

Student Note

A Tale of Two Crises: Assessing the Impact of Exclusionary School Policies on Students During a State of Emergency

Megan Helton*

I. INTRODUCTION

Fifteen years ago, stories of men, women, and children fighting for their lives overwhelmed the headlines.¹ With the click of the remote, living rooms across the United States filled with images of families who were stranded on roof tops and overpasses with no help insight.² Some began the trek to the superdome, hoping to be met with government assistance only to discover that there was nobody there to help.³ In a single day, Hurricane Katrina was able to cause catastrophic destruction to New Orleans and exacerbate inequity among New Orleans families.⁴ Family homes were destroyed, schools were beyond rehabilitation, and suddenly thousands of New Orleans students were displaced.⁵ Now, a

* J.D. Candidate, 2022, University of South Carolina School of Law. Thank you to Professor Claire Raj, Associate Professor of Law at the University of South Carolina School of Law, for her support and guidance as my faculty advisor.

1. See Andy Horowitz, *Hurricane Katrina Showed Us How Spectacularly the Government Can Fail Its People. Fifteen Years Later, the Pattern Continues*, TIME (Aug. 26, 2020), <https://time.com/5883614/hurricane-katrina-coronavirus/>.

2. See *id.*

3. See *id.*

4. See Christine Rushton, *Timeline: Hurricane Katrina and the Aftermath*, USA TODAY (Aug. 28, 2015), <https://www.usatoday.com/story/news/nation/2015/08/24/timeline-hurricane-katrina-and-aftermath/32003013/>; see also, e.g., Robin Brown, *Race and Class in Katrina's Aftermath*, ABC NEWS (Aug. 28, 2006), <https://abcnews.go.com/US/story?id=2367463&page=1>.

5. See *Examining Federal and State Efforts to Meet the Educational Needs of Students and Families Displaced by Hurricane Katrina: Hearing Before the Subcomm. on Educ. & Early Childhood Dev. of the S. Comm. on Health, Educ., Labor, and Pensions*, 109th Cong. 28 (2005) [hereinafter *Subcommittee*]; see also, e.g., Charles Lussier, 'You Can't Leave This': Educators Compare Katrina's Impact on Schools with Coronavirus, ADVOCATE (Apr. 19, 2020), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_6f5b2174-827c-11ea-b35f-5772d7166182.html.

natural disaster of a different nature has swept the country once again highlighting the very disparities that exacerbated the opportunity gap all those years ago in New Orleans.⁶

Today, with the click of the remote, living rooms across the United States are filled with images of men, women, and children fighting for their lives against the spread of COVID-19. A pandemic that raced across the globe in 2020, has infected 2,573,393 United States citizens and killed 126,573 of those individuals by July 2020.⁷ Nearly five months later, the total number of cases had reached 15,718,811 with a total of 294,535 of those cases resulting in death.⁸ In both instances, policies that were put in place to continue education in a safe and controlled environment, were incidentally turned into tools that amplified the disproportionate harms faced by historically marginalized and mistreated school students, ultimately increasing their likelihood of school exclusion.

Just six months after the United States declared the COVID-19 outbreak to be a national emergency, the pandemic's impact on school children was already making headlines.⁹ In July, fifteen-year-old Grace was incarcerated for violating her probation by not completing her online coursework after her school switched to remote learning.¹⁰ Nine months later, and stories of exclusionary discipline taken to the extreme riddle the headlines of national newspapers across the country.¹¹ In August, an order issued by Governor Gary Herbert in Utah, made it possible for K-12 students and teachers to be charged with a

6. See Brian Witte, *Pandemic Highlights Opportunity Gaps in Public Schools*, ABC NEWS (Sept. 22, 2020), <https://abcnews.go.com/US/wireStory/pandemic-highlights-opportunity-gaps-public-schools-73167511>.

7. See WORLD HEALTH ORGANIZATION, CORONAVIRUS DISEASE (COVID-19) SITUATION REPORT 163 (2020).

8. *United States COVID-19 Cases and Deaths by State*, CTR. FOR DISEASE CONTROL & PREVENTION, https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days (last visited Dec. 13, 2020).

9. See Jodi S. Cohen, *A Teenager Didn't Do Her Online Schoolwork. So a Judge Sent Her to Juvenile Detention*, PROPUBLICA (July 14, 2020), <https://www.propublica.org/article/a-teenager-didnt-do-her-online-schoolwork-so-a-judge-sent-her-to-juvenile-detention>.

10. See *id.*

11. See Kalyn Belsha, *Virtual Suspensions. Mask Rules. More Trauma. Why Some Worry a Student Discipline Crisis is on the Horizon*, CHALKBEAT (Aug. 21, 2020), <https://www.chalkbeat.org/2020/8/21/21396481/virtual-suspensions-masks-school-discipline-crisis-coronavirus>.

misdeemeanor for not wearing a mask on school property.¹² Fast forward to the beginning of the 2020 fall semester, where expulsion and police referrals are quickly becoming the norm for minor school transgressions. In Louisiana, nine-year-old Ka Mauri Harrison faced expulsion for an unloaded BB gun the teacher saw behind him in his bedroom during an online class session.¹³ Similarly in Colorado, twelve-year-old Dani Elliot, was referred to police for intervention when he brought a nerf gun into the virtual classroom.¹⁴ These incidents are just the beginning of several anecdotes appearing in news headlines, where exclusionary discipline methods are utilized by schools for minor missteps in the midst of virtual learning.¹⁵

Long before the onset of COVID-19 in the United States, public schools across the country were plagued with the phenomenon known as the school-to-prison pipeline.¹⁶ The term school-to-prison pipeline has been coined to explain a trend in American public schools that utilize zero-tolerance policies to disproportionately punish students for minor transgressions.¹⁷ This discipline method utilizes harsh exclusionary punishments that push students out of the classroom.¹⁸

12. See Allen Kim, *Students and Staff Who Don't Wear Masks in Utah Schools can be Charged with a Misdemeanor*, CNN (Aug. 20, 2020), <https://www.cnn.com/2020/08/20/us/utah-school-covid-mask-trnd/index.html>.

13. Tim Elfrink, *A Teacher Saw a BB Gun in a 9-Year-Old's Room During Online Class. He Faced Expulsion*, WASH. POST (Sept. 25, 2020), <https://www.washingtonpost.com/nation/2020/09/25/louisiana-student-bbgun-expulsion/>.

14. Jaclyn Peiser, *A Black Seventh-Grader Played with a Toy Gun During a Virtual Class. His School Called the Police*, WASH. POST (Sept. 8, 2020), <https://www.washingtonpost.com/nation/2020/09/08/black-student-suspended-police-toy-gun/#click=https://t.co/013DK0e5mY>.

15. See Rebecca Klein, *The New School Suspension: Blocked From Online Classrooms*, HUFFPOST (Aug. 11, 2020), https://www.huffpost.com/entry/school-discipline-remote-learning_n_5f329829c5b64cc99fde4d64 (explaining the story of a fourth-grader who was blocked from her school accounts for sending too many emails); See also Aaron Lowenberg, *School Discipline in the Age of COVID-19*, NEW AM. BLOG (Nov. 16, 2020), <https://www.newamerica.org/education-policy/edcentral/school-discipline-age-covid-19/> (describing the story of a first-grader who was expelled from the classroom for not answering a question loud enough).

16. *The Origins of the School to Prison Pipeline*, AM. DIVIDED SERIES, <https://americadividedseries.com/wp-content/uploads/2016/08/Divided-One-Page-PDF.pdf> (last visited Dec. 13, 2020).

17. See *School-to-Prison Pipeline [Infographic]*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/school-prison-pipeline-infographic> (last visited Dec. 13, 2020).

18. See *id.*

Once pushed out of the classroom, research indicates that these students face an increased risk of entering into the legal system and decreased likelihood of achieving career stability, entry into high-paying occupations, and experience higher unemployment rates.¹⁹ Importantly, the school-to-prison pipeline disproportionately impacts poor and minority students, resulting in higher numbers of suspension and expulsion for these students.²⁰

In the wake of COVID-19, school policies that were implemented to protect the health and safety of students and school personnel alike, have further increased the likelihood that certain populations of students will disproportionately face school exclusions.²¹ As a result, students who have committed minor violations of COVID-19 school policies are facing exclusion from the classroom whether by discipline or opportunity.²² For some marginalized youth, exclusion takes the form of disproportionate use of exclusionary discipline methods such as suspension, expulsion, and criminal charges.²³ For others exclusion occurs due to new COVID-19 school policies which disproportionate impacting poor and minority students by amplifying opportunity gaps in the education system that were present long before the pandemic began.²⁴

During distance learning, low-income students are having to deal with new challenges.²⁵ The transition into distance learning meant students would need consistent access to an internet-compatible device

19. See Emily Boudreau, *School Discipline Linked to Later Consequences*, HARV. GRADUATE SCH. OF EDUC. (Sept. 16, 2019), <https://www.gse.harvard.edu/news/uk/19/09/school-discipline-linked-later-consequences>; see also FARAH Z. AHMAD & TIFFANY MILLER, CTR. FOR AM. PROGRESS, *THE HIGH COST OF TRUANCY* 8 (2015).

20. See Nancy A. Heitzeg, *Education or Incarceration: Zero Tolerance Policies and The School to Prison Pipeline*, F. ON PUB. POL'Y, 2009, at 1, 1–2.

21. See Samantha Walravens, *Why Online Learning is Failing Our Nation's Most Vulnerable Students*, FORBES (June 8, 2020), <https://www.forbes.com/sites/geekgirlrising/2020/06/08/new-report-shows-impact-of-digital-divide-on-low-income-students/?sh=3c0e79c11701>.

22. See *id.*

23. See Joe Heim & Valarie Strauss, *School Discipline Enters New Realm with Online Learning*, WASH. POST (Sept. 15, 2020), https://www.washingtonpost.com/education/school-discipline-enters-new-realm-with-online-learning/2020/09/14/e19a395e-f393-11ea-999c-67ff7bf6a9d2_story.html.

24. See EMMA GARCIA & ELAINE WEISS, ECON. POL'Y INST., *COVID-19 AND STUDENT PERFORMANCE, EQUITY, AND U.S. EDUCATIONAL POLICY* 22-25 (2020).

25. See Walravens, *supra* note 21.

and internet access to attend class.²⁶ Data from the National Center for Education Statistics revealed that 14% of K-12 students did not have access to the internet while learning from home and 17% of K-12 students did not have access to computers in their home.²⁷ As a result, students struggled to complete their distance learning coursework.²⁸

In low-income families, online school means choosing between paying rent and paying the internet bill.²⁹ While some school districts have been able to provide assistance by way of hotspots for low-income students, the access is not always adequate enough for consistent connection throughout the online school day.³⁰ Consequently, the access of low-income students to the online classroom are disproportionately diminished when compared to that of their counterparts.³¹

For students of color, implicit and explicit racial bias could amplify the education gap.³² According to a recent study, two-thirds of students of color live in a remote-only school district which requires that they log onto a computer with internet access to attend class.³³ Despite being the most likely to live in remote-only school districts, children of color are the least likely among their peers to have the technology required to complete distance learning.³⁴ Additionally, systematic racism has led to families of color being disproportionately impacted by the financial effect of COVID-19.³⁵ For families of color, this means the likelihood that parents can work from home to supervise their children or can afford child care is substantially lower than their white counter-parts.³⁶ Consequently, the disproportionate financial impact of COVID-19 on families of color, is likely to negatively impact the academic success of

26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. *See id.*

31. *See id.*

32. *See* Ember Smith & Richard V. Reeves, *Students of Color Most Likely to be Learning Online: Districts Must Work Even Harder on Race Equity*, BROOKINGS INST. (Sept. 23, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/09/23/students-of-color-most-likely-to-be-learning-online-districts-must-work-even-harder-on-race-equity/>.

33. *See id.*

34. *See id.*

35. *See id.*

36. *See id.*

students of color at a higher rate than their white classmates.³⁷

Students of color face another obstacle in the online classroom as related to student discipline.³⁸ Research has repeatedly shown that students of color face discipline for misbehavior at a disproportionate rate to their white counterparts for the same acts.³⁹ Concerns from advocates that students of color will be disproportionately disciplined for their missteps in the classroom have already come to fruition in the news headlines.⁴⁰ Schools have already begun to inflict harsh punishments on children of color for minor offenses that could have been addressed with less stringent discipline.⁴¹ These implicit and/or explicit racial bias have resulted in child's play being deemed dangerous behavior for children of color.⁴² Across several states, children of color are facing suspension, expulsion, and police referrals for having a toy gun within sight of the virtual classroom.⁴³ As a result, children of color face an obstacle unheard of by their white peers.⁴⁴

This note will begin by providing background on the history of the COVID-19 pandemic before discussing the impact of COVID-19 on US schools, by comparing and contrasting it with the impact of Hurricane Katrina on the school-to-prison pipeline. Part III will delve into the effects of Hurricane Katrina on student disciplinary methods, absenteeism, and suspension and expulsion rates. Utilizing identical criteria, this note will compare the impact of Hurricane Katrina and the impact of COVID-19 school closures and reopenings on school students. Part IV will discuss the lessons learned from Hurricane Katrina and pinpoint what US schools should do today to protect students from a similar aftermath faced by the students of Katrina.

II. BACKGROUND

A. Outbreak of COVID-19

On December 31, 2019, patient zero began to display symptoms of

37. *See id.*

38. *See Heim & Strauss, supra* note 23.

39. *See id.*

40. *See id.*

41. *See id.*

42. *See id.*

43. *See id.*

44. *See Heim & Strauss, supra* note 23.

a new virus known as COVID-19.⁴⁵ COVID-19 spread quickly through airborne transmission.⁴⁶ Without a treatment in sight, COVID-19 led to a global shutdown that impacted schools across the globe.⁴⁷

The first reported case of COVID-19 in the United States arose in Washington state on January 21, 2020.⁴⁸ By February the United States had experienced their first COVID-19 death.⁴⁹ In response to the rapid spread of COVID-19 across the US, President Donald Trump declared a national state of emergency on March 13.⁵⁰ Two weeks later, and the United States led the world in confirmed cases, with around 81,321 confirmed infections and more than 1,000 deaths.⁵¹ On March 27, 2020 the United States federal government passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act, an economic relief package to aid United States citizens in managing the economic impacts of COVID-19.⁵²

The CARES Act package, included financial support for K-12 schools to implement their COVID-19 response plans and to prepare for the possibility of long-term closures.⁵³ The bill was drafted to provide flexibility that would allow each school district to address their own unique needs.⁵⁴ For instance, in the Milwaukee Public School District, these needs included addressing the technology gap

45. See Derrick Bryson Taylor, *A Timeline of the Coronavirus Pandemic*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/article/coronavirus-timeline.html>.

46. *COVID-19: Questions and Answers*, WORLD HEALTH ORG., <http://www.emro.who.int/health-topics/corona-virus/questions-and-answers.html> (last visited Dec. 13, 2020).

47. See Taylor, *supra* note 45.

48. Press Release, Ctr. for Disease Control & Prevention, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020) (on file with author).

49. See Stephanie Soucheray, *Coroner: First U.S. COVID-19 Death Occurred in Early February*, CTR. FOR INFECTIOUS DISEASE RES. & POL'Y (Apr. 22, 2020), <https://www.cidrap.umn.edu/news-perspective/2020/04/coroner-first-us-covid-19-death-occurred-early-february>.

50. See Taylor, *supra* note 45.

51. See Donald G. McNeil Jr., *The U.S. Now Leads the World in Confirmed Coronavirus Cases*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/03/26/health/usa-coronavirus-cases.html>.

52. *The CARES Act Provides Assistance to Workers and Their Families*, U.S. DEP'T OF TREASURY, <https://home.treasury.gov/policy-issues/cares/assistance-for-american-workers-and-families> (last visited Apr. 4, 2021).

53. Nathan Storey & Robert E. Slavin, *The U.S. Educational Response to COVID-19 Pandemic*, in 5 BEST EVIDENCE CHINESE EDUC. 617, 618 (2020).

54. See *id.*

among their students by spending 1.2 million dollars to provide their students with Wi-Fi hotspots.⁵⁵ In the meantime, national, state, and local governments were attempting to address the spread of COVID-19 through recommendations and mandates.⁵⁶

B. State and Local Response

The federal government's response to COVID-19 has been slow and fickle.⁵⁷ However, by March 2020, the federal government shifted into action, declaring a state of emergency and encouraging citizens to partake in risk averse behavior.⁵⁸ One of the biggest players in the government's response to COVID-19 has been state and local leaders, who are using their emergency powers to create mandates with the hope of flattening the COVID-19 curve.⁵⁹ One of the first responses to the outbreak from state governors and local officials across the country was to declare a state of emergency.⁶⁰ Without any treatment in site, state and local officials utilized their emergency powers to implement restrictions on the gathering of individuals.⁶¹ Social distancing policies became a popular tool among state and local governments in an attempt to slow the spread of COVID-19.⁶² Social distancing policies required individuals to “remain out of congregate[d]

55. See *Minutes of Board of School Directors Meeting*, MILWAUKEE PUB. SCH. BD. (July 13, 2020), <https://mps.milwaukee.k12.wi.us/MPS-English/OBG/Clerk-Services/Proceedings/2020-21/03JUL20.pdf>; see *Informational Report on Emergency Purchases Due to COVID-19*, MILWAUKEE PUB. SCH. BD. (2020), <https://esb.milwaukee.k12.wi.us/attachments/25965100-fdc5-45c5-86f7-fe43c934cc69.pdf>.

56. See generally Storey & Slavin, *supra* note 53, at 618–619 (explaining the national, state, and local response to COVID-19).

57. See *id.* at 618.

58. See *id.*

59. See generally Christopher Adolph et al., *Pandemic Politics: Timing State-Level Social Distancing Responses to COVID-19*, J. HEALTH POL., POL'Y, & L. (forthcoming 2020) (manuscript at 3–4), <https://faculty.washington.edu/cadolph/articles/AABFW2020.pdf> (explaining why state and local governments took the lead in implementing COVID-19 pandemic precautions).

60. Sumedha Gupta, *Tracking Public and Private Responses to The Covid-19 Epidemic: Evidence from State and Local Government Actions 2* (Nat'l Bureau of Econ. Research, Working Paper No. 27027, 2020), https://www.nber.org/system/files/working_papers/w27027/w27027.pdf (declaring a state of emergency allowed states and local governments to initiate emergency responses procedures and strictive mandates to slow the spread of the disease).

61. See Storey & Slavin, *supra* note 53, at 619.

62. See *id.*

settings, avoid mass gatherings, and maintain distance (approximately six feet or two meters) whenever possible.”⁶³ In addition to social distancing requirements, a significant number of state and local leaders instituted mask mandates, requiring individuals to wear masks when in public.⁶⁴ Altogether, these initial policies laid the groundwork for the implementation of COVID-19 school policies.

C. Impact of COVID-19 on US Schools

1. *The Initial Impact*

Across the country, state and local governments were placing strict restrictions on their citizens based on the recommendations from federal agencies, such as the Center for Disease Control.⁶⁵ However, when it came to guiding schools on how to proceed in the midst of a pandemic, state and local leaders were left to fend for themselves.⁶⁶ A request from the American Federation of Teachers, for more federal guidance for schools on dealing with COVID-19 in early-February, was met with little success.⁶⁷ Dr. Anne Schuchat with the Center for Disease Control simply reminded local governments that they were stuck in the midst of a delicate balancing act, in which they had to choose between slowing the spread of COVID-19 in their schools versus the catastrophic disruption of mass school closures.⁶⁸ By March 12, Ohio became the first state to mandate statewide school closings.⁶⁹ Within twenty-four hours, fifteen other

63. Katie Pearce, *What Is Social Distancing and How Can it Slow the Spread of Covid-19?*, JOHN HOPKINS U. (Mar. 13, 2020), <https://hub.jhu.edu/2020/03/13/what-is-social-distancing/>.

64. See Sarah Mervosh et al., *Mask Rules Expand Across U.S. as Clashes Over the Mandates Intensify*, N.Y. TIMES (Aug. 3, 2020), <https://www.nytimes.com/2020/07/16/us/coronavirus-masks.html>.

65. See *id.*

66. See Storey & Slavin, *supra* note 53, at 619.

67. *The Coronavirus Spring: The Historic Closing of U.S. Schools (A Timeline)*, EDUCATIONWEEK, (July 1, 2020), <https://www.edweek.org/ew/section/multimedia/the-coronavirus-spring-the-historic-closing-of.html> [hereinafter *Timeline*].

68. See Juan Perez Jr., *Senators Question Coronavirus Effects on Schools*, POLITICO (March 4, 2020), <https://www.politico.com/newsletters/morning-education/2020/03/04/senators-question-coronavirus-effects-on-schools-785830>.

69. See *Timeline*, *supra* note 67.

states would impose statewide school closings.⁷⁰ By the end of March, 50.8 million students would be impacted as all fifty states either ordered or recommended school closures.⁷¹

In a matter of days, K-12 schools across the country scrambled to transition their students to virtual learning.⁷² In Greenville, South Carolina a K-12 teacher described the transition as:

[A] free-for-all. We [teachers] all went to school. We created lesson plans in, like, 12 hours. So 10 days of lesson plans in a day, essentially. And we had to be prepared to launch those lesson plans by Wednesday and to start doing full-on e-learning, which our kids had never really done before without us.⁷³

By March 24, the schools had risen to the challenge with 75% of teachers providing instruction to their students.⁷⁴ Schools implemented a diverse assortment of methods of distance learning.⁷⁵ Of those teachers providing instruction, 60% were assigning and collecting student work online and around 33% were using online platforms to teach synchronous classes.⁷⁶ The common thread among the countless methods of distance learning was flexibility and perseverance among teachers who now needed to learn how to navigate online video conferencing platforms, develop new lesson plans, and other necessities to support the transition online.⁷⁷ Despite these efforts, the attempt to replicate the schoolhouse in the student's house revealed significant issues in the shortcomings of teaching amidst a pandemic.⁷⁸

2. *Implications of Virtual Learning*

The transition from traditional in-person schooling to a COVID-19

70. *See id.*

71. *See id.*

72. *See* Storey & Slavin, *supra* note 53, at 619.

73. Corey Turner et al., 'There's a Huge Disparity': What Teaching Looks Like During Coronavirus, NPR (Apr. 11, 2020), <https://www.npr.org/2020/04/11/830856140/teaching-without-schools-grief-then-a-free-for-all>.

74. *See* Benjamin Herold, *The Scramble to Move America's Schools Online*, EDUCATIONWEEK (Mar. 27, 2020), <https://www.edweek.org/ew/articles/2020/03/26/the-scramble-to-move-americas-schools-online.html>.

75. *See id.*

76. *See id.*

77. *See* Storey & Slavin, *supra* note 53, at 619.

78. *See generally id.* at 622–24 (describing the shortcomings of distance learning).

friendly alternative took a variety of paths.⁷⁹ Among the most popular methods were online learning and distance learning.⁸⁰ In online learning, students were required to gain access to the internet with any devices at their disposal.⁸¹ Once online, students attended classes in either synchronous or asynchronous environments.⁸² On the other hand, distance learning required students to gain access to the internet to complete assignments and to communicate with teachers and support staff.⁸³ In this method, all teacher-student interaction occurred through e-mail as opposed to connecting in the online classroom.⁸⁴ Despite the method of COVID-19 alternative learning, they all shared a common denominator, each method required students to have unfettered access to technology and the internet.⁸⁵

Dependency on digital learning methods exposed inequities among the United States education system.⁸⁶ The onset of distance learning made it blatantly obvious that there was a growing digital divide among students.⁸⁷ This divide amplified the pre-existing achievement gap amidst digital learning, making it nearly impossible for students without internet access to attend class, let alone perform at the same level as their classmates.⁸⁸ The divide also amplified student truancy, a term coined to refer to students who have accumulated a specific number of

79. *See id.* at 626.

80. *See generally* Storey & Slavin, *supra* note 53, at 619–622 (describing the methods of COVID-19 learning across the country).

81. *See* Shivangi Dhawan, *Online Learning: A Panacea in the Time of COVID-19 Crisis*, 49 J. EDUC. TECH., 6, 7 (June 20, 2020).

82. *See id.* at 3.

83. *See Distance Learning*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2003).

84. *See id.*

85. *See* Storey & Slavin, *supra* note 53, at 622.

86. *See id.* at 622–23.

87. *See* Sophie Tatum, *As Learning Moves Online, Coronavirus Highlights a Growing Digital Divide*, ABC NEWS (Aug. 25, 2020), <https://abcnews.go.com/Politics/learning-moves-online-coronavirus-highlights-growing-digital-divide/story?id=70238572>.

88. *See* Petula Dvorak, *When Back to School Means a Parking Lot and the Hunt for a WiFi Signal*, WASH. POST, Aug. 27, 2020, https://www.washingtonpost.com/local/when-back-to-school-means-a-parking-lot-and-the-hunt-for-a-wifi-signal/2020/08/27/0f785d5a-e873-11ea-970a-64c73a1c2392_story.html; *see also* Alisha Ebrahimji, *School Sends California Family a Hotspot After Students Went to Taco Bell to Use Their Free WiFi*, CNN, (Aug. 21, 2020), <https://www.cnn.com/2020/08/31/us/taco-bell-california-students-wifi-trnd/index.html> (discussing the story of two young girls who resorted to sitting outside a Taco Bell in Salinas, California to use the free WiFi to complete their schoolwork).

unexcused absences as set by their state.⁸⁹ While morale across students and teachers alike was at an all-time low, truancy rates skyrocketed.⁹⁰ Students with internet access were not immune to the glaring disparities accentuated by digital learning.⁹¹ In the midst of dealing with inequitable access to education and lost instruction, students continued to face the racial discipline gap.⁹² Proving that even from behind the computer screen, minority students would continue to experience disproportionate reactions for trivial misbehavior.⁹³

As schools transitioned to a digital platform amidst COVID-19, access to education became synonymous with access to technology.⁹⁴ In a study published nearly five years before COVID-19 forced schools to transition online, the Pew Research Center reported that five million households with school-age children were without high-speed internet services in their home.⁹⁵ School-aged children without internet-access were already feeling the pressure in 2015, where nearly 17% of students thirteen and older stated that they were frequently unable to complete homework assignments because they lacked reliable access to a computer or internet connection.⁹⁶

Five years later, with the help of a pandemic, the internet has become an essential tool for school children.⁹⁷ This transition to digital learning amplified an already alarming digital divide.⁹⁸ In a similar survey conducted by the Pew Research Center in April 2020, researchers surveyed parents whose children were enrolled in schools utilizing digital learning during COVID-19 to learn about the impact of

89. See *What's the Difference Between Chronic Absence and Truancy?*, ATTENDANCE WORKS (Jan. 11, 2016), <https://www.attendanceworks.org/whats-the-difference-between-chronic-absence-and-truancy/>; see also Holly Kurtz, *National Survey Tracks Impact of Coronavirus on Schools: 10 Key Findings*, EDUCATIONWEEK (Apr. 10, 2020), <https://www.edweek.org/ew/articles/2020/04/10/national-survey-tracks-impact-of-coronavirus-on.html>.

90. See Kurtz, *supra* note 89 (explaining that following COVID-19 school closures, student morale had decreased by 76 percent and teacher morale had decreased by 66 percent).

91. See Heim & Strauss, *supra* note 23.

92. See *id.*

93. See *id.*

94. See Storey & Slavin, *supra* note 53, at 622.

95. See John B. Horrigan, *The Numbers Behind the Broadband 'Homework Gap'*, PEW RESEARCH CTR. (April 20, 2015), <https://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/>.

96. See *id.*

97. See Storey & Slavin, *supra* note 53, at 622.

98. See *id.* at 622–23.

the digital divide on their school children.⁹⁹ They found that one-in-five parents believed that it would be “very or somewhat likely” that their children could not complete their school work because they lacked access to technology.¹⁰⁰ Likewise, 22% of parents reported that their students would be unable to finish their school assignments because they do not have reliable internet in their homes.¹⁰¹ Additionally, three-in-ten parents noted that their children would be limited to completing that schoolwork that could be accessed on a cellphone.¹⁰² In the height of digital learning, students who are impacted by the digital divide are at increased risk for succumbing to the achievement.¹⁰³

D. The School-to-Prison Pipeline

Educational attainment is associated with a wide-array of positive outcomes.¹⁰⁴ As an individual's education level increases so does their health, employment status, income, and civic participation.¹⁰⁵ The benefits deriving from free and compulsory public education in the United States is reliant on equal opportunity in the classroom.¹⁰⁶ Yet, the history of the United States education system has been tainted with segregation along with racial and economic disparities.¹⁰⁷ The school-to-prison pipeline is the latest manifestation of these disparities in the classroom.

The term school-to-prison pipeline refers to a growing trend of minority students who are being pushed out of educational institutions and into the criminal justice systems.¹⁰⁸ This phenomenon is primarily

99. See Emily A. Vogels et al., *53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak*, PEW RESEARCH CTR. (Apr. 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

100. See *id.*

101. See *id.*

102. See *id.*

103. See *id.*

104. See *The Wellbeing Effect of Education*, ECON. & SOC. RESEARCH COUNCIL (July 2014), <https://esrc.ukri.org/files/news-events-and-publications/evidence-briefings/the-wellbeing-effect-of-education/>.

105. See *id.*

106. See Heitzeg, *supra* note 20, at 1.

107. See *id.*

108. Eric Bronson, *What is the School-to-Prison Pipeline?*, YWCA (Sept. 29, 2020), <https://www.ywcaworks.org/blogs/firesteel/tue-09292020-0904/what-school-prison-pipeline>.

the result of increased reliance on exclusionary discipline methods such as suspension, expulsions, referrals to law enforcement, and school-based arrest, to enforce violations of school policies.¹⁰⁹ Disciplinary issues that were once handled among teachers and school leaders have been criminalized and often result in police referrals.¹¹⁰ However, zero-tolerance policies are not the sole instigator in perpetuating racial and economic disparities in the classroom.¹¹¹ The school-to-prison pipeline trend has also been fueled by social and political trends driven by the, now discredited, theory of an explosion in teen crime perpetuated by “super-predators” and the rise of the prison industrial complex.¹¹²

While the fear of super-predators and the capitalization of mass incarceration set the scene for the school-to-prison pipeline, the most prominent factor in the outpouring of children into the legal system was the implementation of zero-tolerance policies.¹¹³ The adoption of zero-tolerance policies began in 1994 with the implementation of the Gun-Free Schools Act.¹¹⁴ In an attempt to alleviate the swift increase of violence in U.S. schools, the Gun-Free Schools Act enacted mandatory expulsions for all students who brought a gun to school.¹¹⁵ A policy meant to end violence in schools soon trickled into other areas of student discipline.¹¹⁶ Before long, teachers and school leaders were implementing harsh punishments for minor offenses that have traditionally been met with little to no reprimand.¹¹⁷ These policies have resulted in headline-worthy suspensions, including the two-day suspension of a seven-year old in Baltimore after he chewed his Poptart into the shape of a gun and said “bang bang” and a twelve-year-old in Brooklyn who was arrested for doodling “I love my friends Abby and Faith” on her desk.¹¹⁸

On standby to enforce zero-tolerance policies, the presence of

109. See Heitzeg, *supra* note 20, at 13.

110. See *id.* at 9.

111. See *id.* at 2.

112. See *id.*

113. See *id.*

114. See Akeem A. Barnes, *School to Prison Pipeline Unmasked: Review of how the School to Prison Pipeline Reinforces Disproportionality in Mass Incarceration*, 21 (2018) (unpublished master's thesis, City University of New York) (on file with author).

115. See *id.*

116. See *id.* at 22-23.

117. See *id.*

118. 6 *Eye-Opening Examples of Zero Tolerance Discipline*, A.B.A. J., <https://www.abajournal.com/gallery/zerotolerance/> (last visited Dec. 13, 2020).

School Resource Officers rose in tandem with these new policies.¹¹⁹ School Resource Officers are those police officers who receive similar training and take the same oath as traditional police officers, but are assigned to patrol schools.¹²⁰ Approximately 14,000 - 20,000 SROs are assigned to patrol schools across the country.¹²¹ These officers have historically been assigned to school districts and neighborhoods that receive little to no funding and that serve a high percentage of marginalized youth.¹²² Without the proper funding to manage inappropriate student behavior, teachers tend to lean on SROs to handle student misbehavior.¹²³ In the long-term, this reliance on law enforcement leads to the criminalization of students.¹²⁴ In a study conducted by the American Civil Liberties Union, it was revealed that schools with SROs conduct student arrests at 3.5 times the rate of schools without SROs.¹²⁵ Zero-tolerance policies combined with an increased presence of SROs and the rise of disproportionate discipline of marginalized students has led to disciplinary systems that utilize suspension and expulsion to direct students out of the school and into the prison pipeline.¹²⁶

Whether the rationale behind the school-to-prison pipeline was punitive, social, or political the resulting damage has been catastrophic to the futures of impacted students.¹²⁷ In the 2011-2012 school year alone, 260,000 students were referred to law enforcement.¹²⁸ In the same year, the education of 92,000 students came to a screeching halt due to school-based arrest.¹²⁹ This phenomenon claims the most

119. *See The Presence of School Resource Officers (SROs) in America's Schools*, JUSTICE POLICY INST. (July 9, 2020), http://www.justicepolicy.org/uploads/justicepolicy/documents/School_Resource_Officers_2020.pdf.

120. *See id.* at 1.

121. *See id.* at 2.

122. *See id.*

123. *See Cops and No Counselors*, AM. CIVIL LIBERTIES UNION, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline/cops-and-no-counselors> (last visited Dec. 13, 2020).

124. *See id.*

125. *See id.*

126. *See Barnes, supra* note 114, at iv.

127. *See Data Snapshot: School Discipline*, U.S. DEP'T EDUC. OFFICE FOR CIVIL RIGHTS 1, 6 (Mar. 2014), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf>.

128. *Id.*

129. *Id.*

vulnerable of populations as its victims. Among those student groups that are disproportionately represented in the school-to-prison pipeline are students from impoverished households, students of color, students with special education needs, and students in the LGBTQ+ community.¹³⁰

Marginalized youth are at a higher risk of being targeted, disciplined, and pushed out of school and into prison than their counterparts.¹³¹ The criminalization of black youth as “super-predators” in the midst of the 1990s, set the scene for the stark racial disparities currently playing out in the US education system.¹³² Then, 66% of juveniles serving life without parole sentences were black.¹³³ Today, black students represent 31% of school-based arrests and are suspended and expelled more than three times that of their white counterparts.¹³⁴ Latinx youth are not shielded from the disproportionate representation in the school-to-prison pipeline.¹³⁵ Despite only making up 13% of the total student enrollment, Latinx boys accounted for 15% of students who were suspended from school.¹³⁶

The United States Education system has historically been at the forefront of segregating marginalized groups, a tradition that is emphasized in the school-to-prison pipeline.¹³⁷ In 2013-2014, the Breaking Schools’ Rule study, reported that 75% of students receiving Individuals with Disabilities Education Act services were suspended at least once throughout their school career.¹³⁸ LGBTQ+ students were not spared from disproportionate discipline either.¹³⁹ Approximately 20% of LGBTQ+ students reported that they were disciplined more harshly

130. See KAREN DOLAN ET AL., INST. FOR POLICY STUDIES, *STUDENT UNDER SIEGE: HOW THE SCHOOL-TO-PRISON PIPELINE, POVERTY, AND RACISM ENDANGER OUR SCHOOL CHILDREN* 1 (2018).

131. See *id.*

132. See Priyanka Boghani, *They Were Sentenced as “Superpredators.” Who Were They Really?*, FRONTLINE (May 2, 2017), <https://www.pbs.org/wgbh/frontline/article/they-were-sentenced-as-superpredators-who-were-they-really/>.

133. See *id.*

134. See *School-to-Prison Pipeline*, *supra* note 17.

135. See DOLAN ET AL., *supra* note 130, at 5.

136. *Id.* at 12.

137. See *id.* at 1.

138. THE COUNCIL OF STATE GOV’T JUSTICE CTR., *BREAKING SCHOOLS’ RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT*, 68 (July 2011).

139. See generally DOLAN ET AL., *supra* note 130, at 14–15 (discussing the impact of the school-to-prison pipeline on LGBTQ+ students).

by teachers and school leaders than their peers.¹⁴⁰ Impoverished students are also no stranger to the school-to-prison pipeline.¹⁴¹ In fact, a 2013 report from the New York Civil Liberties Union (NYCLU) highlighted the significant impact of poverty on student discipline.¹⁴² The NYCLU discovered that the district with the highest percentage of low-income students was also the district with the highest suspension rate in New York City.¹⁴³ The U.S. education system has created the perfect formula to systematically push children out of the school yard and into the prison yard by combining the presence of marginalized youth with a reliance on strict punitive punishment that disproportionately impacts minorities.¹⁴⁴

1. *A Gateway to the School-to-Prison Pipeline*

Exclusionary discipline methods are not the only means of pushing minority students out of educational institutions and into the criminal justice system.¹⁴⁵ Truancy has implications beyond the classroom that can lead to long-term financial barriers and can be a gateway out of the education system and into the legal justice system.¹⁴⁶ While there is no federal definition of truancy, the term generally refers to students who accumulate unexcused absences from class.¹⁴⁷ The specific guidelines of truancy are determined by each state, whom typically base truancy on the age of the student and the hours or days of class missed.¹⁴⁸

Truancy has significant short term education impacts and long-term impacts that reach outside of the classroom.¹⁴⁹ Education, as the building block to future careers, has the potential to open or close doors to economic stability for students.¹⁵⁰ Each day the child is absent from

140. *Id.* at 15.

141. See N.Y. CIVIL LIBERTIES UNION, A, B, C, D, STPP: HOW SCHOOL DISCIPLINE FEEDS THE SCHOOL-TO-PRISON PIPELINE 1 (2013).

142. See *id.* at 19.

143. See *id.* at 18.

144. See DOLAN ET AL., *supra* note 130, at 8.

145. See AHMAD & MILLER, *supra* note 19, at 1.

146. See *id.* 1, 8.

147. See *id.* at 4.

148. See *id.*

149. See *Overview of Truancy*, NAT'L CTR. FOR SCH. ENGAGEMENT 1, 1 (Jan. 2007), https://www.ncjrs.gov/pdffiles1/ojdp/truancy_toolkt_2.pdf.

150. See *id.*

the classroom, they lose access to instructional time.¹⁵¹ Studies have shown that truancy issues are a recurring problem in students, following them into each school year.¹⁵² Overtime, an accumulation of absences results in academic deficiencies.¹⁵³ These deficits result in a decrease in academic performance among chronically truant students throughout their school career.¹⁵⁴ In the long term, the impact of education gaps created from chronic absenteeism results in a decrease in career stability, entry into low-paying occupations, and higher unemployment rates.¹⁵⁵

Challenging futures await for those students who dropout as a result of chronic truancy.¹⁵⁶ As of 2019, the employment-population ratio among those people age twenty-five and older with less than a high school education was 44.6%.¹⁵⁷ Meanwhile, individuals who obtained their high school diploma, experienced a 10.7% increase in employment.¹⁵⁸ Likewise, individuals without a high school diploma earned an average of 606 dollars weekly compared to high school graduates with no college education that earned 749 dollars.¹⁵⁹ As of 2013, 87% of jobs required a high school diploma or higher.¹⁶⁰ In an economy dependent on technology and occupation-based education and training, dropping out of high school makes it increasingly difficult to obtain a job.¹⁶¹ Poor financial outcomes are only the beginning for students who dropout of high school, as high school dropouts are

151. See Ahmad & Miller, *supra* note 19, at 1.

152. See *id.*

153. See *id.*

154. See Claudia W. Allen et al., *School Absenteeism in Children and Adolescents*, 98 AM. FAM. PHYSICIAN 738, 738 (2018).

155. See Ahmad & Miller, *supra* note 19, at 8.

156. See *id.* at 12–13.

157. *44.6 Percent of High School Dropouts and 72.3 Percent of College Graduates Employed in August 2019*, U.S. BUREAU LABOR STATISTICS (Sept. 11, 2019), https://www.bls.gov/opub/ted/2019/44-6-percent-of-high-school-dropouts-and-72-3-percent-of-college-graduates-employed-in-august-2019.htm?view_full.

158. *Id.*

159. *Median Weekly Earnings \$606 for High School Dropouts, \$1,559 for Advanced Degree Holders*, U.S. BUREAU LABOR STATISTICS (Oct. 21, 2019), <https://www.bls.gov/opub/ted/2019/median-weekly-earnings-606-for-high-school-dropouts-1559-for-advanced-degree-holders.htm>.

160. *Education Level and Jobs: Opportunities by State*, U.S. BUREAU LABOR STATISTICS (Sept. 2014), <https://www.bls.gov/careeroutlook/2014/article/education-level-and-jobs.htm>.

161. See *id.*

consistently overrepresented in the prison population.¹⁶²

In a study conducted by the Washington State Center for Court Research, researchers discovered that 50% of truant students would be charged with a criminal offense before their 18th birthday, compared to 12% of nontruant students who would be similarly charged.¹⁶³ The link between education deficiencies and incarceration has repeatedly played out in the data. For every ten high school educations cut short by student dropout rates, one male dropout is incarcerated.¹⁶⁴ On average, dropouts are more likely to be arrested at a rate of 3.5 times higher than their peers with high school diplomas.¹⁶⁵ Consequently, 41% of the inmates housed in the nation's state, federal, and local prisons and jails, lacked a high school diploma or its equivalent.¹⁶⁶ This pattern of incarceration among students who drop out when paired with financial hardships creates an environment ripe for a revolving prison door for students that all began with chronic absenteeism.¹⁶⁷ Considering the impact of truancy on later student dropout rates and incarceration, the possible increase in truancy, stemming from inequities in access to virtual learning, should serve as a red flag to educators of the impending risk of incidentally rerouting our students out of the classroom and into the school-to-prison pipeline.

2. *The Pandemic's Ability to Amplify the School-to-Prison Pipeline*

Combining the popularity of zero-tolerance enforcement policies with the necessity for new school policies amidst a worldwide pandemic has created the perfect environment for a rise in the school-to-prison pipeline trend. In schools across the country, school districts implemented policies aimed at ameliorating the impact of COVID-19 on the school and local community. Attending class in-person is

162. See Sam Dillion, *Study Finds High Rate of Imprisonment Among Dropouts*, N.Y. TIMES, (Oct. 8, 2009), <https://www.nytimes.com/2009/10/09/education/09dropout.html>.

163. See Ahmad & Miller, *supra* note 19, at 13.

164. See Dillion, *supra* note 162.

165. Kathryn Hanson & Deborah Stipek, *Schools v. Prisons: Education's the Way to Cut Prison Population*, MERCURY NEWS (May 15, 2014), <https://www.mercurynews.com/2014/05/15/schools-v-prisons-educations-the-way-to-cut-prison-population/>.

166. BUREAU OF JUSTICE STATISTICS, EDUCATION AND CORRECTIONAL POPULATIONS 1 (2003).

167. See Hanson & Stipek, *supra* note 165.

accompanied with new rules and regulations, such as mandatory mask requirements and social-distancing.¹⁶⁸ On the other hand, students who attend school online have had to adjust to school administration enforcing stringent rules on them in their own homes.¹⁶⁹ At the Success Academy in New York City, students were held to demanding standards as they transitioned to online learning.¹⁷⁰ From the comfort of their homes, these students were required to remain in their designated uniforms, keep their hands clasped in view of the camera when not working, and ask for the teacher's permission to take bathroom breaks.¹⁷¹ In addition to stringent new school policies, chronic absenteeism increased at shocking rates.¹⁷² Without access to high-speed internet or the appropriate electronic device, students struggled to attend virtual class sessions and turn in online assignments.¹⁷³

Just as quickly as schools implemented COVID-19 policies, they utilized harsh punishments to ensure compliance.¹⁷⁴ Within months of these new policies, headlines started appearing highlighting the absurd punishments received by children in the midst of a pandemic.¹⁷⁵ Without the option of detention at recess or in-school suspension, schools commonly referred even minor behavioral issues for suspension.¹⁷⁶ In Colorado Springs, Isiah, a black seventh grader caught playing with a nerf gun in his bedroom during online class, was suspended for five days for having a firearm on school property.¹⁷⁷ Isaiah's case was also referred to the local sheriff's office with whom he now has a record.¹⁷⁸ Meanwhile, the administration at the Success

168. See *Mask in Schools*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/cloth-face-cover.html> (last updated Dec. 14, 2020).

169. See Heim & Strauss, *supra* note 23.

170. See *id.*

171. See *id.*

172. Mark Lieberman, *5 Things You Need to Know About Student Absences During COVID-19*, EDUCATIONWEEK (Oct. 16, 2020), <https://www.edweek.org/leadership/5-things-you-need-to-know-about-student-absences-during-covid-19/2020/10>.

173. See Dvorak, *supra* note 88.

174. See Belsha, *supra* note 11.

175. See Elfrink, *supra* note 13; see also Cohen, *supra* note 9; see also Kim, *supra* note 12; see also Peiser, *supra* note 14.

176. See Carolyn Jones, *How School Discipline — and Student Misbehavior — has Changed During the Pandemic*, EDSOURCE (Nov. 17, 2020), <https://edsources.org/2020/how-school-discipline-and-student-misbehavior-has-changed-during-the-pandemic/643758>.

177. See Peiser, *supra* note 14.

178. See *id.*

Academy offered no mercy to those students who were facing technology issues, dealing out unexcused absences and possible suspension for chronic absenteeism.¹⁷⁹

School disciplinary methods for COVID-19 protocols did not end at unnecessary suspension. In numerous states, schools took to the legal system to enforce these policies. For instance, state officials in Utah took to the state executive branch for an enforcement mechanism of a mask mandate for the K-12 students.¹⁸⁰ Consequently on July 17, the Governor of Utah issued an executive order mandating masks on school property and buses for all students, teachers, support staff, and visitors.¹⁸¹ Violations of the executive order would result in misdemeanor charges with a penalty of either a 1,000 dollar fine or up to six months imprisonment.¹⁸² The Michigan legal system went one step further, incarcerating fifteen-year-old Grace for a parole violation after she failed to complete some online coursework during remote learning.¹⁸³

Across the board, minority populations have been disproportionately impacted by COVID-19 and its surrounding policies.¹⁸⁴ For minority students, who already face disproportionately harsh school punishments and who are over-represented in the digital divide, the implementation and enforcement of strict COVID-19 policies could expose minority students, more so than their counterparts, to an increased risk of becoming a victim to the school-to-prison pipeline.¹⁸⁵

The transition to digital schooling paired with the digital divide has increased the rate of truancy among students amplifying yet another

179. See Heim & Strauss, *supra* note 23.

180. See Kim, *supra* note 12.

181. See *id.*

182. See *id.*

183. See Cohen, *supra* note 9.

184. See Mark Lopez et al., *Financial and Health Impacts of COVID-19 Vary Widely by Race and Ethnicity*, PEW RESEARCH CTR. (May 5, 2020), <https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/>.

185. See DOLAN ET AL., *supra* note 130, at 9; see also WILLIE K. OFOSU ET AL., *IMPACT OF THE DIGITAL DIVIDE ON LOW-INCOME AND MINORITY STUDENTS* 1 (2003); see also Chenoah Sinclair & Richard V. Reeves, *Class Notes: The School to Prison Pipeline, the Economics of AI, and More*, BROOKINGS INST. (Oct. 16, 2019), <https://www.brookings.edu/blog/up-front/2019/10/16/class-notes-the-school-to-prison-pipeline-the-economics-of-ai-and-more/>.

means of excluding marginalized children from the classroom.¹⁸⁶ Only one month after schools had transitioned to the online format, teachers reported that 21% of their students were truant during coronavirus closures.¹⁸⁷ During COVID-19 instruction, students are defined as truant for not logging into classes, turning in assignments, or making contact with teachers.¹⁸⁸ Student absences amidst COVID-19 have increased in schools across the country.¹⁸⁹ In South Carolina, the state spent the better half of 2020 attempting to locate the 16,085 missing students who could not be reached after the switch to digital learning.¹⁹⁰ Meanwhile, families in schools throughout Massachusetts were met with a call from the Department of Children and Families (DCF) when students failed to log in for virtual schooling.¹⁹¹ In a school-year filled with unprecedented disruptions, school districts in Massachusetts instructed teachers to report parents to DCF for neglect when their school-children missed enough class meetings or homework assignments to give teachers a “reasonable cause to believe a child has been abused or neglected.”¹⁹²

III. ANALYSIS

The extent of school closures due to COVID-19 is unprecedented.¹⁹³ However, in 2005, Louisiana schools grappled with similar school closures due to Hurricane Katrina, a Category 5 Hurricane that washed across the Gulf Coast in August 2005.¹⁹⁴ Once the storm had calmed, the resulting damage was catastrophic.¹⁹⁵ As a result, New Orleans

186. See Ahmad & Miller, *supra* note 19, at 1.

187. See Kurtz, *supra* note 89.

188. See *id.*

189. See Liberman, *supra* note 172.

190. Isabella Cueto, *SC schools Haven't Been Able to Reach 16,000 Students During COVID-19 Outbreak*, STATE (July 3, 2020), <https://www.thestate.com/news/local/education/article243956517.html>.

191. See Bianca Vázquez Toness, *Your Child's a No-Show at Virtual School? You May Get a Call from the State's Foster Care Agency*, BOS. GLOBE (Aug. 15, 2020), <https://www.bostonglobe.com/2020/08/15/metro/your-childs-no-show-virtual-school-you-may-get-call-states-foster-care-agency/>.

192. See *id.*

193. See *Unprecedented School Closures? Not Entirely*, STANFORD GRADUATE SCH. EDUC. (Apr. 13, 2020), <https://ed.stanford.edu/news/unprecedented-school-closures-not-entirely>.

194. Sarah Pruitt, *Hurricane Katrina: 10 Facts About the Deadly Storm and its Legacy*, HISTORY (Aug. 19, 2020), <https://www.history.com/news/hurricane-katrina-facts-legacy>.

195. See Subcommittee, *supra* note 5.

schools faced challenges similar to those faced by schools amidst COVID-19 today.¹⁹⁶ In New Orleans, schools remained closed for the entire fall semester.¹⁹⁷ Likewise, COVID-19 caused more than 100,000 schools to close their doors for the remainder of the spring semester.¹⁹⁸ Throughout both natural disasters, school administrations were faced with a growing rate of chronic absenteeism among their students.¹⁹⁹ Katrina students and COVID-19 students were both met with new disciplinary challenges.²⁰⁰ Following both disasters, students had to deal with school administration's increased reliance on exclusionary disciplinary method.²⁰¹ Though different in nature, the shocking similarities of the initial impact of Katrina and COVID-19 on public school students allows insight into the long-term impact of COVID-19 on students if US schools do not address growing trends of chronic absenteeism, exclusionary disciplinary policies, and the racial disparities so engrained.²⁰²

A. Hurricane Katrina

Spanning an entire decade pre-Katrina, New Orleans Public Schools had a reputation of startling disciplinary methods.²⁰³ School records showcase a history of disproportionate discipline at record levels.²⁰⁴ In the five years immediately preceding the storm, suspension and

196. *See generally* KRISTEN L. BURAS, NAT'L EDUC. POLICY CTR., FROM KATRINA TO COVID-19: HOW DISASTER, FEDERAL NEGLECT, AND THE MARKET COMPOUND RACIAL INEQUITIES 1-5 (2020) (describing the similarities between challenges faced by schools during COVID-19 and after Hurricane Katrina).

197. *Subcommittee, supra* note 5.

198. *Timeline, supra* note 67.

199. *See* Mike Kennedy, *Recovery*, AM. SCH. & UNIV. (Oct. 1, 2007), <https://www.asumag.com/facilities-management/maintenance-operations/article/20843653/recovery>.

200. *See* ELIZABETH SULLIVAN & DAMEKIA MORGAN, NATIONAL ECONOMIC AND SOCIAL RIGHTS INITIATIVE & FAMILIES AND FRIENDS OF LOUISIANA'S INCARCERATED CHILDREN, PUSHED OUT: HARD DISCIPLINE IN LOUISIANA SCHOOLS DENIES THE RIGHT TO EDUCATION A FOCUS ON THE RECOVERY SCHOOL DISTRICT IN NEW ORLEANS 9 (2010) [hereinafter PUSHED OUT].

201. *See id.*

202. *See generally* Buras, *supra* note 196 (explaining how the similarities between the COVID-19 crisis and the Hurricane Katrina crisis could lead the country to experience racial inequities similar to those seen following Hurricane Katrina).

203. *See* Ellen Tuzzolo & Damon T. Hewitt, *Rebuilding Inequity: The Re-emergence of the School-to-Prison Pipeline in New Orleans*, 90(2) HIGH SCH. J. 59, 59 (2007).

204. *See id.* at 62.

expulsion rates skyrocketed.²⁰⁵ In the 1999-2000 school year alone, 9,745 students were suspended, accounting for 11.5% of students attending New Orleans Public Schools.²⁰⁶ From that point forward, the number continued to rise, plateauing at approximately 19% of students being suspended annually.²⁰⁷ Rising expulsion rates coincided with trends in suspension.²⁰⁸ Over a period of seventeen years, the expulsion rates of New Orleans Public Schools slowly grew, until the 2002-2003 school year.²⁰⁹ In the 2002-2003 school year alone, New Orleans Public Schools more than tripled their 1986-87 expulsion rate, condemning 829 students to expulsion.²¹⁰ New Orleans Public Schools also set record highs for school-based arrests preceding Katrina, with an estimated 50 juvenile arrests per month citywide occurring within the bounds of school property.²¹¹

On August 29, 2005, Hurricane Katrina crashed into New Orleans, causing catastrophic damage to the entire parish.²¹² Following the storm, more than 200,000 school children across Louisiana were displaced.²¹³ While many children found a home in school districts throughout the country, “tens of thousands of students missed weeks, months, and even years of school after Katrina.”²¹⁴ The utter destruction of New Orleans caused families to disperse across the country, scrambling for a new home. Consequently, serial movers and chronic absenteeism became the new normal for Katrina kids.²¹⁵ In 2006, the Children’s Health Fund and the National Center for Disaster Preparedness, released a study reporting that 20% of displaced children were missing approximately ten days of school per month.²¹⁶ Amidst those chronically absent students, were children who were moving between three and nine times within six

205. *Id.*

206. *Id.*

207. *Id.*

208. *See id.*

209. *See* Tuzzolo & Hewitt, *supra* note 203, at 62–63.

210. *Id.* at 63.

211. *Id.* at 64.

212. *See Subcommittee, supra* note 5.

213. *See* Lussier, *supra* note 5.

214. Katy Reckdahl, *The Lost Children of Katrina*, ATLANTIC (Apr. 2, 2015), <https://www.theatlantic.com/education/archive/2015/04/the-lost-children-of-katrina/389345/>.

215. *See id.*

216. THE CHILDREN’S HEALTH FUND, RESPONDING TO AN EMERGING HUMANITARIAN CRISIS IN LOUISIANA AND MISSISSIPPI: URGENT NEED FOR A HEALTH CARE “MARSHALL PLAN” 2 (2006).

months after the hurricane.²¹⁷ As a result, more than one third of children impacted by Katrina were at least one year behind in school for their age.²¹⁸

Hurricane Katrina set the stage for a steady stream of Katrina kids abandoning their demolished schools.²¹⁹ Chronic absenteeism became a significant problem for New Orleans students post-Katrina. Following the storm “around 130,000 to 135,000 students missed five weeks of school ... 50,000 to 57,000 of those missed as much as one-fourth of the school year, and 20,000 to 30,000 didn't attend school at all in 2005-06.”²²⁰ Lacking a citywide attendance system resulted in a significant amount of unreported absences.²²¹ Louisiana state policy and Orleans Parish policy required teachers to notify parents following a child's absence of three days and to file a report with the Department of Children and Family Services following a child's absence of five or more days.²²² However, when the attendance system was dissolved, the state and local policies lacked any enforcement mechanisms and teachers failed to report any absences.²²³ Absences reported to social workers were never investigated because social workers were prioritizing more imminent cases in the midst of a state of emergency.²²⁴ Consequently, chronically absent students slipped through the cracks of school administration and as a result were deprived of critical classroom instruction.²²⁵

Following the storm, students in schools throughout the New Orleans Parish experienced harsh disciplinary methods that lead to a rapid increase in suspension and expulsion rates.²²⁶ In the aftermath of Hurricane Katrina, teachers and school administrators saw a rise in behavioral issues among their students linked to an influx in Post-

217. *Id.*

218. See Reckdahl, *supra* note 214.

219. See Kennedy, *supra* note 199.

220. *Id.*

221. See Bratt et al., *N.O. Schools or No Schools? Absolute Deprivation of Educational Opportunity in Post-Katrina New Orleans as a Violation of a Fundamental Right to a Minimally Adequate Education*, 2 HARV. L. & POL'Y REV. 407, 415 (2008).

222. See *id.* at 416.

223. See *id.*

224. See *id.*

225. See *id.*

226. See *id.* at 414.

Traumatic Stress Disorder among school aged children in the Parish.²²⁷ In an attempt to address the wide-spread student misbehavior, schools across New Orleans implemented strict student codes of conflict and ruthlessly enforced the new standards.²²⁸ In New Orleans, the Recovery School District (RSD) suspended the most students in the entire state of Louisiana in the 2007-2008 school year, with one in four RSD students being issued out-of-school suspension.²²⁹ In one year the RSD suspended 28.8% of their students, comparatively, RSD doubled and quadrupled state and national suspension rates respectively.²³⁰ The RSD does not release information pertaining to the type of offenses that lead to out-of-school suspension.²³¹ However, a 2010 study published by the National Economic and Social Rights Initiative captured the rationale behind student suspension in the district through a survey of RSD suspended students.²³² The survey uncovered that suspension was being prescribed to students for minor misbehavior.²³³ Among the most common minor student conduct violations resulting in suspension were disruptive or disrespectful behavior, dress code violations, and tardiness.²³⁴ The survey also revealed that students were often suspended repeatedly and for excessive periods of time.²³⁵ Among the survey group, 8% had been suspended once in the past three years compared to 37% who had been suspended four or more times.²³⁶ Additionally, the majority of students suspended were suspended for 3 or more days.²³⁷ As a result of their suspension, 37% of students fell behind after their suspension with only 40% of students receiving any assistance to catch up on school material.²³⁸

Calculating the graduation rates following Hurricane Katrina is difficult; however, based on available data, it appears that New Orleans schools experienced an immediate decrease in the amount of non-

227. Ellen Tuzzolo, Youth Advocate, Juvenile Justice Project of La., Statement at a Press Conference of the Downtown Neighborhoods Improvement Association (Jan. 18, 2007).

228. See Bratt et al., *supra* note 221, at 416.

229. PUSHED OUT, *supra* note 200, at 10.

230. *Id.*

231. See *id.* at 11.

232. See *id.*

233. See *id.*

234. See *id.*

235. See PUSHED OUT, *supra* note 200, at 12.

236. *Id.*

237. See *id.*

238. *Id.*

legitimate non-completion exits in the year immediately following the storm.²³⁹ A 2020 study by the Brookings Institute analyzed graduation rates in Louisiana using the average freshman graduation rate (AFGR).²⁴⁰ The AFGR “divides the number of students receiving regular high school diplomas in a given year by the simple average of the number of 8th, 9th, and 10th graders in the same government unit four, three, and two years earlier.”²⁴¹ According to the AFGR data, approximately 64% of Louisiana students graduated in the spring of 2002, marking a steady increase in graduation rates over the course of three years.²⁴² Conversely, one year after the storm, the graduation rate in Louisiana dropped 6%, with an average of 58% of students graduating in 2006.²⁴³ This drop in graduation rate was mainly fueled by non-legitimate, non-completion exits.²⁴⁴ Missing students consisted of approximately .09% of all non-legitimate, non-completion exits in 2006.²⁴⁵ An additional .04% and .02% of all non-legitimate, non-completion exits in 2006 were due to dropout and no show students respectively.²⁴⁶ Thus, from all available data, it appears that Hurricane Katrina negatively impacted student graduation rates in the year immediately preceding the storm.²⁴⁷

239. See Douglas N. Harris et al., *Is the Rise in High School Graduation Rates Real?* BROWN CTR. EDUC. POLICY AT BROOKINGS 9–10 (2020), <https://www.brookings.edu/wp-content/uploads/2020/02/Is-the-Rise-in-High-School-Graduation-Rates-Real-FINAL.pdf> (explaining that while analyzing graduation rates in Louisiana following the Hurricane was difficult due to a lack of graduation data following the storm, it appears that non-legitimate non-completion exits, which include those students who are no longer considered enrolled at the school because they were missing, they dropped out, they were expelled, etc., experienced an immediate increase).

240. See *id.* (explaining that the average freshman graduation rate was used as opposed to other more popular measures of high school graduation rates because it was the only state-wide graduation measure that was consistently available over time).

241. See *id.* at 10 (noting that an issue with using the AFGR method is that the data does not measure exits directly or categorize exits based on their legitimacy. Recognizing; however, that this data is the only measure available on Louisiana graduation rates pre- and immediately post-New Orleans).

242. *Id.* at 47.

243. *Id.*

244. See *id.* at 50.

245. Harris et al., *supra* note 239, at 50.

246. *Id.*

247. See *id.* at 32. (noting that following 2006, the graduation rate in Louisiana schools experienced a significant increase. By 2010, students' graduation rates had already exceeded the

B. COVID-19

The impact of COVID-19 on schoolchildren across the United States has reflected similar consequences as the mass displacement and reentry of children in the school system following Hurricane Katrina. While today's students are not facing mass displacement and chronic migrations like the students following Katrina, lack of access to technology resulted in similar issues with chronic absenteeism. As a result of the storm tens of thousands of students were missing from the classroom for a significant period of time.²⁴⁸ According to estimates from Bellwether Education Partners, approximately three million students have been absent from the classroom since schools closed in March 2020.²⁴⁹

The storm and the pandemic share in the normalization of chronic absenteeism among students in the midst of the emergency. In New York City schools, one in four students did not log into the first two days of the Fall 2020 semester.²⁵⁰ Since New York City schools closed in March, Brooklyn teachers estimate that their classroom attendance has not exceeded 30%.²⁵¹ Schools districts in California are experiencing a similar influx in chronic absenteeism with approximately one in five students missing 10% of school in the span of three

pre-Katrina graduation rates. This trend is likely explained by the charter school takeover in New Orleans following the storm as opposed to the direct result of Hurricane Katrina on students).

248. See Reckdahl, *supra* note 214.

249. See Hailly T.N. Korman et al., *Missing in the Margins: Estimating the Scale of the COVID-19 Attendance Crisis*, BELLWETHER EDUC. PARTNERS (Oct. 21, 2020), <https://bellwethereducation.org/publication/missing-margins-estimating-scale-covid-19-attendance-crisis>; accord Cueto, *supra* note 190 (explaining the situation in South Carolina where 16,085 students went missing from remote learning in the spring semester. By August, 780 of South Carolina students were still missing resulting in weeks' worth of missed learning opportunities).

250. See Michael Elsen-Rooney, *Exclusive: One in Four NYC Students Didn't Log in During First Two Days of Remote Learning in September, Analysis Finds*, DAILY NEWS (Oct. 23, 2020), <https://www.nydailynews.com/new-york/education/ny-nyc-remote-learning-absentee-analysis-20201023-ka7ampjkszeo3eotd5yfbsdjhq-story.html>.

251. Christina Veiga, *NYC Has Yet to Release Attendance Data, but Schools Say Many Kids Aren't Showing Up*, BROOKLYN DAILY EAGLE (Oct. 21, 2020), <https://brooklyneagle.com/articles/2020/10/21/nyc-has-yet-to-release-attendance-data-but-schools-say-many-kids-arent-showing-up/>.

months.²⁵² Amidst those chronically absent students in California, 16% were due to known deficiencies in access to the necessary technology.²⁵³ Like the children of Katrina, today's students are expected to experience the COVID-19 slide, in which students will experience significant academic setbacks, as a result of chronic absences.²⁵⁴ A study by the Collaborative for Student Growth estimates a 30% decrease in reading levels and a 50% decline in mathematical achievements for students upon the return of students to the classroom.²⁵⁵

While schools did not revoke district wide attendance systems, as seen after Hurricane Katrina, school administration has had difficulties keeping an accurate attendance record during COVID-19.²⁵⁶ Today, schools are forced to determine what they truly consider attendance when COVID friendly learning alternatives do not always utilize video conferences.²⁵⁷ In California, the bar has been set at rock bottom, counting students as present for any interaction between student and teacher.²⁵⁸ In the Los Angeles Unified School District, "a single text between a parent and a teacher counts as 'participation' for a given day."²⁵⁹ While a low bar creates a level of flexibility for students and parents amidst mass changes in the student's education, setting the bar too low risks falling into the same predicament that faced New Orleans post-Katrina, with an increased issue of chronic absenteeism without any means enforcing attendance.²⁶⁰

In an attempt to ameliorate substantial disruptions to the education

252. Linda Jacobson, 'The Numbers are Ugly': Chronic Absenteeism Among California Elementary Students Could Be Surging by More Than 200 Percent, THE 74 MILLION (Nov. 11, 2020), <https://www.the74million.org/article/the-numbers-are-ugly-chronic-absenteeism-among-california-elementary-students-could-be-surging-by-more-than-200-percent/>.

253. *Id.*

254. See Megan Kuhfeld & Beth Tawasawa, *The COVID-19 Slide: What Summer Learning Loss Can Tell Us About the Potential Impact of School Closures on Student Academic Achievement*, COLLABORATIVE FOR STUDENT GROWTH, 2 (April 2020), https://www.nwea.org/content/uploads/2020/05/Collaborative-Brief_Covid19-Slide-APR20.pdf.

255. *See id.*

256. See Anya Kamenetz, *School Attendance in the COVID Era: What Counts as 'Present'*, NPR (Sept. 24, 2020), <https://www.npr.org/2020/09/24/909638343/school-attendance-in-the-covid-era-what-counts-as-present>.

257. *See id.*

258. *See id.*

259. *Id.*

260. *See id.*; see also Bratt et al., *supra* note 221, at 416.

system, school districts implemented stringent student code of conducts enforced with harsh disciplinary methods mimicking those utilized following Hurricane Katrina.²⁶¹ During the COVID-19 pandemic, schools have implemented new policies, based on CDC guidelines, to handle student missteps and have continued to utilize zero-tolerance enforcement mechanisms to enhance students' ability to learn in their new classroom environment and keep students and teachers safe from the spread of COVID-19.²⁶² While statistics on the use of zero-tolerance disciplinary policies during COVID-19 are not yet available, narratives are popping up across the nation as students receive disproportionate punishment for minute missteps.²⁶³

In New York City, the school Chancellor sent a warning to all parents, a student without a mask, will be a student who is not welcome in New York City schools.²⁶⁴ Students who do not comply with mask mandates in New York City will be barred from in-person learning.²⁶⁵ The alternative for these students is online-only instruction.²⁶⁶ For students without access to high-speed internet and a compatible device, a decision to not wear a mask in New York City schools is essentially an expulsion sentence.²⁶⁷ In light of CDC guidelines, mask mandates and social distancing are currently the best method to prevent the spread of COVID-19.²⁶⁸ However, the use of zero-tolerance disciplinary methods to enforce these guidelines may have unintended consequences for rash and forgetful students. Policies similar to those implemented in New York could result in suspension from in-person learning for students who forget to bring their masks to school or simply forget to put them back on following school meals. Similar suspensions could

261. See Heim & Strauss, *supra* note 23.

262. See *COVID-19 Virtual Learning and Education: Behavior Management*, AM. PSYCHOLOGICAL ASS'N (May 18, 2020), <https://www.apa.org/topics/covid-19/education-behavior-management>.

263. See Jones, *supra* note 176; accord Alex Zimmerman, *NYC Students Who Refuse to Wear Masks in School will be Sent Home, Carranza Says*, CHALKBEAT (Aug. 4, 2020), <https://ny.chalkbeat.org/2020/8/4/21354825/carranza-nyc-schools-mask->; see also Cohen, *supra* note 9; see also Peiser *supra* note 14; see also Kim *supra* note 12.

264. See Zimmerman, *supra* note 263.

265. See *id.*

266. See *id.*

267. See Debbie Truong, *As Classes Move Online, What Happens to Students Without Internet or Computers?*, NPR (Mar. 18, 2020), <https://www.npr.org/local/305/2020/03/18/817691597/as-classes-move-online-what-happens-to-students-without-internet-or-computers>.

268. See *Mask in Schools*, *supra* note 168.

accrue for teenagers who make rash decisions to violate pandemic precautions. To maintain student safety without immediately turning to exclusionary discipline methods, schools might need to implement warning systems so that students may adjust to pandemic protocols without fearing harsh punishments.

School districts have used creative spins on suspension as they prescribe an extreme disciplinary measure to students for minor misbehavior. In Northern California, six-year-old Olivia was kicked out of her virtual learning session after she hesitated to answer the teacher's questions and upon answering was not loud enough for the teacher to hear.²⁶⁹ Similarly, in Sacramento, nine-year-old Audrey was blocked from her online classroom for accidentally sending too many e-mails to her classmate.²⁷⁰ The influx of e-mails resulted in automatic reports to the school's IT department for suspicious communications.²⁷¹ Consequently, Audrey was blocked from her online learning accounts, with no idea of when she would regain access.²⁷² Her crime was inappropriate e-mail usage that reportedly drained the school's limited resources, and her punishment was an inability to submit her online coursework.²⁷³ Oliva and Audrey are just two of many students nationwide that are losing valuable learning opportunities, similar to the students of Katrina, due to increased reliance on harsh disciplinary methods during the pandemic.²⁷⁴

Should the impact of exclusionary discipline methods and chronic absenteeism during COVID-19 track the short- and long-term impact of these same issues in New Orleans school children following Hurricane Katrina, the nation is at risk of a trading one national-emergency for another. When students are excluded from the classroom, whether by way of national emergency or disciplinary methods, they lose valuable instruction time risking gaps in their educational achievement in

269. See Aaron Loewenberg, *School Discipline in the Age of COVID-19*, NEW AM. BLOG (Nov. 16, 2020), <https://www.newamerica.org/education-policy/edcentral/school-discipline-age-covid-19/>.

270. See Klein, *supra* note 15.

271. See *id.*

272. See *id.*

273. See *id.*

274. See Klein, *supra* note 15; see also Loewenberg, *supra* note 269; see also Bratt et al., *supra* note 221, at 416.

comparison to their classmates.²⁷⁵ After Katrina, these exclusionary methods took the form of repeated suspension for minor student code violations.²⁷⁶

Digital learning environments have made handing out exclusionary punishments substantially easier and in-school punishments nearly impossible.²⁷⁷ Without in-person learning, traditional discipline methods such as detention at recess or silent lunch detention have become incompatible with student discipline.²⁷⁸ Instead, with the click of a button students are immediately excluded from classroom instruction, sometimes without any explanation of why they were expelled from the classroom or when they may return.²⁷⁹ During Katrina, these suspensions resulted in 37% of students falling behind.²⁸⁰ During COVID-19, where students are already experiencing a COVID-19 slide in their education retention, heavy reliance on effortless exclusion of students from the classroom is bound to amplify the pre-existing educational gap.²⁸¹

In the short-term these exclusionary school policies created an educational achievement gap among students, in the long-term they increase the risk of students exiting the school system.²⁸² In both Katrina and COVID-19, students were first excluded by way of unchecked chronic absenteeism. After Katrina, missing and no-show students together accounted for the single highest rationale behind student exits.²⁸³ In the span of three months chronic absenteeism in missing California school students due to COVID-19 had already matched the number of chronic absenteeism due to missing students in Louisiana for the entirety of 2006.²⁸⁴ Almost eight months after school closures, students remain missing across the country.²⁸⁵ Even students not deemed missing are consistently failing to log in to virtual classes or turn in assignments for the online classroom, placing them at risk for

275. See Kurtz, *supra* note 89.

276. See Tuzzolo & Hewitt, *supra* note 203, at 62.

277. See Jones, *supra* note 176.

278. See *id.*

279. See Loewenberg, *supra* note 269.

280. See PUSHED OUT, *supra* note 200, at 12.

281. See *id.*

282. See *id.* at 2, 12.

283. See THE CHILDREN'S HEALTH FUND, *supra* note 216, at 17.

284. See Jacobson, *supra* note 252; see also *id.*

285. See Cueto, *supra* note 190 (explaining that, by August, 780 of South Carolina students were still missing resulting in weeks' worth of missed learning opportunities).

poor educational outcomes and discontinued enrollment.²⁸⁶ This substantial and consistent absence of missing students from the virtual classroom will doubtlessly result in a similar exodus of missing and no-show students from the school system as we saw in the year following Katrina.²⁸⁷

IV. CONCLUSION

From the rubble of the New Orleans education system post Katrina, arose lessons on how to return to school in the wake of a natural disaster. Among the most relevant of these lessons was that schools should avoid using zero-tolerance models as a means of ensuring safety.²⁸⁸ The combination of student trauma and zero tolerance discipline during Katrina prevented school districts from addressing the individualized behavioral needs of students following a natural disaster.²⁸⁹ As a result, New Orleans schools post-Katrina suspended more than 60% of all students.²⁹⁰ The discipline-based removals pushed already struggling students even further away from schools.²⁹¹ During the 2020 school year, students are facing yet another natural disaster. This pandemic has forced students to deal with the trauma of losing family members and facing financial difficulties all while being secluded from friends.²⁹² To avoid the zero-tolerance pitfall New Orleans school district fell into following Katrina, schools should transition from a focus on zero-tolerance discipline to individualized discipline aimed at addressing a student's social, physical, and psychological needs.²⁹³ This transition

286. See Dana Goldstein et al., *As School Moves Online, Many Students Stay Logged Out*, N.Y. TIMES (Apr. 6, 2020), <https://www.nytimes.com/2020/04/06/us/coronavirus-schools-attendance-absent.html>.

287. See Harris et al., *supra* note 239, at 47.

288. See Jennifer Coco et al., *Returning to School in the Wake of Disaster: Post Katrina Lessons for the COVID Era*, NAT'L CTR FOR SPECIAL EDUC. IN CHARTER SCHS. (Oct. 8, 2020), <https://www.ncsecs.org/news/returning-to-school-in-the-wake-of-disaster-post-katrina-lessons-for-the-covid-era/>.

289. See *id.*

290. *Id.*

291. See *id.*

292. See *Trauma in Children During the COVID-19 Pandemic*, N.Y.U LANGONE HEALTH, <https://nyulangone.org/news/trauma-children-during-covid-19-pandemic> (last visited Dec. 14, 2020).

293. See Randi Weingarten, *Moving Past Punishment Toward Support*, 39 AM. EDUCATOR 1, 1 (Winter 2015-2016).

will require schools to base punishment determinations on the unique challenges the student is currently facing.²⁹⁴ By addressing the child's social and emotional needs, the schools might be able to correct student behavior and protect the community without retraumatizing children.²⁹⁵ Thus, allowing schools to address the underlying issue causing the misbehavior and teach the students coping skills that set them up for future success inside and outside the classroom.²⁹⁶

Returning to school after Hurricane Katrina was a privilege some students could not afford.²⁹⁷ Evacuating from and returning to the city required financial capital that would grant students access to transportation, food, and shelter.²⁹⁸ As a result, students struggling with inequities in access to basic needs were unable to make it to school.²⁹⁹ It is estimated that following the storm, Katrina kids missed “weeks, months, and even years of school.”³⁰⁰ Unfortunately, chronically absent children slipped through the cracks of school administration and as a result, more than one third of children impacted by Katrina were at least one year behind in school.³⁰¹ Likewise, COVID-19 has placed a spotlight on inequities in access to internet access and technology.³⁰² Some students have been unable to afford adequate access to technology and the internet necessary for online instruction during the pandemic.³⁰³ As a result, the digital divide has amplified a pre-existing achievement gap for students who are unable to attend class or complete assignments without access to the internet and internet-compatible technology.³⁰⁴ To avoid the achievement gap faced by students following Katrina, schools must first collect sufficient data on student achievement throughout the

294. *See id.*

295. *See id.*

296. *See id.*

297. *See* Andre M. Perry, *Hurricane Katrina Provides Lessons About Closing Campuses During the Coronavirus Crisis*, BROOKINGS INST. (Mar. 16, 2020), <https://www.brookings.edu/blog/the-avenue/2020/03/16/the-lessons-hurricane-katrina-taught-us-about-closing-campuses-in-a-crisis/>.

298. *See id.*

299. *See id.*

300. Reckdahl, *supra* note 214.

301. *See id.*

302. *See* Tatum, *supra* note 87.

303. *See* Dvorak, *supra* note 88; *see also* Ebrahimji, *supra* note 88.

304. *See* Tatum, *supra* note 87.

school year.³⁰⁵ Following Katrina, data on student achievement was hard to come by.³⁰⁶ Consequently, the only consistent data available to educators was based on the graduation rates of each freshman class.³⁰⁷ Collecting data on accessibility and retention of students during distance learning will allow school districts to have a better understanding of which students' educational needs are being met and which need more assistance.³⁰⁸ Once this data is readily available, school districts might be able to decrease the achievement gap by investing in specialist core classes to assist off-track students to make sure they are on-track with their peers.³⁰⁹ By utilizing data to provide off-track students with extended learning time with specialist before they fall significantly behind, schools might be able to provide students with the necessary support needed to reach their target learning goals during distance learning.³¹⁰

Exclusionary policies disproportionately deprive marginalized students of an education by pushing them out of schools, where they often end up involved in the legal system.³¹¹ The use of zero-tolerance policies promotes harsh and often exclusionary punishments for violations of school policies.³¹² Unfortunately, for minority students, they are unduly subjected to suspension, expulsions, and law enforcement referrals for misbehavior in school.³¹³ Prior to the outbreak of COVID-19, the school-to-prison pipeline phenomenon had been on the minds of student advocates for over twenty-six years.³¹⁴ Many of these same advocates hoped that in the devastation of COVID-19, students in danger of becoming victims of the school-to-prison pipeline

305. See Andrea J. Campbell & Yi-Chin Chen, *How to Close Boston's Achievement Gap During the Coronavirus Pandemic*, BOS. GLOBE (Apr. 28, 2020), <https://www.bostonglobe.com/2020/04/28/opinion/how-close-bostons-achievement-gap-during-coronavirus-pandemic/>.

306. See Harris et al., *supra* note 239.

307. See *id.*

308. See Campbell & Chen, *supra* note 305.

309. See *id.*

310. See *id.*

311. See Bronson, *supra* note 108.

312. See Heitzeg, *supra* note 20, at 13.

313. See Bronson, *supra* note 108.

314. See Barnes, *supra* note 114, at 21.

could come up for a breath of fresh air.³¹⁵ However, the increased reliance of zero-tolerance exclusionary punishments amidst COVID-19 concerns have increased the likelihood that marginalized students would experience policies and practices that would directly and indirectly push them out of schools.³¹⁶ Following Katrina, tens of thousands of students exited the school system as a result of these same direct and indirect factors.³¹⁷ Should the United States education system continue to rely on exclusionary policies that disproportionately impact marginalized students, we risk reviving a system grounded in institutional racism and implicit bias in an era where our school children are already struggling to hang on.

315. See *Slowing the Growth of the School to Prison Pipeline*, NAT'L CTR. FOR YOUTH L. (last visited Dec. 13, 2020), <https://youthlaw.org/school-to-prison-pipeline-covid-19-statement/>.

316. See Walravens, *supra* note 21.

317. See Reckdahl, *supra* note 214.