

West Virginia K–12 Discipline: A Review of Disparate Treatment of Students of Color, Students with Disabilities, and LGBTQ+ Students



**A Report of the
West Virginia Advisory Committee to the
U.S. Commission on Civil Rights**

December 2023

West Virginia Advisory Committee to the U.S. Commission on Civil Rights

The West Virginia State Advisory Committee (the Committee) to the U.S. Commission on Civil Rights (the Commission) issues this Report concerning West Virginia K–12 school discipline, which builds on and reaffirms the school discipline reports published by the Commission and a number of its advisory committees of the emerging national and state view that students of color, students with disabilities, and—withstanding some data limitations—LGBTQ+ students are disproportionately disciplined. This Report also builds upon past Committee reports concerning the treatment of racial minorities and people with disabilities in West Virginia public schools¹ and an Advisory Memorandum on the Interaction Between Individuals with Mental Health Issues and the Criminal Justice System in West Virginia.² This Report makes no statement as to whether other groups, such as foster students or students from lower socio-economic backgrounds are also disparately affected.

The West Virginia Advisory Committee, as part of its responsibility to advise the Commission about civil rights issues within the state, submits this report titled, *Impact of Exclusionary and Punitive Discipline on West Virginia Public School Students of Color, Students with Disabilities and LGBTQ+ Students*. The Committee conducted several virtual briefings.³ The agenda⁴ for each Briefing is appended at Appendix A. It heard testimony from a variety of subject-matter experts with diverse points of view.⁵

¹ West Virginia Advisory Committee Report to the U.S. Commission on Civil Rights, *Civil Rights Issues in West Virginia, Chapter 3: Treatment of Racial Minorities and People with Disabilities in the Public Schools*, (May 2003), at: <https://www.usccr.gov/files/pubs/sac/wv0503/wvreport>.

² West Virginia Advisory Committee Memorandum to the U.S. Commission on Civil Rights, *The Interaction Between Individuals with Mental Health Issues and the Criminal Justice System in West Virginia* (Nov. 13, 2019), at: <https://www.usccr.gov/files/pubs/2019/11-14-WV-SAC-Mental-Health-Criminal-Justice-Report>. In light of the so-called “school-to-prison” pipeline where students who receive frequent discipline in school too often end up later incarcerated, this examination of school discipline and the previous memorandum concerning prison mental health are unfortunately related. See COMMISSION, BEYOND SUSPENSIONS: EXAMINING SCHOOL DISCIPLINE POLICIES AND CONNECTIONS TO THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS OF COLOR WITH DISABILITIES, (Briefing Rep. 2019), [hereinafter *Beyond Suspensions*], at: <https://www.usccr.gov/files/pubs/2019/07-23-Beyond-Suspensions>.

³ See, Appendix A for all briefing dates.

⁴ See, all Briefing Agendas, at: Appendix A.

⁵ See, panelists’ Written Opening Statements (hereinafter Panelists’ Statements), at: Appendix C.

Transmittal Letter

The West Virginia Advisory Committee, as part of its responsibility to advise the Commission about civil rights issues within the state, submits this report titled, *Impact of Exclusionary and Punitive Discipline on West Virginia Public School Students of Color, Students with Disabilities and LGBTQ+ Students*. At an October 26, 2023, public Zoom Meeting, the report was unanimously adopted by all 13 of the 14 Committee members in attendance; one member was absent.⁶

Sincerely,

Lisa K. Younis

Lisa K. Younis, Chair
West Virginia Advisory Committee

⁶ Advisory Committee members who voted yes: Katherine Dooley, I. Franklin Hartman, Anne Marie Lofaso, Lydia C. Milnes, Fanica Payne, William Rhee, Isabel Simon, Merideth D. Smith, Sean Thomas, Stephanie Thornton, Ronald Neal Walters, Joshua Weishart, Lisa K. Younis; absent: Jeri Kirby.

Members of the West Virginia Advisory Committee

Lisa K. Younis, Chair

(Shepherdstown)

Katherine Dooley

(Charleston)

I. Franklin Hartman

(Charleston)

Jeri Kirby

(Morgantown)

Anne Marie Lofaso, Vice-Chair

(Morgantown)

Lydia C. Milnes

(Charleston)

Fanica Payne

(Morgantown)

William Rhee

(Morgantown)

Isabel Simon, Secretary

(Harpers Ferry)

Merideth D. Smith

(Charleston)

Sean Thomas

(Charleston)

Stephanne Thornton

(Charleston)

Ronald Neal Walters

(Charleston)

Joshua Weishart

(Morgantown)

Acknowledgments

There are a number of individuals that the West Virginia Advisory Committee wants to acknowledge for helping to ensure the successful conclusion of its civil rights project review. Committee member Katherine Dooley proposed the topic and explained why it was an important civil rights issue in West Virginia. The Committee thanks the subject-matter experts who testified at the several virtual briefings for sharing their knowledge and experiences about school discipline generally and in West Virginia specifically, as well as those subject-matter experts whose writings about school discipline are referenced throughout this report. We rely on the subject-matter experts to educate and inform us about the topics we select for our civil rights studies. Our deepest appreciation goes to those Committee members who helped produce this rich briefing record and report. Our special thanks go to Vice Chair Anne Marie Lofaso who blended the drafted sections of the report into one voice. This civil rights study could not have happened without the administrative and programmatic support from Commission staff, Ivy L. Davis, Director of the Eastern Regional Office and Designated Federal Officer (DFO) and Sarah Villanueva, Support Specialist.

At two key stages in this study, the Committee was assisted by two outstanding students. Giorgianna Rose Heiko, an undergraduate at The College of William and Mary, Williamsburg, VA. Giorgianna was a summer intern who prepared detailed written summaries of each virtual briefing; they assisted the Committee as the report was drafted and reviewed. MacKenzie Thaxton, a student at WVU College of Law, Morgantown, WV, who in addition to her on-going legal studies agreed to review the footnotes that referenced the briefing panelists' testimony and written opening statements.

Each Advisory Committee member thanks Lisa K. Younis, Chair of the WV Advisory Committee, for her leadership in conducting this civil rights review. Our members were appointed to the Committee because of our interest in civil rights and our diverse opinions, and we invited subject-matter experts with diverse views. As Chair, Lisa conducted all meetings in a cordial manner, assuring all participants, including Committee members, that their views would be heard respectfully, and they were. It was our honor to serve with our Chair and other members.

Jurisdictional Statement

The U.S. Commission on Civil Rights (Commission) is an independent, bipartisan agency established by Congress and is authorized by statute to study and collect information concerning legal developments constituting discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice.⁷ Congress also directed the Commission to establish advisory committees in each state and the District of Columbia.⁸ It also supports committees in five in the U.S. Territories.⁹ The 56 committees advise the Commission about civil rights issues in their states and jurisdictions consistent with the Commission's statutory authority.¹⁰

The review outlined in this project proposal falls within the Commission's statutory authority, including administration of justice. In addition, there are a number of federal laws that prohibit such discrimination in educational institutions, including:

- Section 1 of the 14th Amendment to the U.S. Constitution prohibits any state from depriving "any person of life, liberty, or property, without due process of law" and from denying "to any person within its jurisdiction the equal protection of the laws." This encompasses a prohibition on discrimination on the basis of race and sex, including sexual orientation and gender identity.
- The Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, sex, religion, or national origin, including in institutions of public education. Discrimination on the basis of sexual orientation and gender identity are encompassed in the Act's prohibition of sex discrimination.
- The Equal Educational Opportunity Act of 1974 prohibits discrimination, including segregation, in schools on the basis of race, color, and national origin, and requires State Education Agencies (SEAs) and Local Educational Associations (LEAs) to take action to overcome barriers to students' equal participation.
- The Individuals with Disabilities Education Act provides children with disabilities with the right to a free appropriate public education tailored to their individual needs.
- Section 504 of the Rehabilitation Act and the American with Disabilities Act prohibit discrimination on the basis of disability.¹¹

⁷ 42 U.S.C. 1975a. Duties of Commission.

⁸ 42 U.S.C. 17975a.(d). Advisory Committees.

⁹ American Samoa, Guam, Northern Marianas Islands, Puerto Rico, and U.S. Virgin Islands.

¹⁰ 45 CFR § 703.3.

¹¹ W. Va. Code § 18-20-1 (2014).

Contents

Transmittal Letter	2
Members of the West Virginia Advisory Committee.....	3
Acknowledgments	4
Jurisdictional Statement	5
Background	7
Findings	10
Finding I: Students of color, students with disabilities, and LGBTQ+ students in West Virginia experience school discipline disparities	10
Finding II: Bias and other forms of discrimination may impact school discipline disparities. Bias can cause disparate disciplinary treatment.	17
Finding III: High costs are associated with school discipline disparities.....	21
Finding IV: There are reasonable alternatives to exclusionary discipline.	26
Recommendations	31
Recommendation 1: As a matter of school-level policy, educators should reduce reliance on exclusionary discipline for relatively minor disruptive behavior.	31
Recommendation 2: Expand reasonable alternatives to exclusionary discipline.	32
Recommendation 3: Improve student well-being and mental health.	37
Recommendation 4: Collect more robust and verified student discipline data, including data that captures intersectional identities such as race, LGBTQ+ status, and disability. Ensure data is up to date and available on a user-friendly public website.....	43
Recommendation 5: The state must commit to funding the necessary resources to improve overall school quality and to eliminate school discipline disparities.	47
Appendix	51
Appendix A - Panel Agendas	52
Appendix B - Transcripts	55
Appendix C - Written Testimony.....	56
Appendix D - Further Discussion of WVDE Reports.....	57

Background

School Discipline Reviews at the National Level

The Commission recently found that students of color, students with disabilities, and LGBTQ+ students are more likely to receive harsher punishment than their peers. In particular, a 2019 Commission report found that in K–12 schools students of color as a whole, as well as by individual racial group, do not commit more disciplinable offenses than their white peers—but Black students, Hispanic or Latino students, and Native American students in the aggregate receive substantially more school discipline than their white peers and receive harsher and longer punishments than their white peers receive for like offenses. Students with disabilities are approximately twice as likely to be suspended throughout each school level compared to students without disabilities.¹² Although not a focus of its Briefing Report, the Commission also quoted an American Bar Association (ABA) report recognizing the disproportionate discipline of LGBTQ+ students.¹³

The COVID pandemic that began the following year¹⁴ and its devastating impact on U.S. K–12 public education¹⁵ has only further exacerbated concerns over disparate school discipline.¹⁶

Other State Advisory Committee Reviews of School Discipline

¹² Letter of Transmittal from Catherine E. Lhamon, Chair, U.S. Commission on Civil Rights, to President Donald J. Trump 1 (July 23, 2019) (transmitting *Beyond Suspensions*), at: <https://www.usccr.gov/files/pubs/2019/07-23-Beyond-Suspensions>.

¹³ Ibid., p. 5 (quoting SARAH E. REDFIELD AND JASON P. NANCE, SCHOOL-TO-PRISON PIPELINE 7 (ABA Joint Task Force on Reversing the School-to-Prison Pipeline 2016)).

¹⁴ The U.S. Centers for Disease Control and Prevention (CDC) report that the COVID-19 pandemic began on January 2, 2020. See David J. Senser CDC Museum, CDC Museum COVID-19 Timeline (last reviewed Mar. 15, 2023), at: <https://www.cdc.gov/museum/timeline/covid19.html#:~:text=January%2020%2C%202020,respond%20to%20the%20emerging%20outbreak>.

¹⁵ See Eesha Pendharkar, *Here's How the Pandemic Changed School Discipline*, EDUC. WEEK (Nov. 28, 2022), at: <https://www.edweek.org/leadership/heres-how-the-pandemic-changed-school-discipline/2022/11>.

¹⁶ Ibid.

By our estimate, at least seven advisory committees—Pennsylvania,¹⁷ Maryland,¹⁸ Vermont,¹⁹ Georgia,²⁰ Kentucky,²¹ Florida,²² and Michigan²³—have found disparate K–12 school discipline by race,²⁴ disability,²⁵ or sexual orientation.²⁶ Although its speed and progress have been criticized,²⁷ West Virginia has been examining its K–12 school discipline data and practices since at least 2011.²⁸

Despite the Committee’s efforts, the West Virginia Department of Education (“WVDE”) ultimately declined to provide direct testimony to the Committee. Unable to engage in direct dialogue with WVDE, the Committee has been forced to rely upon news reports and other publicly available statements. Such incomplete communication may unavoidably result in the Committee not being able to report WVDE’s current efforts as fully and accurately as the Committee otherwise would have desired. The Committee hopes that this Report encourages WVDE to engage the Committee and Commission directly in the future.

¹⁷ Pennsylvania Advisory Committee Report to the U.S. Commission on Civil rights, *Disparate and Punitive Impact of Exclusionary Practices on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools*, (April 2021), [hereinafter PA Rpt.], at: <https://www.usccr.gov/files/2021/04-09-Pennsylvania-Public-Schools>.

¹⁸ Maryland Advisory Committee Report to the U.S. Commission on Civil Rights, *Disparities in School Discipline in Maryland*, (October 2019), [hereinafter MD Rpt.], at: <https://www.usccr.gov/files/pubs/2020/01-14-MD-SAC-School-Discipline-Report>.

¹⁹ Vermont Advisory Committee Report to the U.S. Commission on Civil rights, titled, *Disparities in School Discipline in Vermont*, (December 2019), [hereinafter VT Rpt.], at: <https://www.usccr.gov/files/pubs/2020/02-19-VT-SAC-School-Disparities>.

²⁰ Georgia Advisory Committee Report to the U.S. Commission on Civil rights, *School Discipline: African American Students Disproportionately Disciplined in Georgia Schools as Well as Other School Districts in the South*, (April 2013), [hereinafter GA Rpt.], at: <https://www.usccr.gov/files/pubs/docs/GA-SchoolDisciplineReport>.

²¹ Kentucky Advisory Committee Report to the U.S. Commission on Civil rights, *School Discipline in Kentucky: An Examination of School Discipline in the Jefferson County Public School District*, (June 2011), [hereinafter KY Rpt.], at: <https://www.usccr.gov/files/pubs/docs/KYSchoolDisciplineReport>.

²² Florida Advisory Committee Report to the U.S. Commission on Civil rights, *School Discipline in Florida: Discipline Practices Leave Many Children Behind*, (December 2010), [hereinafter FL Rpt.], at: <https://www.usccr.gov/files/pubs/docs/FLSchoolDisciplineReport>.

²³ Michigan Advisory Committee Report to the U.S. Commission on Civil rights, *Discipline in Michigan Public Schools and Government Enforcement of Equal Educational Opportunity*, (1996), [hereinafter MI Rpt.], at: <https://www2.law.umaryland.edu/marshall/usccr/documents/cr12m54>.

²⁴ See, PA Rpt., MD Rpt., VT Rpt., GA Rpt., KY Rpt., FL Rpt., MI Rpt.

²⁵ See, PA Rpt., MD Rpt., VT Rpt.

²⁶ See, PA. Rpt.

²⁷ Duncan Slade, *West Virginia Ignored Recommendations for Fixing Racial Disparities in Public School Discipline*, FAYETTE TRIB. (Aug. 11, 2022), at: https://www.fayetttribune.com/news/west-virginia-ignored-recommendations-for-fixing-racial-disparities-in-public-school-discipline/article_99f2adc4-1926-11ed-a04b-8be4a7ce1703.html.

²⁸ West Virginia Department of Education, Office of Research. *Improving School Discipline Data Collection and Reporting: A Status Report for the 2013–2014 School Year*. 2013; West Virginia Department of Education. *West Virginia School Discipline Report as Required by W. Va. Code § 18-2-43*. July 2022; West Virginia Department of Education. *SY22 Discipline Data in Review*. May 10, 2023. https://wvde.us/wp-content/uploads/2023/05/DisciplineData_Review; West Virginia Department of Education. *Discipline Data Response*. May 10, 2023. <https://wvde.us/wp-content/uploads/2023/05/DisciplineBoardMayV3.pdf>. These reports document West Virginia's efforts to reform school discipline policies, including data collection and legislative changes such as W. Va. Code § 18-2-43 (2020) and amendments to W. Va. Code § 18A-5-1 (2023).

Only very recently has WVDE publicly recognized its own school discipline disparities and publicly expressed a desire to understand their root causes and possible solutions. On May 10, 2023, after reviewing its 2022 school discipline data (which lacks data on LGBTQ+ students and students limited to online or virtual instruction) the WVDE concluded:

The data show that several subgroups of students in West Virginia continue to have disproportionate rates of discipline referrals and suspensions. Students in foster care, Black

students, children from low-income homes, homeless students as well as those with disabilities are among those experiencing the most disproportionality . . .

Additionally, several student subgroups were suspended at higher rates than the general school population. This includes 64% of Black students that were referred for disciplinary action being suspended along with 60% of those from low-income homes, 73% of students in foster care, 60% of homeless students and 65% of students with disabilities. In total, 65% of all students suspended for more than 10 days were from low-income homes. Of the suspensions among all students, 51% were in-school and 49% were out-of-school.²⁹

According to newspaper reports, during the May 10 meeting, West Virginia Board of Education (WVBE) President Paul Hardesty said in response to the data disparities: “This has got to be a complete overhaul. We’ve got to do something different.”³⁰ WVDE Director of Instructional Leadership and School Improvement Drew McClanahan added that the WVDE “should be the largest advocate for transparency as we can.”³¹ He divided the WVDE’s response into four areas: training and support, accountability, policy requirements, and responsibility.³²

McClanahan and West Virginia Board of Education member Debra Sullivan then encouraged a transparent, holistic effort to understand and remedy these disparities. McClanahan said, “I think it’s important for next steps that we continue these conversations, that we continue to find the questions . . . It appears as though we have disproportionate numbers. Why is that? What is going on? Why are we seeing these issues?”³³ Sullivan recognized that the West Virginia Board of Education had an opportunity to change the dynamic around school discipline, adding, “That’s going to take a change in perspective. Now it’s nobody’s fault. Everybody’s problem. Everybody has to get involved, not just our schools but our families, our businesses, our health care providers.”³⁴

²⁹ WVDE, Board of Education Hears School Discipline, Clay County Updates and Places Policies on Comment (May 10, 2023), at: <https://wvde.us/wv-board-of-education-hears-school-discipline-clay-county-updates-and-places-policies-on-comment/>, [hereinafter *WVDE May 10, 2023, Update*].

³⁰ Duncan Slade, *New Data Shows Racial, Economic Disparities Persist in West Virginia School Discipline Practices*, MOUNTAIN STATE SPOTLIGHT (May 10, 2023), at: <https://mountainstatespotlight.org/2023/05/10/west-virginia-data-school-discipline-disparities/> (quoting Hardesty).

³¹ Chris Schultz, *State Board of Education hears Numbers, Next Steps to Address School Discipline*, W. VA. PUB. BROADCASTING (May 10, 2023, 5:14 PM), at: <https://wvpublic.org/state-board-of-education-hears-numbers-next-steps-to-address-school-discipline/>.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

Recognizing that everyone involved sincerely shares the same goal—for every student regardless of race, disability, or sexual orientation to attend schools that are equally nurturing, welcoming, and safe,³⁵ the Committee authored this Memorandum. In addition to its own research, the Committee conducted hearings on seven days³⁶ and heard testimony from 18 people.³⁷

Findings

The section below communicates the observations and conclusions of the Committee based on the testimony received in the course of its investigation. While the Committee has not independently verified each assertion and members are not experts on the topic at hand, a diverse and balanced selection of panelists was chosen to testify due to their professional experience, academic credentials, subject matter expertise, and/or firsthand experience with the relevant issues.

In keeping with its duty to inform the Commission of (1) matters related to discrimination or a denial of equal protection of the laws; and (2) matters of mutual concern in the preparation of reports of the Commission to the President and the Congress,³⁸ the West Virginia Advisory Committee submits the following findings to the Commission.

Finding I: Students of color, students with disabilities, and LGBTQ+ students in West Virginia experience school discipline disparities³⁹

Disparate discipline of students who identify as not white, not cisgender, not straight, and/or not disabled was a common theme throughout the briefings. Reports prepared by the West Virginia Department of Education (WVDE) in 1968, 1976, 1980, 2012, and 2013 all documented evidence that minority students in West Virginia are suspended or disciplined more frequently than their white peers.⁴⁰ West Virginia State studies prepared in 2012 and 2013 found that Black students were suspended at 2.5 times the representation of the school population, a finding that was confirmed in a 2015 study done by the University of Pennsylvania.⁴¹ More recent data from

³⁵ *Supra*, Note 6, at 5.

³⁶ *Supra*, Note 1.

³⁷ *See*, Briefing Agendas at: Appendix A.

³⁸ 45 C.F.R. § 703.2 (2018).

³⁹ Other students, such as students from foster families and students from lower socio-economic families, may also experience disparate discipline. This Report makes no findings with regard to those students.

⁴⁰ Rev. Matthew J. Watts, CEO of Hope Community Development Corporation, [hereinafter Rev. Watts Testimony], Transcript 3, p. 3.

⁴¹ *Ibid.*, Rev. Watts Testimony, p. 3. Edward Smith and Shaun Harper. “Disproportionate impact of K–12 school suspension and expulsion on Black students in southern states.” University of Pennsylvania, Center for the Study of Race and Equity in Education (2015), pp. 178-195, at: <https://race.usc.edu/wp-content/uploads/2020/08/Pub-14-Smith-and-Harper>.

the WVDE exist but may be difficult to obtain; Rev. Matthew J. Watts, CEO of Hope Community Development Corporation, Charleston, WV, reported he has attempted to gain access to more recent West Virginia data that would include disaggregation of race, gender, socioeconomic status, disability status, and foster care status, but the WVDE has not released these data.⁴²

When examining the composition of the student population, white students account for approximately 90% of the West Virginia student body while 10% of the students identify as students of color;⁴³ however, students of color make up 17% of suspensions in 2020–2021.⁴⁴ This highlights the level of overrepresentation of students of color in disciplinary actions taken within West Virginia schools. This disparity follows a national trend that started during the era of desegregation and continued throughout the push for zero-tolerance policies that occurred in the 1980s and 1990s, resulting in the expulsion or suspension of 3.5 million students in 2010.⁴⁵ Only 5% of these punishments were meted for objective offenses involving weapons or drugs,⁴⁶ while 50% of these disciplinary actions were imposed for actions that are more subjective in nature, such as disrespect or disruption.⁴⁷

Testimonials Support Our Finding

Much of the testimony centered around contextualizing situations resulting in discipline. For example, in the racial context, we heard testimony about racial harassment, reported to school officials, going unheeded. Failure to deal with the harassment resulted in escalated tensions among students, sometimes resulting in violence and disparate discipline.

The Committee honored the request for anonymity of two panelists—identified as Panelist #2 and Panelist #3—who were concerned about possible retaliation against family members currently enrolled in public schools. Panelist #2, a Court-Appointed Guardian from Southwest WV, described his/her Black niece’s encounter with the West Virginia school disciplinary process.⁴⁸ A group of white girls bullied the niece, including the white girls’ use of racial slurs. The niece alerted her teachers and principal, but the harassment continued. During one encounter, the white girls backed the niece into a corner; the niece felt threatened and the need to defend herself. This resulted in a fight with one of the harassers being injured. The school principal suspended the niece for ten days told her that “...the [racial slur] is just a word and that

⁴² Ibid., Rev. Watts Testimony, Transcript 3, p. 31.

⁴³ Dr. Shanequa Smith, PhD, Founder of Restorative Actions, Testimony, [hereinafter Dr. Smith Testimony], Transcript 3, p. 2.

⁴⁴ Dr. Akuoma Nwadike, President and Principal Educator of Inclusivity Education LLC, Testimony [hereinafter Dr. Nwadike Testimony], Transcript 2, p. 6.

⁴⁵ Derek W. Black (Professor of Law at the University of South Carolina School of Law) Testimony [hereinafter Prof. Black Testimony], Transcript 1, p. 4.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Panelist #2, Court-Appointed Guardian from Southwest WV, Testimony, Transcript 4, p. 6.

she should not let that word create a situation that would go on her permanent record.”⁴⁹ The harassment of the niece continued even after the disciplinary action, with no response from the school except to advise the family to be happy the other girl was not suing for medical bills.

Panelist Loretta Young, Community Advocate, Race Matters, Inc., Greenbrier County, WV, told a similar story regarding her experience in a West Virginia school.⁵⁰ She was a young girl who was one of only two students integrating into a West Virginia public school. A white boy repeatedly chased and harassed her with racial slurs. No teachers intervened, and Panelist Young ended up pushing that boy resulting in him falling down an embankment. Ms. Young encountered a similar story fifty years later when a young Black girl reported to school officials that other white students were calling her a racial slur. The principal told the girl that “[n-word] was just a word and that the Black student needed to just play past that word.”⁵¹ Subsequently one harasser, a white girl, waited for this young Black girl and would continue to harass her with the [n-word]. The Black girl finally hit the white girl, resulting in a five-day out-of-school suspension for fighting her while the white girl received two-days in-school suspension for her part.

Panelist #3, a Parent from North Central, WV, described the challenges of parenting a child with Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, and Anxiety.⁵² In addition to the several diagnoses given, the child also experienced racism, family substance use, and other traumas increasing the child’s mental health and support needs. Starting at a young age, the child became a scapegoat for both the other children and teachers, who was often blamed and punished for the behavior of others. In one incident, the child was suspended from school after another student reported that the child had made racial slurs. However, the other student eventually admitted that the child was not at fault, but not before the child missed three days of school.⁵³ The child was also expelled based on a false account made by another student; no attempt was made to help the child or provide services despite the clear targeting and difficulties the child was experiencing. In the end, the child served seven days of expulsion before being allowed to return to school.⁵⁴

Because it appeared that the school was targeting the child, the school’s special education director moved the child to a different school with limited in-school instructional time, but with in-school time increased based on compliant behavior.⁵⁵ Despite the child’s best efforts,

⁴⁹ Ibid.

⁵⁰ Loretta Young, Community Advocate, Race Matters, Inc., [hereinafter Young Testimony], Transcript 4, pp. 3-4.

⁵¹ Ibid., p. 4.

⁵² Panelist #3 (Parent from North Central, WV, Written Opening Statement submitted for May 4, 2023 Briefing) [hereinafter Panelist #3 Statement], Transcript 4, p. 7— the panelist was not able to participate in-person – the statement was read into the record by the DFO.

⁵³ Ibid., p. 8.

⁵⁴ Ibid., p. 10.

⁵⁵ Ibid., p. 9.

infractions like cussing or saying “Jesus” would result in continued limited time in school and subsequently, the child was exposed to an increase in bullying and victimization by other students. This continued until the child acted out and was placed in an in-school setting that the students called “the dungeon,” which provided minimum instruction, no interactions with peers, no gym class, and no outside time.⁵⁶ Panelist #3’s Written Opening Statement concluded with:

There have been countless incidents where my child was wrongly accused and has suffered from extreme and inconsistent punishment, embarrassment, humiliation, confusion, and frustration at a time in life where love, support, guidance, and compassion should be plentiful to ensure healthy brain development, development of appropriate coping skills and positive character development. I believe, as I am sure many do, that teaching our children should not involve hostility, degradation, cruelty, and should include compassion, love, accountability, and justice.⁵⁷

Panelists agreed that the marginalized students identified in this report⁵⁸ receive disparate discipline but disagreed to some extent about the reasons for disparate treatment.

Verbal harassment is allowed to pass in schools creating an unsafe environment while zero-tolerance and no-touch policies punish students who are targets of harassment because of their identity.⁵⁹ The policies designed to protect students from harassment and bullying are inconsistently enforced across counties resulting in the proliferation of discrepancies in treatment of students who deviate from the white cisgender, nondisabled heterosexual student “norm.”⁶⁰ The lack of a safe environment can lead to an environment where students perceive that little can be done and ultimately decide not to report incidents of bullying and harassment, thereby reinforcing the belief that solitary action on the student’s part is required to remain safe. The cycle of experiencing harassment or threats to safety, lack of perceived support, and engaging in solitary confrontational action increases the chances of disciplinary results and often reinforces the continuation of this cycle.⁶¹

Panelist Max Eden, Research Fellow of the American Enterprise Institute, Washington, DC, highlighted the complexity of disciplinary disparities explaining that race alone may not explain the differences, and emphasizing instead the impact of individual student behavior, school characteristics, and socioeconomic differences as the driving factors in the differences in

⁵⁶ Ibid.

⁵⁷ Ibid., p. 11.

⁵⁸ In this report the Committee deems that the term “marginalized student” refers to the categories of students that are the subject of this review.

⁵⁹ Teresa McCune (Senior Counsel, Public Defender 30th Judicial Circuit) Testimony, Transcript 3, p. 6.

⁶⁰ Paula Kerner (Program Manager of Fairness WV’s Safe and Healthy Schools Initiative, Charleston, WV) Testimony [hereinafter Kerner Testimony], Transcript 5, p. 2.

⁶¹ Jason L. Smith (Assistant Principal of Morgan County Schools) Testimony [hereinafter J. Smith Testimony], Transcript 7, p. 13.

discipline found across groups.⁶² Mr. Eden quoted a 2011 study by Michael Rocque and Raymond Paternoster, stating that “it is possible that our finding of racial disparity in punishment is linked to past behavior, not cultural stereotypes.”⁶³ Rocque and Paternoster reported that in their initial model controlling for grades, attitudes, gender, special education, language program, and the student conduct reported by teachers, Black students were more likely to receive disciplinary infractions compared with other students. This finding was also found when controlling for teacher characteristics (e.g., gender, grade taught, years of experience) and when controlling for school characteristics. However, as Mr. Eden noted, bad behavior also remained a significant predictor of disciplinary referrals making it a contributing factor to disciplinary referrals even when accounting for the impact of race.

Mr. Eden cited another study finding that, when controlling for school-level variables such as the principal’s attitudes towards discipline and the percentage of Black students, the impact of race on disparate disciplinary practices was no longer statistically significant.⁶⁴ Mr. Eden also cited an article by Josh Kinsler (2011) reporting that although racial disparities in discipline were noted when examining data across schools these disparities disappeared when examined within a school.⁶⁵ Mr. Eden further noted that Kinsler (2011) did not find that white teachers or white principals behaved differently in terms of referrals for discipline or severity of discipline.⁶⁶ A similar trend was noted in a study of students in Arkansas, in which racial disparities in discipline were found across schools; when examining within-school differences the racial disparities were not noted.⁶⁷ Mr. Eden cited this study as further evidence that race played a minimum role in discipline.

A Fordham Institute article on disparities in discipline cited data collected through the 2016 Youth Risk Behavior Surveillance System⁶⁸ provides another example of evidence for individual behavior leading to differences in disciplinary practices. The article demonstrates that Black

⁶² Max Eden (Research Fellow of the American Enterprise Institute) Testimony [hereinafter Eden Testimony], Transcript 1, p. 6.

⁶³ Ibid., p. 2, and Eden Written Opening Statement submitted for August 26, 2021 Briefing, (hereinafter Eden Statement), p. 2; citing Rocque, M., & Paternoster, R. (2011). Understanding the antecedents of the “school-to-jail”, The relationship between race and school discipline. *The Journal of Criminal Law and Criminology*, 633-665), at: <https://scholarlycommons.law.northwestern.edu/jclc/vol101/iss2/7>.

⁶⁴ Ibid., Eden Testimony, p. 7, and Eden Statement, p. 2; citing Russell Skiba, Choong-Geun Chung, Megan Trachok, Timberly Baker, Adam Sheya, & Robyn Hughes, “Parsing Disciplinary Disproportionality: Contributions of Infraction, Student, and School Characteristics to Out-of-School Suspension and Expulsion,” *American Education Research Journal*, 51.4, 640-670, (2014), at: <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=00333937e5e1b783f7b6da1cd27a3bbfde3c9d19>.

⁶⁵ Josh Kinsler, “Understanding the Black-White School Discipline Gap,” *Economics of Education Review* 30, no. 6 (2011): 1370–83.

⁶⁶ Ibid., pp. 1370–83, and Eden Statement, p. 2.

⁶⁷ Kaitlin P. Anderson and Gary W. Ritter, “Do School Discipline Policies Treat Students Fairly? Evidence from Arkansas,” *Education Policy* 34, no. 5 (July 1, 2020): 707–34.

⁶⁸ CDC study of United States students grades 9 through 12 Conducted yearly, at: <https://www.cdc.gov/healthyyouth/data/yrbs/index.htm>.

students self-reported more fights at school, were more likely to skip school, and were more likely to be (sometimes or often) tardy to class compared to other students of other racial demographics.⁶⁹ An article in *Education Next* reported that children from one-parent households had higher rates of in-school suspension than students from two-parent households based on Census Data collected in 2008.⁷⁰

The trend of disparate treatment of students who fall outside the expected “norm” can also be found in students with a disability—although the research appears more complicated. In West Virginia, students with disabilities ages 6–21 make up 12.6% of the population.⁷¹ However, students with disabilities make up a far larger portion of out-of-school suspensions (29%) and expulsions (16%). These numbers are consistent with national trends.⁷² Use of physical restraints, seclusion, and mechanical restraints are also disproportionately used on students with disabilities in West Virginia. When examining disciplinary actions within students with disabilities, race does not appear to result in disparate treatment.⁷³ This is also consistent with a study published in 2019, where the authors found disparities in discipline within races, but not when the data were examined at the intersection of race and disability.⁷⁴ Panelist Max Eden interpreted this finding as evidence of a limited or nonexistent role of race or disability on disciplinary disparities.⁷⁵ Panelist Paul L. Morgan, PhD, Henry and Marion Eberly Fellow and Professor of Education and Demography, Pennsylvania State University, State College, PA, the first author of the study, put forward a different interpretation of the data. He informed the panel that these results and his studies on disparities in disability identification suggest that students who are a racial minority or bilingual are less likely to be identified as having a disability compared to white, English-speaking peers who display similar behaviors.⁷⁶ In West Virginia, 77% of white students were identified as having a disability and receiving services while only 44% of Black students were identified as having a disability and receiving services that would

⁶⁹ Musu-Gillette, L., Zhang, A., Wang, K., Zhang J., and Oudekerk, B.A. (2017). *Indicators of School Crime and Safety: 2016* (NCES 2017-064/NCJ 250650). National Center for Education Statistics, U.S. Department of Education and Bureau of Justice Statics, Office of Justice Programs, U.S. Department of Justice. Washington DC, at: <https://nces.ed.gov/pubs2017/2017064>.

⁷⁰ Eden Statement, p. 1.; citing A.J. Egalite, “How family background influences student Achievement: Can schools narrow the gap?” *Education Next* 16, no. 2 (2006), pp. 70-78, at: <https://www.uccronline.it/wp-content/uploads/2012/06/201604educationnext>.

⁷¹ Marshall Written Opening Statement, for August 26, 2021 Briefing [herein Marshall’s Statement], p.6.

⁷² Marshall Testimony, Transcript 1, p. 9; Paul L. Morgan, PhD, (Henry and Marion Eberly Fellow and Professor of Education and Demography, Pennsylvania State University) Testimony [hereinafter Prof. Morgan Testimony], Transcript 2, p. 3. See also, Georgia Advisory Committee Report to the U.S. Commission on Civil Rights, *School Discipline: African American Students Disproportionately Discipline in Georgian Schools as well as Other School Districts in the South*, (2013), [hereinafter *GA Rept.*], at: <https://www.usccr.gov/files/pubs/docs/GA-SchoolDisciplineReport>.

⁷³ Ibid., Prof. Morgan Testimony.

⁷⁴ Morgan, P. L., Farkas, G., Hillemeier, M. M., Wang, Y., Mandel, Z., DeJarnett, C., & Maczuga, S. “Are students with disabilities suspended more frequently than otherwise similar students without disabilities?” *Journal of School Psychology* 72, 1-13 (2019).

⁷⁵ Eden Statement, p. 1.

⁷⁶ Prof. Morgan Testimony, Transcript 2, pp. 4-5.

put potentially punishable behavior in the context of a disability.⁷⁷ The lack of racial discrimination in school discipline within the cohort of students with disabilities may be a function of the lower probability of schools identifying students of color as having a disability.

Students who identify as LGBTQ+ also face disparate school discipline arising from inconsistent policy application. Policies such as those intended to create safe environments; those related to bathroom use, dress codes, or public displays of affection; and those concerning the use of pronouns have all contributed to creating disparate treatment of students who identify as LGBTQ+. ⁷⁸ However, the ability to gather information about specific populations and the disciplinary actions of those populations is more difficult given the nature of collecting data on sexual or gender identities and the potential safety risks of identifying as LGBTQ+. The Gay Lesbian and Straight Education Network (GLSEN) conducted their eleventh national school climate survey in US secondary schools in 2019. ⁷⁹ In this study, which included 103 students from West Virginia, almost half of students who identified as LGBTQ+ reported harassment and victimization to their schools, and only 16% of those who experienced harassment or victimization reported effective staff interventions. Like Black students, LGBTQ+ students who are harassed and made to feel unsafe in schools may fight to defend themselves. Only 9% of the West Virginia students surveyed in the GLSEN study reported attending a school with a comprehensive anti-bullying and harassment policy. ⁸⁰ Nationwide, students who reported anti-LGBTQ+ discrimination within the school also reported a greater likelihood of being disciplined. ⁸¹ Being misgendered ⁸² by teachers denies the student's basic identity and can elicit confrontational behavior on the part of the student as a means of defending themselves. In the GLSEN survey, one-third of West Virginia LGBTQ+ students and two-thirds of gender-diverse students were prevented from using their chosen names or pronouns while in school. ⁸³ The fighting and confrontational behavior that can occur when misgendered can be construed as requiring disciplinary actions thus disproportionately impacting students who perceive a need to stand up for themselves to establish a safe environment. ⁸⁴

⁷⁷ Ibid., p. 5.

⁷⁸ Kerner Testimony, Transcript 5, p. 2.

⁷⁹ Melanie Willingham-Jaggers (Deputy Executive Director, GLSEN), Testimony [hereinafter Willingham-Jaggers Testimony], Transcript 1, p. 12 (referencing "School Climate for LGBTQ Students in West Virginia" (state snapshot) (2011), at: <https://www.glsen.org/sites/default/files/2021-01/West-Virginia-Snapshot-2019>).

⁸⁰ Ibid., p. 13.

⁸¹ Ibid.

⁸² By misgendered, we mean to refer to someone using a word (e.g., pronoun) or form of address (e.g., Mr. vs. Ms.) that does not reflect the person's gender identity.

⁸³ Willingham-Jaggers Testimony, Transcript 1, p. 13.

⁸⁴ Kerner Testimony, Transcript 1, pp. 3-4.

Students who identify as gender diverse⁸⁵ may find themselves being punished for utilizing a bathroom that aligns with their identity but not with their sex assigned at birth; more than one-third of West Virginia LGBTQ+ students surveyed reported attending a school where they may be punished for using the bathroom of their gender identity.⁸⁶ Gender-diverse students may also be punished for violating dress codes by wearing clothing that aligns with their identity.⁸⁷ It is the teacher and principal's discretion whether to enforce dress codes and public displays of affection, often resulting in more lenient enforcement for cis-gender, heterosexual students.⁸⁸ In West Virginia, 44% of students who identified as LGBTQ+ reported that they were punished for public displays of affection while similar behavior for non-LGBTQ+ did not result in disciplinary action.⁸⁹

The impact of disparate treatment is increased when the student has multiple intersectional identities, such as race or disability.⁹⁰ Nationwide, GLSEN found that Black LGBTQ+ students were twice as likely to be removed from school compared to their white LGBTQ+ peers while LGBTQ+ students with disabilities were more likely to be disciplined compared to their nondisabled LGBTQ+ peers.⁹¹

Finding II: Bias and other forms of discrimination may impact school discipline disparities. Bias can cause disparate disciplinary treatment.

Bias is generally defined as “[t]endency to favour or dislike a person or thing, especially as a result of a preconceived opinion; partiality, prejudice in favor of or against one thing, person, or group, in a way considered to be[or] prejudice.”⁹² Bias can be express or implicit.⁹³

Dr. Stacey Sinclair, Professor of Psychology and Public Affairs at Princeton University, Princeton, NJ, an expert in bias, explained the difference between explicit and implicit bias. According to her, explicit biases are “explicit attitudes.” She added that “biases are beliefs and evaluations that are knowingly endorse[d] and have complete discretion over whether they [are] disclose[d].”⁹⁴ “In contrast, implicit associations (biases) are associations individuals have with particular social groups. They can be feelings or concepts or evaluations. People are generally

⁸⁵ By gender diverse we mean individuals who define themselves and behave in ways that are not culturally expected of people with their physical sex characteristics. This term is used to describe individuals who identify on the full spectrum of gender.

⁸⁶ Willingham-Jaggers Testimony, Transcript 1, p. 13.

⁸⁷ Kerner Testimony, Transcript 5, p. 4.

⁸⁸ Ibid.

⁸⁹ Ibid., p. 13.

⁹⁰ Ibid., p. 14.

⁹¹ Ibid., p. 13.

⁹² Oxford English Dictionary Online, oed.com. accessed 10/18/2023.

⁹³ Dr. Stacey Sinclair (Professor of Psychology and Public Affairs at Princeton University) Testimony, [hereinafter Dr. Sinclair Testimony], Transcript 1, pp. 15-16.

⁹⁴ Ibid.

unaware of their implicit associations or unwilling to endorse them as indicative of their feelings toward a particular group.”⁹⁵

Dr. Sinclair explained that the disproportionate suspension and expulsion of Black students, other students of color, and students with disabilities from the classroom and school could be due to bias.⁹⁶ Applying those definitions of bias, Dr. Sinclair further testified that teachers have been shown to express explicit stereotypic beliefs about Black students as well as holding implicit biases. In addition, she noted that teachers and administrators, even while holding egalitarian views, can still have their judgments and behaviors towards their students shaped by implicit biases, particularly when required to make quick decisions in stressful environments and cognitively demanding situations despite their best intentions.⁹⁷

Implicit bias is also a significant concept for understanding school discipline disparities. While this concept is well-understood by experts, it is often misunderstood by lay people. Jennifer Eberhardt, Ph.D., the Harvard-trained social psychologist and author of *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do*, explains implicit bias this way:

Implicit bias is a kind of distorting lens that’s a product of both the architecture of our brain and the disparities in our society....

Confronting implicit bias requires us to look in the mirror. To understand the influence of implicit bias requires us ...to face how readily stereotypes and unconscious associations can shape our reality. By acknowledging the distorting lens of fear and bias, we move one step closer to clearly seeing each other. And we move one step closer to clearly seeing the social harms—the devastation—that bias can leave in its wake.⁹⁸

The data suggest that disparate discipline could be the result of bias. According to official data collected by the WVDE, Black students, other students of color, and those with disabilities in West Virginia are disproportionately suspended and expelled from classrooms and schools relative to their representation in the general student population for years.⁹⁹ Along these lines, Derek W. Black, Professor of Law at the University of South Carolina School of Law, Columbia, SC, testified that a dramatic increase in suspensions and expulsions of Black students began with

⁹⁵ Ibid., p. 15.

⁹⁶ Dr. Sinclair Testimony, Transcript 1, pp. 15-16.

⁹⁷ Ibid.

⁹⁸ Jennifer L. Eberhardt, “Introduction.” in *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do* (2019): 6–7. New York: Penguin.

⁹⁹ Andy Whisman, *School Discipline Data Collection and Reporting: A status Report for the 2013–2014 School Year*, Charleston, WV, West Virginia Board of Education, 2015. *West Virginia School Discipline Report as Required by West Virginia Code §18-2-43*, Charleston, WV, West Virginia Department of Education, 2022. West Virginia does not collect these statistics for LGBTQ+ students. Ibid. [Andy Whisman, *A Status Report for the 2013–2014 School Year*].

school desegregation. He noted, however, that fifty percent (50%) of the issues attributed to this rise in suspensions and expulsions resulted from minor misbehavior categorized as “disruption” and not serious misconduct.¹⁰⁰

The disparate application of disciplinary policies could also result from bias against or in favor of a group. For example, Dr. Akuoma Nwadike, PhD, President and Principal Educator of Inclusivity Education LLC, Silver Spring, MD, testified that the data showing the disparate discipline of Black students and other students of color, students with disabilities are a manifestation of implicit bias due to the “open-endedness... of West Virginia’s manual (policy) for expected behavior in safe and supportive schools.”¹⁰¹ She believes the policy’s language focusing on “orderly conduct,” “inappropriate speech,” and “inappropriate behavior” is subjective resulting in harsher treatment of marginalized students because they usually lack affinity with the educator. In contrast, she testified that the National Education Association found that white students, when disciplined, were disciplined for more objective offenses such as drug possession.¹⁰²

Micro and macroaggressions can also result in disparate disciplinary treatment.

Macroaggressions and microaggressions also impact marginalized students. Dr. Nwadike discussed these terms by first noting that the root word “aggression” is “any kind of hostile, violent, behavior or treatment.”¹⁰³ Macroaggressions are overt insults, use of slurs and offensive language and derogatory purposely used against individuals or groups. She notes that macroaggressions be systemic, meaning that such aggressions are permitted within an entire school district or an individual school.¹⁰⁴

One panelist recounted an example of macroaggression that was reported to her. A classmate called an Black student the “N”- word. The student reported this to the school principal, who refused to take corrective action against the offending student. The panelist explained that the name calling continued and further that when the Black student struck the classmate—what the panelist described as “self-help”—the student received a five-day suspension. The classmate’s macroaggression was not considered as a mitigating factor and itself was not punished.¹⁰⁵

Marginalized groups react to micro and macroaggressions differently. On the one hand, microaggressions normally do not illicit immediate responses because they are “everyday slights, insults, put-downs, invalidations, and offensive behaviors that people of marginalized groups experience in daily interactions with generally with ... people who may be unaware of their

¹⁰⁰ Prof. Black Testimony, Transcript 1, p. 4.

¹⁰¹ Dr. Nwadike Testimony, Transcript 2, p. 7.

¹⁰² Ibid.

¹⁰³ Ibid., p. 11.

¹⁰⁴ Ibid.

¹⁰⁵ Young Testimony, Transcript 4, p. 5.

impact. Microaggressions are reflections of implicit bias or prejudicial beliefs and attitudes beyond the level of conscious awareness.”¹⁰⁶ However, there can be a slow accumulation of these slights and offenses which go unnoticed by most people until their breaking point is reached.¹⁰⁷ Dr. Nwadike explained that by the time a student reacts to microaggressions or reach their breaking point, their behavior is deemed disruptive or inappropriate without acknowledgement or exploration of the issues which resulted in the student’s reaction. On the other hand, when a student is confronted with macroaggressions, there is usually an immediate response. As a result, Dr. Nwadike advises that the student should be “centered” focusing on the actual aggression, whether micro or macro, which led to the student behavior resulting in punishment.¹⁰⁸

Panelist Melanie Willingham-Jaggers, Interim Executive Director of the Gay Lesbian and Straight Education Network (GLSEN), New York, NY, provided an example of microaggressions in the LGBTQ+ context. She testified that the vast majority of LGBTQ+ students in West Virginia regularly heard school staff make homophobic and negative remarks about someone’s gender expression.¹⁰⁹ The cumulative impact of these microaggressions on a student identifying as LGBTQ+ could result in behavior considered by a teacher or administrator as disruptive or inappropriate resulting in suspension or expulsion.¹¹⁰

Intersectionality also helps explain disparate disciplinary treatment.

“Intersectionality” may also impact the discipline of students. Intersectionality is defined as the complex, cumulative way in which several forms of discrimination—such as, gender, race, class, sexual orientation, physical ability—combine, overlap, or intersect, especially in the experiences of marginalized individuals or groups.¹¹¹

Ms. Willingham -Jaggers opined that given the existing findings on disparities in school discipline, it is likely that LGBTQ+ students who are also Black, Indigenous, people of color and/or those with disabilities are subjected to unfair and discriminatory policies at a higher rate than general LGBTQ+ student population. She explained that The Gay Lesbian and Straight Education Network’s research indicated that Black LGBTQ+ students were almost twice as likely to report suspension and expulsion than their white LGBTQ+ peers.¹¹²

¹⁰⁶ Sue, Derald Wing, “Microaggressions: Death by a Thousand Cuts,” *Scientific American* (2021).

¹⁰⁷ Dr. Nwadike Testimony, Transcript 2, p. 12.

¹⁰⁸ Ibid., pp. 12-13.

¹⁰⁹ Willingham-Jaggers Testimony, Transcript 1, p. 13.

¹¹⁰ Ibid., pp. 12-13.

¹¹¹ Merriam-Webster, Adia Harvey Wingfield, merriam-webster.com, accessed 9/8/2023. Kimberle Crenshaw, Professor at UCLA School of Law and Columbia Law School, introduced this theory. Crenshaw, Kimberle, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color, *Stanford Law Review*, Vol. 43, No. 6 (July 1991), pp. 1241-1299.

¹¹² Jaggers Testimony, Transcript 2, p. 13.

Finding III: High costs are associated with school discipline disparities.

Exclusionary school discipline exacts a variety of costs, ranging from loss of academic achievement, social-emotional costs, exclusion from supportive classroom resources, and costs associated with later-life achievement or lack thereof. While not monetized in this report, there are measurable ways in which these costs negatively impact students in the school system and later into adulthood.

Exclusionary school discipline—where students are suspended or expelled and therefore out of the classroom learning environment—occurs at disproportional rates for students of color, disabled students, and LGBTQ+ students. Nationally, Black students are suspended at a rate three times as high as their white peers. Students with disabilities are twice as likely to be suspended compared with their peers without disabilities. LGBTQ+ students are 1.4 times more likely to be suspended compared with their heterosexual peers.¹¹³ Students excluded from the classroom environment cannot learn.

In West Virginia, those exclusionary numbers are higher. Based on discipline data from School Year 2022 reported by the WVDE, K–12 students in West Virginia lost an average of six classroom days due to suspension.¹¹⁴ These numbers were higher for all students of color except Hispanic or Latino students and higher for students with disabilities as compared to white students.¹¹⁵ Black students lost 9.03 instructional days due to suspension and students with disabilities lost 7 instructional days due to suspension.¹¹⁶ These numbers are in part due to the kind of suspension issued. Black students received out-of-school suspension (OSS) 50% of the time; Hispanic or Latino students received OSS 42% of the time; multi-racial students 48% of the time; and other minority groups 50% of the time.¹¹⁷ White students received OSS 50% of the time, and students with disabilities (regardless of race) received OSS 52% of the time.¹¹⁸

During the 2022 school year, Black students represented 4% of all West Virginia students in kindergarten through 12th grade.¹¹⁹ Despite the low percentage of Black students represented in West Virginia schools, one in three Black students was referred for discipline and 64% of Black students referred for discipline were suspended.¹²⁰ This equates to approximately one in five Black students suspended during some point in the 2022 school year, compared to 10% of white

¹¹³ Dr. Nwadike Testimony, Transcript 2, p. 6.

¹¹⁴ West Virginia Department of Education, SY22 Discipline Data in Review (5/10/23), at: https://wvde.us/wp-content/uploads/2023/05/DisciplineData_Review, p. 3.

¹¹⁵ *Ibid.*, p. 28.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, p. 21.

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*, p. 14.

¹²⁰ *Ibid.*, p. 29.

students suspended. Black students also represented 16% of all students suspended for more than 10 days,¹²¹ reflecting a significant decrease in instructional time and correlated with lower English language¹²² and math proficiency for West Virginia students.¹²³

Other discipline disparities for West Virginia students were evident in the disproportional treatment of students with disabilities, particularly Black students with disabilities. Students with disabilities comprised 19% of the student population during the 2022 school year but made up the 23% of students referred for discipline and 30% of students suspended out of school.¹²⁴ When overlaying students with disabilities and race, Black students with disabilities were frequently referred for discipline (37% of Black students with disabilities), suspended (73% of Black students with disabilities), and lost 9.8 instructional days on average which is 1.6 more days than Black students without a disability and 3.2 days more than white peers with disabilities.¹²⁵ Data for LGBTQ+ students are not available in West Virginia because the state does not collect this data,¹²⁶ and therefore this demographic is not reflected in the WVDE discipline data report. One perspective on the experiences of students of color, students with disabilities, and LGBTQ+ students is that their lack of representation in the school system increases feelings of isolation and a lack of participation in the school community leaving them disconnected and acting out, resulting in behavior with disciplinary responses.¹²⁷

For any student, suspension and expulsion results in a lack of access to supportive classroom resources, lower educational quality, and lower educational achievement. In West Virginia, state assessment records reflect a correlation in lower educational achievement for Black students who performed lowest in math, reading, and science for the academic year.¹²⁸ Correlations in low achievement for all West Virginia students was made based on number of suspensions and days of instructional time lost due to suspension.¹²⁹

When considering school exclusion for any student, school resource officers, sometimes referred to as SRO's, can also negatively impact student ability to remain in the classroom as they respond by either criminalizing problem behaviors, or their presence decreases children's feeling of safety in the school.¹³⁰ In West Virginia, school resource officers are employed by their law enforcement agency (such as the county Sheriff's Department) but paid by the school system and

¹²¹ Ibid.

¹²² Ibid., p. 41.

¹²³ Ibid., p. 43.

¹²⁴ Ibid., p. 33.

¹²⁵ Ibid., p. 34.

¹²⁶ Dr. Nwadike Testimony, Transcript 2, p. 6 (referring to the National Education Association report of 2015), at: <https://www.nea.org/advocating-for-change/new-from-nea/school-prison-pipeline-time-shut-it-down>.

¹²⁷ J. Smith Testimony, Transcript 7, p. 2.

¹²⁸ Ibid.

¹²⁹ Ibid., pp. 40-43; *see*, West Virginia Department of Education, SY22 Discipline Data in Review (5/10/23), at: https://wvde.us/wp-content/uploads/2023/05/DisciplineData_Review, pp. 40-43.

¹³⁰ Jagers Testimony, Transcript 1, p. 29.

receive 32 hours' (16 hours of mandatory) training related to school-based issues in order to be certified.¹³¹ This training, however, does not include training on implicit bias, differential treatment due to bias, or childhood development.¹³² School resource officers and prevention resource officers do not administer discipline to students but are present to promote safety, security, and modeling to students. In instances when a law is broken these individuals will write the narrative that is sent to the prosecuting attorney for review related to the prosecutor's possible filing of a juvenile petition.¹³³ School resource officers do not directly file charges in West Virginia schools but may be asked by the prosecuting attorney for their recommendations on the school-based behavior.¹³⁴

The Committee heard that that nationally when school resource officers are involved disproportionate discipline is invoked against Black students, students with disabilities, and LGBTQ+ students.¹³⁵ Without training in de-escalation techniques with children, officer responses can be inadequate for students with specialized needs. Instead, officer intervention can result in student escalation and disciplinary action.¹³⁶

The student achievement gap can be attributed to disproportionate application of school discipline policy and practices, with these disparities lying predominantly in poor schools with high numbers of students of color.¹³⁷ Punitive and exclusionary school discipline depresses academic achievement for all students.¹³⁸ Black students, particularly, confront a school disciplinary environment that decreases student achievement rather than improving it. In a longitudinal study that looked at behaviors in children at age five and again at age nine, comparing suspension rates for children at ages when the children could not—then could—control their behaviors, 9% of the Black-white suspension gap could be accounted for by differences in behavior. Approximately 46% of the gap is correlated with how educators respond to these students in the classroom.¹³⁹ Educational quality correlates with an educator's response to student behavior resulting in exclusionary discipline.¹⁴⁰ Thus, in schools where the majority of students are students of color, it is the implicit bias of the educators,¹⁴¹ the inconsistent

¹³¹ Corporal Kevin Barney (Prevention Resource Officer, Morgan County Public Schools) Testimony [hereinafter Barney Testimony], Transcript 6, p. 10.

¹³² Ibid., pp. 11, 13.

¹³³ Ibid., pp. 2-3.

¹³⁴ Ibid., p. 15.

¹³⁵ Marshal Testimony, Transcript 1, p. 29.

¹³⁶ Panelist #3 Statement, Transcript 4, p. 10.

¹³⁷ Prof. Black Testimony, Transcript 1, p. 3.

¹³⁸ Prof. Black, Written Opening Statement submitted for August 26, 2021 Briefing [hereinafter Prof. Black Statement], p. 1.

¹³⁹ Dr. Sinclair Testimony, Transcript 1, p. 17, (referencing Owens, J. & McLanahan, S. S. (2020). Unpacking the Drivers of Racial Disparities in School Suspension and Expulsion. *Social Forces*, 98(4), 1548–1577.

¹⁴⁰ Prof. Black Testimony, Transcript 1, p. 5.

¹⁴¹ Dr. Sinclair Testimony, Transcript 1, p. 16.

application of classroom standards, and school quality that have a greater influence over student discipline.

School discipline and school quality can be viewed as the same issue, with the increase in exclusionary discipline practices associated with lower educational quality while higher quality schools have few discipline problems.¹⁴² Students who are not in school cannot receive educational benefits or other supportive educational services resulting in lower student achievement. The result of lower educational quality and exclusion from supportive educational services has lasting effects for students later in life. Students who are not in the classroom cannot learn, and this bears out for students who are suspended. Findings show suspended students are more likely to drop out of school, not pursue college, or become involved in the criminal justice system later in life.¹⁴³

Lower student achievement rates also have collateral consequences for other students in the classroom. Exclusionary school discipline has a direct impact on the students who are excluded from the classroom, but also negatively impacts other students who remain in the classroom, called the “innocent bystanders,”¹⁴⁴ indicating there is a change in the educational environment for all students.¹⁴⁵

There is also a social-emotional impact on students who are disciplined for behaviors they could not have predicted would result in discipline. Unpredictable discipline engenders a lack of belonging in students, and these students may determine that the school culture is not supportive of them, so they begin to distance themselves from school conformity resulting in future school discipline and a cyclical response of further lack of belonging.¹⁴⁶ These students eventually drop out of school or face expulsion.

Discipline due to unjust policies and unwelcoming school environments negatively impact LGBTQ+ students, with one 25-year study finding 70% of LGBTQ+ students missed more school days per month due to unwelcoming environments.¹⁴⁷ Yet policy alone is not the issue as students with disabilities have had codified policies and protections in place for decades yet are still disproportionately impacted by exclusionary school discipline.¹⁴⁸

For students with disabilities, supportive school resources as recommended by an Individualized Education Plan (IEP) are costly for schools to implement when funding for such resources is

¹⁴² Prof. Black Testimony, Transcript 1, p. 4.

¹⁴³ Denise Marshall (Director, Council for Parents Attorneys and Advocates, COPAA) Testimony [hereinafter Marshall Testimony], Transcript 1, p. 10.

¹⁴⁴ Prof. Black Testimony, Transcript 1, p. 5.

¹⁴⁵ Ibid.

¹⁴⁶ Dr. Nwadike Testimony, Transcript 2, p. 7.

¹⁴⁷ Willingham-Jagers Testimony, Transcript 1, p. 34.

¹⁴⁸ Dr. Nwadike Testimony, Transcript 2, p. 8.

limited and schools are disincentivized to provide these resources.¹⁴⁹ Academic requirements for students are often unachievable for students with disabilities who lack the supportive services and resources to make these requirements attainable. The students become frustrated and exhibit non-compliant behavior resulting in disciplinary actions.¹⁵⁰

Frequently, the allocation of these supportive resources is divided by race, where schools in responding to problem behaviors in children, are more likely to medicalize those problem behaviors in white students and criminalize those problem behaviors in students of color.¹⁵¹ Whereas white students tend to receive IEPs and also mental health supports in school, students of color with the same behaviors are more likely to be suspended or expelled from the classroom. Suspension or expulsion results not just in these students not receiving any supportive services in the classroom but also results in a greater likelihood of involvement in the criminal justice system and not receiving mental health care as adults.¹⁵² Criminalized responses to problem behavior leads to the school-to-prison pipeline.¹⁵³

Higher suspension rates and exclusionary school discipline can inevitably lead to higher dropout rates and later-life consequences resulting in criminal justice involvement, low earning potential, and shorter life spans. Economics and education professor, Henry Levin, noted, “If we were to increase the high school completion rate by just 1 percent for all men 20 to 60, it could save the U.S. up to 1.4 billion a year and reduce costs from crime alone. And that’s just a 1 percent improvement.”¹⁵⁴ Students who are excluded from school, drop out because of exclusionary discipline, or enter the school-to-prison pipeline face wider gaps in wage attainment later in life. A 2019 report by the United States Bureau of Labor Statistics looked at wage earning gaps for workers who dropped out of high school compared with those who remained. Workers without a high school diploma earned on average \$606 weekly compared to \$749 in weekly earnings for workers with a high school diploma,¹⁵⁵ indicating tangible decreased earnings for students as adults who did not complete school.¹⁵⁶ Also quantifiable is life expectancy for students with and without a high school diploma. Students who drop out or leave school prior to earning their high school diploma have, on average, a life expectancy that is nine years shorter than high school

¹⁴⁹ Prof. Morgan Testimony, Transcript 2, p. 16.

¹⁵⁰ Marshall Testimony, Transcript 1, p. 11.

¹⁵¹ Prof. Morgan Testimony, Transcript 2, p. 27.

¹⁵² Ibid.

¹⁵³ Dr. Nwadike Testimony, Transcript 2, p. 27.

¹⁵⁴ WNYC. (2005, October 24). *High school dropouts have lower life expectancy: Teachers College Columbia University*. Teachers College – Columbia University. <https://www.tc.columbia.edu/articles/2005/october/high-school-dropouts-have-lower-life-expectancy/>.

¹⁵⁵ Bureau of Labor Statistics, U.S. Department of Labor, The Economics Daily, Median weekly earnings \$606 for high school dropouts, \$1,559 for advanced degree holders at <https://www.bls.gov/opub/ted/2019/median-weekly-earnings-606-for-high-school-dropouts-1559-for-advanced-degree-holders.htm> (visited September 25, 2023).

¹⁵⁶ Dr. Nwadike Testimony, Transcript 2, p. 7.

graduates.¹⁵⁷ All these consequences of early school departure have associated costs impacting the individual and society. Estimates nationally suggest that “each high school dropout costs the United States economy at least \$250,000 over the course of his or her lifetime because of greater reliance on welfare and Medicaid, more criminal activity, poorer health, and lower tax contributions.”¹⁵⁸ Focusing on retention of students in school including through restorative justice practices, creation of student alliances or affinity clubs,¹⁵⁹ and in-school versus exclusionary discipline can have lasting individual and societal benefits.

Finding IV: There are reasonable alternatives to exclusionary discipline.

Exclusionary discipline alienates students from their learning environment, deteriorates student school engagement, self-esteem, and confidence to learn. School become a hostile and cold place for many of the expelled student.¹⁶⁰ Exclusion often make the student feel as if they are the problem. Blaming children and creating fault does not accomplish the state’s goals of creating good citizens and productive members of society.¹⁶¹

Restorative Justice

One reasonable alternative to exclusionary discipline is restorative justice, which one study defines as follows:

Restorative justice ... is a broad term that encompasses a growing social movement to institutionalize non-punitive, relationship-centered approaches for avoiding and addressing harm, responding to violations of legal and human rights, and collaboratively solving problems. Restorative justice has been used extensively both as a means to divert people from traditional justice systems and as a program for convicted offenders already supervised by the adult or juvenile justice system.¹⁶²

¹⁵⁷ WNYC. (2005, October 24). *High school dropouts have lower life expectancy: Teachers College Columbia University*. Teachers College – Columbia University, at: <https://www.tc.columbia.edu/articles/2005/october/high-school-dropouts-have-lower-life-expectancy/>.

¹⁵⁸ Lansford, Jennifer E et al. “A Public Health Perspective on School Dropout and Adult Outcomes: A Prospective Study of Risk and Protective Factors From Age 5 to 27 Years.” *The Journal of Adolescent Health: Official publication of the Society for Adolescent Medicine* vol. 58,6 (2016), pp. 652-8. doi:10.1016/j.jadohealth.2016.01.014.

¹⁵⁹ J. Smith Testimony, Transcript 7, pp. 2-3.

¹⁶⁰ Cathy Grewe (Student Services Coordinator at Wood County Schools, and Member of the West Virginia Restorative Justice Project) Testimony [hereinafter Grew Testimony, Transcript 4, p. 12.

¹⁶¹ Ibid.

¹⁶² Trevor Fronius, Sean Darling-Hammond, Hannah Persson, Sarah Guckenburg, Nancy Hurley, Anthony Petrosino. Restorative Justice in U.S. Schools: An Update Research Review, Justice and Prevention Research Center, March 2019, p. 1, at: <https://files.eric.ed.gov/fulltext/ED595733.pdf>.

A restorative justice model that incorporates social-emotional learning, trauma-informed practices and specific professional development for educators offers promise as an alternative to exclusionary discipline.

In a school setting, restorative justice is student-centered and develops from a changed mindset that looks at children's needs rather than their behaviors. Restorative justice keeps students in the public school—the place that the state created for student learning—rather than excluding them because exclusion hurts educational outcomes by denying the student that public space for learning. In-school restorative practices build relationships among students, staff, and other school officials; encourage better behaviors; and strengthen student connections by repairing damaged relationships.¹⁶³

Restorative justice is designed to address harm in a way that teaches the students to address the impact of harm caused and provide an alternative mechanism to address that harm.”¹⁶⁴ In contrast to non-restorative practices, restorative justice teaches students to manage harm and its impact by providing an alternative mechanism to address that harm.¹⁶⁵ Restorative justice thereby creates a disciplinary policy that is designed to heal the student who is the subject of the discipline rather than making them feel as if they are the cause of classroom problems. Restorative justice is, therefore, “a healing process.”¹⁶⁶ In the context of marginalized students, it is also “a redirection process and it is hard to operationalize without the acknowledgement that biases exist, and I must keep this kid in the room.”¹⁶⁷

Fundamentally, restorative practices begin with a new mindset. While the old mindset of exclusionary punishment is about punishing students into compliance, it actually produces the opposite results—defiance and opposition. Exclusionary punishment exacerbates students' adverse experiences and therefore results in worse behavior. Students are left feeling unwanted. Because there are no bad—only *wounded* children—the mindset of a restorative justice model is healing and nurturing with a focus on the children's needs rather than their behaviors. By responding to students' needs, restorative justice helps establish strong trusting relationships where students feel emotionally safe and supported.¹⁶⁸

For children to flourish, they must experience a sense of belonging and feel connected as a valuable member of the learning community. Restorative justice teaches and reinforces social-emotional skills and promotes self-regulation. Moreover, restorative practices address more than discipline. They help students connect with staff and each other. Students participate in community circles where all students have a voice and focus on relationships and respect,

¹⁶³ Grewe Testimony, Transcript 4, p. 12.

¹⁶⁴ J. Smith Testimony, Transcript 7, pp. 13-14.

¹⁶⁵ Ibid.

¹⁶⁶ Dr. Nwadike Testimony, Transcript 2, p. 26.

¹⁶⁷ Ibid.

¹⁶⁸ Grewe Testimony, Transcript 4, p. 12.

resulting in less bullying and increased empathy among students. An important aspect of restorative justice is to teach behavior as a part of what students learn, as good behavior is a skill that must be taught rather than expected and then disciplined when good behavior is lacking.¹⁶⁹

While the particular details of a restorative justice program may vary among schools, certain elements of a successful program include:

Community Circles. Children have an opportunity to share things about themselves. If issues in the classroom exist, they can be talked about within that circle. Ideally the circle teaches students to value each other and support each other. Empathy is taught and other social-emotional skills are embedded in the community circles.¹⁷⁰

Restorative Conversations. When a student is disruptive, the first step of action is for the teacher to take the child aside at some point and have a conversation, such as: “I feel such and such when you yell out in class.” The student and teacher can then talk through the issue and set goals for the student to improve.¹⁷¹

Restorative Conferences. Where a student is really struggling and must be disciplined, those issues are discussed in a restorative conference. In place of out-of-school suspension, the student will have in-school suspension with a restorative circle where students must be accountable for their actions and take responsibility.¹⁷²

When a child is seriously disciplined, such as being suspended for a couple of days or worse, there is not just a conversation with that student but a conference with the child, the parents, advocates, and supportive teachers who would speak on what they believed happened in the whole situation and where every person gets one voice. During this conference, the actors express positive things about the child and develop a plan of action with set goals. This helps both the victims and the offender because the latter receives the message that they can do better but are still loved, respected, and valued.¹⁷³

Empathy mapping. The student and teacher identify goals for the class, discuss what previous teachers have experienced, and identify what the student is bringing to the classroom. The important part of the empathy mapping process is that the student also knows what the schools and educators think about them.¹⁷⁴

¹⁶⁹ Ibid.

¹⁷⁰ Ibid., p. 23.

¹⁷¹ Ibid.

¹⁷² Ibid., p. 23.

¹⁷³ Ibid., p. 22.

¹⁷⁴ Dr. Nwadike Testimony, Transcript 2, p. 25.

Trauma-informed Practices

Included in a robust and successful restorative justice program is the application of trauma-informed practices. It is imperative that educators be trained in trauma-informed practices including an awareness of the adverse childhood experiences students have experienced. Along these lines, panelist Dr. Shanequa Smith, PhD, Founder of Restorative Actions, Charleston, WV, defines an adverse childhood experience (ACE) as an experience that a person has before the age of 18 that impacts the cognitive part of the brain and can adversely affect development and academic functioning if not addressed.¹⁷⁵ The earlier a child encounters these ACEs, the more devastating and the more long-term the effects can be. However, students can recover and become functioning persons, but it takes serious intervention and support that begins with the recognition of the ACE.¹⁷⁶

Society has changed, families are struggling with poverty, neglect, abuse, parental incarcerations, addictions, mental health issues, and parental loss are adverse conditions that are increasing at alarming rates.¹⁷⁷ Children are regularly experiencing varying degrees of trauma and students cannot choose the life circumstances in which they are born, so we must stop punishing our students for these unchosen circumstances. Exclusionary disciplinary practices do just that; they are especially discriminatory towards students who are affected by trauma and students with disabilities.¹⁷⁸

Institutions that make decisions affecting children's well-being must be trauma-informed and understand restorative practices. Otherwise, the institutions risk exacerbating challenges within our vulnerable student populations. Restorative practices inform decision-makers on what can be done to foster better behaviors, improve attendance, and increase graduation rates. Schools must mandate positive behavior practices rather than punitive practices and support staff so that they can better support struggling students, including all staff being trained in trauma-sensitive schools as well as restorative practices.¹⁷⁹

Many schools suffer from a lack of resources and training and, therefore, do not have enough support for students. Panelist Teresa McCune, Senior Counsel, Public Defender 30th Judicial Circuit, Charleston, WV, recommends a "counseling not criminalization" approach and cites a specific support for students are more counselors for children to simply talk to when they have a problem.¹⁸⁰ This is particularly important because many teachers and administrators, due to a

¹⁷⁵ J. Smith Testimony, Transcript 7, pp. 12-13.

¹⁷⁶ Rev. Watts Testimony, Transcript 3, p. 13.

¹⁷⁷ Grewe Testimony, Transcript 4, p. 12.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid., pp. 11-13.

¹⁸⁰ McCune Testimony, Transcript 3, p. 6.

lack of training, do not know the best ways to handle conflicts, so they punish children instead of helping them.¹⁸¹

Cultural Competence

A meaningful restorative program requires educators to receive specific and ongoing training on not only trauma-informed practices but also cultural competence and the elimination of bias. Professional development and training for all public education staff on implicit biases against Black students, LGBTQ+ students, and students with disabilities is essential.¹⁸²

According to Dr. Nwadike, obtaining cultural competence takes three steps. First, the school official or other adult must engage in a personal cultural self-assessment, including examining their own oppressions, biases, and privileges. Second, the adult must become proficient in the ethnography of the students they will be working with from a cultural relativist perspective. This means identifying who those students are, studying what their cultural norms look like, and learning not to compare those norms with the adult's own cultural norms. Third, the adult must engage in an intercultural exchange where they learn to communicate with and interpret students whose behaviors are different from their own. For example, a teacher must address ideological differences they may have and how those ideologies show up in the classroom.¹⁸³

Citing her own experience, Dr. Nwadike further testified that cultural differences are more qualitatively understood, as opposed to quantitatively understood. She added “that many Black cultures use loudness to communicate, and the loudest person takes the floor. This contrasts with expected behavior in classrooms, in which you raise your hand before speaking. A non-Black teacher, as well as school policies, could label this as her having no classroom management.”¹⁸⁴ This reality highlights the importance of acknowledging the cultural relevance of how certain students interact that proper cultural competency training can address. More often than not, when Dr. Nwadike was a teacher, how she ran her classroom was against school policy. She acknowledged the cultural element in that classroom, she let her kids act up, walk around the room, and sit at her desk. Moreover, these actions should not have been against school policies¹⁸⁵.

Panelist Marshall includes bias training as part of a larger restorative justice model and points out other states have found success with restorative justice models that emphasize relationship building, involves students in problem solving, and includes families in the process.

¹⁸¹ Ibid.

¹⁸² Kerner Testimony, Transcript 5, p. 10; Dr. Nwadike Testimony, Transcript 2, p. 10; Young Testimony, Transcript 4, p. 17.

¹⁸³ Dr. Nwadike Testimony, Transcript 2, pp. 9-10.

¹⁸⁴ Ibid., pp. 22-23.

¹⁸⁵ Ibid., pp. 22-23.

Additionally, new staff and new tools, such as assessing where students are provides evidence that we need to move away from punitive practices and move towards positive approaches based in restorative justice.¹⁸⁶

Recommendations

Among their duties, advisory committees to the Commission are authorized to: (1) advise the Commission concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the federal government with respect to equal protection of the laws, and (2) initiate and forward advice and recommendations to the Commission upon matters that the Advisory Committee has examined.¹⁸⁷

The Committee offers the following recommendations, including necessary resources and training that it believes will help eliminate and/or reduce exclusionary and punitive disciplinary policies, practices, procedures that may impact students of color, students with disabilities and LGBTQ+ students and promote an improved learning environments in West Virginia's public schools.

Recommendation 1: As a matter of school-level policy, educators should reduce reliance on exclusionary discipline for relatively minor disruptive behavior.

Recommendation 1a: Reduce the use of exclusionary discipline.

Most experts testifying before the Committee discussed the need to reduce the use of exclusionary discipline—suspensions and expulsions, as well as the use of restraints and seclusion within the school building—particularly for minor infractions or infractions that do not involve violence or drugs. Eliminating or severely restricting exclusionary school discipline can be achieved by policy changes at the school, district, and state levels.

Recommendation 1b: Eliminate zero-tolerance policies that require exclusionary discipline for infractions without considering context or trauma.

The state legislature and the state Board of Education should consider eliminating zero-tolerance policies, which require exclusionary discipline for certain infractions without allowing for consideration of the context of the infraction or the trauma to the child that will result. Such zero-tolerance policies have not been shown to be effective at reducing negative behaviors but do substantially increase the time students spend out of the school environment.¹⁸⁸ Moreover, zero-tolerance policies can have a disparate impact on students of color who, after being subjected to

¹⁸⁶ Marshall Testimony, Transcript 1, p. 36.

¹⁸⁷ 45 C.F.R. § 703.2.

¹⁸⁸ McCune Testimony, Transcript 3, p. 6.

racist slurs, often receive little to no help from the school administration but are then suspended when resorting to fighting as a means of managing the situation.¹⁸⁹

Recommendation 1c: Prevent or limit school bus exclusions.

In limiting or ending exclusionary discipline policies, the state legislature and state board of education should include policies preventing or limiting the exclusion of children from school buses. Bus removals are common and can result in children not being able to get to school, thus creating a de facto out-of-school suspension.¹⁹⁰

Recommendation 1d: Conduct student assistance team meetings for behavioral intervention and provide children with access to advocates.

For students with disabilities, schools should conduct meaningful Student Assistance Team meetings regarding children who need any level of behavioral intervention, as well as meaningful manifestation determinations for students with IEP or 504 plans,¹⁹¹ prior to implementing exclusionary discipline. We agree with Panelist McCune that to make these meetings and determinations more meaningful, parents should have access to an advocate or attorney to represent the child and their needs.¹⁹² While manifestation determinations are required after ten days of school removals, nothing prevents a school from holding such a meeting before any removals, and the State Board of Education along with county Boards of Education should encourage local schools to do so.

Recommendation 1e: Convene West Virginia legislative public hearings on exclusionary discipline with an eye toward reconsidering HB2890.

Finally, the West Virginia Legislature should convene public hearings on exclusionary school discipline, and reconsider the implications of HB 2890,¹⁹³ passed in the 2023 legislative session, which encourages the use of more exclusionary school discipline.

Recommendation 2: Expand reasonable alternatives to exclusionary discipline.

There are a variety of reasonable alternatives to exclusionary discipline that can assist with cultivating more inclusive policies and practices that influence and guide school discipline in

¹⁸⁹ McCune Ibid., and Young Testimony, Transcript 3, p. 4.

¹⁹⁰ Blaire Malkin (Staff Attorney for Mountain State Justice, Kanawha County, WV) Testimony, Transcript 6, p. 29.

¹⁹¹ An IEP or individualized education program is a written educational plan that is required for all public school students with disabilities and needs special education. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, is a federal law protecting individuals with disabilities from discrimination. For children enrolled in schools that accept federal funding, Section 504 ensures that they are provided with accommodations needed to access their education. Section 504 does not provide special education services, which are governed by the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. For example, a child who uses a wheelchair but who does not need specially designed instruction would not be eligible for an IEP under IDEA but would be entitled to accommodations such as access to a wheelchair ramp, elevator, and accessible restroom under Section 504.

¹⁹² McCune Testimony, Transcript 3, pp. 23-24.

¹⁹³ See W. Va. Legis., *House Bill 2890: Bill Status—2023 Regular Session*, WVLEGISLATURE.GOV, at: https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2890&year=2023&sessiontype=RS, (last visited October 12, 2023).

West Virginia public schools. The state legislature can pass laws to eliminate exclusionary and punitive school disciplinary policies, practices, and procedures, which have a disparate impact on students of color, students with disabilities, and LGBTQ+ students in West Virginia. Moreover, the legislature can allocate funding for school districts to supplement or improve current school disciplinary policies, practices, and procedures that can have a positive impact on children, their families, improved educational outcomes. However, the WV Advisory Committee warns that policy changes alone will not resolve these issues; many issues need to be addressed in the short term and long term for sustained effective, positive change. Below, we discuss each of our recommendations.

Recommendation 2a: Expand reasonable disciplinary interventions as an alternative to suspension.

Given the drawbacks of suspension—primarily that the disciplined students lose valuable in-class instructional time that itself may contribute to cyclical discipline—the Committee recommends expanding the possibilities of reasonable alternative disciplinary interventions for West Virginia K–12 public school students.

Recommendation 2b: Maintain student resource officers as a resource but eliminate them as a routine part of the school discipline process.

While School Resource Officers (SROs) and Prevention Resource Officers (PROs) have been viewed as important resources by some, the panelists agreed that they should not be part of the routine school discipline process and that additional school resources are needed. The Committee believes that school resource officers, in particular, have helped contribute to the increased number of marginalized students¹⁹⁴ who are removed from classrooms, forced to miss critical instructional time, suspended, and criminalized at higher rates than their nonmarginalized peers with little regard to additional factors that may be contributing to behavior challenges in students.

According to the Morgan County Public School Prevention Resource Officers (PRO) the goal of the PRO is to “[b]ridge the gap between education and law enforcement.”¹⁹⁵ Prevention resource officers teach “tolerance” and “equality” as part of “[o]ur daily interactions with students.”¹⁹⁶ He added that the PRO program “focuses on better role models for students, healthy relationships with our youth so they can have someone they can come ask questions and received guidance from when in doubt and when in doubt, of what to do and when situations arise that additional resource may be needed either for the student or at home that refer referrals and direction be provided for their safety.”¹⁹⁷ Corporal Kevin Barney, Prevention Resource Officer (PRO), Morgan County Public Schools also reported that coupling prevention resource officers and school resource officers with law enforcement works if “[t]he people ... make it work.”¹⁹⁸

¹⁹⁴ As used in this report, *marginalized students* include Black and other students of color, students with disabilities and LGBTQ+ students in WV public schools.

¹⁹⁵ Barney Testimony, Transcript 6, p. 2.

¹⁹⁶ Ibid., pp. 3-4.

¹⁹⁷ Ibid., p. 4.

¹⁹⁸ Ibid., p. 4.

Recommendation 2c: Adopt student-centered approach to discipline practices.

The Committee also recommends that the state adopted a student-centered approach¹⁹⁹ to disciplinary practices. If a more student-centered approach to discipline practices and policies were implemented, student behaviors could be addressed at their root cause, and students' individualized needs could be met to improve overall well-being, reduce school disruption, and contribute to change in classroom and school cultures. These needs include but are not limited to mental health, environmental challenges, and psychological assessment of abilities or limited abilities that may be contributing factors to their overall functioning or behaviors.

Recommendation 2d: Incorporate restorative justice.

The Committee recommends that the state adopt and implement restorative justice practices or interventions that build on the collaborative experiences of the disciplinary process among students, faculty, administration, and parents. Restorative justice is a good start because many nonprofits provide free or low-cost training. The Committee agrees that for restorative justice to work, there must be an acknowledgement of bias toward students.²⁰⁰

The restorative justice approach not only incorporates a process, but also asks the following questions: *"How do we bring students into understanding the disciplinary policies? What counts as disciplinary policies? And how can they be part of the system of figuring out how to take agency in their behaviors? So, it's really a student-centered approach to discipline as opposed to the more zero-tolerance approach we have."*²⁰¹ The panelists offered that immediately removing a student from a classroom is not helpful. Instead, a "redirected process" as opposed to "discipline" should be used.²⁰² The educator must utilize "empathy mapping"²⁰³ with students. In-home suspension does not help to improve student behavior. Dr. Nwadike recommended, and we agree, that suspensions should be in-school and that parents should not be blamed. Both Dr. Nwadike and Professor Morgan agreed that when possible, it is important to involve parents in the disciplinary discussion(s).²⁰⁴ Often parents do not know how to manage their child's behavior.²⁰⁵ Bringing parents into the discussion will help parents manage their child, which will in turn reinforce good behavior.

Recommendation 2e: Expand teacher and administrator training in how to discipline.

The Committee further recommends that the state expand teacher and administrator training. In addition to a more student-centered approach to discipline, additional resources and alternatives can be implemented around teachers' and administrators' handling of discipline. These reasonable alternatives can contribute to enhancing and reshaping education and training around teachers' and administrators' ability to manage classroom behaviors, increase cultural competence, and have a positive impact on classroom and school culture.

¹⁹⁹ As used in this report, a student-centered approach is a strategy and/or a method of interaction that emphasizes the student's needs as an individual.

²⁰⁰ Dr. Nwadike Testimony, Panel 2, p. 9.

²⁰¹ Ibid.

²⁰² Ibid., p. 26.

²⁰³ Ibid., pp. 25-26.

²⁰⁴ Prof. Morgan Testimony, Transcript 2, p. 30.

²⁰⁵ Dr. Nwadike Testimony, pp. 9, 34.

Dr. Stacey Sinclair asserted, and we agree, that “exploring strategies to evoke and implement natural pauses between infractions and discipline referrals.”²⁰⁶ As she explained, this not only contributes to the further development of student–teacher relationships but also allows all parties involved time to de-escalate and regulate feelings and emotions prior disciplinary process, which may assist with mitigating implicit or explicit biases.²⁰⁷

Additionally, the Committee concurs with the experts that additional classroom management practices, education and training for teachers and administrators would help mitigate the need for student resource officers but also takes a more individualized approach to in-class discipline.²⁰⁸

Recommendation 2f: West Virginia Department of Education and county school boards should train teachers in de-escalation techniques.

We further recommend that the WVDE and county school boards train teachers in de-escalation techniques. This will help with the problems associated with those teachers who are inappropriately responding to non-serious behaviors.

Recommendation 2g: Provide teacher training in culturally relevant pedagogy.

The Committee also agrees with Dr. Nwadike’s recommendation that teacher training incorporate “culturally relevant pedagogy,”²⁰⁹ which focuses on students’ diverse identities. This also speaks to the hiring of more racially and ethnically diverse teachers, administrators and staff. This recommendation is supported by the empirical literature on “matching,” which explains that when students are being taught by teachers who match their racial identity or other of identities they attain greater academic achievement and display better behavior in class.²¹⁰

Recommendation 2h: West Virginia Department of Education should edit their manuals to make them more user-friendly.

The Committee also recommends that the WVDE edit their manuals so that open-ended or vague terms, and terms with subjective meanings in the WVDE manuals for expected behavior in safe and supportive schools, are defined more clearly and objectively.²¹¹ For example, the terms orderly conduct, inappropriate speech, and inappropriate behavior should be explained clearly and precisely so that they are not subject to the subjective interpretations of individual school officials. Black students and other students of color, students with disabilities, and LGBTQ+ students are particularly vulnerable to biased and harsher interpretations of these terms.

Although the Committee believes that policy, without action, is insufficient to overcome disparate disciplinary treatment between groups, the Committee notes that Panelist Paula Kerner, Program Manager of Fairness WV’s Safe and Healthy Schools Initiative, Charleston, WV,

²⁰⁶ Dr. Sinclair Testimony, Transcript 1, p. 37.

²⁰⁷ Ibid.

²⁰⁸ Prof. Morgan Testimony, Transcript 2, pp. 10, 35.

²⁰⁹ Dr. Nwadike Testimony, Transcript 2, pp. 9-10.

²¹⁰ Prof. Morgan Testimony, Transcript 2, p. 37.

²¹¹ *Notice of Final Filing and Adoption of a Legislative Exempt, Interpretive, or Procedural Rule*, Expected Behaviors in Safe and Supportive Schools Policy 4373, (eFiled, 3/14/2019, with Secretary of State), Effective Date, July 1, 2019, at: <https://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=51038&Format=PDF>

reported that implementation of important policies in the WV Code 18-2C regarding bullying, harassment, and intimidation of students are not a reality for all West Virginia students.²¹²

Recommendation 2i: School officials should use the student’s preferred name and pronouns and identify the underlying issues that are resulting in harassment of LGBTQ+ students.

The Committee agrees with Panelist Kerner’s recommendation that school officials should use the student’s preferred name and pronouns and also identify underlying issues that are resulting in bullying or harassment of LGBTQ+ students. Along these lines, schools should adopt the toolkit dealing with discipline basic principles that Fairness WV developed and hold mandatory teacher training on how to hold discussions with students in a classroom and IEPs regarding sexual harassment. Identifying underlying issues that lead to harassment or bullying is important.

Recommendation 2j: School officials should include parental education and involvement.

The Committee also agrees with the recommendations of Rev. Watts²¹³ and Dr. Smith, Restorative Practitioner and founder of Restorative Actions²¹⁴ that alternative reasonable action should include parental education and involvement.

Recommendation 2k: Concerned citizens should become active in their local school improvement council.

Concerned citizens, including parents, can also be more active in the Local School Improvement Councils (LSIC) to address issues.

Recommendation 2l: Students with IEPs should have access to an advocate.

Students with IEPs, and other students with diverse abilities or disabilities, should have both a school assistance team and a “manifestation determination meeting,” which allows for a volunteer or attorney advocate.²¹⁵

Recommendation 2m: Implement countywide Positive Behavior Interventions and Support (PBIS) programs.

The Committee also recommends that countywide Positive Behavior Interventions and Support (PBIS) programs be implemented fairly and customized to be equitable, so as to track discipline data to identify bias and adjust training on biases found for staff, including social workers, trained paraprofessionals, counselors, and school resource officers.

²¹² Marshall Testimony, Transcript 1, p. 2.

²¹³ Rev. Watts Testimony, Transcript 3, p. 22.

²¹⁴ Dr. Smith, Testimony, Transcript 3, pp. 12, 21, 25, 26, 27.

²¹⁵ Susan Given (Director, Disability Rights of WV, Kanawha County, WV) Testimony, Transcript 6, p. 34.

Recommendation 2n: The state should provide training for invisible disabilities and fund HB 3035.

The Committee further recommends that the state provide training for identifying and understanding invisible disabilities, and fund HB 3035²¹⁶, which provides for additional staffing in elementary school classrooms related to learning disabilities.²¹⁷

Recommendation 2o: School districts and boards should consider ways to diversify faculty within the confines of the law.

School districts and local boards of education should also consider ways in which diversifying faculty populations will help lessen tension thereby creating a lesser need for discipline.

Recommendation 2p: School officials should consider ways to support their diverse student body.

School districts and boards should consider ways to support their diverse student body. For example, allowing on-campus clubs, such as Gay Student Alliances and Black and Hispanic Alliances. School officials could also assist students from marginalized identities to create a sense of community and provides a safe space for students to address issues relevant to them. Similarly, as discussed above, recruiting teachers who are themselves from marginalized groups, e.g., LGBTQ+, non-white, and/or person with a disability, would allow students to witness an authority figure that looks like them. This could facilitate more open interaction between students and school officials. Along these lines, faculty members and administrators should be trained to approach students with empathy and compassion to help build those positive relationships.

Recommendation 2q: Long-term recommendations.

The Committee also recommends longer-term solutions. Incentivizing more people from marginalized groups to become teachers should ultimately reduce tensions and therefore reduce the need for discipline. Moreover, if local communities were to hold sessions on the impact certain words can have on the development of children's psyche, parents and other community members could reinforce these values at home.

Recommendation 3: Improve student well-being and mental health.

The Committee recommends that West Virginia schools:

- a) at all levels be educated about the potential negative consequences of the new West Virginia Code § 18A-5-1;²¹⁸
- b) aggressively apply for new mental health grant funding; and
- c) consider implementing the National Association of State Boards of Education (NASBE) and American Academy of Pediatrics (AAP) Building Bridges for Student Mental Health.

²¹⁶ H.B. 3035, 86th Leg., Reg. Sess. (W. Va. 2023).

https://www.wvlegislature.gov/bill_status/bills_text.cfm?billdoc=hb3035%20sub%20enr.htm&yr=2023&sesstype=RS&billtype=B&houseorig=H&i=3035

²¹⁷ Malkin Testimony, Transcript 6, p. 34.

²¹⁸ W. Va. Code § 18A-5-1 (2023).

West Virginia students generally report that their well-being and mental health are worse than the average U.S. student. According to a National Center on Safe Supportive Learning Environments (NCSSLE)²¹⁹ analysis of U.S. Center for Disease Control and Prevention (CDC) data, more West Virginia students than the national average reported in 2009, 2015, 2017, 2019, and 2021 that they seriously considered attempting suicide;²²⁰ in 2009, 2013, 2015, 2017, 2019, and 2021 that they were bullied on school property;²²¹ and in 2021 that their mental health was most of the time or always not good.²²² As previously discussed, suspensions, expulsions, and other school discipline can further negatively impact West Virginia student well-being and mental health.²²³ With these considerations in mind, each recommendation is considered in more detail below.

Recommendation 3a: Educate school officials, parents, and state officials on the potential negative impact of new West Virginia code § 18a-5-1 on student mental health and well-being identified by the West Virginia Dept. of Education.

Section 18A-5-1 of the West Virginia Code went into effect on June 9, 2023.²²⁴ According to *The Intelligencer*, House Majority Whip Marty Gearheart (R-Mercer), lead sponsor of the legislation, explained that the new law was intended to be “about rights and responsibilities” by specifying that West Virginia students “have a responsibility to behave in a classroom so as not to deny others from receiving that education . . . you can’t be a participant in class if you’re going to constantly disrupt it.”²²⁵

The new law authorizes a teacher to “exclude from his or her classroom or school bus any student who:

- “is guilty of disorderly conduct;”
- “in any manner interferes with an orderly educational process;”
- “behaves in a manner that obstructs the teaching and learning process of others in the classroom;”
- “threatens, abuses or otherwise intimidates or attempts to intimidate a school employee or a student;”
- “willfully disobeys a school employee; or”

²¹⁹ The NCSSLE is funded by the U.S. Department of Education, Office of Elementary and Secondary School’s Office of Safe and Supportive Schools. NCSSLE, *About the National Center on Safe Supportive Learning Environments (NCSSLE)*, at: <https://safesupportivelearning.ed.gov/about>.

²²⁰ NCSSLE, State Profiles > West Virginia > Selected Indicators > Indicator 4: *Seriously Considered Attempting Suicide*, at: <https://safesupportivelearning.ed.gov/state-profiles/west-virginia>.

²²¹ NCSSLE, State Profiles > West Virginia > Selected Indicators > Indicator 5: *Bullied on School Property*, at: <https://safesupportivelearning.ed.gov/state-profiles/west-virginia>.

²²² NCSSLE, State Profiles > West Virginia > Selected Indicators > Indicator 6: *Reported That Their Mental Health Was Most of the Time or Always Not Good*, at: <https://safesupportivelearning.ed.gov/state-profiles/west-virginia>.

²²³ For further discussion, see *supra* Parts 1-3.

²²⁴ See W. Va. Legis., *House Bill 2890: Bill Status—2023 Regular Session*, WVLEGISLATURE.GOV, at: https://www.wvlegislature.gov/Bill_Status/bills_history.cfm?INPUT=2890&year=2023&sessiontype=RS (last visited October 12, 2023).

²²⁵ Steven Allen Adams, *West Virginia House of Delegates Passes Student Discipline Bill*, INTELLIGENCER (Feb. 1, 2023), at: <https://www.theintelligencer.net/news/top-headlines/2023/02/west-virginia-house-of-delegates-passes-student-discipline-bill/> (quoting House Majority Whip Gearheart).

- “uses abusive or profane language directed at a school employee.”²²⁶

The new law may create serious consequences for students. If a grade 6–12 teacher determines that a student has committed the first three offenses—disorderly conduct, interfering with an orderly educational process, or obstructing the teaching or learning process with others—then the following occurs: the student cannot return to the teacher’s classroom until the next instructional day, the principal must discuss the exclusion with the teacher within 24 hours, and the teacher must create an electronic record of the exclusion into the West Virginia Education Information System (WVEIS).²²⁷ If a student is “removed from a classroom a total of three times in one month” for one of the above offenses, “the student shall receive as determined by the principal an in-school suspension, an out-of-school suspension, or may be considered for placement in an alternative learning center if one is available within the school district.”²²⁸

In the new law, the West Virginia Legislature also made the following two relevant findings: (1) “isolating students or placing them in alternative learning centers may be the best setting for chronically disruptive students”; and (2) “suspension from school is not appropriate solely for a student’s failure to attend class.”²²⁹ Although the Committee considers the second finding well-founded, the first finding is excessively punitive and contrary to the evolving body of research indicating that excluding students from mainstream classroom learning is counterproductive. As WBOY News 12 reported, Monongalia County Public Schools Superintendent Eddie Campbell echoed this research consensus when in response to the law he commented that West Virginia schools need to find ways to support students with behavioral problems to keep them in the classroom so they can continue to learn:

We need to keep our kids in the classroom, if at all possible. [They] can’t learn, we can’t provide instruction to our kids if they’re sitting in school suspension or they’re down in the principal’s office or they’re sent home because they’re having behavioral issues. We have to find ways to support kids who are having those emotional problems and find ways to be able to keep them in the classroom.²³⁰

Campbell added that implementing a tiered support system like the one already in their district for academically struggling students could lessen the new law’s negative impact on students.²³¹

²²⁶ W. VA. CODE § 18A-5-1 (2023).

²²⁷ W. VA. CODE § 18A-5-1 (2023).

²²⁸ W. VA. CODE § 18A-5-1 (2023).

²²⁹ W. VA. CODE § 18A-5-1 (2023).

²³⁰ Jalyn Lamp, *What Administrators Think of West Virginia’s ‘3 Strike’ Student Suspension Law*, WBOY.COM (Sept. 18, 2023), at: <https://www.wboy.com/news/education/what-administrators-think-of-west-virginias-3-strike-student-suspension-law/> (quoting Superintendent Campbell).

²³¹ See Jalyn Lamp, *What Administrators Think of West Virginia’s ‘3 Strike’ Student Suspension Law*, WBOY.COM (Sept. 18, 2023), at: <https://www.wboy.com/news/education/what-administrators-think-of-west-virginias-3-strike-student-suspension-law/>.

At least one West Virginia legislator²³² has publicly stated that he believes § 18A-5-1 conflicts with the federal Individuals with Disabilities in Education Act (IDEA).²³³

According to media reports, the WVDE has cautioned against the apparently broad discretion individual schoolteachers have in excluding students under the new law. As *West Virginia Metro News* reported, West Virginia Board of Education President Paul Hardesty told Board members at a September 2023 meeting that the new law “was a train wreck waiting to happen.”²³⁴ As reported, Hardesty disagreed with the law allowing student removal “as determined by the teacher” because some teachers might not be properly trained to handle student discipline problems appropriately:

We take a long-term sub [who has no training] and put them in a classroom . . . and now give them the capacity to basically, and I hate to use the word for the legal term, become arbitrary and capricious in their actions for a child to get kicked out of school. It may be well-intended, but you’re not hitting what you’re shooting at.²³⁵

West Virginia Watch reported Hardesty as adding, “It could include a failure to bring a pencil to class . . . Stay tuned. This is not good.”²³⁶ The *Parkersburg News and Sentinel* reported that WVDE Director of Instructional Leadership and School Improvement Drew McClanahan said that the new law “gives every decision ability to the teacher regardless of what is in policy or in [the West Virginia] Code.” McClanahan added, “There is no definition for what disruptive or disrespectful conduct pursuant to this particular bill is.”²³⁷

Based on these public statements, the Committee agrees with the Board of Education and Department of Education that § 18A-5-1 not only makes it more possible for individual teachers to punish students arbitrarily and unfairly but also is overbroad and unclear in defining what student conduct can lead to classroom exclusion. As previously discussed, such excessive discretion could allow an implicitly biased teacher to discipline students unfairly.²³⁸ Excluding students from the classroom for potentially minor offenses can also be excessively costly to that

²³² WSAZ News Channel 3 quoted West Virginia House Education Committee Minority Chairman Delegate Sean Hornbuckle (D-Cabell) as saying, “I still believe [the new law] is in conflict with the federal code of individuals with disabilities education act.” Curtis Johnson, *Lawmakers Pass School Discipline Bill*, WSAZ.COM (Mar. 12, 2023), at: <https://www.wsaz.com/2023/03/12/lawmakers-pass-school-discipline-bill/>.

²³³ 20 U.S.C. § 1400 *et seq.*

²³⁴ Carrie Hodousek, *State BOE President Says New Student Suspension Law Is ‘a Train Wreck Waiting to Happen’*, W. VA. METRO NEWS (Sept. 17, 2023, 4:14 PM EST), at: <https://wvmetronews.com/2023/09/17/state-boe-president-says-new-student-suspension-law-is-a-train-wreck-waiting-to-happen/>.

²³⁵ Carrie Hodousek, *State BOE President Says New Student Suspension Law Is ‘a Train Wreck Waiting to Happen’*, W. VA. METRO NEWS (Sept. 17, 2023, 4:14 PM EST), at: <https://wvmetronews.com/2023/09/17/state-boe-president-says-new-student-suspension-law-is-a-train-wreck-waiting-to-happen/>.

²³⁶ Amelia Ferrell Knisely, *‘A Trainwreck Waiting to Happen.’ Board Worries New School Discipline Bill Lacks Guardrails*, W. VA. WATCH (Sept. 14, 2023, 6 AM EST), at: <https://westvirginiawatch.com/2023/09/14/a-trainwreck-waiting-to-happen-board-worries-new-school-discipline-bill-lacks-guardrails/>.

²³⁷ Steven Allen Adams, *Concerns Raised over W.Va. Legislature’s School Discipline Bill*, PARKERSBURG NEWS & SENTINEL (Sept. 14, 2023), at: <https://www.newsandsentinel.com/news/local-news/2023/09/concerns-raised-over-w-va-legislatures-school-discipline-bill/>.

²³⁸ For further discussion, see *supra* Part 2.

student's academic achievement, mental health, and well-being.²³⁹ Finally, there are less costly reasonable alternatives that can nevertheless promote student safety and learning.²⁴⁰

Ensuring that § 18A-5-1 does not further exacerbate already disproportionate student discipline rates or, even worse, cause avoidable yet lasting socio-emotional harm to students, will require a careful, coordinated education campaign among West Virginia teachers, school administrators, parents, and public officials at all levels.

Recommendation 3b: Seek funding from new grant opportunities like the Bipartisan Safer Communities Act (BSCA) of 2022 to increase the number of mental health professionals in schools and implement restorative justice student disciplinary training and practices.

The WVDE should aggressively apply to new funding opportunities like the Bipartisan Safer Communities Act (BSCA)²⁴¹ to get more mental health professionals in West Virginia schools and implement more restorative justice best practices²⁴² in its student discipline training and policies.²⁴³ We base this recommendation in part on our experience with the COVID-19 pandemic. Perhaps one of the few positive benefits of the pandemic was increased awareness (and funding) for student mental health services.²⁴⁴ In October 2021, the American Academy of Pediatrics (AAP), the American Academy of Child and Adolescent Psychiatry, and the Children's Hospital Association declared a National State of Emergency in Children's Mental Health.²⁴⁵ In December 2021, the U.S. Surgeon General issued an Advisory on protecting youth mental health.²⁴⁶

Recommendation 3c: Consider partnering with universities to apply for these grants.

Along these lines, the WVDE could partner or coordinate with West Virginia universities to apply for a MHSP grant to increase the number of mental health professionals in West Virginia schools. For example, in 2022, the Office of Elementary and Secondary Education, U.S. Department of Education, announced a Mental Health Service Professional (MHSP)

²³⁹ For further discussion, see *supra* Part 3.

²⁴⁰ For further discussion, see *supra* Part 4.

²⁴¹ Bipartisan Safer Communities Act, Pub. L. No. 117-159, 136 Stat. 1313 (2022).

²⁴² For further discussion, see *supra* Part 4.

²⁴³ The WVDE has a proven track record for obtaining mental-health grants. In 2010, the WVDE received a Safe Supportive Schools (S3) grant. NCSSLE, *Safe and Supportive School (S3) Grants*, at: <https://safesupportivelearning.ed.gov/state-grantees/safe-and-supportive-school-s3-grants>. In 2014, the WVDE received a Project AWARE grant through President Obama's Now Is the Time Initiative to "1) train adults on responding to mental health issues when interacting with school-aged youth, 2) connect children, youth, and families who required support to appropriate mental health services, and 3) implement Mental Health First Aid and Youth Mental Health First Aid in State and local training programs." NCSSLE, *State Profiles > West Virginia > Selected Indicators > Grants Received > Project AWARE*, at: <https://safesupportivelearning.ed.gov/state-profiles/west-virginia>.

²⁴⁴ See *supra* Note 137; see also, Statement submitted for August 26, 2021 Briefing, pp. 1-5 (citing COPAA Report, *The Crisis of Trauma and Abuse in Our Nation's Schools*, 2020), at: https://cdn.ymaws.com/www.copaa.org/resource/resmgr/docs/2020_docs/restraint_and_seclusion_pape.pdf.

²⁴⁵ AAP, *AAP-AACAP-CHA Declaration of a National Emergency in Child and Adolescent Mental Health*, AAP.org (Oct. 19, 2021), at: <https://www.aap.org/en/advocacy/child-and-adolescent-healthy-mental-development/aap-aacap-cha-declaration-of-a-national-emergency-in-child-and-adolescent-mental-health/>.

²⁴⁶ U.S. SURGEON GENERAL, *PROTECTING YOUTH MENTAL HEALTH: THE U.S. SURGEON GENERAL'S ADVISORY* (2021), at: <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>.

Demonstration Grant Program “to support and demonstrate innovative partnerships to train school-based mental health services providers . . . for employment in schools and local educational agencies.”²⁴⁷ In 2022, Alabama State University, Auburn University, and Troy University received MHSP grants.²⁴⁸ In 2023, the University of Alabama received a MHSP grant.

Recommendation 3d: Evaluate the National Association of State Boards of Education (NASBE) and American Academy of Pediatrics (AAP) Building Bridges for Student Mental Health best practices for multidisciplinary relationships between educators, medical experts, and families to improve student mental health.

As a member of the National Association of State Boards of Education (NASBE),²⁴⁹ the West Virginia Board of Education can also receive training and technical assistance from NASBE on its innovative school mental health initiatives. The NASBE has identified six foundational questions the Board of Education can ask about student mental health in West Virginia:

1. What existing policies, services, and funding streams address student mental health in our state?
2. What is the state of our students’ mental health, and are there subgroup differences?
3. What partnerships can our Board build?
4. What mental health education do students receive?
5. How is our state building adult capacity to support student mental health?
6. What is our Board doing to eliminate stigma and public misunderstanding about mental health?²⁵⁰

As WVDE’s mental health trainer and subject-matter expert, Marshall University’s Behavior/Mental Health Technical Assistance Center²⁵¹ could take the lead in assessing such innovative mental health school initiatives.

In particular, the NASBE has partnered with the American Academy of Pediatrics through their Building Bridges for Student Mental Health joint initiative to “establish[] and enhance[] productive, collaborative, and trustworthy relationships between state education leaders, medical experts, and families to improve student mental health.”²⁵² Like Illinois, Maryland, Texas, and Utah, the Board of Education can “participate in convenings and professional development and

²⁴⁷ Applications for New Awards; Mental Health Service Professional Demonstration Grant Program, 87 Fed. Reg. 72976, 72976-72883 (Nov. 28, 2022), at: <https://www.federalregister.gov/documents/2022/11/28/2022-25824/applications-for-new-awards-mental-health-service-professional-demonstration-grant-program>.

²⁴⁸ NCSSLE, State Profiles > West Virginia > Grants Received > Institution of Higher Education > *Mental Health Professional Demonstration*, at: <https://safesupportivelearning.ed.gov/state-profiles/west-virginia>.

²⁴⁹ See NASBE, *Our Members*, at: <https://www.nasbe.org/members/> (showing West Virginia as a member of the NASBE’s Southern Region).

²⁵⁰ Megan Blanco, “Six Questions State Boards Should Ask about Student Mental Health,” *Power of the Question* 5, no. 3 (Dec. 2021), at: <https://www.nasbe.org/six-questions-state-boards-should-ask-about-student-mental-health/>.

²⁵¹ See Marshall University, *Behavior and Mental Health TAC*, MARSHALL.EDU, <https://www.marshall.edu/bmhtac/> (last visited Oct. 20, 2023).

²⁵² NASBE, *Building Bridges for Student Mental Health*, NASBE.org, at: <https://www.nasbe.org/building-bridges-for-student-mental-health/#:~:text=Building%20Bridges%20for%20Student%20Mental%20Health%20is%20a%20joint%20initiative,between%20state%20education%20leaders%2C%20medical> (last visited Oct. 15, 2023).

receive ongoing technical assistance, and connection to subject-matter experts on effective parent and family engagement strategies to help formulate an action plan”²⁵³ in West Virginia.

Recommendation 4: Collect more robust and verified student discipline data, including data that captures intersectional identities such as race, LGBTQ+ status, and disability. Ensure data is up to date and available on a user-friendly public website.

All West Virginia schools should:

- a) build on the promising legislative framework to implement practical, data-driven plans that actually reduce school discipline disparities;
- b) implement school discipline data best practices as reported in the WVDE’s 2013 and 2015 reports; and
- c) make sure that school discipline data captures voluntarily reported LGBTQ+ student identity and can be used to hold individual teachers and principals accountable.

Our recommendation is based on a consideration that there is a well-established consensus that racial minority and LGBTQ+ public school students in West Virginia²⁵⁴ and the United States²⁵⁵ are disproportionately disciplined; therefore, timely and accurate student discipline data are especially critical to measure progress and maintain accountability.²⁵⁶ Moreover, such data ultimately must be a means to ends and not the ends in themselves. Although West Virginia has established a legislative framework with potential to encourage transparency and accountability²⁵⁷ and has recently released a new publicly available school discipline data dashboard,²⁵⁸ it is too early to tell whether this framework and new dashboard will result in constructive progress. In particular, the legislatively mandated school discipline data have only been reported for two years²⁵⁹ and still exclude LGBTQ+ information.²⁶⁰ Most importantly, the only legislatively required WVDE statewide plan to address such data remains incomplete and, to the best of the Committee’s knowledge, has been neither disseminated nor coordinated to the individual school level.²⁶¹

Each of these recommendations is taken in turn and discussed in more detail below.

²⁵³ NASBE, *Building Bridges for Student Mental Health*, NASBE.org, at: <https://www.nasbe.org/building-bridges-for-student-mental-health/#:~:text=Building%20Bridges%20for%20Student%20Mental%20Health%20is%20a%20joint%20initiative,between%20state%20education%20leaders%2C%20medical> (last visited Oct. 15, 2023).

²⁵⁴ For further discussion, see *supra* Introduction—The State Perspective.

²⁵⁵ For further discussion, see *supra*, Introduction—USCCR Review of School Discipline at the National Level.

²⁵⁶ *See ANDY WHISMAN & DON CHAPMAN, IMPROVING SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2012-2013 SCHOOL YEAR vii (WVDE Dec. 2013) (stressing the critical need for accurate data reporting to ensure data-driven policy and accountability).

²⁵⁷ For further discussion, see *infra*, Part 3.a. concerning W. VA. CODE §§ 29A-31-11, 18-2-43.

²⁵⁸ See WVDE, *Discipline*, ZOOMWV.K12.WV.US, at: <https://zoomwv.k12.wv.us/Dashboard/dashboard/28497>. The new Discipline Dashboard was publicly released at a September 13, 2023, WVBE meeting. See Chris Schulz, *Board of Education Hears Updates on School Discipline*, WVPUBLIC.ORG (Sept. 13, 2023 4:45 PM EST) (linking WVDE Discipline Dashboard website).

²⁵⁹ For further discussion, see *infra* Part 3.a.

²⁶⁰ For further discussion, see *infra* Part 3.b.

²⁶¹ For further discussion, see *infra* Part 3.a.

Recommendation 4a. Build on the promising statutory structure of West Virginia Code § 18-2-43 (“Addressing Disciplinary Action in West Virginia Schools”) to collect data and implement evidence-based plans to reduce significantly the undisputed overrepresentation of minority and LGBTQ+ students in school discipline.

The Committee recommends that the WVDE provide more specific and detailed school discipline plans moving forward and that the Legislative Oversight Commission on Education and Accountability hold WVDE accountable for actually reducing student subgroup disparities (to include race/ethnicity and sexual orientation) in particular and overall student discipline referrals generally. Our recommendation to collect robust data and implement evidence-based plans to significantly reduce undisputed disparate discipline is based on our review of the history of data collection in West Virginia, particularly by the WVDE. We review this history below. We then review the school discipline legislative accountability framework.

As early as 1968, the WVDE may have collected school discipline data demonstrating that minority students were being disproportionately disciplined.²⁶² In a 2013 report, however, the WVDE stated that “no comprehensive [school discipline] reports had previously been provided to counties [before the 2013-2014 school year] showing rates for specific behaviors in comparison to the rest of the state.”²⁶³

The impetus for the 2013 and 2015 WVDE student discipline reports was WVBE’s revision of its student conduct policy to WVDE Policy 4373, *Expected Behaviors in Safe and Supportive Schools*,²⁶⁴ which became effective on July 1, 2012. Both Reports were pursuant to a National Association of State Boards of Education (NASBE) Examining and Reforming State Disciplinary Policies from a State-Level Perspective grant to assist the WVDE “to revise and implement new state student discipline policies that limit the use of out-of-school punishments.”²⁶⁵ Upon receiving the NASBE grant in 2013, WVDE explicitly stated that the purpose of collecting the student discipline data in the 2013 and 2015 WVDE Reports was to establish goals to improve its school discipline practices. Yet in 2019 the WVDE amended its school discipline policy, arguably contradicting its earlier policy by increasing the use of out-of-school punishments and reducing school accountability for student discipline. Finally, in 2020, the West Virginia Legislature created a legislative accountability framework for West Virginia student discipline.

For the 2012–2013 and 2013–2014 school years, WVDE found that minimally disruptive offenses were excessively referred for school discipline and that minority students and students with disabilities were disproportionately disciplined.

The Committee discusses these reports in further detail in Appendix D.

* * *

²⁶² Rev. Watts Testimony, Transcript 3, p. 3.

²⁶³ *ANDY WHISMAN & DON CHAPMAN, IMPROVING SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2012-2013 SCHOOL YEAR iii (WVDE Dec. 2013), at: <https://wvde.us/wp-content/uploads/2018/01/ImprovingSchoolDisciplineDataCollectionandReporting2013.pdf>.

²⁶⁴ WVBE Policy 4373 (effective July 1, 2012).

²⁶⁵ Press Release, WVDE, W.Va. Board Receives National Grant for School Discipline (June 17, 2013), at: <https://wvde.state.wv.us/news/2805/>.

At the time of drafting this report, there are encouraging signs of accountability and possible community collaboration among the WVBE, WVDE, and school discipline activists. According to the *Parkersburg News and Sentinel*, Board of Education President Paul Hardesty at a May 10, 2023, the Board of Education meeting clearly acknowledged how terrible West Virginia's school discipline data is in saying, "We've got the punishment-side down pat, but that's the only thing we have down pat, and who has suffered because of that? Our children."²⁶⁶ Hardesty added the need for transparency and massive collaboration to address school discipline disparities,

[T]his board cannot fix this alone. We have laid out cards on the table here today. We have a problem of epic proportions. It's no wonder we're in the position we are on proficiency . . . We're failing our kids. This has to be a complete overhaul. We've got to do something different.²⁶⁷

The fact that, according to the *News and Sentinel*, the Board of Education President and West Virginia State Superintendent are eager to work with longstanding school discipline activists like Rev. Matthew Watts and his Tuesday Morning Group (TMG) is encouraging given the need for total community involvement to address school discipline disparities. The Committee would like to give Rev. Watts the last word here:

The [TMG] commends State Board President Paul Hardesty, state board members, and Superintendent David Roach for compiling and releasing the detailed analysis of West Virginia state school discipline data. After over eight years Forof advocacy, the TMG is encouraged to see that there is finally a state school board and State Superintendent that is willing to recognize and acknowledge the severity and complexity of excessive student school discipline and suspensions . . . It is the hope of the TMG that the recently released West Virginia school discipline data will serve as a clarion call to capture the attention and engagement of all stakeholders. Addressing school discipline is a challenge that calls for an all hands on deck response.²⁶⁸

According to *West Virginia Metro News*, last August, Rev. Watts stated that he was looking forward to working with the new State Superintendent Michelle Blatt and even made a hopeful prediction, "I think we can pick up the ball and we can run and this time next year we'll have some very good news to share."²⁶⁹

²⁶⁶ Steven Allen Adams, *West Virginia Board of Education Receives Updated Student Discipline Numbers*, PARKERSBURG NEWS & SENTINEL (May 11, 2023), at: <https://www.newsandsentinel.com/news/local-news/2023/05/west-virginia-board-of-education-receives-updated-student-discipline-numbers/>.

²⁶⁷ Steven Allen Adams, *West Virginia Board of Education Receives Updated Student Discipline Numbers*, PARKERSBURG NEWS & SENTINEL (May 11, 2023), at: <https://www.newsandsentinel.com/news/local-news/2023/05/west-virginia-board-of-education-receives-updated-student-discipline-numbers/>.

²⁶⁸ Steven Allen Adams, *West Virginia Board of Education Receives Updated Student Discipline Numbers*, PARKERSBURG NEWS & SENTINEL (May 11, 2023), at: <https://www.newsandsentinel.com/news/local-news/2023/05/west-virginia-board-of-education-receives-updated-student-discipline-numbers/> (quoting Rev. Watts).

²⁶⁹ Carrie Houdousek, *Efforts to Address School Discipline Continue as New School Year Approaches*, WVMETRONews.COM (Aug. 13, 2023 5:46 PM), at: <https://wvmetronews.com/2023/08/13/efforts-to-address-school-discipline-continue-as-new-school-year-approaches/> (quoting Rev. Watts).

Recommendation 4b: Implement the school discipline data analysis and data collection recommendations from the WVDE 2013 and 2015 reports.

The aforementioned WVDE 2013 and 2015 Reports written as part of NASBE’s Examining and Reforming State Disciplinary Policies from a State-Level Perspective Project were cogent, well-reasoned, and data-driven. The lead author of both reports, Andy Whisman, is currently the Executive Director of WVDE’s Office of Data Analysis and Research.²⁷⁰ If not already doing so, the WVDE should implement the school discipline data analysis and data collection recommendations from both Reports. Those recommendations include:

- “Black students and students with disabilities are over-represented in the discipline referral data—indicating the need to investigate subgroup representation in more detail, and to build capacity to address disparities in discipline practices.”²⁷¹
- The Board of Education and WVDE should investigate the so-called “discipline gap,” where student subgroups like racial/ethnic minorities and students with disabilities are disciplined disproportionate to the student population as a whole, “in more detail” and the WVDE and RESAs should “develop and deliver professional development and technical assistance specific to minimizing subgroup disparity in discipline practices.”²⁷²
- The Board of Education and WVDE should “continue to encourage diligence among districts and schools in using the newly designed [discipline management system—at present, the new student Discipline Dashboard] DMS to accurately and completely report discipline behaviors, and to use the resultant data as part of a systematic and evidence-based school improvement effort.”²⁷³
- WVDE and regional education service agencies (RESAs) should “develop and deliver professional development and technical assistance specific to alternatives to suspension and to supporting schools in implementing a positive discipline approach.”²⁷⁴
- Districts and schools should “build staff capacity to provide appropriate behavioral interventions in the context of the multitiered framework, and integrate such a framework as part of a school-wide approach to promote appropriate behavior.”²⁷⁵
- The Board of Education and WVDE must hold nonreporting and underreporting schools accountable to ensure the accuracy of reported student discipline data. Otherwise, there is a danger of garbage in, garbage out. “It appears nonreporting and underreporting continue to be practiced by substantial numbers of schools, suggesting that these schools are out of

²⁷⁰ See WVDE, *Office of Data Analysis & Research*, WVDE.US, at: <https://wvde.us/office-of-data-analysis-research/>, (last visited Oct. 16, 2023).

²⁷¹ Andy Whisman, Executive Summary, *Improving School Discipline Data Collection and Reporting: A Status Report for the 2012-2013 School Year 3* (Dec. 2013).

²⁷² *ANDY WHISMAN & DON CHAPMAN, *IMPROVING SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2012-2013 SCHOOL YEAR vii-viii* (WVDE Dec. 2013).

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ *ANDY WHISMAN, *SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2013-2014 SCHOOL YEAR viii* (Apr. 2015). “In a multitiered approach, approximately 80% of students tend to do well with universal academic and behavioral supports available to all students. Another 15% of students may need more ongoing intensive supports, and about 5% may need more ongoing intensive supports. In this context, the number of discipline referrals could be used as a criterion for behavioral support, wherein students with one or two discipline referrals may be identified for targeted supports, and those with more frequent or more severe behaviors may be identified for intensive supports.” *Ibid.*, at vii.

compliance with the reporting provisions of Board of Education Policy 4373. It also suggests that some schools are failing to collect the data they need to create conditions for learning in which learners feel safe, both emotionally and physically; feel supported and connected to the learning setting; can manage emotions and relationships positively; and be actively engaged in learning. Furthermore, the WVDE relies on these data for federal reporting and accountability, and could be vulnerable to incomplete or inaccurate reporting on critical school safety issues.”²⁷⁶

Recommendation 4c: Collect and publish discipline data that includes voluntary anonymous student sexual orientation and disaggregates to the individual school level. Collect confidential discipline data that disaggregates to the individual referring teacher and administrator.

Considering the significant evidence of the disproportionate discipline of LGBTQ+ students in West Virginia schools,²⁷⁷ the Committee recommends that WVDE collect student sexual orientation data voluntarily and anonymously. We acknowledge that the new WVDE school Discipline Dashboard²⁷⁸ appears to have made school discipline data down to the individual school level more accessible to parents, researchers, and the general public. However, it rolled-out right before the Committee’s completion of this report. Consequently, the Committee was not able to test out the Dashboard as exhaustively as it would have liked. The Dashboard, however, still lacks LGBTQ+ identity data.

WVDE should also maintain confidential school discipline data that tracks the referring teacher and reviewing principal along with the race, ethnicity, sexual orientation, and disability status of the disciplined student(s) to maintain accountability and identify individual teachers and principals who disproportionately refer minority students, LGBTQ+ students, and students with disabilities for discipline. Although there may be innocent explanations for any overrepresentation, such identified teachers and principals do merit further respectful investigation to ensure student fairness and equality.

Recommendation 5: The state must commit to funding the necessary resources to improve overall school quality and to eliminate school discipline disparities.

Panelist Kerner and Dr. Smith explained that virtually every reform to mitigate school discipline disparities requires additional school funding. Even our recommended school-level policy changes to prohibit reliance on exclusionary, punitive discipline entail associated costs, e.g., staffing, to support positive, behavioral interventions or alternative forms of discipline. Recommended bias and classroom management training for educators, wellbeing and mental health services for students, and data collection for informed policymaking all come at a cost as

²⁷⁶ ANDY WHISMAN & DON CHAPMAN, IMPROVING SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2012-2013 SCHOOL YEAR vii (WVDE Dec. 2013).

²⁷⁷ For further discussion, see *supra* Parts 1-2.

²⁷⁸ See WVDE, *Discipline*, ZOOMWV.K12.WV.US, at: <https://zoomwv.k12.wv.us/Dashboard/dashboard/28497>.

well.²⁷⁹ And research predictably suggests that such initiatives must be adequately funded to achieve their objectives.²⁸⁰

But beyond obvious expenditures, education policymakers and stakeholders must begin to view school discipline and school funding issues as interrelated—two sides of the same coin, figuratively and literally. “School discipline policy is ultimately school quality policy.”²⁸¹ Well-resourced schools have fewer discipline problems than schools serving higher concentrations of disadvantaged students.²⁸² Under-resourced schools, struggling to meet the educational and social needs of their students, “more often rely on extreme forms of discipline, punishment, and control.”²⁸³ Those “problematic discipline policy and practices” in turn widen achievement gaps enlarged by “poverty, segregation, and unequal access to resources.”²⁸⁴

A meaningful, holistic approach to school discipline policy therefore demands that we acknowledge and address school funding policy inadequacies and inequities that perpetuate this self-fulfilling cycle of degradation in which school quality disparities exacerbate school discipline disparities which in turn exacerbate school quality disparities.

A state with a nearly \$2 billion revenue surplus should have the financial capacity to meaningfully address school discipline and funding disparities. Regardless, we note that the Supreme Court of Appeals of West Virginia has held that, “standing alone, the lack of financial resources does not present a compelling State interest to justify the denial of [a child’s] constitutional right to an education.”²⁸⁵ And because an alleged lack of funds does not alone present a compelling interest, then any resulting “discrimination” infringing on that “fundamental right to education” is unconstitutional.²⁸⁶

Although such legal arguments carry much force, we understand that even legally sound arguments may not carry the day in a politically charged atmosphere. Still, lack-of-money assertions should not be countenanced before state and local policymakers have exhausted federal funding and philanthropic sources dedicated to addressing discriminatory school discipline.²⁸⁷ As the U.S. Department of Education recently emphasized in guidance on this very issue:

- “the Bipartisan Safer Communities Act (BSCA) of 2022 provides historic funding, including \$1 billion in grant funding to help schools establish safe, healthy, and supportive learning opportunities and environments and \$1 billion in funding to increase

²⁷⁹ See, Kerner Testimony, Transcript 5, pp. 13-14; Dr. Smith Testimony, Transcript 3, pp. 13-14 (explaining for example, why additional funding is critical for teacher training and support).

²⁸⁰ Alyssa Rafa, The Status of School Discipline in State Policy, Education Commission of the States (Jan. 2019), at: <https://files.eric.ed.gov/fulltext/ED592549.pdf>.

²⁸¹ Prof. Black Testimony, Transcript 1, p. 4; see also, Black Statement, p. 4.

²⁸² Ibid., Testimony, p. 4; see also, Ibid., Statement, p. 3.

²⁸³ Jason P. Nance, *Dismantling the School-to-Prison Pipeline: Tools for Change*, 48 Ariz. St. L.J. 313, 318 (2016), at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2671447

²⁸⁴ Prof. Black Statement, p. 3.

²⁸⁵ Phillip Leon M. v. Greenbrier Cnty. Bd. of Educ., 199 W. Va. 400, 406–07, 484 S.E.2d 909, 915–16 (1996).

²⁸⁶ See Bd. of Educ. of Cnty. of Kanawha v. W. Virginia Bd. of Educ., 219 W. Va. 801, 807, 639 S.E.2d 893, 899 (2006).

²⁸⁷ See Children’s Defense Fund, Funding School Discipline Reform Resource Guide (Sept. 2014), at: <https://www.childrensdefense.org/wp-content/uploads/2018/06/funding-school-discipline.pdf>.

the number of mental health professionals in schools.”

- “the U.S. Department of Education has distributed \$122 billion in American Rescue Plan (ARP) funding to states and school districts [which may be used] to help ensure nondiscriminatory access to programs in a variety of ways to meet students’ behavioral, mental health, and academic needs.”²⁸⁸

Although the bulk of the ARP funding in particular has been allocated to the economic development authority, some West Virginia counties still have funding left which could be used to address issues like school discipline disparities as intended.²⁸⁹ And not every initiative will require a vast infusion of funds, experts suggested that some school discipline reforms, e.g., restorative justice and teacher training, could mitigate harms even with limited resources.²⁹⁰ Metro Nashville Public Schools, for example, used a \$200,000 grant to fund a trauma-informed district and school coordinators and saw a significant “decrease in office discipline referrals,” in some schools as much as a “97 percent reduction” in the first year alone.²⁹¹

We are not here suggesting just to “throw money at the problem.” We find that phrase a convenient trope used frequently by those personally unaffected by harmful school problems, who have thrown so little money at them to virtually assure they remain intractable. Rather, we are recommending the need to invest in proven strategies and initiatives that will improve educational opportunities for *all* children.

We have been informed, for instance, of “several pieces of legislation that have been introduced in West Virginia but are not currently funded, which could help address the civil rights impacts of exclusionary and punitive policies, disciplinary practices, and procedures.”²⁹²

More to the point, the decades-long debate about whether money matters in education has been settled. It does.²⁹³ Even leading critics have now conceded as much.²⁹⁴

²⁸⁸ U.S. Department of Education, Resource on Confronting Racial Discrimination in Student Discipline (May 2023), at: <https://www2.ed.gov/about/offices/list/ocr/docs/tvi-student-discipline-resource-202305.pdf>.

²⁸⁹ Rev. Watts Testimony, Transcript 3, p. 20.

²⁹⁰ Prof. Morgan and Dr. Nwadike Testimony, Transcript 2, p. 33.

²⁹¹ Jason Gonzales, Nashville schools asked to dedicate \$432,000 for childhood trauma practices, reducing disciplinary issues, *The Tennessean* (Sept. 19, 2018), at: <https://www.tennessean.com/story/news/education/2018/09/19/childhood-trauma-nashville-public-schools/1269252002/>.

²⁹² McClune Testimony, Transcript 3, pp. 11-12 (referencing “diversion program that has been approved by legislature and is an enacted bill but there’s no funding for it.”); McClune Written Opening Statement (hereinafter McClune Statement), for Transcript 3, p. 3 (identifying “Student Access to Mental Health Support Act,” “Restorative Justice in Schools Act,” “Racial Equity in Education Act,” and “LGBTQ+ Student Non-Discrimination Act”).

²⁹³ See Matt Barnum, The racist idea that changed American education, *Vox* (Feb. 22, 2023) (citing research that confirm money has “positive effects on student outcomes”), at: <https://www.vox.com/the-highlight/23584874/public-school-funding-supreme-court>.

²⁹⁴ See Matt Barnum, An economist spent decades saying money wouldn’t help schools. Now his research suggests otherwise. *Chalkbeat* (May 16, 2023), at: <https://www.chalkbeat.org/2023/5/16/23724474/school-funding-research-studies-hanushek-does-money-matter>.

So, we echo calls for the West Virginia Legislature to appropriate additional funding to address discriminatory school discipline in the specific ways we have herein recommended.²⁹⁵ We thereby join our fellow advisory committees in neighboring Maryland and Pennsylvania in recognizing the need for adequate school funding to ensure implementation of school discipline reforms.²⁹⁶

We also agree with another School Discipline Commission in Maryland, which recommended state and local government entities integrate their efforts to ensure that multiple funding streams flow in the same direction, towards leveraging resources to mitigate school discipline disparities.²⁹⁷ We would add that collaboration with the community in such efforts is also critical “because there are organizations that may be connected [to funding streams] but may not be connected to the community.”²⁹⁸

Finally, our bottom line, big picture recommendation is for the Legislature and State Board of Education to equitably adjust the school funding formula to direct additional funding to schools serving higher concentrations of disadvantaged students so that those schools can better meet the educational needs of their students rather than rely on discriminatory school discipline.

²⁹⁵ Carrie Hodousek, Watts calls on Legislature to allocate funding to address school discipline issues, MetroNews (May 11, 2023), at: <https://wvmetronews.com/2023/05/11/watts-calls-on-legislature-to-allocate-funding-to-address-school-discipline-issues/>.

²⁹⁶ Maryland Advisory Committee Report to the U.S. Commission on Civil Rights titled, *Disparities in School Discipline in Maryland* (Oct. 2019), at: <https://www.usccr.gov/files/pubs/2020/01-14-MD-SAC-School-Discipline-Report> [insert link]; Pennsylvania Advisory Committee Report to the U.S. Commission on Civil Rights titled, *Disparate and Punitive Impact of Exclusionary Practices on Students of Color, Students with Disabilities and LGBTQ Students in Pennsylvania Public Schools* (April 2021), at: <https://www.usccr.gov/files/2021/04-09-Pennsylvania-Public-Schools>.

²⁹⁷ Maryland Commission on the School-to-Prison Pipeline and Restorative Practices, Report to the Maryland Governor and General Assembly Pursuant to House Bill 1287 (2017) (Dec. 20, 2018), at: <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/023600/023694/20190078e.pdf>.

²⁹⁸ Dr. Smith Testimony, Transcript 3, p. 17.

Appendix

- A. Panel Agendas
- B. Hearing Transcripts
- C. Written Testimony
- D. Further Discussion of WVDE Reports

Appendix A - Panel Agendas

Panel I - Thursday, August 26, 2021

From 11:00 am to 1:00 pm ET

Agenda

- A. Roll Call & Chair's Welcome
- B. Panel Presentation
 - a. Prof. Derek Black, Univ. of S.C. School of Law
 - b. Max Eden, Research Fellow, American Enterprise Institute
 - c. Denise Marshall, Director, Council for Parents Attys and Advocates (COPAA)
 - d. Prof. Stacey Sinclair, Psychology Department, Princeton University
 - e. Melanie Willingham-Jaggers, Deputy Executive Director, Gay and Lesbian Strategic Education Network (GLSEN)
- C. Discussion Among Panelists and Members
- D. Public Comments from the Public

Panel II - Tuesday, December 13, 2022

2:00 pm to 4:00 pm ET

Agenda

- A. Roll Call & Chair's Welcome
- B. Panel Presentation
 - a. Prof. Paul L. Morgan, PhD, Henry and Marion Eberly Fellow and Professor of Education and Demography, Pennsylvania State University
 - b. Akuoma Nwadike, PhD, President & Principal Educator, Inclusivity Education, LLC
- C. Discussion Among Panelists and Members
- D. Public Comments from the Public

Panel III - Monday, April 24, 2023

10:30 am – 12:30pm ET

Agenda

- A. Roll Call & Chair's Welcome
- B. Panel Presentation
 - a. Matthew J. Watts, CEO, Hope Community Development Corporation
 - b. Teresa McCune, Attorney at Law, Senior Counsel, Public Defender 30th Judicial Circuit
 - c. Shanequa Smith, PhD, Founder, Restorative Actions
- C. Discussion Among Panelists and Members
- D. Public Comments from the Public

Panel IV - Thursday, May 4, 2023

2:00 pm – 4:00 pm ET

Agenda

- A. Roll Call & Chair's Welcome
- B. Panel Presentation
 - a. Loretta Young, Community Advocate, Race Matters, Inc.
 - b. Panelist 2,²⁹⁹ Court-Appointed Guardian
 - c. Panelist 3,³⁰⁰ Parent
 - i. (Panelist did not testify; written opening statement was read into the record)
 - d. Cathy Grewe, Student Services Coordinator, Wood County Schools
- C. Discussion Among Panelists and Members
- D. Public Comments from the Public

Panel V - Friday, May 5, 2023

10:00 am – 12:00 pm ET

Agenda

- A. Roll Call & Chair's Welcome
- B. Panel Presentation
 - a. Paula Kerner, Program Manager, Safe & Healthy Schools Initiative–State-Wide Initiative
- C. Discussion Among Panelists and Members
- D. Public Comments from the Public

Panel VI - Monday, May 8, 2023

10:00 am – 12:00 pm ET

Agenda

- A. Roll Call & Chair's Welcome
- B. Panel Presentation
 - a. Cpl. Kevin Barney, Prevention Resource Officer (PRO), Morgan County Public Schools
 - b. Blaire L. Malkin, Staff Attorney, Mountain State Justice (MSJ)
 - c. Susan Given, Director, Disability Rights – WV
- C. Discussion Among Panelists and Members
- D. Public Comments from the Public

²⁹⁹ Panelist wished to remain anonymous.

³⁰⁰ Panelist wished to remain anonymous.

Panel VII - Thursday, May 11, 2023

3:00 pm – 4:00 pm ET

Agenda

- A. Roll Call & Chair's Welcome
- B. Panel Presentation
 - a. Jason L. Smith, Vice Principal, Morgan County Schools
- C. Discussion Among Panelists and Members
- D. Public Comments from the Public

Appendix B - Transcripts

Briefing transcripts for this project can be found at:

<https://usccr.box.com/s/qytbv63e8ukbyx8m088gaxjxndg6ipnl>

Appendix C - Written Testimony

Written testimony submitted for this project can be found at:
<https://usccr.box.com/s/cee9gpqfu42kg18rd05119yufghw4fou>

Appendix D - Further Discussion of WVDE Reports

The 2013 Report

In 2013, WVDE concluded that [a]lthough suspensions are viewed in Policy 4373 as temporary solutions, they were among the most frequently used interventions or consequences used by [West Virginia] districts as schools, even for minimally disruptive behaviors.³⁰¹

About 45% of 2012–2013 school discipline referrals were made for high school students, followed by 39% for middle school and 17% for elementary school students. About 63% of 2012–2013 discipline referrals were for minimally disruptive Level 1 behaviors.³⁰²

As far as the identities of referred students, although only 5% of 2012–2013 students self-identified as Black, about 8%—almost double their population proportion—of disciplined students were Black.³⁰³ In a similar manner, although only 14.9% of 2012–2013 students identified as students with disabilities, nearly 18% of disciplined students—almost 3% more than their overall percentage—identified with a disability.³⁰⁴

Following the National Clearinghouse on Supportive School Discipline (NCSSD) methodology, WVDE calculated 2012–2013 school discipline risk ratios for racial or ethnic minority students and for students with disabilities.³⁰⁵ The resulting risk ratios indicated that in 2012–2013 Black students were two times more likely to experience single suspensions and 2.5 times more likely to experience multiple suspensions. Black, multiple race, and Hispanic or Latino students were at increased risk of expulsion. Likewise, students with disabilities were also at increased risk of multiple in-school suspensions, for single and multiple out-of-school suspensions, and expulsion.³⁰⁶

The 2015 Report

Analyzing data only one year later, the 2015 report unsurprisingly was similar to the 2013 report. For the 2013–2014 school year, about 44% of discipline referrals were for high school students, followed by 39% for middle school and 18% for elementary school students.³⁰⁷ Sixty-five percent of discipline referrals were for Level 1 minimally disruptive behaviors.³⁰⁸ Racially, Black students were 5% of the overall student population yet 8% of discipline referred students. All other racial and ethnic minorities were disciplined at rates comparable to their representation in the student population.³⁰⁹ As far as NCSSD risk ratios, in 2013–2014, Black students were two

³⁰¹ Andy Whisman, Executive Summary, Improving School Discipline Data Collection and Reporting: A Status Report for the 2012–2013 School Year 3 (Dec. 2013).

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Andy Whisman, Executive Summary, Improving School Discipline Data Collection and Reporting: A Status Report for the 2012–2013 School Year 4 (Dec. 2013).

³⁰⁶ *ANDY WHISMAN & DON CHAPMAN, IMPROVING SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2012–2013 SCHOOL YEAR VI (WVDE Dec. 2013).

³⁰⁷ *ANDY WHISMAN, SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2013–2014 SCHOOL YEAR IV (Apr. 2015).

³⁰⁸ *ANDY WHISMAN, SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2013–2014 SCHOOL YEAR IV (Apr. 2015).

³⁰⁹ *ANDY WHISMAN, SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2013–2014 SCHOOL YEAR VI (Apr. 2015).

times more likely to receive single suspensions, and 2.5-3 times more likely to receive multiple suspensions. Black students were also more likely to be expelled. Like the previous year, students with disabilities were more likely to experience single or multiple in-school or out-of-school suspensions and expulsions.³¹⁰

2013 Goals to Improve School Discipline Practices

WVDE had also announced in 2013 that West Virginia's task force on student discipline is working on comprehensive statewide and county-level reports of disciplinary incidents and using the information to establish goals to improve school discipline practices. It also is preparing a trend analysis of school climate and culture improvement outcomes from the growing body of data collected across the state.³¹¹

In other words, for over ten years WVDE has been collecting and analyzing data ostensibly to set school discipline improvement goals. To the Committee's best knowledge, WVBE or WVDE still have not created or implemented any comprehensive statewide plan to attempt to ameliorate well-documented student discipline disparities.³¹²

2019 WVDE School Discipline Policy Amendments

Contrary to WVDE's 2013 goals, according to *Mountain State Spotlight* and Rev. Watts, in 2019, the WVBE amended its school discipline policy³¹³ not only to allow out-of-school suspensions for minor offenses (thereby explicitly contradicting the purpose of the previous 2013 NASBE grant) but also to no longer penalize schools for these types of offenses under the state school accountability system.³¹⁴ Rev. Watts testified at the time that "[a]ddressing school discipline is not a priority" of the WVBE, WVDE, or local county boards. "[B]ecause no one gets penalized for it," he said, "[t]here is no incentive to really do better."³¹⁵

Notwithstanding the dearth of a comprehensive remedial plan, West Virginia has made notable progress since 2020, including: (1) a legislative accountability framework which, if enforced, could help reduce student discipline disparities; (2) two WVDE data reports in July 2022 and May 2023; and (3) the first WVDE plan in response to the school discipline data.

School Discipline Legislative Accountability Framework

³¹⁰ *ANDY WHISMAN, SCHOOL DISCIPLINE DATA COLLECTION AND REPORTING: A STATUS REPORT FOR THE 2013-2014 SCHOOL YEAR Vi (Apr. 2015).

³¹¹ Press Release, WVDE, W.Va. Board Receives National Grant for School Discipline (June 17, 2013), at: <https://wvde.state.wv.us/news/2805/>.

³¹² As explained in the Introduction, although the WVDE may have actually created or implemented such plans, the WVDE's decision not to engage the Committee directly through testimony has limited the Committee's knowledge to information which the Committee was able to gather through public sources.

³¹³ See Mac Warner, W. Va. Sec'y of State, Notice of Final Filing and Adoption of a Legislative Exempt, Interpretative or Procedural Rule, No. 126CSR99, 3/14/19 11:23 AM, at: <https://apps.sos.wv.gov/adlaw/csr/readfile.aspx?DocId=51038&Format=PDF>.

³¹⁴ Duncan Slade, *Black Students in WV Are Suspended Twice as Often as Their White Peers. Community Leaders Aren't Convinced yet Another Report Is the Answer*, MOUNTAIN STATE SPOTLIGHT (July 21, 2022), at: <https://mountainstatespotlight.org/2022/07/21/wv-racial-disparities-education-discipline/>.

³¹⁵ Rev. Watts Testimony, WVSAC, 4/24/23, p. 28 (). Again, while the Committee would have welcomed the WVBE's or WVDE's response to *Mountain State Spotlight's* and Rev. Watts's characterization of the 2019 student discipline policy amendments, the Committee unfortunately was unable to obtain such a response.

First, in 2020, the West Virginia Legislature proposed and passed West Virginia Code § 18-2-43 (“Addressing Disciplinary Action in West Virginia Schools”)³¹⁶ which created a legislative framework for further student discipline accountability. The Note to Senate Bill 723, which originally introduced the legislation, stated, “The purpose of this bill is to require the [WVDE] to analyze data compiled annually on school discipline and to develop a statewide plan aimed at addressing the high volume of disciplinary actions taken by county boards.”³¹⁷ According to *Mountain State Spotlight*, Senator Rollan Roberts (R-Raleigh County), an original sponsor of § 18-2-43, explained the motivation behind the legislation: “[WVDE] had never looked at what the problems were—the behavioral problems or any kind of problems that students were having. There hadn’t been any focused effort and looking at things, so I’m eager to hear what their report is going to be.”³¹⁸

In § 18-2-43(a), the Legislature directed WVDE to “analyze statewide data collected on school disciplinary action and, based on the findings of this data, develop a statewide program intended to address the number of disciplinary actions.”³¹⁹ Such data, the Legislature specified, should include “race, gender, and disability” subgroups.³²⁰ In § 18-2-43(b), the Legislature directed West Virginia county boards of education to “implement” the WVDE’s statewide program “with the ultimate goal of improving disciplinary outcomes.”³²¹ The statute does not define improved disciplinary outcomes. Finally, in § 18-2-43(c), the Legislature directs WVDE to present a statewide school discipline report to the Legislative Oversight Commission on Education and Accountability (LOCEA), previously established in § 29A-31-11, every two years starting in 2022.³²² The LOCEA provides direct legislative oversight of WVDE and other West Virginia educational organizations.³²³

The report should include (1) “findings of statewide disciplinary data;” and (2) “a summary of the progress of the statewide program and individual county programs, evaluating the extent to which the programs have successfully led to making a positive impact in disciplinary actions in West Virginia school systems.”³²⁴ The statute also does not define what constitutes a “positive impact in disciplinary actions.”³²⁵

First Two Mandated School Discipline Data Reports

Second, the first two legislatively mandated WVDE school discipline reports in July 2022 (which included data from the 2017-2018, 2018-2019, 2019-2020, 2020-2021, and 2021-2022

³¹⁶ See 2020 West Virginia Senate Bill No. 723, West Virginia 84th Legislature, Regular Session, 2020.

³¹⁷ West Virginia Legislature, 2020 Regular Session, Introduced Senate Bill 723, Introduced Version [Introduced Feb. 6, 2020, referred to the Committee on Education], at: https://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=SB723%20INTR.htm&yr=2020&sesstype=RS&i=723.

³¹⁸ Duncan Slade, *Black Students in WV Are Suspended Twice as Often as Their White Peers. Community Leaders Aren’t Convinced yet Another Report Is the Answer*, MOUNTAIN STATE SPOTLIGHT (July 21, 2022), at: <https://mountainstatespotlight.org/2022/07/21/wv-racial-disparities-education-discipline/> (quoting Senator Roberts).

³¹⁹ W. VA. CODE § 18-2-43(a) (2023).

³²⁰ W. VA. CODE § 18-2-43(a) (2023).

³²¹ W. VA. CODE § 18-2-43(b) (2023).

³²² W. VA. CODE § 18-2-43I (2023).

³²³ W. VA. CODE § 29A-31-11 (2023).

³²⁴ W. VA. CODE § 18-2-43(c) (2023).

³²⁵ W. VA. CODE § 18-2-43(c) (2023).

school years)³²⁶ and May 2023³²⁷ demonstrated that disparities identified in 2013 and 2015 remained. For example, consistent with the 2013 and 2015 Reports,³²⁸ Black students remained more than twice as likely to be disciplined from 2017-2018 to 2021-2022. Between 2017-2018 to 2021-2022, while overall Black student enrollment in West Virginia public schools fluctuated between 4.0-4.3%,³²⁹ the percentage of disciplined students who were Black varied from 9.2-10.6%.³³⁰ Of those disciplined Black students, 64% were suspended.³³¹ According to West Virginia Public Radio, during a December 14, 2022, WVBE meeting, then State Superintendent David Roach directed WVDE to expand the scope and depth of the July 2022 Report³³² in the May 2023 Report. According to at least one former educator and Board of Education member, the May 2023 Report was a marked improvement over the July 2022 Report.³³³

First Mandated WVDE Plan

Third, WVDE did provide a “Response” to its reported discipline data.³³⁴ While its ostensible Plan was essentially five terse presentation slides with bullet points,³³⁵ the fact that WVDE has made a Plan publicly available nevertheless is progress. Although the bullet points therein lack explanation, some are worth highlighting here:

- Under “Training and Support,” the WVDE wrote:
 - “Expand West Virginia School Leadership Network.”

³²⁶ WVDE, West Virginia School Discipline Report as Required by West Virginia Code § 18-2-43, at 3 (July 2022), at: <https://www.documentcloud.org/documents/22120978-locea-report-on-school-discipline-v3?responsive=1&title=1>.

³²⁷ WVDE, SY22 Discipline Data in Review (May 10, 2023), at: https://wvde.us/wp-content/uploads/2023/05/DisciplineData_Review.pdf.

³²⁸ For further discussion, see *supra* 2013 Report & 2015 Report.

³²⁹ WVDE, West Virginia School Discipline Report as Required by West Virginia Code § 18-2-43, tbl. 1 at 3 (July 2022).

³³⁰ WVDE, West Virginia School Discipline Report as Required by West Virginia Code § 18-2-43, tbl. 2 at 4-7 (July 2022).

³³¹ WVDE, *WV Board of Education Hears School Discipline, Clay County Updates and Places Policies on Comment* (May 10, 2023), at: <https://wvde.us/wv-board-of-education-hears-school-discipline-clay-county-updates-and-places-policies-on-comment/>.

³³² See Chris Schulz, *State Board of Education Hears Numbers, Next Steps to Address School Discipline*, WVPUBLIC.ORG (May 10, 2023 5:14 PM), at: <https://wvpublic.org/state-board-of-education-hears-numbers-next-steps-to-address-school-discipline/>.

³³³ According to the *Parkersburg News and Sentinel*, retired educator and WVBE Board member Debra Sullivan, who was reportedly “unhappy” with the July 2022 Report, stated that the May 2023 Report provided an excellent starting point:

Wow. It’s in-depth, it’s comprehensive . . . and what you’ve done is given us an accurate picture of the state of our schools in terms of discipline. Before, we just had sort of a feeling. But because of the data, we can drive solutions . . . this is an opportunity for us to change the dynamic. Before, we had a state outline, but now we know the road.

Steven Allen Adams, *West Virginia Board of Education Receives Updated Student Discipline Numbers*, at: PARKERSBURG NEWS & SENTINEL (May 11, 2023), at: <https://www.newsandsentinel.com/news/local-news/2023/05/west-virginia-board-of-education-receives-updated-student-discipline-numbers/> (quoting Sullivan).

³³⁴ WVDE, Discipline Data Response (May 10, 2023), at: <https://wvde.us/wp-content/uploads/2023/05/DisciplineBoardMayV3.pdf> [hereinafter *WVDE Data Response*].

³³⁵ *Ibid*.

- “Continue to Provide and Adapt Trainings” that include “Positive Behavioral Interventions (PBIS)”, “Social-emotional Supports for the Individual Student”, “Appropriate Data Practices”, “Root Cause Analysis”, “Strategic Planning”, “West Virginia Tiered System of Support”, “School Culture”, and “Classroom Management Effective Practices.”³³⁶
- Under “Accountability,” the WVDE wrote:
 - “Create Public Discipline Dashboard” (which it has done).
 - “Continue Internal Discipline Review.”
 - “Develop Discipline Data Flags.”³³⁷
- Under Policy “4373 Revisions,” WVDE wrote some promising non-punitive bullet points consistent with the majority of research on how to best reduce school discipline,³³⁸ including “Highlight relationship between engaging instruction and student behavior,” “Expand PBIS” [Positive Behavioral Interventions], “Reinforce supports and plans for individual students i.e.[,] mentoring,” “Include relationship between engaging instruction and discipline,” “Examine accomplishments of Communities in Schools programs,” “End zero tolerance policies,” “Strengthen due process implementation,” “Revisit discipline levels, definitions, and identified behaviors,” “Expand data entry requirements,” and “Encourage alternatives to exclusion.”³³⁹

It is for these reasons that we recommend that the WVDE provide more specific and detailed school discipline plans moving forward and that the LOCEA hold WVDE accountable for actually reducing student subgroup disparities (to include race/ethnicity and sexual orientation) in particular and overall student discipline referrals generally.

³³⁶ Ibid., p. 3.

³³⁷ WVDE Data Response, p. 4.

³³⁸ For further discussion, see *supra* Parts 1-4.

³³⁹ WVDE Data Response, p. 5.