Century Race Law*, 88 CAL. L. REV. 1925 (2000); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality Identity, Politics, and Violence Against Women of Color*, 43 STANFORD L. REV. 1241 (1991).

[100] Yearby, *supra* note 3. *See also*, Thalia González, *Race, School Policing, and Public Health,* 73 STAN. L. REV. ONLINE 180, 184–5 (2021).

[101] While Profesor Yearby presents structural discrimination as inclusive of racism, sexism, ableism and classism, she identifies racism as the most significant operant force. Yearby, *supra* note 3, at 523–4.

[102] These "tool(s)" named as legal and political determinants in other health law and public health law literature. *See* Benfer et al., *supra* note 8, at 135; *See also*, Ruqaiijah Yearby, Lindsay F. Wiley, Emily A. Benfer & Seema Mohapatra, *Subordination and Law as Social Determinants of*

education, and health care) in ways that produce differential health outcomes. Figure 3 illustrates this connection in the context of school discipline and policing.[103]

Figure 3. The Revised SDH Framework and School Discipline and Policing[104]
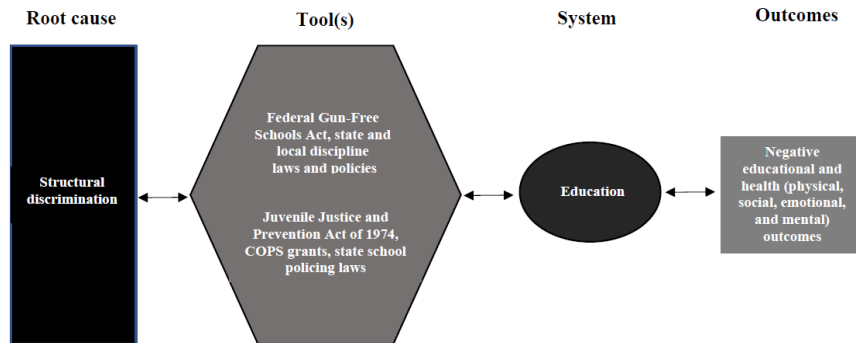
As Figure 3 shows, structural discrimination in education[105]—as manifested in historic and contemporary reliance on policing tactics and punitive

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Health (2020); John Coggon, *Legal, Moral and Political Determinants within the Social Determinants of Health*, 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 THE LANCET, 1857 (2019); Joel B. Teitelbaum et al., *Striving for Health Equity through Medical, Public Health, and Legal Collaboration*, 42 J. L. MED. ETHICS, 104, 104-105 (2019).

[103] The Figure 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.

[104] 42 U.S.C. 136, § 13701 et seq. (1994); Juvenile Justice and Delinquency Prevention Act, Pub. L. No. 93-415, 42 U.S.C. § 5601 et seq. (1974); The School Resource Officers Partnership Grant Act, Pub. Law No. 105-302, 112 Stat. 2841 (1998). *See e.g.*, Thalia González, Nikola Nable-Juris, Rhea Shinde & Rebecca Epstein, *Exclusionary School Discipline Trends*, CTR. ON POVERTY AND INEQUALITY, GEORGETOWN UNIVERSITY LAW CENTER (2020) (legislative summary of state exclusionary school discipline laws); Curren *supra* note 81, at 9–10 (a study of school-based law enforcement in Florida with findings that associate the passage of the 2018 Marjory Stoneman Douglas High School Public Safety Act with increasing law enforcement presence).

[105] 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* AM. PUB. HEALTH ASS'N, *Structural Racism is a Public Health Crisis: Impact on the Black Community* (2020) (identifying three areas of structural racism and racial inequality in education), https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/13/structural-racism-is-a-public-health-crisis (last visited August 5, 2021).

and exclusionary practices[106]— is the primary driver of "political processes, statutes, cases, budgetary decisions, regulations, and enforcement"[107] that shape learning environments marked by disproportionality in discipline and policing outcomes for BIPOC and students with disabilities.[108] With those same students experiencing disparities in health outcomes.

The revised SDH framework is also important for approaching discriminatory school policies from a health justice framework as it reinforces the concurrent nature of education as a driver of health-promoting opportunities.[109] This dual functionality underscores how health justice approaches systems-level transformation: to dismantle health-harming laws and promulgate health-affirming laws, which we discuss *infra*.[110] To disrupt legal pathways that perpetuate education and health inequities, health law scholars define three primary operational principles.[111] First, legal and policy responses must address the "social and political mechanisms that generate, configure, and maintain social hierarchies."[112] Second, health interventions should be holistic and supportive— offering legal protections, financial supports, and material and environmental contexts that facilitate compliance and minimize harms.[113] And third, frontline communities must be prioritized as critical partners in the development and implementation of health interventions.[114] 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. The application of these principles to education—and, more specifically, school discipline and policing—provides an opportunity to translate the health justice framework from the academic to the practical to leverage 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-

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[106] *See supra* note 94. See also, FRENCH-MARCELIN & HINGER SUPRA NOTE 78.

[107] We adopt Yearby's broad definition of law. Yearby, *supra* note 3, at 523.

[108] *See supra* Part I.B. – C.

[109] *See supra* Part I.A.

[110] See *infra* notes 120–121. *See also*, CHANGELAB BLUEPRINT SUPRA NOTE 5.

[111] *Benfer* et al., *supra* note 5, at 137–8.

[112] *Id*. at 137 (quoting the COMM'N ON THE SOC. DETERMINANTS OF HEALTH, WORLD HEALTH ORG., A Conceptual Framework for Action on the Social Determinants of Health 9 (2010) at 25).

[113] *Id*. at 138.

[114] *Id.* at 138–9.

harming laws are laws that exacerbate negative health outcomes through direct or indirect impact on the SDH, such as access to care[115] and housing.[116] In this case, one can look to examples of health-harming laws in the context of nuisance laws[117] and redlining[118] both of which have externalities with far-reaching health impacts. Conversely, health-affirming laws, such as paid family leave[119] and the earned income tax credit[120], protect and promote health.

  Like the laws and policies that established redlining and restrictive covenants leading to residential racial segregation and ultimately negative conditions that influence health status[121]—school discipline and policing laws and

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[115] 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 CURR. LEGAL. PROBL., 159, 166, 173 (2019); Cannon, *Injustice is an Underlying Condition, supra* note 10, at 218; Jodi Seigal et al., *Benefits of Pediatric Medical-Legal Partnerships*, 71 FLA. L. REV. FORUM 145 (2019); Daphne McGee & Drew Stevens, *Law as a Social Determinant of Health and the Pursuit of Health Justice,* AM. HEALTH L. ASS'N. (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 (last visited August 5, 2021).

[116] Cannon, *supra* note 1, at 18.

[117] 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. CHANGELAB SOLUTIONS, 10 LOCAL LAWS THAT MAY BE DOING MORE HARM THAN GOOD, https://www.changelabsolutions.org/blog/10-harmful-local-laws (last visited Aug 5, 2021); AM. CIVIL LIBERTIES UNION, I AM NOT A NUISANCE: LOCAL ORDINANCES PUNISH VICTIMS OF CRIME, https://www.aclu.org/other/i-am-not-nuisance-local-ordinances-punish-victims-crime (last visited Aug 5, 2021).

[118] 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 EQUITY, CUPH, https://www.cuph.org/health-equity.html (last visited Aug 5, 2021).

[119] 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. CHANGELAB SOLUTIONS, PAID FAMILY LEAVE ENSURES HEALTH EQUITY FOR ALL, https://www.changelabsolutions.org/product/paid-family-leave-ensures-health-equity-all (last visited Aug 5, 2021); Maya Rossin-Slater & Lindsey Uniat, *Paid Family Leave Policies And Population Health*, HEALTH AFFAIRS BRIEF.

[120] 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, COUNTY HEALTH RANKINGS & ROADMAPS, https://www.countyhealthrankings.org/take-action-to-improve-health/what-works-for-health/strategies/earned-income-tax-credit-eitc (last visited Aug 5, 2021).

[121] David R. Williams, Jourdyn A. Lawrence & Brigette A. Davis, *Racism and Health: Evidence and Needed Research,* 40 ANN. REV. PUB. HEALTH 105 (2019); David R. Williams & Chiquita

policies should be understood as health-harming: they have led to racial disparities that produce deleterious health effects on students.[122]

In identifying structural reform pathways, scholars utilize the first two prongs of the health justice framework[123] to pair (1) examination of the harms of law (e.g., law limiting access to health services[124], underenforcement of law resulting in health-harming legal needs[125], and lack of public funding for health laws[126]) with (2) legislative and policy changes to close health gaps and promote "health in all policies."[127] 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 key principal site for health justice guided reforms is at the state level.[128] Existing state-level discipline laws and regulations control the forms and uses of exclusionary, punitive, and zero tolerance discipline practices from pre-kindergarten to grade 12 as well as data collection and reporting mechanisms.[129] 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

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Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*, 116 PUB. HEALTH 404 (2001).

[122] *Supra* Part I.B.

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

[124] Benfer, et al. *supra* note 5 (mapping the health justice framework as a pandemic response to health care, housing, and employment).

[125] Cannon, *Injustice is an Underlying Condition, supra* note 10, at 218 (identifying underenforcement of housing laws).

[126] Makhlouf *supra* note 10, at 283–4 (a health justice analysis to publicly funded health care).

[127] *Supra* note 10. 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." *Social Determinants of Health*, HEALTHY PEOPLE 2030, https://health.gov/healthypeople/objectives-and-data/social-determinants-health (last visited August 5, 2021).

[128] Education is primarily controlled at state and local levels in the United States. U.S. DEP'T ED., THE FEDERAL ROLE IN EDUCATION, https://www2.ed.gov/about/overview/fed/role.html (last visited August 5, 2021). 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 and the Individuals with Disabilities Education Act) to more comprehensively and effectively address discriminatory school discipline and policing practices. The examination of federal education law through a health justice framework warrants further inquiry.

[129] González et al., *supra* note 108. *See also*, NAT'L CTR. ON SAFE AND SUPPORTIVE LEARNING ENVIRONMENTS, COMPENDIUM OF SCHOOL DISCIPLINE LAWS AND REGULATIONS (2019), https://safesupportivelearning.ed.gov/school-discipline-compendium (last visited August 5, 2021).

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.[130] 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[131], such as willful defiance, disruption, insubordination, dress code, or even a failure to address school officials with courtesy.[132]

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.[133] And most state statutes, do not even extend the limits on ESD use to adolescents (e.g., grades 9 through 12).[134] This fragmentation in law runs counter to public health research, which recognizes that adolescents are at a high risk for poor mental health outcomes, including feelings of hopelessness and suicidal ideation.[135] Adolescents who feel connected to their schools, peers, and families are approximately fifty percent less likely to experience mental health issues, violence, engage in risky sexual behavior, and use substances.[136] Further, as identified in Part I, health and behavioral risks, when unmitigated, negatively impact other health-promoting factors, including academic achievement and economic security.[137] A health justice response thus must (1) center discrimination and (2) link ESD laws with structural determinants of health to begin to address the persistent disproportionality in health outcomes linked to group status.

In addition to health justice strategies to remedy the deficiencies in the state-level ESD scheme, such as protecting students at all grade levels from structurally discriminatory practices, there is ripe opportunity for local level

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[130] González et al., *supra* note 108.

[131] Studies indicate that the use of ESD for such behaviors reinforce racial and gender stereotypes. *Supra* note 41.

[132] Cal. Educ. Code § 48900(k) (2019); D.C. Code § 38-236.04(a)(2)(B) (2020); D.C. Code § 38-236.04(a)(2)(A) (2020); La. Rev. Stat. Ann. § 17:416.12 (2019); S.C. Code Ann. § 59-17-135(F) (2019).

[133] *Infra* Part I.B.

[134] *See, e.g.*, MN ST § 121A.425 (limiting the use of expulsion and exclusion for students in pre-school and pre-kindergarten).

[135] CTRS FOR DISEASE CONTROL, ADOLESCENT CONNECTEDNESS (October 8, 2020), https://www.cdc.gov/healthyyouth/protective/youth-connectedness-important-protective-factor-for-health-well-being.htm (last visited August 11, 2021); *See also*, *supra* note 38.

[136] *Id*.

[137] CTRS. FOR DISEASE CONTROL, YOUTH RISK BEHAVIOR SURVEY: DATA SUMMARY AND TRENDS REPORT: 2009-2019, 4 (2020), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBSDataSummaryTrendsReport2019-508.pdf.

changes. School districts, for example, can leverage their policymaking authority to enact health-promoting policies. In the immediate term, school districts and individual schools should assess their discipline policies and explore multi-layered approaches to support student health and wellbeing in light of data of the deleterious health effects for youth due to school closures and the COVID-19 pandemic.[138] Additionally, school reopening plans should address the uses of virtual discipline policies and practices identified *supra* as well as the use of Zoom "detention rooms" or segregated "waiting rooms," limiting the students' visual participation, or ejecting student from online class.[139] Further, parents should not be penalized or sanctioned for appearing in their child's background or punished for conditions that may arise because children are learning in an environment shared by others.[140] Instead, school policies, including school codes of conduct and student handbooks, should address structural barriers to student participation in virtual learning environments. For example, such policies should ensure that students understand their right to access their education, improve engagement in virtual contexts, and make explicit that they cannot be disciplined or excluded from class for having their camera off, being in environments that may be too noisy, being in environments where others maybe present, or learning in any conditions that are outside of their control.[141] School districts should also prioritize oversight and accountability of virtual discipline. 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

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[138] DEP'T EDUC., OFFICE CIVIL RIGHTS, EDUCATION IN A PANDEMIC: THE DISPARATE IMPACTS OF COVID-19 ON AMERICA'S STUDENTS, https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf (June 9, 2021) (a comprehensive report of disparities in education in the United States for students K – 12 and post-secondary, including mental health, academic achievement, instructional time, and access) (last visited August 7, 2021); UNESCO, ADVERSE CONSEQUENCES OF SCHOOL CLOSURES,
https://en.unesco.org/covid19/educationresponse/consequences, (Last visited Aug. 6 2021) (school closures have resulted in poor nutrition and social isolation of students with potential impacts on mental wellbeing); Sonia Chabaane et al., *The Impact of COVID-19 School Closure on Child and Adolescent Health: A Rapid Systematic Review,* 8 CHILDREN, 1, 5, 17 (2021) (increase in feelings of frustration, anxiety, depression, and hyperactivity amongst students due to COVID-19; length of school closures creates increased risk for childhood obesity); JENNIFER L. DEPAOLI ET AL., A RESTORATIVE APPROACH FOR EQUITABLE EDUCATION, 1, 3- 5 (2021) (collective 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. Sorsen, *Protecting the Health of Vulnerable Children and Adolescents During COVID-19–Related K-12 School Closures in the US,* 1 JAMA, 1 (2020) (children quarantined are more likely to experience post-traumatic stress disorder).
[139] *Supra* note 61. Email from Paige Joki, Staff Attorney, Ed. L. Ctr. (August 3, 2021) (on file with authors).
[140] *Id.*
[141] *Id*.

context.[142] 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.[143] Without such actions, a key principle of health justice—interrogation of the effects of social and cultural bias—will be overlooked.

Equally important to limiting health-harming policies, health justice approaches prioritize leveraging laws and policies that institutionalize health-promoting practices.[144] 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.[145] Within the health justice paradigm, all of these approaches and laws[146] are important tools to

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[142] *Id.*

[143] Benfer, et al. *supra* note 5, at 146; Cannon *supra* note 8, at 815. Discrimination in education, in particular, policies and practices that restrict and criminalize youth behaviors are sustained by interpersonal, institutional, and structural discrimination.

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

[145] Thalia González, Rebecca Epstein, Claire Krelitz & Rhea Shinde, *Restorative Justice, School Reopenings and Educational Equity: A Contemporary Mapping and Analysis of State Law* (forthcoming UC DAVIS L. REV. ONLINE, 2021) (reviewing school-based restorative practices outcomes across multiple measures); Jelena Todic, Catherine Cubbin, Marilyn Armour, Michele Roundtree & Thalia González, *Reframing School-based Restorative Justice as a Structural Health Equity Intervention*, 62 HEALTH & PLACE 102289 (2020) (cross comparative analysis of California Healthy Kids data with schools that have implemented restorative practices); Thalia González & Rebecca Epstein, *Building Foundations of Health and Well Being in Schools: A Study of Restorative Practices and Girls of Color*, CTR. POVERTY AND INEQUALITY, GEORGETOWN UNIVERSITY LAW CTR. (2021) (13-month study of school based restorative practices with Black and Latina with associated outcomes of these practices and protective health factors); LINDA DUSENBURY & ROGER P. WEISSBERG, EDNA BENNETT PIERCE PREVENTION RESEARCH CTR., PENNSYLVANIA STATE UNIVERSITY, SOCIAL EMOTIONAL LEARNING IN ELEMENTARY SCHOOL: PREPARATION FOR SUCCESS 1, 3- 5 (2017) (students who engage in social emotional learning are shown to have an 11% increase in academic achievement); DAMON E. JONES, EARLY SOCIAL-EMOTIONAL FUNCTIONING AND PUBLIC HEALTH: THE RELATIONSHIP BETWEEN KINDERGARTEN SOCIAL COMPETENCE AND FUTURE WELLNESS, 1, 5–7 (2015) (social emotional learning has been shown to decrease interaction with the police and the justice system); COLORADO DEPARTMENT OF EDUCATION, TRAUMA INFORMED APPROACHES IN SCHOOLS: KEY TO SUCCESSFUL IMPLEMENTATION IN COLORADO, 1, 2 5 (2018) (trauma informed approaches improve educational attainment and reduce negative health outcomes); 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 (2016) (trauma informed approaches contribute to healthy and supportive school climates and communities).

[146] González et al. *supra* note 145; DUSENBURY & DUSENBURY, *supra* note 145, at 2; NATIONAL CONFERENCE OF STATE LEGISLATURES, EDUCATION BILL TRACKING AND DATABASES,

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.[147] The literature is clear that youth respond to traumatic experiences and environments by developing adaptive behaviors in order to survive, such as dissociation or aggression.[148] As prior examples illustrate, most significantly Hurricane Katrina[149], 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.[150] Yet, as Part I of this Article makes clear, these policies and actions are counterproductive

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https://www.ncsl.org/research/education/education-bill-tracking-and-databases.aspx (last visited Aug. 11, 2021).

[147] *Supra* note 138.

[148] Tenah A.K Hunt et al., *Adverse Childhood Experiences and Behavioral Problems in Middle Childhood,* 67 CHILD ABUSE NEGL. 391, 403 (2016) (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) (summative understanding of the relationship between youth trauma and aggression in carceral settings, aggressive acts can be coping and protective measures for individuals who have experienced significant trauma); THE NATIONAL CHILD TRAUMATIC STRESS NETWORK, https://www.nctsn.org/what-is-child-trauma/trauma-types/early-childhood-trauma/effects#:~:text=Young%20children%20suffering%20from%20traumatic,and%2For%20aggressive%20and%20impulsive, (last visited Aug. 6 2021) (describing negative youth responses to trauma).

[149] Manny Otiko, *10 Years Later: Children Traumatized by Katrina Are Still Struggling in School*, ATLANTA BLACK STAR (August 24, 2015) (discussing the rates of suspension and school-based arrests in New Orleans public schools and how they are used as tactics "push out" troubled students); Xian-Liang Tian and Xian Guan, *The Impact of Hurricane Katrina on Students' Behavioral Disorder: A Difference-in-Difference Analysis*, 12, INT. J. ENVIRON. RES. PUBLIC HEALTH, 5540, 5555–5556, (2015) (difference-in-difference analysis demonstrating that students who were displaced as a result of Katrina were far more likely to be punished in school relative to their nondisplaced peers).

[150] CTR. FOR LEARNER EQUITY, RETURNING TO SCHOOL IN THE WAKE OF DISASTER: POST-KATRINA LESSONS FOR THE COVID ERA (2020), https://www.centerforlearnerequity.org/news/returning-to-school-in-the-wake-of-disaster-post-katrina-lessons-for-the-covid-era/ (last visited Aug 6, 2021) (arguing that the "no-excuses" model should not be the 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 48, ii, (2010) ("Harsh 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").

to developing and sustaining positive learning environments and result in direct and indirect health harms.[151]

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 to preventative, healing, equity-centered, and culturally competent practices that diminish the health risks for BIPOC students and students with disabilities. Instead, the central focus for school reopening, 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. 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 racism and childhood trauma on healthy development and evaluate policies that maintain disproportionate health burdens on specific student populations. 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, school discipline and policing, is a critical first step in ending a legacy of structural discrimination in the U.S. education system and advancing lasting changes. To approach school discipline and policing as a health justice issue will serve to not address the immediate health harms and risks of these policies and practices, but also limit their functionality as upstream drivers of health inequities across other SDH. As a primary SDH, education is closely connected to other systems that disproportionately impact BIPOC communities and produce health disparities.

C.   Operationalizing Resolutions Declaring Racism a Public Health Crisis

Expanding the health justice framework to education laws and policies is also of particular importance as state and local governments,[152] community-based

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[151] A body of research shows zero tolerance, ESD and school policing do not necessarily improve school safety or healthier classrooms. *Infra* note 77.

[152] *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 (last visited Jul. 29, 2021).

organizations,[153] policymakers,[154] and health organizations[155] across the country have declared racism a public health crisis, and now seek to advance concrete action plans.[156] Moving from simply affirming that racism is a public health crisis to operationalizing these commitments, requires examining several gaps in the over 200 declarations[157] issued to date. For example, despite evidence of the intrinsic links between education and health[158] very few of these declarations address racism in education, and more specifically racialized disparities in education policies and practices.[159] In most declarations, education is only mentioned alongside a list of other system-level social determinants: "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 demonstrates that racism itself is a social determinant of health" (emphasis added) without further explication.[160] Even in declarations that identify

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[153] POPULATION HEALTH INSTITUTE, SIGN-ON: RACISM IS A PUBLIC HEALTH CRISIS IN WISCONSIN, https://uwphi.pophealth.wisc.edu/match/match-wisconsin-healthiest-state-initiative/racism-is-a-public-health-crisis-in-wisconsin/ (last visited August 11, 2021)

[154] HARVARD T. CHAN PUBLIC HEALTH SCHOOL, WHY DECLARING RACISM A PUBLIC HEALTH CRISIS MATTERS, https://www.hsph.harvard.edu/news/hsph-in-the-news/racism-public-health-crisis-bassett/ (last visited August 11, 2021).

[155] Kevin B. O'Reilly, *AMA: Racism is a Threat to Public Health*, AM. MED. ASS'N, https://www.ama-assn.org/delivering-care/health-equity/ama-racism-threat-public-health (last visited August 11, 2021).

[156] The movement to declare racism a public health crisis began in 2018 and has expanded most significantly in 2020. The most comprehensive database is maintained by the American Public Health Association. *Supra* note 152.

[157] Presently, there are two hundred and seventeen declarations distributed at the city (n=118), state (n=15), county (n=83), and county board (n=1) levels. *Id.*

[158] *Supra* Part 1.A. *See also*, *Education: A Neglected Social Determinant of Health*, 5 THE LANCET PUB. HEALTH e361 (2020).

[159] The body of declarations also fail to address the relationship between racialized school policies and health status.

[160] Franklin Cnty. Comm'r, 2020, Res. No. 0341-20 (2020); Indio City Council, 2020, Res. No. 10177 (2020); Milwaukee Cnty. Bd. of Supervisors, 2019, Res. 19-397 (2019). There is a small subset of declarations that mention disciplinary disparities in schools in relationship to schools, but these represent an outlier trend. *See, e.g.,* Chattanooga City 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"); City Council of San Buenaventura, 2020, Racism Resolution § 2, at 3 (2020) (discussing the existence of the school-to-prison pipeline as well as the Council's policy to not use law enforcement personnel for school disciplinary purposes).

adverse childhood experiences (ACEs)—which are closely related to ESD[161]—as a priority, they only contain general language, without any mention of discriminatory and health-harming school discipline and policing policies.[162] For example, the Buncombe County Health and Human Services Board[163] and Dekalb County[164] 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.

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 structural discrimination has fueled disparities and deepened the persistence of health inequities. Some educational entities have included such language in their declarations and can serve as a guide.[165] In contrast to the more generalized city, county, and state declarations, these declarations identify not only the interconnection between racism and education, but 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 *emotional and psychological harm created from exposure to criminalizing practices in school that disproportionately impact students of color*." (emphasis added).[166] 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." (emphasis added).[167] The Ferndale Public School District "authorizes the Superintendent to work directly

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[161] CESAR DE LA VEGA & ALEXIS ETOW, SCHOOL DISCIPLINE PRACTICES: A PUBLIC HEALTH CRISIS AND OPPORTUNITY FOR REFORM, CHANGELAB SOLUTIONS 2 –4 (2019).

[162] *Supra* Part I.B.

[163] Buncombe County Health and Human Services, Health & Human Services Board Declaring Racism a Public Health Crisis (2020).

[164] Tyler Estep, *DeKalb County Declares Racism a Public Health Crisis*, THE ATLANTA JOURNAL-CONSTITUTION (July 22, 2020), https://www.ajc.com/news/atlanta-news/dekalb-county-declares-racism-a-public-health-crisis/QPDAOVI36VCW3D4XD4MXVN3WOM/.

[165] 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; Ferndale Public School District, Resolution to Declare Racism as a Public Health Crisis (2020).; Bd. of Educ. of the Champaign Unit School District #4, Resolution to Declare Racism as a Public Health Crisis (2020); Decatur Public School District #61 Bd. of Educ., Resolution to Declare Racism as a Public Health Crisis (2020)

[166] Bd. Of Educ. Rialto Unified School District, Res. No. 19-20-65 (2020)

[167] Champaign Unit School District #4, *supra* note 6.

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."[168] 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, restorative justice model that prioritizes the goal of involving the Decatur Police Department only in emergent violent crises."[169]

As the movement to declare racism a public health crisis continues to grow, cities, counties, and states may be especially critical to supporting structural changes within schools and districts. 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. This new cross-sectoral attention will ensure the first two prongs of the health justice framework are actualized. Indeed, it would be 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.[170] Similarly, to promote structural change to structural and intermediary determinants of health, but not reform laws and policies in schools would not only limit the efficacy of the declarations but 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."[171]

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

Critical to health justice reforms to education law and policy 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."[172] 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

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[168] Ferndale Public School District, *supra* note 6.

[169] Decatur Public School District #61, *supra* note 6, § IX

[170] *Supra* Part 1.B. – C.

[171] Cannon, *Injustice is an Underlying Condition, supra* note 10, at 208.

[172] Benfer, et al. *supra* note 5, at 139.

policymaking process and interventions. Increasing individuals' agency and ensuring health-harmed communities can fully exercise self-determination is not only a central commitment of health justice, but itself positively impacts health.[173]

Despite this foundational principle[174], however, existing health justice scholarship articulating *how* to concretely empower communities is sparse. In exploring some of the ways in which 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 multisectoral 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 practices[175] is central to any health justice approach. This includes bringing public health methodologies[176] and health law responses[177] to bear in

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[173] *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) (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 (meta-analysis of self-determination theory and positive outcomes on health)

[174] Wiley, *Health Law as Social Justice*, *supra* note 10, at 95-96

[175] *See, e.g.,* ADVANCEMENT PROJECT, https://advancementproject.org/about-advancement-project/ (last visited August 12, 2021); COMMUNITY ASSET DEV. REDEFINING EDUC. (CADRE), http://www.cadre-la.org (last visited August 12, 2021); DIGNITY IN SCHOOLS CAMPAIGN, https://dignityinschools.org (last visited Sept. 21, 2016); End the School to Jail Track, PADRES Y JOVENES UNIDOS, https://padresunidos.org/?v=402f03a963ba (last visited August 12, 2021); POWER U. CTR. FOR SOC. CHANGE, https://www.poweru.org (last visited August 12, 2021); POSITIVE YOUTH JUSTICE INITIATIVE, *Disrupting the School-to-Prison Pipeline*, https://www.shfcenter.org/assets/PYJI/PYJI_Disrupting_SPP_Brief_December_2019_Web.pdf (last visited August 12, 2021) BLACK ORGANIZING PROJECT, http://blackorganizingproject.org/our-work/ (last visited August 13, 2021); RYSE CENTER, https://static1.squarespace.com/static/58ece61644024383be911a95/t/5d4dc16c34c15d0001d9e27b/1565376878390/Policy+Wins+%26+Campaigns+8.9.19.pdf (last visited August 13, 2021); AMERICAN CIVIL LIBERTIES UNION, https://www.aclu.org/report/bullies-blue-origins-and-consequences-school-policing (last visited August 13, 2021).

[176] *See, e.g.*, Ford & Airhihenbuwa, supra note 20, at S34; Harris & Pamukcu, *supra* note 2, at 825.

[177] *See, e.g.,* THE NETWORK FOR PUB. HEALTH LAW, https://www.networkforphl.org/ (last visited August 12, 2021).

response to heightened calls for reform during the COVID-19 pandemic, as students, families, community partners, and advocates have sought, among other actions, a moratorium on suspensions to "help minimize the additional trauma, stigma, and social isolation for students"[178] during periods of virtual learning and as students transition back to in-person learning. Even though these calls to action went largely unheeded during the 2020–21 academic year, there is a ripe opportunity for a health justice intervention to challenge governors and other state policymakers to issue a short-term moratorium on exclusionary school discipline practices. As Part I has illustrated, the urgency of a moratorium has not passed with the potential diminished use of virtual learning environments. From a health justice perspective, a moratorium would serve as an immediate and critical safeguard for students coping with unprecedented trauma and minimize negative health outcomes defined *infra*. Public health law professionals have an important role to play in amplifying the voices of community leaders in the moratorium movement by elevating the health-harming effects of school discipline and policing.

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 policymaking process. This will require public health professionals to become more deeply integrated with community-driven movements, such as Black Lives Matter, that seeks to reduce school police budgets or remove the presence of police in school altogether.[179] Importantly, however, public health law professionals should not assume leadership roles in these movements. 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 longstanding disinvestment, discrimination, and disenfranchisement in frontline communities.[180] 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 for partnership is via youth participatory action research (YPAR), an "innovative

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[178] SOLUTIONS NOT SUSPENSIONS COALITION, LETTER TO CHANCELLOR BETTY A. ROSA, NEW YORK AM. CIVIL LIB. UNION, (April 16, 2020), https://www.nyclu.org/sites/default/files/20201604_snsletter_regentrosa_discipline_during_covid-19.pdf (last visited August 11, 2021).

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

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

approach to youth and community development based in social justice principles in which young people are trained to conduct systematic research to improve their lives, their communities, and the institutions intended to serve them."[181] YPAR has been utilized to evaluate programs, policies, and practices that affect youth and to identify resources and solutions to support them.[182] 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.[183] YPAR can also expose students to the lifecycle of the policymaking processes and ensure their involvement from issue identification through implementation and evaluation. Finally, a critical component to YPAR is power-sharing.[184] 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. One example is the model of participatory budgeting, a practice "that invites individuals to directly decide how to allocate money from public budgets into projects that benefit their communities."[185] Applied to the education context, students and families could be invited to participate in a participatory budget process for school safety. The participatory process would create a space from which to draw directly on students' lived experiences and apply that expertise to a collective decision-making process on how to invest limited resources in a responsive, community-driven manner.[186] As communities around the country call for divestment from police and policing practices and

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[181] *Learn About YPAR*, YPAR HUB, http://yparhub.berkeley.edu/learn-about-ypar/ (last visited August 12, 2021)

[182] *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).

[183] 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).

[184] *Supra* note 182.

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

[186] 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/ (last visited August 12, 2021).

reinvestment of such funds to health-promoting resources and practices, the participatory budgeting process can help ensure that schools spend their budgets on supports that center the needs of students and do in fact make schools a safer place for everyone. Beyond participatory budgeting, school districts are exploring other methods of power-sharing, such as having students serve on school boards or "student advisory panels."[187] Power-sharing in education is still a novel concept[188]; however, the application of the health justice framework may support the growth of this movement by bringing to light the necessity to act against racialized health-harming practices and policies and simultaneously help 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 our education system's laws and policies are neither replicated nor entrenched in future policy decisions.

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 creatively and collaboratively address health disparities across the SDH. One such model are medical-legal partnerships (MLPs). Over the past several decades, the MLP movement served as a key strategy for identifying and addressing SDH through a health justice frame.[189] Law school MLPs, for example, have recognized how pediatricians may witness the health-harming effects of social and legal problems on children, but not possesses the training and tools to systemically address those issues.[190] And, inversely law students and lawyer can see how racism, trauma, and adversity can influence legal outcomes, but have the 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.[191]

MLPs, while growing in across the country, are an underutilized health justice opportunity for transdisciplinary engagement and leveraging of diverse

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[187] Jinghong Cai, *Students Serving on School Boards: Democratic Education in Action*, NATIONAL SCHOOL BOARDS ASSOCIATION (February 4, 2021), https://www.nsba.org/Perspectives/2021/Students-Serving-on-School-Boards.

[188] "As of January 2021, 67 out of [the] 495 [largest public] school districts (14%) have students serving on their governing boards." *Id.*

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

[190] Yael Cannon & Andrew Hsi, *Disrupting the Path from Childhood Trauma to Juvenile Justice: An Upstream Health and Justice Approach*, 43 FORDHAM URB. L. J. 245 (2016).

[191] *Id.*

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 shape[192], 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 with disabilities to educational services.[193] This 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 discriminatory school discipline and policing practices is a foundational step to combating systemic barriers to health 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 co-occurrence of legal needs associated with poverty, housing insecurity, and school discipline[194] 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 given that poor mental health is a direct outcome of school discipline and policing[195] and risks for chronic illness are associated with low educational attainment.[196]

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[192] *See, e.g.*, YALE NEW HAVEN HEALTH, YALE NEW HAVEN HOSPITAL, *Medical-Legal Partnership Projects Enhance Patient Care*,
https://www.ynhh.org/publications/bulletin/102617/medical-legal-partnership-projects-enhance-patient-care.aspx (identifying education as an area of focus for the pediatric MLP).

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

[194] Carmen DeNavas-Walt & Bernadette D. Proctor, CURRENT POPULATION REPORTS: INCOME AND POVERTY IN THE UNITED STATES: 2014. U.S. CENSUS BUREAU (2015),
www.census.gov/content/dam/Census/library/publications/2015/demo/p60-252.pdf (last visited August 11, 2021).

[195] Part I.C.

[196] CTR. ON SOCIETY AND HEALTH, *supra* note 24.

Conclusion

As BIPOC families and communities continue to face steep health, mental health, and structural challenges amidst the ongoing COVID-19 pandemic, the work of health justice is vital. As a country, we are at an inflection point and have a historic opportunity to redress the structural inequities that the pandemic laid bare. No longer is it possible 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 with public health implications in mind.

To achieve health justice, dismantle structural discrimination, and disrupt the pathways that lead to health inequities, ending discriminatory school discipline and policing policies is a concrete and fundamental next step. In applying the health justice framework to school discipline and policing, this Article not only places the health-harming effects of school discipline and policing squarely in the domain of public health law but 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.