Eradicating the School-to-Prison Pipeline Through a Comprehensive Approach to School Equity

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ERADICATING THE SCHOOL-TO-PRISON PIPELINE THROUGH A COMPREHENSIVE APPROACH TO SCHOOL EQUITY

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When examining the school-to-prison pipeline, most focus on issues of exclusionary discipline, the presence of police in schools, or the use of intrusive surveillance and monitoring systems. To close the pipeline, agencies, educators, and advocates must also examine other, broader factors that contribute to educational inequities. We argue in this article that eradicating the school-to-prison pipeline involves tackling the legal structures, policies, practices, and beliefs that create harmful discipline systems and other linked inequitable systems. With Arkansas schools as our illustration, we explain how inequities in discipline, funding, and school accountability create a situation primed to send students into the pipeline. With these systems as backdrop, we explain an alternative approach to eradicating the pipeline using examples from the work of the IDRA EAC-South operated by the Intercultural Development Research Association. This approach relies on using data to identify equity gaps in policy and practice and supporting educators, administrators, and policymakers to respond effectively to these challenges. Only by taking a comprehensive approach that considers the impact of inequity in educational systems adjacent to those typically examined, including systems such as school governance and funding, can we hope to eradicate the school-to-prison pipeline.

I. INTRODUCTION

The "school-to-prison pipeline" describes the process by which students are pushed out of their schools through the use of overly punitive, inappropriate, and exclusionary discipline methods. Eradicating the school-to-prison pipeline requires more than addressing the markers of school-to-prison issues, like exclusionary discipline rates, the presence of police in schools, or the use of intrusive surveillance and monitoring systems. In addition, education agencies, administrators, and teachers must examine the many other factors that create educational inequities and prevent students and adults from thriving in schools. It is important to address foundational systems, whole school climates, and legal structures—including education funding, coursework access, and school district governance—in order to prevent justice system involvement and instead focus on higher education, career, and life success. If serious inequities exist in any part of a school system, it becomes difficult to disentangle and address specific challenges, like harmful school discipline, in a meaningful and lasting way.

Here, we review inequities in school discipline and in two systems that also impact overall equity in schools—school funding and school district health.[1] We argue that eradicating the school-to-prison pipeline involves tackling the legal structures, policies, practices, and beliefs that create harmful discipline systems and other linked inequitable systems.[2] We focus on Arkansas schools to illustrate these points. We then make recommendations, based on our experience as policy advocates, researchers, and practitioners, about what it takes to create strong school cultures that do not rely on harmful exclusionary discipline and instead focus on ensuring that every student feels valued and is prepared to succeed in college.[3]

II. SYSTEMS THAT IMPACT EQUITY IN PUBLIC SCHOOLS

Many systems impact equity in public schools and tie directly to school discipline and the school-to-prison pipeline. In this section, we describe the drivers and outcomes of punitive discipline and policing in schools and explore the particular impact of these types of discipline on Arkansas students. We then examine the Arkansas school funding system and the policies that allow the Arkansas State Board of Education to take control over school districts that fail to meet accountability measures. We argue that all policies are linked and that inequities in any part of the education system impact the ability to obtain equity in public education overall.

A.   The School-to-Prison Pipeline

Teachers and administrators across the United States rely on suspensions, expulsions, alternative school placements, corporal punishment, police officers, and courts to punish school-based behaviors. Black students, Latinx students, girls of color, LGBTQ students, and students with disabilities are more likely to be disciplined using these methods than their peers,

    1. *See infra* Part II.
    2. *See infra* Part II.
    3. *See infra* Part III.

with particularly harmful outcomes for those students who identify with more than one category.[4]

This outdated approach to school discipline harms every person in a school and engenders unstable school climates. Research on the impacts of punitive school discipline is clear: these punishments—even a single suspension—increase the likelihood that students will be held back, drop out of school, and have contact with the adult and juvenile justice systems.[5] Even students who are not punished but attend schools that rely heavily on exclusionary discipline see negative impacts on their academic performance.[6] To make matters worse, students are subjected to these harsh outcomes even though many punishments are for minor, age-appropriate behaviors—even preschoolers are punished and expelled for behaviors like "horseplay" or "dress code violation."[7] Often these punishments are discretionary, based on the subjective decision of a single adult, which allows individual biases to come into play.[8] And, when there are real behavior challenges to address, punitive approaches ignore what are often serious, root causes of those challenges, including homelessness, food insecurity, or an un- or under-diagnosed special education need.

Harsh and ineffective punishments have no social or pedagogical value and can present significant barriers to students' success. Yet the punitive discipline policies and practices of schools and school districts are fully supported by overly punitive legal systems that have developed over time,

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4. *See* U.S. DEP'T OF EDUC. OFFICE FOR CIVIL RIGHTS, CIVIL RIGHTS DATA COLLECTION, DATA SNAPSHOT: SCHOOL DISCIPLINE 1, https://www2.ed.gov/about/offices /list/ocr/docs/crdc-discipline-snapshot.pdf (last visited Feb. 4, 2020); *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-18-258, K-12 EDUCATION: DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES (2018); *see* GLSEN, Educational Exclusion: Drop Out, Push Out, and the School-to-Prison Pipeline Among LGBTQ Youth, https://www.glsen.org/sites/default/files/2019-11/Educational_Exclusion_2013.pdf   (last visited June 20, 2020).

5. *See, e.g.*, MINER P. MARCHBANKS III & JAMILIA J. BLAKE, ASSESSING THE ROLE OF SCHOOL DISCIPLINE IN DISPROPORTIONATE MINORITY CONTACT WITH THE JUVENILE JUSTICE SYSTEM: FINAL TECHNICAL REPORT 6, 18, 24 (2018), https://www.ncjrs.gov/pdffiles1 /ojjdp/grants/252059.pdf; TONY FABELO ET AL., BREAKING SCHOOLS' RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS' SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 54 (2011).

6. *See* Andrew Bacher-Hicks, Stephen B. Billings & David J. Deming, *The School to Prison Pipeline: Long-Run Impacts of School Suspensions on Adult Crime* 4 (Working Paper No. 26257, 2019).

7. *See* U.S. Dep't of Health and Human Servs. & U.S. Dep't of Educ., Policy Statement on Expulsion and Suspension Policies in Early Childhood Settings 4 (Nov. 2014) (un-published policy guidance) (on file with U.S. Dep't of Health and Human Services & U.S. Dep't of Educ.).

8. AJMEL QUERESHI & JASON OKONOFUA, NAACP LEGAL DEF. & EDUC. FUND, INC., LOCKED OUT OF THE CLASSROOM: HOW IMPLICIT BIAS CONTRIBUTES TO DISPARITIES IN SCHOOL DISCIPLINE 4 (2017).

exploding in the 1990s.[9] The expansion in schools of "zero-tolerance" poli-
cies that encouraged immediate and harsh punishments, even for minor in-
fractions, occurred in tandem with changes in the juvenile justice system
that were based on wrong and racist theories about juvenile behavior and
criminalization.[10]

1.   School Discipline Inequities in Arkansas

Arkansas students can receive several types of punishments, including
in-school suspensions, out-of-school suspensions, alternative school place-
ments, expulsions, and corporal punishment. There are significant disparities
in the way Arkansas students are disciplined in schools. Black students, stu-
dents with disabilities, and students from families with limited incomes are
overrepresented in discipline referrals (sent to an administrator) and actual
exclusionary punishments (removed from their regular classroom setting).

One analysis of Arkansas school discipline data found that, between
the 2014–15 and 2016–17 school years, Black students received about 117
discipline referrals per 100 students (more than one referral per student per
year).[11] Students of other races received just 37 to 40 referrals per 100 stu-
dents.[12] Additionally, Black students were more likely than students of other
races to receive an exclusionary punishment following a referral.[13] Twenty-
five percent of referrals resulted in exclusionary discipline for Black stu-
dents, compared to 13.5% for White and Hispanic students, and 15% for
students of other races.[14]

Among common infraction types, "disorderly conduct" is the most fre-
quently punished.[15] There were over 68,000 cases of disorderly conduct in
the 2016–17 school year.[16] Disorderly conduct and the other most common
offense, "insubordination," can be extremely vague offenses that are often
based on the subjective beliefs of the observer, allowing individual biases to

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9. *See* Nancy A. Heitzeg, *Education or Incarceration: Zero Tolerance Policies and the
School to Prison Pipeline*, F. ON PUB. POL'Y ONLINE, 2009, at 4–5, https://files.eric.ed.gov/
fulltext/EJ870076.pdf.

10. *Id.* at 8–9.

11. KAITLIN ANDERSON, UNIV. ARK. OFFICE FOR EDUC. POL'Y, ARKANSAS STUDENT
DISCIPLINE REPORT 12–13 (2018).

12. *Id.* at 13.

13. *Id.*

14. *Id*.

15. ADE DATA CENTER, ARK. DEP'T OF EDUC., DISCIPLINARY INFRACTIONS BY STATE,
https://adedata.arkansas.gov/statewide/ReportList/State/DisciplinaryInfractions.aspx   (last
visited June 7, 2020) (listing only the category "other" as having more cases than disorderly
conduct).

16. *Id.*

dictate who gets punished for the infraction.[17] For example, disorderly conduct involves engaging in "tumultuous behavior," making "unreasonable or excessive noise," and using "abusive or obscene language," among other provisions.[18] In Arkansas schools, Black students are three times more likely than White students to receive a discipline referral for disorderly conduct and more likely to receive exclusionary discipline for the offense.[19] It is important to note that students of color are not more likely to misbehave than their peers; they are simply more likely to be punished, particularly for subjective offenses, and at the discretion of teachers and administrators.[20]

Similarly, there are disparities in discipline based on socioeconomic status and disability. Students who receive free or reduced-price lunch are two and a half times more likely to receive discipline referrals than their peers, while students with disabilities are 1.7 times more likely to receive a referral than their peers.[21]

While exclusionary discipline can be harmful for any student, the discriminatory outcomes for certain student groups make the practices particularly troubling. When certain students are punished disproportionately based on race, socioeconomic status, disability, or any other characteristic, classroom learning and socialization time are negatively impacted for those students, potentially putting them behind their peers in a number of measures. Furthermore, when teachers and administrators punish some students more than others, they leave the students who are not punished with harmful impressions and messages about which of their peers and who in the larger society is valuable and deserving of inclusion. Inequities in school discipline impact entire school structures and can have long-lasting impacts on collective concepts of fairness and justice.

B.   School Funding

A child's future should not depend on his or her race, ethnicity, parents' income, or neighborhood. Yet school funding systems often exacerbate existing inequities in housing and wealth by relying on formulae that are tied to the markers of those inequities. For example, redlining policies[22] kept

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17.   *See* Charles Ogletree, Robert J. Smith & Johanna Wald, *Criminal Law: Coloring Punishment: Implicit Social Cognition and Criminal Justice*, *in* IMPLICIT RACIAL BIAS ACROSS THE LAW 45, 53–54 (Justin D. Levinson & Robert J. Smith eds., 2012); *see also generally* Frances Vavrus & KimMarie Cole, *"I Didn't Do Nothin'": The Discursive Construction of School Suspension*, 34 URBAN REV. 87 (2002).

18.   ARK. CODE ANN. § 5-71-207 (2019).

19.   Anderson, *supra* note 11, at 13.

20.   Fabelo et al., *supra* note 5, at 46.

21.   Anderson, *supra* note 11, at 16-17.

22.   "Redlining" describes the federal government policies and practices, prevalent in the 1930s, that designated neighborhoods, based on race and ethnicity, as high risk for home

neighborhoods segregated, prevented community development, and blocked families of color from building intergenerational wealth through property ownership.[23] Many school-funding formulae tie funds to property values, and policies allow communities to raise additional dollars solely for their neighborhood schools. Because funding is so foundational to the success of schools, it is important that we provide fair and equitable funding that meets the individual needs of students and adults. If we do not focus on this issue, we compromise our ability to craft other equitable systems, including fair school discipline.

The Arkansas Constitution requires the state to maintain a "suitable and efficient" public school system.[24] The Supreme Court of Arkansas has interpreted this provision to require the state to provide an "adequate" education to students and to ensure that "equal educational opportunity" exists.[25] In *Lake View School District Number 25 v. Huckabee,* the court reviewed the state's public school funding structure,[26] which the district of Lake View challenged because of its reliance on local property taxes to fund schools.[27] Lake View argued that, even with the state's attempts to balance funding among districts, schools in wealthier areas of the state were receiving more funding than schools in poorer areas.[28] The Supreme Court of Arkansas found that the funding formula was neither adequate nor equitable and affirmed the lower court's decision that the school funding system was unconstitutional under the Education Article and the Equality provisions of the Arkansas Constitution.[29]

Since that ruling, the Arkansas General Assembly has attempted to remedy the unconstitutional system of funding through a number of legislative actions reviewed by the courts. For example, the Arkansas General Assembly appointed a Special Joint Committee on Educational Adequacy in 2003, tasked with making recommendations for how to ensure more ade-

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mortgage loans. As a result, mortgage lenders routinely denied people of color access to mortgages and other funds, resulting in racially segregated access to homeownership and the wealth that could be passed down through families.

23.   *See* RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017).

24.   ARK. CONST. art. 14, § 1.

25.   Lake View Sch. Dist. No. 25 of Phillips Cty. v. Huckabee, 351 Ark. 31, 66–67, 91 S.W.3d 472, 492 (2002) (*Lakeview III*). For a full chronology of all *Lakeview* decisions, *see* ARK. BUREAU OF LEGISLATIVE RESEARCH, CHRONOLOGY OF MILESTONES IN LAKEVIEW, http://dese.ade.arkansas.gov/public/userfiles/Legal/Milestones_in_Lake_View_Case_-_BLR.pdf (last updated May 23, 2012).

26.   *Lakeview III*, 351 Ark. at 42, 91 S.W.3d at 477.

27.   Lake View Sch. Dist. No. 25 of Phillips Cty. v. Huckabee, 340 Ark. 481, 484, 10 S.W.3d 892, 893–94 (2000) (*Lakeview II*).

28.   *Id.*

29.   *Id*. at 484–85; 10 S.W.3d at 894; *Lakeview III*, 351 Ark. at 42, 91 S.W.3d at 477; *see also* ARK. CONST. art. 14, § 1; ARK. CONST. art. 2, §§ 2–3, 18.

quate funding in the Arkansas school system.[30] The recommendations in these reports are designed to influence budgeting and set per-pupil spending levels for each biennium.[31]

1.   School Funding Inequities in Arkansas

A little over half of the current funding for Arkansas public schools comes from "foundation funding," a combination of local property tax dollars and state investment.[32] An additional 17% of funding comes from other local sources, and another 11% comes from other state sources.[33] These funds are distributed to schools based on annual per-pupil spending levels set by the legislature according to its determination of what it costs to provide a student with an adequate education.[34] But a policy brief issued by the Office for Education Policy at the University of Arkansas indicates that spending gaps persist throughout the state and that achievement gaps remain between students from different geographic, racial, and socio-economic backgrounds.[35]

Because a significant portion of funds for Arkansas public schools still comes from local property tax revenues, inequity is built into the public-school funding system. In *Kimbrell v. McCleskey*, the Supreme Court of Arkansas ruled that school districts may keep funds they collect in excess of their education costs, based on the legislature's per-pupil spending determination.[36] This decision ended the state's policy of redistributing excess local tax revenue funds from wealthier districts to poorer ones. As a result, wealthier districts are able to collect and keep more funds than others, enabling students in wealthier districts to have access to more and better resources than students in poorer districts.[37] This funding scheme ties educa-

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30.   *See Adequacy Reports*, ARK. STATE LEGISLATURE, https://www.arkleg.state.ar.us /Education/K12/AdequacyReports (last visited June 7, 2020).

31.   *Id.*

32.   *See Funding Education in Arkansas*, STATE OF ARK. HOUSE OF REPRESENTATIVES (June 14, 2019), https://www.arkansashouse.org/news/post/7590/funding-education-in-arkansas.

33.   *Id.*

34.   *Id.*

35.   *See Education Funding Equity in Arkansas*, 12 U. ARK. OFF. FOR EDUC. POL'Y, Nov. 2015, at 3.

36.   *See* Mark A. Fritsche, Note, Kimbrell v. McCleskey*: Rethinking the Constitutional Equality Requirement for Funding Arkansas's Public Schools*, 67 ARK. L. REV. 724, 741 (2014) (discussing Kimbrell v. McCleskey, 2012 Ark. 443, 424 S.W.3d 844 (2012)).

37.   *See id.* The four school districts that were plaintiffs in *Kimbrell* had two main characteristics "in common—high property values and low student enrollment." *Id.* at 751. Because of the *Kimbrell* decision, these school districts now have significantly more per-pupil funding than other districts in the state. In 2014, eight school districts were able to keep an excess of more than eight million dollars in total—all had either a highly-taxed industry like a

tional resources to district wealth, not actual costs, and in some cases can exacerbate racial and economic segregation issues.[38] These funding inequities can be made even worse *within* districts, where resources like parent contributions and in-kind donations can be collected outside of state formulae and tracking systems.[39] Further, state contributions to education can be unstable, particularly during large-scale economic downturns, which can disproportionately harm poorer districts that rely heavily on state funding to meet schools' needs.[40]

Additionally, inequitable funding for student groups with additional resource needs continues to be a problem in the Arkansas school funding system. For example, English learners (ELs) are a growing population in the state—from the 2000–01 school year to the 2016–17 school year, EL enrollment increased approximately 254%.[41] In *Lake View I*, the court identified low spending on ELs as one of the many factors that made the state funding system unconstitutional and deficient.[42] Arkansas's school finance system allocates additional funds, beyond the average per-pupil spending, for ELs. Currently, ELs receive an additional $345 per school year,[43] but this allocation may not meet the needs of schools or ELs.[44] In the 2016–17

steel mill, a retirement community, a tourist destination, or a large natural gas facility. *Id.* at 752–53. Thus, the characteristics of the communities, not the needs of the students in them, drove up per-pupil spending.

38. *See* Alana Semuels, *How Segregation Has Persisted in Little Rock,* ATLANTIC (Apr. 27, 2016), https://www.theatlantic.com/business/archive/2016/04/segregation-persists-little-rock/479538.

39. *See, e.g.*, Ary Amerikaner, Opinion, *States Are Burying Damning Data About School Funding*, N.Y. TIMES (Jan. 29, 2020), https://www.nytimes.com/2020/01/29/opinion/school-district-funding-data.html.

40. *See Without Intervention, COVID-19-Induced Budgetary Shortfalls Will Fall Hardest on Marginalized Students in the South*, Update to *COVID-19 Education Policy Updates*, INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION, (May 22, 2020), https://www.idra.org/resource-center/covid-19-education-policy-updates/.

41. *See* Sonya Douglass Horsford & Carrie Sampson, *High-ELL-Growth States: Expanding Funding Equity and Opportunity for English Language Learners*, VUE, Summer 2013, at 50; ARK. BUREAU OF LEGISLATIVE RESEARCH, ENGLISH LANGUAGE LEARNERS (ELL) STATE CATEGORICAL FUNDING REVIEW 1 (Dec. 19, 2017), http://www.arkleg.state.ar.us /education/K12/AdequacyReports/2018/2017-12-19/ELL-CategoricalReportBLR08.pdf.

42. *See* JOINT INTERIM COMMITTEE ON EDUC., FINAL REPORT ON THE LEGISLATIVE HEARINGS FOR THE 2018 EDUC. ADEQUACY STUDY, 91st Ark. Gen. Assemb., 2nd Sess., at 3 (2018), http://www.arkleg.state.ar.us/education/K12/AdequacyReportYears/2018Educational AdequacyReportVolumeI_11-1-2018withAddendum.pdf [hereinafter 2018 EDUC. ADEQUACY STUDY].

43. ARK. CODE ANN. § 6-20-2305(b)(3)(A) (2019).

44. *See* 2018 EDUC. ADEQUACY STUDY, *supra* note 40, at 3; *see also* Oscar Jimenez-Castellanos & Amelia M. Topper, *The Cost of Providing an Adequate Education to English Language Learners*, 82 REV. EDUC. RES. 179 (2012) (reviewing seventy studies on EL funding and explaining that studies unanimously agree that funding levels are insufficient for Els to meet performance standards).

school year, Arkansas schools were spending an average of $525 beyond the basic level of per-pupil funding on EL education, but the state only allocated an additional $331 per student for EL education that year.[45] Additionally, the state has not mandated funds to meet federal requirements in the Every Student Succeeds Act to review the educational progress of ELs who have exited language programs, making it difficult to monitor the success of the students and the language programs themselves.[46]

Well- and equitably-funded schools are able to support students, teachers, and families. They make real investments in the people, materials, and programs that create healthy, safe, and supportive schools that do not rely on exclusionary discipline. Centering equity in school finance conversations can help education agencies to shift away from the habit of throwing money at harmful, ineffective approaches, like school-based police officers, and instead invest in long-term solutions that are responsive to school needs, like excellent instructional materials, counselors, social workers, homeless liaisons and other professionals that support students. Resources allow for school-wide programs, trainings, and professional development, and they allow schools to address the social, emotional, and physical needs of students, adults, and entire school communities.

C.   District Health

Healthy school districts have diverse, democratically elected school boards that are empowered to make decisions that benefit all students in the district. They have students and families who are actively involved in schools and whose perspectives are valued and considered with determining policies and practices. Healthy school districts have diverse student bodies and are held accountable through meaningful evaluation systems that do not rely on inappropriately punitive and ineffective consequences. When a district is healthy and has equitable systems in place, it does not allow schools to rely on harmful discipline practices to punish students, and instead encourages appropriate practices to build strong and healthy relationships between members of the school community.[47]

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45. *See* 2018 EDUC. ADEQUACY STUDY, *supra* note 40, at 92 (noting district expenditures do not include federal funding designated for ELs).

46. *See id.* at 91; *see English Language Learners State Categorical Funding Review, supra* note 37 at 10; Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1802 (2015).

47. *See, e.g.*, Jill D. Sharkey & Pamela A. Fenning, *Rationale for Designing School Contexts in Support of Proactive Discipline,* 11 J. SCH. VIOLENCE 1, 3 (2012).

1.   *District Health in Arkansas*

Increasingly, state education agencies are using their power to take over local school boards they deem to be under-performing.[48] But in doing so, state agencies often compromise local school district health, creating unstable school climates that can lead to poor outcomes for students.[49] In 2015, the Arkansas State Board of Education (SBOE) dissolved the Little Rock School District's locally-elected school board and took control of the district because of, the SBOE said, several consecutive years of low ratings at six of the district's forty-eight schools.[50] The board takeover also occurred shortly after the election of the first majority-Black school board in Little Rock.[51] Johnny Key, the Arkansas Education Secretary, was given control of the school board.[52]

At the time of the Little Rock takeover, the system used to determine whether a school or district was in "academic distress,"[53] and thus subject to state takeover, considered whether a school district or school met one of two factors: first, whether 49.5% or fewer students had tested "proficient" or "advanced" in state math and reading assessments for the previous three years[54] and, second, whether certain schools failed to meet required progress under federal improvement plans.[55] Six schools in the Little Rock School

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48. *See* TERRENCE WILSON & CHLOE LATHAM SIKES, INTERCULTURAL DEVELOPMENT RESEARCH ASSOCIATION, ANOTHER ZERO TOLERANCE FAILURE – STATE TAKEOVERS OF SCHOOL DISTRICTS DON'T WORK 1 (2020), https://www.idra.org/wp-content/uploads /2020/03/Another-Zero-Tolerance-Failure-IDRA-Issue-Brief-State-Takeovers-2020.pdf.

49. *Id.* at 2.

50. Lindsey Millar, *LRSD "Grades" and the Many Flaws in the State's Education Accountability System and How It's Being Applied*, ARK. TIMES (Oct. 3, 2019), https://arktimes.com/arkansas-blog/2019/10/03/lrsd-grades-and-the-many-flaws-in-the-states-education-accountability-system-and-how-its-being-applied.

51. Adam Harris, *An Attempt to Resegregate Little Rock, of All Places*, ATLANTIC (Oct. 22, 2019), https://www.theatlantic.com/education/archive/2019/10/little-rock-still-fighting-school-integration/600436/.

52. Daniel Breen, *As LRSD Approaches Five Years of State Control, Its Future Is Still Uncertain*, KUAR NPR (Nov. 13, 2019), https://www.ualrpublicradio.org/post/lrsd-approaches-five-years-state-control-its-future-still-uncertain.

53. AR Code §§ 6-15-424 to -431(repealed 2017).

54. *See* ARK. DEP'T OF EDUC. RULES GOVERNING THE ARK. COMPREHENSIVE TESTING, ASSESSMENT AND ACCOUNTABILITY PROGRAM (ACTAAP) AND THE ACADEMIC DISTRESS PROGRAM, Rule 3.02, 005.19 Ark. Reg. 247 (May 2016), https://www.sos.arkansas.gov /uploads/rulesRegs/Arkansas%20Register/2016/june2016/005.19.16-001.pdf (specifying that the "academic distress" classification applied to school districts or schools that fail to meet test score expectations for three consecutive years). At that point, the SBOE had the discretion to intervene. SBOE was *required* to intervene after five consecutive years of the test score levels that led to the academic distress classification. ARK. CODE ANN. § 6-15-429 (repealed 2017).

55. In 2013, the criteria for an academic distress designation were changed—the bar for chronic academic underperformance was lowered, resulting in more districts designated as

District, but not the district itself, were identified as being in academic distress. [56]

In 2017, the state legislature adopted the Arkansas Education Support and Accountability Act, which ended the "academic distress" designation and instead identified school districts that were not meeting accountability standards as in need of "Level 5—Intensive Support."[57] The Act also called for more collaboration between the state education agency and school districts in order to address the challenges faced by districts.[58] After a deficiency finding by the state, the SBOE has the power to dismiss locally-elected school boards; replace superintendents; annex, consolidate, or reconstitute any school district; and close any school that meets the Level 5—Intensive Support criteria.[59] The SBOE may also delegate its power to govern the day-to-day functioning of a taken-over school board directly to the Commissioner of Education.[60]

The SBOE may only retain control of a local school board for five years,[61] so in 2019, the SBOE proposed a plan to pass control of *some* of the schools in the Little Rock School District back to an elected board.[62] The plan would have given control of the highest-performing schools in the district back to a locally-elected board, while the lowest-performing schools (those that received an "F" in the state's accountability system) would remain under state control.[63] Many in the Little Rock community protested, claiming that the proposed division of control was tantamount to state-sanctioned segregation since the schools that would have remained under state control were majority Black.[64] The SBOE instead voted to return con-

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"distressed," and the state began evaluating individual schools, not just entire districts, to determine academic distress. *See* ARK. BUREAU OF LEGISLATIVE RESEARCH, ACADEMIC DISTRESS 1–2 (Aug. 23, 2016), http://www.arkleg.state.ar.us/education/K12 /AdequacyReports/2016/2016-08-23/04-Academic%20Distress%20Report,%20BLR% 20(25).pdf.

56. *Id.*

57. *See* ARK. BUREAU OF LEGISLATIVE RESEARCH, ARKANSAS EDUCATIONAL SUPPORT AND ACCOUNTABILITY SYSTEM 2 (Aug. 22, 2017), http://www.arkleg.state.ar.us/education /K12/AdequacyReports/2018/2017-08-22/AR%20Educational%20Support%20and%20 Accountability%20System,%20Report,%20BLR%20(5).pdf.

58. *Id.*

59. The SBOE has the power to take these and a number of other actions described in ARK. CODE ANN. § 6-15-2916 (2019).

60. *Id.* § 6-15-2916(2)(B)(iii).

61. *Id.* § 6-15-2917(c)(1). If a school district has not exited Level 5—Intensive Support after five years of state control, the state must "annex, consolidate, or reconstitute" the district. *Id.*

62. Lindsey Millar, *The Second Little Rock Crisis*, ARK. TIMES (Oct. 28, 2019), https://arktimes.com/news/cover-stories/2019/10/28/the-second-little-rock-crisis.

63. *See id.*

64. Breen, *supra* note 50.

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trol of the entire district to a locally-elected board in November 2020, but the damage to the relationship between the state education agency and many members of the Little Rock community had been done.[65]

State accountability systems can rely too heavily on unreliable tests and numerical indicators and fail to recognize underlying equity issues that may influence those indicators.[66] The Arkansas Bureau of Legislative Research found that

> schools with a lower than average percentage of Black students are six times as likely to receive "A" ratings than schools with larger than average percentage of Black students. That same comparison with students from families with limited incomes shows that schools with lower than average percentages of free-and-reduced-lunch students are almost eight times as likely to receive "A" ratings than are schools with higher than average percentages of students in that category."[67]

Research of state takeovers across the United States found that predominantly Black school districts are more likely to be taken over by state education agencies and are more likely to have their democratically-elected school boards completely removed than similarly struggling, predominantly White districts.[68]

State takeovers of local school boards have not been shown to result in significant improvements in reading and math scores, attendance, or graduation rates post-takeover.[69] Instead, they can erode trust between state education agencies and local districts and communities. In a survey of Arkansas superintendents whose districts were taken over by the state education agency, one superintendent noted that state takeover "is not only irresponsible of [the Arkansas Department of Education] and the legislature, but also dehumanizing to the [District] teachers, students and community," especially when there are changing state assessments and federal standards.[70]

While schools and districts should certainly be held accountable for providing an excellent education to all students, accountability systems that

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65. *See id.*

66. *See generally* Albert Cortez, *Accountability that Doesn't Hurt Students*, IDRA NEWSL. (Intercultural Dev. Research Ass'n), Nov.–Dec. 2010 (discussing accountability measures that are harmful in Texas and across the nation).

67. *See* ARK. BUREAU OF LEGISLATIVE RESEARCH, RESEARCH REPORT: HOLDING ARKANSAS SCHOOLS ACCOUNTABLE, ENSURING AN ADEQUATE AND EQUITABLE EDUCATION FOR ALL STUDENTS 15 (Sept. 10, 2019), http://www.arkleg.state.ar.us/education/ K12/AdequacyReports/2020/2019-09-10/_Handout-C1_AccountabilityReport-05.pdf.

68. *See* DOMINGO MOREL, TAKEOVER: RACE, EDUCATION, AND AMERICAN DEMOCRACY (2018) at 11.

69. *Id.*

70. *See* ARK. BUREAU OF LEGISLATIVE RESEARCH, *supra* note 53, at 7 (second alteration original).

do not accurately identify needs and instead allow state agencies to punish school districts harshly and wrest governing power away from communities can create unstable schools and districts. School district takeovers can demonstrate a state education agency's lack of understanding of the drivers of inequities and can result in the isolation of schools and districts that might want and need meaningful supports. Measures of success or failure that ignore systemic inequities, trigger interventions that are narrowly focused on testing metrics, and have a disproportionate impact on students of color and students in families with low incomes cause entire district and school cultures to suffer.

This lack of overall system health and equity can make achieving school discipline equity extremely challenging. Research shows multiple instances in which punitive school discipline was worse in districts taken over by the state compared to neighboring locally governed districts.[71] Underlying issues that may create challenges for teachers and students in schools can go unaddressed in unhealthy districts. Educators who are struggling to meet accountability standards may not feel equipped to adequately respond to students' social, emotional, and behavioral needs. Additionally, educators, parents, and teachers can become disengaged and frustrated when they believe that school systems are poorly managed and unfairly assessed. This frustration can inhibit the strong school cultures that are necessary to create discipline systems that are fair, responsive to needs, and unbiased.

III. A COMPREHENSIVE APPROACH TO ERADICATING THE SCHOOL-TO-PRISON PIPELINE

A comprehensive approach to eradicating the school-to-prison pipeline and ensuring safe, supportive districts and schools that prepare all students for college success requires the use of a number of tools to address the many systemic inequities in our public school systems. Just as the school-to-prison pipeline is created and exacerbated by multiple systemic inequities in schools, the responses to those inequities are interconnected and multi-pronged. Large-scale technical assistance, equitable data analyses, multi-level policy advocacy, training and professional development for educators, challenging and supportive school cultures, and family and student engagement are critical components of addressing the school-to-prison pipeline and developing healthier pathways for students. These tools can be paired with appropriate legal strategies, including individual student representation in discipline hearings, impact litigation, and "know your rights" materials and

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71. *See* Steven L. Nelson, *Could the State Takeover of Public Schools Create a State-Created Danger?: Theorizing at the Intersection of State Takeover Districts, the School-to-Prison Pipeline, and Racial Oppression*, 27 NAT'L BLACK LAW J. 1, 36–41 (2018).

trainings to ensure that legal structures support, and do not hinder, progress toward creating equitable and excellent educational opportunities for all students.

A.   Technical Assistance for Education Agencies to Address Discrimination

Beginning with *Brown v. Board of Education* (1954),[72] the first generation of civil-rights legislation has striven to bring systemic equity to public education. The judicial branch recognized that public schools would need guidance on the adoption and implementation of desegregation plans.[73] Technical assistance centers were born from this legislation and evolved over time to embrace a broader set of educational inequities related to school desegregation.

The IDRA EAC-*South* is one of four federally-funded centers that provide technical assistance and training at the request of school districts and other related government agencies to build capacity of local educators to ensure a more equitable learning environment for all students.[74] The center's four focus areas include race, gender, national origin, and religion. The IDRA EAC-*South* specifically serves states and school districts in federal Region II: Alabama, Arkansas, District of Columbia, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

The equity assistance centers (EACs), originally named desegregation assistance centers (DACs), originated in the Civil Rights Act of 1964 and are the oldest technical assistance entities in the nation.[75] The EACs hold a unique position of focusing their work on civil rights considerations and implications in public K-12 education. Though the EACs are not enforcement agencies, they help build capacity for non-discriminatory policies and practices, leading to increased equitable educational opportunities for all students.

The IDRA EAC-*South* implements a coherent, research-based technical assistance and training plan through strategic approaches, service delivery, and web-based and on-site approaches. The IDRA EAC-*South* works with state and local education agencies to build capacity among the 2,329 school districts and 28,628 schools in the region to desegregate schools and ser-

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72.   *See* Brown v. Bd. of Educ., 347 U.S. 483 (1954).

73.   *See* Bradley Scott, *From "DAC" to "EAC"—The Expanding Role of the Equity Assistance Center*, IDRA NEWSL. (Intercultural Dev. Research Ass'n), Feb. 1999, https://www.idra.org/resource-center/from-aeoedacae-to-aeoeeacae-the-expanding-role-of-the-equity-assistance-center/.

74.   IDRA EAC – SOUTH, https://www.idraeacsouth.org/.

75.   Scott, *supra* note 73.

vices and combat discriminatory practices that threaten student achievement. IDRA defines capacity building as an evidence-driven process of strengthening the abilities of individuals, organizations, and systems responsible for creating an equitable system of education that works for all students regardless of race, ethnicity, language, religion, sex or socioeconomic status. IDRA's focus on building capacity among and across stakeholders provides a foundation that allows for a comprehensive approach to addressing the school-to-prison pipeline.

B.   Using Data to Identify Inequities

Data allow us to understand truths about education as well as combat myths about marginalized children and communities.[76] It is imperative that data related to student outcomes and success include both quantitative and qualitative measures. These measures must be examined through an equity lens and made accessible to the public in a consistent and meaningful way.

An equitable analysis of data can help to identify opportunity gaps. Opportunity gaps in education are differences in opportunity that result from a combination of factors external to students' educational experiences and access to instruction within our schools.[77] These include (1) lowered expectations for historically marginalized students; (2) a lack of equitable access to rigorous courses and programs that prepare all students for a college- and career-ready future; and (3) a lack of access to high levels of support that measurably increase student achievement and success in rigorous and advanced courses.

An equity-based definition of opportunity gaps acknowledges the importance of students' and families' innate funds of knowledge and assets. All students who enter schools bring gifts, dreams, and shared histories. This is not to say that students do not experience unique adversities outside of school that affects their lives. Rather, this affirmation reminds us that, as educators and educational policymakers, we are most effective when we concentrate on those factors that we can most easily influence.

Equitable data analyses can reveal and measure these gaps and lead to appropriate structural and systemic responses. Data can challenge misconceptions about student behavior and ensure proper and efficient implementation of research-based approaches to discipline and classroom management. When these data are published, with appropriate contextual information,

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76. Bricio Vasquez & Hector Bojorquez, *Using Data to Uncover Facts for Strengthening Education*, IDRA NEWSL. (Intercultural Dev. Research Ass'n), Jan. 2019, https://www.idra.org/resource-center/using-data-to-uncover-facts-for-strengthening-education/.

77. Muhammad A. Khalifa, Mark Anthony Gooden & James Earl Davis, *Culturally Responsive School Leadership*, 86 REV. EDUC. RES. 1272 2179–80(2016).

they can ensure the critical community involvement that leads to healthier schools for all students.

C.   Supporting Teachers and Administrators

Teachers, education leaders, and policymakers must accept responsibility and hold others accountable for the education of every learner. Unfortunately, many educators enter the teaching field ill-prepared to face the challenges of teaching in culturally diverse schools.[78] Differences among students (including language, race/ethnicity, and religion) that are not properly acknowledged and honored in schools can leave students feeling out of place and disconnected from their peers and teachers.[79] Cultural and curricular mismatches between teachers, students, and school leaders can further contribute to educational inequities.[80] These conditions often lead to tension-filled classrooms with lowered expectations for achievement among marginalized student groups and higher incidents of harmful discipline strategies.[81]

Professional development should offer effective tools and strategies that provide instructional and interpersonal support and prepare educators to successfully engage students in multicultural learning environments. Providing teachers with professional development experiences focused on the role of implicit bias in furthering systemic educational inequality develops intercultural proficiency and allows teachers to learn more about themselves in relation to others' experiences.[82] Employing culturally-responsive instructional practices provides students with opportunities to engage with teachers, peers, and content through numerous avenues and dialogue, resulting in increased student outcomes in achievement, college and career readiness, and global citizenship.[83]

Teachers play a key role in creating positive learning environments that promote diversity.[84] That diversity must extend to the homes and communi-

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78.   Dawn T. Lambeth & Ann Marie Smith, *Pre-Service Teachers' Perceptions of Culturally Responsive Teacher Preparation*, 85 J. NEGRO EDUC. 46, 46 (2016).

79.   *See generally* Jennifer M. Langer-Osuna & Na'ilah Suad Nasir, *Rehumanizing the "Other": Race, Culture, and Identity in Education Research*, 40 REV. RES. EDUC. 723 (2016).

80.   *See* CHERYL STAATS, KIRWAN INST., IMPLICIT RACIAL BIAS AND SCHOOL DISCIPLINE DISPARITIES: EXPLORING THE CONNECTION 8–9 (2014), http://kirwaninstitute.osu.edu/implicit-bias-training/resources/ki-ib-argument-piece03.pdf.

81.   *See id.* at 10.

82.   *Id.* at 13–14.

83.   *See* Brittany Aronson & Judson Laughter, *The Theory and Practice of Culturally Relevant Education*, 86 REV. EDUC. RES. 163, 178–200 (2016).

84.   TAMI KOPISCHKE SMITH, FAITH CONNOLLY & CHARLENE PRYSESKI, BALT. EDUC. RESEARCH CONSORTIUM, POSITIVE SCHOOL CLIMATE: WHAT IT LOOKS LIKE AND HOW IT

ties of students. It is important for teachers and schools to continually expand their understanding of the students, families, and communities they serve. Schools and teachers earnestly striving for ongoing, authentic engagement with families and the community find increased support for student growth and achievement.[85]

D.   Ensuring Equitable Policies and Practices

Policies that impact school discipline are established at many levels, so they must be evaluated for appropriateness, fairness, and equity at every level. The federal government, state governments, school districts, and campuses have rules, expectations, and requirements that determine how behaviors are viewed and addressed inside the classroom.

For example, consider the issue of "school safety" and the school-to-prison pipeline.[86] Following high-profile incidents of school violence, policymakers at every decision-making level search for ways to improve school safety. The most recent violent incident in Parkland, Florida triggered a number of responses:

- Federal: The Department of Education convened a Federal Commission on School Safety[87] and issued a report with recommendations and guidance for education agencies.[88] The Department also released funds focused on supporting programs and approaches the report found most effective.[89]

- State: A number of states, including Arkansas, created school safety commissions tasked with identifying solutions to school safety con-

HAPPENS 2, https://baltimore-berc.org/wp-content/uploads/2014/02/SchoolClimateFeb2014.pdf (Feb. 2014).

85.   Ann M. Ishimaru et al., *Reinforcing Deficit, Journeying Toward Equity: Cultural Brokering in Family Engagement Initiatives*, 53 AM. EDUC. RES. J. 850, 850–52 (2016).

86.   While all schools should be safe for every student, every day, here we are referring to safety from targeted school violence such as mass shootings.

87.   *Federal Commission on School Safety*, U.S. DEP'T OF EDUC., https://www.ed.gov/school-safety (last visited April 18, 2020).

88.   FED. COMM'N ON SCH. SAFETY, FINAL REPORT OF THE FEDERAL COMMISSION ON SCHOOL SAFETY (2018), https://www2.ed.gov/documents/school-safety/school-safety-report.pdf. The Federal Commission's report also recommended rescinding guidance issued under President Obama that advised schools on how to avoid discriminatory discipline practices that could be in violation of Title VI of the Civil Rights Act of 1964. *Id.* at 67–72. This harmful recommendation was adopted.

89.   *U.S. Department of Education Announces New Grant Awards to Address School Safety and Improve Access to Mental Health Services*, U.S. DEP'T OF EDUC. (Oct. 8, 2019), https://www.ed.gov/news/press-releases/us-department-education-announces-new-grant-awards-address-school-safety-and-improve-access-mental-health-services.

cerns[90] and allocated funding to their preferred "school safety" approaches. In Arkansas, Governor Hutchison devoted funds to, among other areas, training school-based police officers and evaluating safety and emergency plans in schools.[91]

- School Districts and Schools: Many school districts and schools instructed police officers to be stationed inside campuses and changed the procedures for responding to perceived threats of violence.[92] Some of these procedures relied on harmful and unnecessary zero tolerance approaches, including justice system involvement, in response to student behaviors.[93]

There are serious equity issues to consider as we evaluate these multi-level safety policies and practices and how they contribute to school-to-prison pipeline issues. For example, increasing the presence of police in schools, "hardening" school buildings with cameras and locks, and taking a zero-tolerance approach to student behaviors are not supported by reliable research. In fact, these approaches actually create *less safe* schools for the students of color, students with disabilities, and LGBTQ students who are disproportionately impacted by school policing, exclusionary discipline, and harsh surveillance techniques.[94]

Similarly, other policies and practices, at all levels, must be evaluated carefully to ensure they do not reinforce inequitable approaches that funnel young people into the school-to-prison pipeline. Reliable research, data analysis, and the experiences of teachers, families, and students should be considered a critical part of the policymaking process to ensure fair approaches to school discipline.

E.   Providing a Real Pathway for Student Success

All schools should prepare every student to access and succeed in college. Schools can offer courses that help students gain important technical skills and knowledge, but they should never make decisions that track students away from college or deny opportunities that prepare students for a

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90.   ARK. SCH. SAFETY COMM'N, FINAL REPORT 1 (2018), http://dese.ade.arkansas.gov/public/userfiles/Communications/School_Safety/Final%20Report%20November%2030%202018%20rv.pdf.

91.   *School Safety*, ARK. DEP'T OF EDUC., DIV. OF ELEMENTARY & SECONDARY EDUC., http://dese.ade.arkansas.gov/divisions/communications/safety (last visited April 18, 2020).

92.   Deborah Fowler & Morgan Craven, *Collateral Consequences: The Increase in Texas Student Arrests Following the Parkland and Santa Fe Tragedies*, TEX. APPLESEED, http://stories.texasappleseed.org/collateral-consequences (last visited April 18, 2020).

93.   *Id.*

94.   Jason P. Nance, *Student Surveillance, Racial Inequalities, and Implicit Racial Bias*, 66 EMORY L.J. 765, 768–69 (2017); *see* GLSEN, *supra* note 4.

postsecondary education. Every student should have access to challenging coursework, like higher-level mathematics and Advanced Placement courses, and should have the support to learn how to apply and pay for college.[95] Every adult in a school should believe that all students are capable of going to college should they choose to do so. Though it is clear that a postsecondary education opens career and income opportunities,[96] there are still significant differences in who has meaningful access to college and who does not.

When schools rely on exclusionary discipline practices, they limit college (and life) opportunities for students because of the increased likelihood of in-grade retention and higher dropout rates associated with those punitive forms of discipline. Importantly, they also create, within the school, a culture of pushing-out, rather than a college-going culture in which students feel valued and supported.

F. Centering Families and Students in Changing Policy and Practice

Families and students must be part of policy and practice decisions that impact schools. Research has shown that increased caregiver and community involvement "leads to better academic outcomes, students staying in school longer, and more students pursuing a college education."[97] Additionally, students in schools with involved families and communities see an increase in their social and emotional well-being.[98] Empowering students gives them a significant stake in ensuring educational quality and fairness in their own schools, and they are often the best advocates to move schools forward. For example, in Texas, IDRA operates the Chief Science Officer program that exposes students to science, technology, engineering, and math (STEM), and these students have been successfully changing STEM policies and activities on their campuses.[99] Similarly, IDRA has trained families in

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95. *See* M. Robledo Montecel & Christie L. Goodman, Intercultural Dev. Research Ass'n, Courage to Connect: A Quality Schools Action Framework (2010).

96. Anthony P. Carnevale, Tamara Jayasundera & Ban Cheah, Georgetown Pub. Policy Inst.: Ctr. on Educ. and the Workforce, The College Advantage: Weathering the Economic Storm 4–6, https://1gyhoq479ufd3yna29x7ubjn-wpengine.netdna-ssl.com/wp-content/uploads/2014/11/CollegeAdvantage.FullReport.081512.pdf; *see also* Anthony P. Carnevale, Nicole Smith, & Jeff Strohl, Georgetown Pub. Policy Inst.: Ctr. on Educ. and the Workforce, Recovery: Job Growth and Education Requirements Through 2020 7, https://cew.georgetown.edu/wp-content/uploads/2014/11/Recovery2020.FR_.Web_.pdf (June 2013).

97. Aurelio Montemayor, Intercultural Dev. Research Ass'n, Family Engagement for School Reform 1 (2019), https://www.idraeacsouth.org/wp-content/uploads/2019/08/Lit-Review-Family-Engagement-for-School-Reform-IDRA.pdf.

98. *Id.*

99. Lexis Ratto & Kelly O'Kane, *Building a STEM Identity through the Chief Science Officer Program,* IDRA Newsl. (Intercultural Dev. Research Ass'n), Aug. 2019,

the Lower Texas Rio Grande Valley to work in collaboration with school districts to address numerous education equity policy issues successfully.[100] These two examples illustrate that centering families and students as essential partners in education strengthens the school-home connection and can effectively change how schools approach educational equity, including discipline. By working in collaboration with strong families and communities, schools can craft sustainable solutions that keep students out of the pipeline to prison and on a pathway towards success.

V. CONCLUSION

Communities across the country are focused on resolving the alarming rate of exclusionary discipline practices in an effort to maximize students' access to instruction. Out-of-school time due to suspension is one of the leading variables impacting poor academic performance and attrition in school and is most notable for Black students. Removing students from the educational environment not only impedes their opportunity to learn; it can isolate them from their school community upon their return.

But focusing solely on addressing exclusionary discipline policies and practices will not eradicate the school-to-prison pipeline. Eliminating punitive school discipline systems *also* requires a comprehensive approach in which all stakeholders are equipped to use a wide range of tools to address the systemic issues that contribute to inequitable schools, including unfair funding, unstable district governance and punitive accountability systems, limited authentic student and community engagement, and poor teaching and curriculum quality.

All students, regardless of race, gender, religion, socioeconomic status, disability, or any other characteristic, deserve a high-quality education in welcoming and supportive schools. Together, state and local education agencies, families, students, and communities must work to implement equitable and inclusive policies and practices that afford every student the opportunity to succeed in school and beyond the classroom.

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https://www.idra.org/resource-center/building-a-stem-identity-through-the-chief-science-officer-program.

100.   Hector Bojorquez & Aurelio M. Montemayor, *Armed with Data, PTA Comunitarios Work with Schools for College Preparation: An IDRA OurSchool Portal Story*, IDRA NEWSL. (Intercultural Dev. Research Ass'n), June–July 2014, https://www.idra.org/resource-center/armed-with-data/.