

2021

KEEPING STUDENTS SAFE IN SCHOOL: REDIRECTING SCHOOL POLICE FUNDING TO BENEFIT STUDENTS BY SUPPORTING SOCIAL, EMOTIONAL, AND BEHAVIORAL NEEDS



COPAA

Alyssa Fieo and
Nicole Joseph

This article was written by attorneys [Alyssa Fieo](#)¹ and [Nicole Joseph](#)²

The Council of Parent Attorneys and Advocates (COPAA) has worked since its inception in 1998 to promote safe, supportive schools for all students. For students with disabilities, students of color, and students who are otherwise marginalized, safe school environments are all too often out of reach. Because of COPAA’s dedication to representing and giving voices to marginalized children and their families, we have worked tirelessly to end school policies that punish students for their disabilities and that criminalize them in school.

Specifically, COPAA calls for the end of police presence in schools, corporal punishment, out-of-school suspension, expulsion, restraint, seclusion, and school-based arrests for anything other than the commission of serious felonies. Only when the safety and well-being of students in school are assured can they learn most effectively and develop positive and trusting relationships with trained, knowledgeable, and supportive teachers and providers.

The “School-to-Prison Pipeline” describes the phenomenon that occurs when the discipline of children, which historically has been part of the educational process and handled by educators, is turned over to law enforcement. Not surprisingly, stationing police, often as school resource officers, in school buildings leads to children in those buildings increasingly being forced out of school and into the criminal justice system. The school-to-prison-pipeline does not affect all children equally. Students of color, students with disabilities, and especially students of color with disabilities, are most likely to become victims of the school-to-prison

¹ Alyssa Fieo practiced as an education attorney representing students with disabilities for nearly 25 years at Disability Rights Maryland and at the Education Law Center in Pennsylvania. She currently serves as the Assistant Dean of Law Career Development at the University of Baltimore School of Law.

² Nicole Joseph is an education attorney at [The Law Offices of Nicole Joseph](#), where she represents students and families in education issues in Maryland. Nicole opened her private practice in 2017 after 13 years representing children at Disability Rights Maryland in healthcare, special education and school discipline issues.

pipeline.³ While we know that some families and educators feel that sections of the student population benefit from police presence in schools; and, while stationing police in school buildings may have been seen at the inception of school police programs as a safety measure, data shows that the programs have instead proven to foster feelings of alienation, disengagement, and distrust of authority—all of which have contributed to lower educational outcomes.⁴

Children with disabilities have faced abuses and long-term negative consequences from police presence and involvement in schools.⁵ Data consistently show that Black children with disabilities have the highest rates of school exclusion and arrests in school.⁶ The treatment of these students by police inside school buildings and the harmful impact of the school-to-prison pipeline demand a reconsideration of how law enforcement and education dollars are spent. The national movement to reform policing in response to the tragic killings of Black adults by police must also include a discussion of how children with disabilities and children of color (and those who are both) are affected by the presence of police inside school buildings.

³ National Council on Disability, *Breaking the School-to-Prison Pipeline for Students with Disabilities* 6, 11 (2015), <https://www.ncd.gov/publications/2015/06182015>; see also National Disability Rights Network, *Probation Referral: A Model for Diversion of Children and Youth with Disabilities from the Juvenile Justice System* 10 (2019), https://www.ndrn.org/wp-content/uploads/2019/10/Probation_Referral_Report_FINAL_w_Appendices.pdf.

⁴ Maya Lindberg, *False Sense of Security*, Teaching Tolerance 22 (Spring 2015), <http://www.tolerance.org/sites/default/files/general/False%20Sense%20of%20Security%20-%20TT50.pdf?fbclid=IwAR2eoWYAHKxEVlqhsJ7YuTNJFXTEiKQSAsktMuT69e7FPqfoTG4ZFgabVb4>.

⁵ U.S. Commission on Civil Rights, *Beyond Suspensions: Examining School Discipline Policies and Connections to the School-to Prison Pipeline for Students of Color with Disabilities* 4 (July 2019), https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf?fbclid=IwAR2buu4C_liI3SdO8huQbJXXbCkAz81YhKsXlww0ChXIFcwtxainnw15sPE.

⁶ National Council on Disability, *supra* note 3; see also U.S. Dep’t of Education Office for Civil Rights, *An Overview of Exclusionary Discipline Practices in Public Schools for the 2017-18 School Year* 18 (June 2021) [hereinafter *2017-2018 OCR Discipline Report*], <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-exclusionary-school-discipline.pdf>; U.S. Dep’t of Education Office for Civil Rights, *2015-2016 Civil Rights Data Collection: School Safety and Climate* 4, 14 (2018) [hereinafter *2015-2016 OCR School Climate and Safety Report*], <https://www2.ed.gov/about/offices/list/ocr/docs/school-climate-and-safety.pdf>.

This article primarily focuses on and offers suggestions regarding police in schools and children with disabilities. However, the issue cannot be separated from the racial inequities clearly present in school discipline and school policing. Besides the obvious fact that many children affected are both children of color and children with disabilities, we hope that our contributions will be understood within the framework of intersectionality, which examines and addresses the experiences of various marginalized groups in order to promote social justice for all.

A BRIEF HISTORY OF POLICE IN SCHOOLS

Police have not always been part of the public school landscape. There were very few, if any, officers stationed in schools before the 1950s and 60s, when one of the earliest school resource officer (SRO) programs was started in Flint, Michigan.⁷ The rise in police presence in schools was concurrent with, and directly related to, school desegregation. From Los Angeles to New York City, police officers were placed in Black and Latino neighborhoods in recently desegregated schools to control and monitor youth of color.⁸ At the time, some effort was made to justify police presence in schools as a way to create community trust between police and youth, though many doubted, and continue to doubt, that purported motivation.⁹

Students with disabilities, who were likely not identified as such at the time, were also directly and disproportionately affected by the increase in police presence and resulting criminalization of young people. The Individuals with Disabilities Education Act (IDEA), which requires numerous procedural safeguards for children with disabilities and their parents as well as the substantive guarantee of a free appropriate public education (FAPE) in the least restrictive environment (LRE), was not passed into law until 1975.

In 1974, the Juvenile Justice and Delinquency Prevention Act allowed schools and police to identify children as “pre-delinquent” even before they had committed any specifically delinquent acts.¹⁰ Teachers, administrators, and law enforcement were

⁷ National Association of School Resource Officers, *SRO Management Symposium Course Manual* 11 (Apr. 2006), <https://www.nasro.org/training/training-courses/>.

⁸ Am. Civ. Liberties Union, *Bullies in Blue: The Origins and Consequences of School Policing* 3-4 (Apr. 2017) [hereinafter *Bullies in Blue*], <https://www.aclu.org/feature/bullies-blue>.

⁹ *Id.* at 4.

¹⁰ *Id.* at 5. A delinquent act is an act committed by a juvenile that would be considered a crime if committed by an adult. In addition, there are a number of other acts that are “delinquent” if committed by a child but would not be criminal if committed by an adult, like running away from home.

directed to attempt to identify, in advance, which children might become juvenile delinquents. In part, teachers were instructed to identify students who had “short attention spans” or “quick tempers.”¹¹ In other words, many students with cognitive or learning disabilities, or what is now understood to be attention deficit hyperactivity disorder (ADHD), were identified as “pre-delinquent.”¹²

However, it is only since the 1990s, in response to the myth of increased juvenile crime, the war on drugs, and the increase in a now-disproven¹³ zero-tolerance approach to school discipline, that police presence in schools became as common as it is today.¹⁴ The Gun-Free Schools Act of 1994 also played its part in influencing schools across the country to adopt zero tolerance discipline policies not only for guns, but also “weapons,” which schools broadly defined to include arguably non-dangerous objects, such as toy guns and nail clippers.¹⁵ Politicians and the media also painted young people as violent predators who needed to be controlled using armed police. For example, in Washington, D.C., schools were staffed with SROs recruited from a violent crime response team, and in New York City, SROs were armed with SWAT gear.¹⁶ Despite misleading media coverage and political rhetoric, youth crime, which had never been centered at schools, remained steady through the 1980s, and was actually declining by the mid-1990s.¹⁷ However, federal dollars poured in to fund additional police officers in schools.

¹¹ *Bullies in Blue*, *supra* note 8, at 5.

¹² *Id.*

¹³ There is no data that indicate that zero tolerance school discipline policies work to change behavior or to keep schools safe. Peter Leone et al., *School Failure, Race and Disability: Promoting Positive Outcomes, Decreasing Vulnerability for Involvement with the Juvenile Delinquency System*, The National Center on Education, Disability & Juvenile Justice (2003); *see also* Catherine Winter, *Spare the Rod: Amid evidence zero tolerance doesn't work, schools reverse themselves*, American Public Media (Aug. 25, 2016), <https://www.apmreports.org/story/2016/08/25/reforming-school-discipline>.

¹⁴ *Bullies in Blue*, *supra* note 8, at 6-7.

¹⁵ *Id.* at 7.

¹⁶ *Id.*

¹⁷ *Id.* at 7 (citing *Safety in Schools Is High Priority for Local Police and L.A. School District*, Los Angeles Sentinel (Oct. 14, 1993)).

With the rise in the number of SROs, advocates for these programs, even at the federal level, returned to the idea that putting police officers in schools would create positive relationships between youth and police and opportunities for police to assist with conflict resolution.¹⁸ This led to the increased funding of these programs.¹⁹ The considerable increase of federal funding allocated to support the rising number of police officers in schools was also in part a response to tragic school shootings that occurred in the 1990s and early 2000s. It was in that context that from 1997 to 2007, the number of SROs increased by 27%.²⁰ Even after the Obama administration acknowledged the school-to-prison pipeline and instituted programs to address it, in 2013, after the shooting at Sandy Hook Elementary School in Connecticut, “school policing received almost four times the federal grant funding as did school counseling (\$46.5 million and \$12.3 million respectively).”²¹

Despite the large-scale increase in funding to support police in schools, there is little indication that law enforcement ever had the skills or training necessary to accomplish the stated relationship and conflict resolution goals. Nor is it clear that school police deter school shootings, which many proponents name as a central motivation behind their belief that police belong in schools.²² Despite this, after the tragic 2018 school shooting in Parkland, Florida, \$75 million was allocated by Congress to increase school policing under the STOP School Violence Act in 2018, with \$100 million more dedicated over the next several years.²³

¹⁸ *Bullies in Blue*, *supra* note 8, at 14.

¹⁹ *Id.* at 8.

²⁰ Simone Robers et al., *Indicators of School Crime and Safety: 2010*, Washington, DC: National Center for Education Statistics, U.S. Dep’t of Education 156 (2010), <http://nces.ed.gov/pubs2011/2011002.pdf>.

²¹ *Bullies in Blue*, *supra* note 8, at 10.

²² *Id.* at 14.

²³ Terrence Wilson, *At What Cost? A Review of School Funding and Accountability Across the U.S. South* (IDRA Newsletter) (Feb. 2020), <https://www.idra.org/resource-center/at-what-cost-a-review-of-school-police-funding-and-accountability-across-the-u-s->

Data compiled by the ACLU and reported in *The Hechinger Report* in 2019 showed that in 1975, one percent of schools had police officers; today that number is over sixty-five percent in some states.²⁴ While there has clearly been an exponential increase in police presence in schools, critical data is not being reported—the Every Student Succeeds Act has required reporting on school police since 2015, but that reporting requirement has not been met by any state.²⁵ This increased presence of police in schools “creates the opportunity for an increased application of the law directly to students and school situations without the filter of school administrators or policies.”²⁶ The direct result is that as the school-to-prison pipeline continues to churn, some of our most vulnerable children get caught up in the juvenile delinquency system as a result of incidents that educators should be trained and provided the resources to handle within the school system.

CRIMINALIZING BEHAVIOR RELATED TO A STUDENT’S DISABILITY

Minority students and students with disabilities are more likely to be suspended or expelled from school, especially when the underlying school rule violation requires a subjective determination, such as “disrespect,” “disruption,” or “disorderly conduct.”²⁷ The school-to-prison pipeline often starts with suspension, and studies

[south/#:~:text=For%20example,%20school%20policing%20funding%20in%20states%20across,million%20in%20Texas,%20and%20\\$400%20million%20in%20Florida.](#)

²⁴ Amir Whitaker, *OPINION: 1.7 Million students attend schools with police but no counselor -- ACLU report*, The Hechinger Report (Mar. 4, 2019), <https://hechingerreport.org/opinion-7-million-attend-schools-with-police-but-no-counselor-aclu-report>.

²⁵ Daniel J. Losen and Paul Martinez, *Lost opportunities: How disparate school discipline continues to drive differences in the opportunity to learn*, Learning Policy Institute; Center for Civil Rights Remedies at the Civil Rights Project, UCLA 3, 6, (Oct. 2020), <https://www.civilrightsproject.ucla.edu/research/k-12-education/school-discipline/lost-opportunities-how-disparate-school-discipline-continues-to-drive-differences-in-the-opportunity-to-learn/Lost-Opportunities-REPORT-v17.pdf>.

²⁶ Justice Policy Institute, *Education Under Arrest: The Case Against Police in Schools* 15 (Nov. 2011) [hereinafter *Education Under Arrest*], http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf

²⁷ Russel.J. Skiba et al., *The Color of Discipline: Sources of Racial and Gender Disproportionality in School Punishment*, Urban Review 16 (2000), <https://k12engagement.unl.edu/color%20of%20discipline-%20IN.pdf>.

show that “a suspended student is less likely to advance to the next grade level or enroll in college and is more likely to drop out, commit a crime, get arrested, and become incarcerated as an adult.”²⁸ The disproportionate impact of school suspension on students with disabilities and especially on students of color with disabilities is clear. A recent report from the United States Department of Education Office for Civil Rights (OCR) found that in the 2017-18 school year, students with disabilities served under the IDEA “represented 13.2% of the total enrollment but received 20.5% of one or more in-school suspensions and 24.5% of one or more out-of-school suspensions.”²⁹ In addition, “Black students served under IDEA accounted for 2.3% of total student enrollment but received 6.2% of one or more in-school suspensions and 8.8% of one or more out-of-school suspensions.”³⁰ Black K-12 students overall are far more likely to receive one or more out-of-school suspensions than are white students and, according to the most recent national data available, Black students are expelled and suspended at rates that are more than twice their share of total student enrollment.³¹ These students often say that they feel like they are being constantly watched for any potential behavioral incident, no matter how minor, which then results in being disciplined for things that other students would not be, or punished more severely.³²

²⁸ Jason P. Nance, *Students, Police, and the School-To-Prison Pipeline*, 93 WASH. U. L. REV. 919, 956 (2016), http://openscholarship.wustl.edu/law_lawreview/vol93/iss4/6; see also *Education Under Arrest*, *supra* note 26; see also Daniel J. Losen et al., *Disabling Inequity: The Urgent Need for Race-Conscious Resource Remedies*, The Center for Civil Rights Remedies at the Civil Rights Project, UCLA 23 (2021), <https://www.civilrightsproject.ucla.edu/research/k-12-education/special-education/disabling-inequity-the-urgent-need-for-race-conscious-resource-remedies/>.

²⁹ *2017-2018 OCR Discipline Report*, *supra* note 6, at 18. The 2015-2016 data equally reflects that students with disabilities served under the IDEA were more than twice as likely to receive one or more out-of-school suspensions as compared to students without disabilities. See also *2015-2016 OCR School Climate and Safety Report*, *supra* note 6, at 14.

³⁰ *2017-2018 OCR Discipline Report*, *supra* note 6, at 18; see also Losen, *Disabling Inequity*, *supra* note 28, at 33-34.

³¹ *2017-2018 OCR Discipline Report*, *supra* note 6, at 12, 16.

³² Leone, *supra* note 13.

The negative impact of punitive school policies becomes more significant when police are stationed in schools, as it increases the likelihood that law enforcement will be involved in responding to less serious school-based behavior.³³ In that case, involvement in the juvenile justice system becomes a significant risk, even for incidents which had traditionally been handled by school administrators. Involvement in the juvenile justice system carries considerable detrimental collateral consequences, including increased risk of dropping out of school, increased mental health issues, lower college acceptance, diminished job prospects, and a higher likelihood of becoming involved in the adult criminal system.³⁴ The effect on youth who are arrested or referred to the juvenile justice system has been widely examined, with uncontroverted findings that school-based arrests and referrals have dire immediate and future consequences for students.³⁵

Implicit bias and the ongoing criminalization of typical adolescent behavior feeds the school-to-prison pipeline, as does the criminalization of behavior related to a student's disability. While the recent OCR summary data report for the 2017-2018 school year does not provide specific disproportionality data for students with disabilities arrested from school activities or referred to law enforcement, based on 2015-2016 national data, the disproportionality is evident where students with disabilities represented 28% of students arrested and referred to law enforcement,

³³ In January 2017, the United States Department of Justice (DOJ) and Wicomico County Public Schools in Maryland entered into a settlement agreement related to the use of school discipline and law enforcement in responding to the behavior of students with disabilities. Parents and advocates, including Disability Rights Maryland, filed a complaint regarding the overuse of suspension, school-based arrests, and emergency petitions on students with disabilities and Black students. The settlement agreement required a district-wide program to implement Positive Behavior Intervention and Supports (PBIS) and restorative practices and limited the involvement of SROs and other law enforcement to behaviors that present an imminent and substantial risk of serious physical injury and cannot safely be handled by school staff. Settlement Agreement between The United States of America and Wicomico County Public Schools (Jan. 23, 2017), <https://www.justice.gov/crt/case-document/wicomico-county-public-school-district-settlement-agreement>.

³⁴ Nance, *supra* note 28, at 954-56.

³⁵ See Nance, *supra* note 28; *Bullies in Blue*, *supra* note 8; see also Advancement Project, *Education On Lockdown: The Schoolhouse To Jailhouse Track* (2005), https://www.njjn.org/uploads/digital-library/Education-on-Lockdown-Advancement-Project_2005.pdf; see also *Education Under Arrest*, *supra* note 26.

but only 12% of the overall student population.³⁶ Likewise, in the most recent reported data for the 2017-2018 school year, the disproportionate impact of the school-to-prison pipeline specifically on Black students with disabilities is also apparent, showing that while Black students served under IDEA accounted for 2.3% of total student enrollment, they represented “8.4% of students referred to law enforcement and 9.1% of students who were arrested.”³⁷ Further, similar to 2015-2016 data, Black students represented 15% of the total student enrollment, yet 28.7% of all students referred to law enforcement and 31.6% of all students arrested at school or during a school-related activity.”³⁸ Overall, the recent OCR data report for the 2017-2018 school shows a 12% increase in referral to law enforcement and a 5% increase in school-based arrests.³⁹ As one example, in Maryland, the problem does not seem to be improving except in a small number of districts that are specifically focusing attention on the issue.⁴⁰ Students with disabilities are overrepresented in the juvenile justice system and nationally the percentage is thought to be between 30% and 60%, with some estimates citing even higher percentages.⁴¹

The reasons students with disabilities have a greater risk of being arrested in school or referred to the juvenile justice system are complex. A student’s learning disability, emotional disability, autism, ADHD, or other disability can manifest

³⁶ 2015-2016 OCR School Climate and Safety Report, *supra* note 6, at 4.

³⁷ 2017-2018 OCR Discipline Report, *supra* note 6, at 21.

³⁸ *Id.*

³⁹ *Id.* at 4. With only 61% of districts reporting to OCR any school based arrests and referrals to law enforcement for the 2017-2018 school year, this percentage is most likely higher. See, Losen, *Disabling Inequity*, *supra* note 28, at 39.

⁴⁰ Donna St. George, *As activists try to get police out of schools, Maryland arrest data shows racial gap* (June 24, 2020), https://www.washingtonpost.com/local/education/as-activists-try-to-get-police-out-of-schools-maryland-arrest-data-shows-racial-gap/2020/06/24/8056414e-b598-11ea-a8da-693df3d7674a_story.html.

⁴¹ Mary Magee Quinn et al., *Youth with Disabilities in Juvenile Corrections: A National Survey*, Council for Exceptional Children, Vol. 71, No. 3, 339-45, 340 (2005), https://www.researchgate.net/publication/240633339_Youth_With_Disabilities_in_Juvenile_Corrections_A_National_Survey; see also Office of Special Education and Rehabilitative Services, *Supporting Youth with Disabilities in Juvenile Corrections*, <https://sites.ed.gov/osers/2017/05/supporting-youth-with-disabilities-in-juvenile-corrections/> (last visited June 21, 2021); see also Losen, *Disabling Inequity*, *supra* note 28, at 24.

behaviors that may be challenging or disruptive in a school environment. In some cases, the behaviors surface before the student is identified as having a disability and before the student begins receiving services or treatment.

Likewise, even for a student identified with a disability, that disability may be misunderstood or underestimated by school staff, who may not have sufficient training or resources to best interact with and educate students with disabilities. In some of those cases, it may be that the behavioral problems only manifest when there is a failure to provide appropriate behavioral or academic interventions.⁴² The ACLU found that “professional standards recommended at least one counselor and one social worker for every 250 students and at least one nurse and one psychologist for every 750 students and every 700 students respectively. These staffing recommendations reflect a minimum requirement,” but 90% of schools failed to meet these minimum standards.⁴³ In part because of this lack of appropriate professional staff, the adult response to the behavior may be disproportionate to the incident, particularly for students who have been identified as having behavioral concerns, and even more specifically, for students of color who have disabilities, who are disciplined for things that other students would not be, and who are punished more severely for the same conduct infractions.⁴⁴

These problems demonstrate the urgent need to shift funding away from programs putting law enforcement officers in schools and toward programs that expand school teams of experts trained to support the social, emotional, and behavioral needs of students. COPAA strongly urges Congress to pass the Counseling not

⁴² Losen, *Disabling Inequity*, *supra* note 28, at 29.

⁴³ American Civil Liberties Union, *Cops and No Counselors: How The Lack Of School Mental Health Staff Is Harming Students* 4-5, <https://www.aclu.org/report/cops-and-no-counselors> (last visited June 21, 2021).

⁴⁴ Leone, *supra* note 13 (noting in one study, Black male students with disabilities were punished more severely than others for the same offense).

Criminalization in Schools Act⁴⁵ in order to disrupt the school-to-prison pipeline by changing how the federal government invests in school safety.

THE LEGAL OBLIGATION TO PROVIDE SERVICES AND SUPPORTS TO ADDRESS BEHAVIOR UNDER SPECIAL EDUCATION LAW

Schools have specific legal obligations regarding students with disabilities under the IDEA, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These obligations include, among other things: identifying children who have disabilities and providing a free and appropriate public education (FAPE) to those children, even to those children who are suspended. This includes providing positive behavior supports and interventions to those students who need them.⁴⁶ When school systems fail to meet these obligations, students are more likely to display behaviors that result in suspension, expulsion, and arrest.

There are critical opportunities to address behavior issues within the special education process, and more specifically within a student's special education program, called an individualized education program (IEP). The IEP team must ensure that the needed behavioral interventions and supports identified are written into the IEP and that IEP goals addressing behavior are developed. IEP teams are obligated to provide specific, measurable IEP goals with close monitoring of progress to reduce challenging behaviors as well as to address the underlying academic and social-emotional needs of the student.

⁴⁵ See Counseling not Criminalization in Schools Act, H.R. 7848, 116th Congress (2019-2020), <https://www.congress.gov/bill/116th-congress/house-bill/7848?s=1&r=77>; S. 4360, 116th Congress (2019-2020), <https://www.congress.gov/bill/116th-congress/senate-bill/4360/text?q=%7B%22search%22%3A%5B%22%5C%22%5C%22Counseling+Not+Criminalization+in+Schoo+ls+Act%5C%22%5C%22%22%5D%7D&r=1&s=3>.

⁴⁶ 20 U.S.C. § 1414; 34 C.F.R. § 300.324.

A critical resource for addressing challenging behaviors available to schools is the functional behavior assessment (FBA) and behavioral intervention plan (BIP) process, which can be used for both students with disabilities and students without disabilities.⁴⁷ The goal of an FBA is to identify the main challenging behaviors and the “function” of those behaviors, as well as to collect hard data on how often, when, and where the behaviors are taking place.

Figuring out how to support the student needs, including the function of the behavior, how to address the pattern of behavior, and teaching alternative behaviors or missing skills are processes that are built into the special education rights of students with disabilities. These are critical strategies for stemming suspensions and avoiding law enforcement involvement in the first place. This allows the IEP team to understand the nature of the behavior, recommend strategies and responses, and to monitor progress. Based on the FBA, a BIP is then developed by the child’s IEP team—which must include the child’s parent(s)—with appropriate training that directs adults on how to support students proactively, respond in a consistent and specific way, and teach and reward appropriate “replacement” behaviors. Other programs that have been successful in many schools aim to teach children the skills they are lacking in order to resolve conflicts.⁴⁸

COPAA continues to work tirelessly to promote the fundamental truth that all children *can* learn, as well as to secure the services and supports that they need *to* learn—specifically, proactive and individualized behavioral interventions and supports that are focused on behavioral skills acquisition and not harsh, reactive disciplinary measures.

⁴⁷ See 34 C.F.R. § 300.530.

⁴⁸ See Think:Kids, <http://www.thinkkids.org/> (last visited June 21, 2021).

Federal law recognizes that challenging or disruptive behavior of students with disabilities can be caused by, or have a direct relationship to, a student’s disability. A student’s disability may impact communication, decision making, emotional regulation, or social skills. When a behavior incident occurs and the school administration proposes a suspension beyond 10 school days—whether consecutive or in a “series of removals that constitute a pattern”⁴⁹—or an expulsion, an IEP team must hold a “manifestation meeting” or “manifestation determination review” session, in which the team determines whether the student’s conduct was a “manifestation” of the student’s disability. If the behavior was related to the disability, the student must be permitted to return to school, though the IDEA does provide exceptions for serious conduct violations, and parents can agree to a change in placement even if the student’s behavior was a manifestation of his or her disability.⁵⁰

It is critical that parents, advocates working with families, and school systems ensure that students’ rights are protected at each step in this process, in particular ensuring that students with disabilities are identified appropriately, that the manifestation determination review process is completed fairly, and that schools provide the required positive behavioral interventions and supports.⁵¹

Because students with disabilities are far too often denied the services they need and to which they are entitled by law, COPAA calls for the end of out-of-school

⁴⁹ 34 C.F.R. § 300.536(a).

⁵⁰ Under the IDEA, there is an exception for incidents that involve illegal drugs, weapons, or serious bodily injury at school or at a school function; in these cases, a disciplinary removal constituting a change in placement can occur despite a finding of manifestation. *See* 20 U.S.C. § 1415(k)(1)(G)(i)-(iii); 34 C.F.R. § 300.530(g)(1)-(3).

⁵¹ If a student is charged criminally for the behavior, a finding by the IEP team that the behavior was related to the disability can provide support for a dismissal of the charge. We advise families and advocates to share this information with the juvenile justice intake worker who is reviewing the charge and determining if the case will move on to the state attorney’s office as well as the defense attorney or public defender. Addressing the behavior through the special education process is usually the more appropriate and effective response rather than students going through the juvenile justice system.

suspensions and expulsions—exclusionary discipline measures to which children with disabilities are subjected disproportionately.

Importantly, the IDEA does provide protections for students who have disabilities but who have not yet been determined eligible for special education when it comes to exclusionary school discipline. A student may assert the protections of the manifestation determination review process *if* the school district “had knowledge... that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.”⁵² The ability to assert this right, of course, is predicated on the knowledge of the student or family of the IDEA rights to which a child is entitled, even in the absence of having been identified by the school district or having been informed of this right.

Despite the legal requirements of federal and state laws to use the special education process to address challenging behavior, administrators and school staff often instead respond to challenging behavior with suspension, expulsion, restraint,⁵³ seclusion, law enforcement intervention, and emergency petitions for mental health evaluations. Students, many of whom have already experienced trauma, may be further traumatized by these responses. In addition, the lost instructional time and disruption in educational services that result can further exacerbate a challenging academic situation. The denial of FAPE marked by the absence of appropriate behavioral supports that a child needs in order to make appropriate progress in school in the first place is therefore compounded by the further denial of FAPE when a child with a disability is removed from the learning environment due to disability-related behaviors for which the child requires support.

⁵² 34 C.F.R. § 300.534(a).

⁵³ See U.S. Dep’t of Education, Office for Civil Rights, *2017-18 Civil Rights Data Collection: The Use of Restraint and Seclusion on Children with Disabilities in K-12 Schools* 6 (Oct. 2020) (finding that during the 2017-2018 school year, “[o]f the 101,990 students who were restrained at school to immobilize them or reduce their ability to move freely or were placed in seclusion — 79,676, or 78%, were students with disabilities” served under the IDEA).

It is not uncommon for a student struggling against the imposition of physical restraint by school staff to then be charged with “assault” or “resisting arrest” as a result of that interaction. Rather than de-escalating the incident, the restraint and resulting charge exacerbates the situation and throws the student and his family into a frightening and uncertain path within the juvenile delinquency system, which can result in an adjudication of delinquency and placement out of the home. This type of charge, ancillary to a restraint or a confrontation in school, occurs even in school settings specifically designed for students with emotional disabilities and behavioral challenges.

When systems of support, such as special education and related services, accommodations, and behavioral interventions, are not provided or fail, school staff increasingly rely on law enforcement to control the situation. Examples of inappropriate handling of students with disabilities by law enforcement have permeated the news over the past several years.⁵⁴ Our casework and that of other disability rights advocates offer additional examples, such as a student with an emotional disability in a behavior support class who was tased because he was agitated (a function of his disability) and not following an SRO’s command, and an elementary school-aged client with autism, who would not come out from under a desk, and was therefore handcuffed and placed into the back of a police car.

⁵⁴ See, e.g., Laurel Mallory, *SC elementary student with special needs handcuffed by police, activists say*, WMBF News (May 21, 2021), <https://www.live5news.com/2021/05/20/sc-elementary-student-handcuffed-after-attacking-others-school-bus-police-say/>; Jayne Miller, *Special needs student's family questions police use of force after boy handcuffed*, WBAL TV (Oct. 13, 2020), <https://www.wbal.com/article/jarome-liason-autism-handcuffed-family-questions-police-use-of-force-baltimore-county/34362102#>; see also, e.g., Minyvonne Burk, *7-year-old boy with autism handcuffed, held on floor by school resource officer*, NBC News (Oct. 13, 2020), <https://www.nbcnews.com/news/us-news/7-year-old-boy-autism-handcuffed-held-floor-school-resource-n1243168>; see also, e.g., Lindsey Bever, *'I don't like to be touched': Video shows 10-year-old autistic boy getting arrested at school*, The Washington Post (Apr. 21, 2017), https://www.washingtonpost.com/news/education/wp/2017/04/19/i-dont-like-to-be-touched-video-shows-10-year-old-autistic-boy-getting-arrested-at-school/?utm_term=.e5dec63de6; Artemis Moshtagian, *Dallas school police use handcuffs to restrain 7-year-old boy*, CNN (May 19, 2017), <http://www.cnn.com/2017/05/16/us/boy-handcuffs-dallas-school-trnd/index.html>; see also, e.g., Holly Yan, *School resource officer sued for allegedly handcuffing children with ADHD*, CNN (Aug. 4, 2015), <http://www.cnn.com/2015/08/04/us/aclu-disabled-students-handcuffed-lawsuit/>.

Unfortunately, the examples from families and advocates are numerous, and the experiences have a lasting impact on both the child and the families involved.

Because of this ongoing crisis, COPAA renews its call for recognition of and bold action to dismantle the systemic and institutionalized racism deeply embedded in exclusionary discipline policies and policing in schools. As OCR data has shown, far too many students – especially those who are Black, Native American, have a disability, or are otherwise marginalized – have had their education taken from them because of exclusionary discipline and criminalization.⁵⁵

THE RELATIONSHIP BETWEEN ACADEMIC STRUGGLES AND BEHAVIOR

Many children with disabilities experience both academic and functional challenges as a result of their disabilities. The codified goal of the IDEA is that “all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living...”⁵⁶ Appropriate instruction in both functional and behavioral skills, as well as academics that specifically address the child's individual academic needs, are therefore imperative.

There is a strong relationship between academic struggles and behavior.⁵⁷ A student who is struggling academically and not receiving appropriate interventions may act out to avoid academic demands or may feel frustrated and exhibit noncompliance or work avoidance. In some cases, the student may lack the cognitive skills to make good choices, to understand expectations, or to express

⁵⁵ See Losen, *Disabling Inequity*, *supra* note 28, at 83.

⁵⁶ 20 U.S.C. § 1400(d)(1)(A).

⁵⁷ Leone, *supra* note 13.

frustration appropriately in trying to meet those expectations.⁵⁸ Challenging behaviors can also occur when otherwise capable students are not provided effective and appropriate instruction, including literacy instruction and academic intervention.

Nationally, only 35% of 4th graders and 34% of 8th graders were considered to be “proficient” readers in 2019, according to the National Assessment of Educational Progress Nation’s Report Card (NAEP Report Card).⁵⁹ Children involved in the juvenile justice system are even more likely than other children to read below grade level.⁶⁰ Of children who are found to be delinquent, those with reading disabilities or reading problems have been found to have higher recidivism rates.⁶¹ The link between reading problems and both juvenile delinquency and adult incarceration has been clearly documented in study after study, going back decades.

In our members’ experience, there is evidence of this common pattern— students fall behind academically, most noticeably in reading, and as their reading skill gaps widen, their negative behaviors increase. While not all of these students become involved in the juvenile justice system, the connection between reading skills and behavior is evident.

⁵⁸ Alisha R. Pollastri et al., *The Collaborative Problem Solving Approach: Outcomes Across Settings*, 21 *Harv. Rev. Psychiatry* 4 (July/Aug. 2013).

⁵⁹ The Nation’s Report Card, *NAEP Report Card: Reading National Achievement Level Results*, <https://www.nationsreportcard.gov/reading/nation/achievement/?grade=4> (last visited June 21, 2021); see also The Nation’s Report Card, *NAEP Report Card: Reading National Achievement Level Results*, <https://www.nationsreportcard.gov/reading/nation/achievement/?grade=8> (last visited June 21, 2021).

⁶⁰ Stell Simonton, *Reading Difficulty in Young Children Linked to Later Trouble With the Law* (July 18, 2016), <https://jjie.org/2016/07/18/reading-difficulty-in-young-children-linked-to-later-trouble-with-the-law/>.

⁶¹ Teara Archwamety and Antonis Katsiyannis, *Academic remediation, parole violations, and recidivism rates among delinquent youths*, 21 *Remedial & Special Educ.*, no.3, May 2000, at 161-70.

There is also far too often a delay in identifying children with learning disabilities, in some cases because the focus is on the behaviors that lead to discipline and police involvement, rather than the academic needs that may be behind the behaviors.⁶² Incredibly high numbers of incarcerated youth have learning or emotional disabilities, and over half of those students were not identified by their schools as needing special education prior to incarceration.⁶³ Instead of educators asking what these behaviors are communicating (in many cases, serious academic frustration), and addressing them within the context of educational and disability-related needs, children are turned over to administrators for discipline (if they are lucky, or perhaps, white), or to police (if they are not).

Many public schools use disproven reading instruction methods in the early elementary general education classroom, which contributes to high levels of underachievement in reading.⁶⁴ Although the IDEA requires special education that is “based on peer-reviewed research,”⁶⁵ when students are eventually identified as students with disabilities, the intervention they receive in many schools is not evidence-based. This is all the more unfortunate as there is widespread, longstanding knowledge of methods that work to teach struggling readers and children with learning disabilities to read.⁶⁶

⁶² This reluctance to identify disabilities in schools is also related to the widespread lack of sufficient resources in many districts to then serve the child with the disability, as would be required under IDEA post-identification.

⁶³ National Council on Disability, *supra* note 3.

⁶⁴ Louisa Moats, *Whole language High Jinks; How to Tell When “Scientifically-Based Reading Instruction Isn’t 7* (Jan. 2007), https://files.eric.ed.gov/fulltext/ED498005.pdf?fbclid=IwAR2i7U82nT48FmkN74HbpUrH4MHvPzdR_o96FDLKFfTwAgsXnNmJlYz0oEL; see also Emily Hanford, *Hard Words; Why aren’t kids being taught to read?* APM Reports (Sept. 10, 2018), <https://www.apmreports.org/episode/2018/09/10/hard-words-why-american-kids-arent-being-taught-to-read>.

⁶⁵ 20 U.S.C. § 1414(d)(1)(A)(i)(IV).

⁶⁶ International Dyslexia Association, *Research to Support Implementation*, <https://dyslexiaida.org/research-to-support-implementation/> (last visited June 21, 2021); see also Louise Spear-Swerling, *Structured Literacy and Typical Literacy Practices; Understanding Differences to Create Instructional Opportunities*, *Teaching Exceptional Children* 2, (2018).

Schools and districts must move away from the still widespread use of ineffective and disproven reading instruction and intervention methods and towards methods of reading instruction and intervention that are well-supported by peer-reviewed evidence in order to help more children learn to read. Far too many students, including those without diagnosed disabilities, are not learning to read given the instruction they are receiving in American public schools. Changes must be made to general education programs to bring them in line with the science of reading, including changes to teacher preparedness and standards for evidence-based instructional methods.

Individualized, evidence-based interventions must be provided for students with learning disabilities in reading, as is required under IDEA.⁶⁷ These include structured literacy interventions that are systematic, cumulative, diagnostic, multi-sensory, and delivered with fidelity. These types of evidence-based interventions and reading instructional methods are not new; they are just underutilized in an education system that is underfunded and slow to change.

Importantly, IDEA regulations specify that “specially designed instruction” involves the “adapting, as appropriate to the needs of an eligible child... the content, methodology, or delivery of instruction.”⁶⁸ Families of children with disabilities can and should advocate for changes in methodologies or programs that are not working. Schools are required to adapt their teaching in order to address the unique needs of each child receiving special education.

Given the connection between reading failure and involvement in the juvenile justice system, whether through police contact or incarceration, redistribution of funding away from police in schools creates opportunities to address these needs.

⁶⁷ 20 U.S.C. § 1414(d)(1)(i)(IV).

⁶⁸ 34 C.F.R. § 300.39(b)(3).

RECOMMENDATIONS FOR IMPROVING OUTCOMES FOR STUDENTS WITH DISABILITIES WITHOUT RELYING ON LAW ENFORCEMENT

Redressing a long history of past policies and practices that have funneled many students with disabilities into the juvenile delinquency system will take concentrated advocacy and coordinated efforts by school systems, communities, students, parents, and advocacy organizations alike.

What is clear is that the effects of policing in school on children with disabilities should be considered as part of the larger conversation about the effects of policing on children of color, and of police funding and reform in general. Children with disabilities and children of color, and critically, children who fit into both of these groups, are being discriminated against and harmed by the presence of police officers in school buildings. The Dignity in Schools Campaign, which includes a large number of national organizations, has come together to create a comprehensive set of policy recommendations, *Counselors Not Cops: Ending the Regular Presence of Law Enforcement in Schools*, as has The Advancement Project with their comprehensive report *We Came to Learn: A Call to Action for Police-Free Schools*.⁶⁹

COPAA'S RECOMMENDATIONS

1) **Stop funding police presence in schools.**

⁶⁹ Dignity in Schools, *Counselors Not Cops: Ending the Regular Presence of Law Enforcement in Schools*, <https://dignityinschools.org/take-action/counselors-not-cops/> (last visited June 21, 2021); see also Advancement Project, *We Came to Learn: A Call to Action for Police-Free Schools*, <https://advancementproject.org/wecametolearn/> (last visited June 21, 2021).

There is little, if any, reliable research effectively supporting the assertion that stationing police officers in schools makes schools safer.⁷⁰ Given the well-documented negative impacts of arrest and involvement in the juvenile justice system on young people, and the high costs associated with policing in schools, school systems should take affirmative steps to redirect that funding to other interventions and programs that are research-supported alternative responses to addressing challenging behaviors, improving school climate, and responding to the underlying issues that affect behavior.

Passing the federal Counseling not Criminalization in Schools Act is a crucial step in combating this crisis.

- 2) **With appropriate training and support, increase the role and effectiveness of educators, counselors, and mental health professionals in addressing challenging behavior.**

To reduce reliance on law enforcement, there must be a concerted effort on the part of administrators and school systems to redirect conflicts away from police intervention and back into the hands of school staff. It is critical that educators and mental health workers be relied upon to address difficult behaviors in schools, rather than police. These professionals are more likely to have the knowledge and training necessary to teach children how to prevent and resolve conflict, thereby avoiding the devastating effects of the juvenile justice system.

This does not necessarily require the implementation of new or expensive programs. In many cases, this means utilizing social workers and counselors who

⁷⁰ Nathan James and Gail McCallion, *School Resource Officers: Law Enforcement Officers in Schools*, Congressional Research Service, June 26, 2013, at 9; *see also* Chongmin Na and Denise C. Gottfredson, *Police Officers in Schools: Effects on School Crime and the Processing of Offending Behaviors*, Justice Quarterly, October 3, 2011, at 24.

are already in schools, ensuring clear guidance from administration that staff and the administration will handle behavioral incidents in the absence of a serious felony, and providing appropriate training to all adults in the school building.⁷¹ In some school districts, where mental health professionals are in short supply, this may require a community demand for funding for counselors and social workers, or a redirecting of funds into those areas.

COPAA encourages advocates for children with disabilities to urge their state departments of education and local school boards to use substantial portions of the funding they will receive through the American Rescue Plan Elementary and Secondary School Emergency Relief fund (ARP ESSER) to support the social, emotional, and behavioral needs of children with disabilities, as well as evidence-based reading instruction and intervention in the wake of the COVID-19 pandemic.

3) Rely first on the existing special education process, including the provision of individualized services and supports, for meeting the needs of students with disabilities exhibiting challenging behavior.

First, school districts need to correctly identify students with disabilities through the existing special education or Section 504 process. Some schools may be hesitant to offer special education services to students they see as having behavioral, rather than academic, difficulties. However, a hard look at students who are having behavioral issues in school often reveals academic failure, and in many cases, undiagnosed disabilities that should be addressed as required by IDEA, which is designed to support not only academic but also functional needs, as well.⁷²

⁷¹ Teachers also report that they would like their training to include more information about behavior and classroom management. American Federation of Teachers, *Reclaiming the Promise: A new path forward on school discipline practices*, <http://www.aft.org/position/school-discipline#sthash.DJf7GIID.dpuf> (last visited June 21, 2021).

⁷² See 20 U.S.C. § 1400(c)(5)(E).

Students whose behavioral disabilities affect their academic and/or functional performance may qualify for special education or related services due to an “emotional disturbance.” Students with emotional disabilities are eligible to receive special education and support services to address their difficult behaviors.⁷³

Under IDEA, there are also protections specific to students with disabilities through the “manifestation determination review” process. These protections are designed to shield these students from discriminatory disciplinary measures that set them down the path toward incarceration and redirect adult responses to behaviors towards evidence-based supportive services as well as special education support.

- 4) **Ensure that all children have access to high quality evidence-based literacy instruction and early evidence-based reading intervention where needed.**

To address the failure of American schools to ensure that students meet basic literacy standards, schools must abandon instructional methods that are not supported by efficacy evidence. Instead, teachers must be taught the science of reading at the university level, as well as how to teach reading effectively. Schools should employ evidence-based general education structured literacy instruction, early screening for reading problems, and evidence-based special education as required by IDEA.

⁷³ Emotional disturbance is defined by IDEA as “a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child’s educational performance: (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors; (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) Inappropriate types of behavior or feelings under normal circumstances; (D) A general pervasive mood of unhappiness or depression; (E) A tendency to develop physical symptoms or fears associated with personal or school problems. [34 C.F.R. § 300.8](#) (c)(4)(i).

5) Use research-based methods to improve school climate and consequently stop the reliance on law enforcement to manage behavior or address conflicts.

Many school systems have begun to implement restorative practices programs to create more positive school climates. Restorative practices can promote positive relationships among members of a school community, provide tools for problem-solving, and create productive and appropriate means for dealing with conflicts.⁷⁴

Larger scale peer-reviewed research into the effects of restorative practices on school discipline is needed.⁷⁵ The data thus far is encouraging: When Denver Public Schools adopted restorative justice policies, the result was a 68% reduction in police tickets in schools, as well as a 40% reduction in out-of-school suspensions.⁷⁶ Other worthwhile programs to consider include Positive Behavior Interventions and Supports (PBIS), meditation programs, peer jury programs, and youth courts. Actively working towards a positive school “climate” goes a long way in avoiding some behavioral problems and improving the learning environment for all students.

6) Collect and publish reliable data on discipline and police involvement within schools.

Reliable data must be collected on all incidents of school discipline,

⁷⁴ The Black Organizing Project has proposed spending some of the \$2.3 million saved by dismantling the Oakland district’s police force on training school staff in restorative justice and trauma-informed care. Black Organizing Project, <http://blackorganizingproject.org> (last visited June 21, 2021). Restorative justice is a process that uses a moderated conversation to help people understand the harm they have caused and to make amends.

⁷⁵ Trevor Fronius et al., *Restorative Justice in U.S. Schools; An Updated Research Review*, WestEd Justice & Prevention Research Center (2019), <https://www.wested.org/wp-content/uploads/2019/04/resource-restorative-justice-in-u-s-schools-an-updated-research-review.pdf>.

⁷⁶ *Fact Sheet: Creating Positive School Discipline*, Dignity in Schools (2012), <https://dignityinschools.org/resources/creating-positive-discipline/>.

suspensions, expulsions, the use of restraint and seclusion, community service referrals, school-based arrests and referrals to law enforcement, and police activity in schools, including data about race and disability-based disproportionality. Although it is not currently being done with fidelity nationally, the collection and reporting of this data is critical, in particular to begin to address both the overuse of police, and race- and disability-based disproportionality.

Finally, COPAA continues its strong support of the passage of the federal Keeping All Students Safe Act,⁷⁷ which would prohibit seclusion and prevent or reduce the use of physical restraint against students by school staff and school resource officers. These dangerous practices pose grave threats in particular to students with disabilities and students of color. Because not every state has laws limiting the use of these techniques—and the existing state laws contain varying levels of safety measures—a federal law to keep students safe and protected in school is of vital importance.

⁷⁷ U.S. House Comm. on Educ. & Lab., *Fact Sheet: Keeping All Students Safe Act* (2020), <https://edlabor.house.gov/imo/media/doc/2020-11-19%20Keeping%20All%20Students%20Safe%20Act%20Fact%20Sheet.pdf>.