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# Stopping the Flow: Eliminating the School-to-Prison Pipeline in Washington State

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Emily Justin

## I. INTRODUCTION

Justice Warren in *Brown v. Board of Education* stated, “[i]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.”<sup>1</sup> When school personnel suspend or expel students, they explicitly deny students the opportunity of an education and, as a result, deny an adequate opportunity of success in life. This article focuses on the disproportionate and disparate effects exclusionary school discipline practices have on students of color, students with disabilities, students experiencing trauma, and students with intersections of these identities.

Current zero tolerance school disciplinary practices lead to higher rates of dropout and incarceration.<sup>2</sup> These phenomena lead to what is commonly referred to as the “school-to-prison pipeline.”<sup>3</sup> This is because students without a school structure are often left unsupervised and without educational activities, which may lead these students to fall behind in schoolwork and become disengaged in school.<sup>4</sup> Historically, schools have issued punishments such as suspension or expulsion at much higher rates to the detriment of students of color, students with disabilities, or students experiencing trauma.<sup>5</sup>

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<sup>1</sup> *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

<sup>2</sup> See *School-To-Prison Pipeline*, ACLU, <https://www.aclu.org/issues/juvenile-justice/school-prison-pipeline> [<https://perma.cc/Q2XE-YRY9>].

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Vaidya Gullapalli, *To End the School-To-Prison Pipeline, Invest in Resources for Students*, APPEAL (Sept. 9, 2019), <https://theappeal.org/to-end-the-school-to-prison-pipeline-invest-in-resources-for->

Students subject to exclusionary discipline practices such as suspension or expulsion are almost ten times more likely to drop out of high school or face incarceration than students who are not.<sup>6</sup> In addition, students who face suspension or expulsion have lower rates of achievement in reading, writing, and mathematics.<sup>7</sup> Specific to Washington state, during the 2009-2010 school year, 771 students reported suspension or expulsion as the reason they dropped out of school.<sup>8</sup> Relatedly, 75% of people under the age of eighteen sentenced to adult prisons have not completed the tenth grade.<sup>9</sup> Therefore, suspension and expulsion may be driving forces behind the sentencing of youth to adult prisons.

While the school-to-prison pipeline affects any student subject to exclusionary discipline practices, Black and Brown students, especially those with disabilities or those experiencing trauma, are disproportionately impacted by the school-to-prison pipeline with harsh consequences.<sup>10</sup> For example, one out of five male students of color with disabilities received one or more suspensions compared to one in ten for white male students

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students/?fbclid=IwAR0do2OCKyzhzhG337cTi8PeQVuXUHP\_2ZXXMMEWFomDKJkO3KkFlwrLec [https://perma.cc/7N6E-T35P].

<sup>6</sup> U.S. DEP'T OF HEALTH & HUM. SERVS. & U.S. DEP'T. OF EDUC., POLICY STATEMENT ON EXPULSION POLICIES IN EARLY CHILDHOOD SETTINGS 3 (2016), <https://www2.ed.gov/policy/gen/guid/school-discipline/policy-statement-ecce-expulsions-suspensions.pdf> [https://perma.cc/CD7G-5JPG].

<sup>7</sup> ARTHUR BURKE, INST. OF EDUC. SCIS., U.S. DEP'T OF EDUC., SUSPENSION, EXPULSION, AND ACHIEVEMENT OF ENGLISH LEARNER STUDENTS IN SIX OREGON DISTRICTS (2015), <https://files.eric.ed.gov/fulltext/ED558158.pdf> [https://perma.cc/X5UG-BN2S].

<sup>8</sup> Kim Shepard, *The School to Prison Pipeline*, MYNORTHWEST (Mar. 19, 2013, 1:56 PM), <https://mynorthwest.com/29812/the-school-to-prison-pipeline/> [https://perma.cc/FS8V-E3B6].

<sup>9</sup> Johanna H. Wald & Daniel J. Losen. *Defining and Redirecting a School-to-prison Pipeline*, 2003 NEW DIRECTIONS FOR YOUTH DEVELOPMENT 9, 13 (2003), <http://web.a.ebscohost.com.proxy.seattleu.edu/ehost/pdfviewer/pdfviewer?vid=1&sid=77b7af26-693f-4166-b79a-b64d317703a1%40sdc-v-sessmgr03> [https://perma.cc/6JM9-NXR2].

<sup>10</sup> *Id.* at 13.

with disabilities.<sup>11</sup> This harmful system perpetuates systemic racism and oppression by punishing Black and Brown students at much higher rates than white students, and in turn, limiting their opportunities for success.<sup>12</sup> The school-to-prison pipeline can be a political buzzword because in the abstract, addressing the pipeline is an attractive political platform, but using it as a line item on an agenda erases the very personal and very real effects the school-to-prison pipeline has on students. Black and Brown students with disabilities or students experiencing trauma deserve the support and resources they need to succeed beyond school.

To combat the adverse impact expelling and suspending students has on students' experiences in education and the criminal justice system, Washington state must abolish the use of these exclusionary discipline practices. Washington state should require all school personnel to complete extensive trainings in cultural competency that incorporate the concerns of community organizations, parents, and families. Finally, Washington state schools must hire more experienced staff to provide spaces for children struggling with behavioral issues to understand and rehabilitate them before they are faced with harsh consequences.

Current disciplinary policies and practices in schools throughout Washington state disproportionately affect students of color, especially students with disabilities and students experiencing trauma, and lead to higher dropout and incarceration rates.<sup>13</sup>

Schools must abolish expulsion and suspension regulations. They must implement trainings and practices that recognize and support students experiencing trauma and students with disabilities. Schools must also focus on supporting students from the beginning of their education to identify potential barriers and work to dismantle such barriers to offer an adequate education.

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<sup>11</sup> *Id.* at 10.

<sup>12</sup> Gullapalli, *supra* note 5.

<sup>13</sup> Shepard, *supra* note 8.

## II. ROAD MAP

This article will first describe the school-to-prison pipeline and how it disproportionately affects students of color, especially those whose intersecting identities include having disabilities or experiences of trauma. Section III, Subsection A will discuss the disparate impact the school-to-prison pipeline has on students of color. Section III, Subsection B will discuss the impact of the school-to-prison pipeline on students with disabilities. Section III, Subsection C will address the impact on students experiencing trauma. Section III, Subsection D will look at how experiences of trauma may impact a student's behavior. Finally, Section III, Subsection E reveals how intersecting identities of race, disability, and previous trauma are manifested in the experiences of affected students.

In Section IV, this article will discuss rethinking how schools address violence and how suspension and expulsion are harmful rather than helpful.

Section V will address how Washington state can enact policies in schools as well as pass legislation to prohibit suspension and expulsion. Section V, Subsection A will discuss the current school disciplinary practices in Washington state, such as the regulations regarding suspensions and expulsions. Section V, Subsection B will discuss rethinking violence and what abolishing exclusionary practices looks like. Section V, Subsection C will introduce the necessity of cultural competency trainings for all school staff. Section V, Subsection D will look at how Washington state can implement such training requirements into law. Section V will end with possible alternatives to exclusionary discipline practices.

Section VI will address opposing positions to abolishing suspension and expulsion in schools. This section will first address how some opponents believe that exclusionary discipline practices are necessary to keep students safe. Then, the section will address the belief that abolishing suspension and expulsion will put more responsibility on teachers. Section VI outlines both of these arguments and provides reasoning for why they are unfounded.

Section VII concludes this article. It reiterates the harm of the school-to-prison pipeline and the laws Washington state can pass to eliminate the pipeline.

### III. IN-DEPTH ANALYSIS OF THE SCHOOL-TO-PRISON PIPELINE

The school-to-prison pipeline is not a novel phenomenon.<sup>14</sup> For years, scholars have researched the effects of harsh school disciplinary procedures in relation to incarceration and dropout rates.<sup>15</sup> The increased likelihood that expelled or suspended students will have contact with the criminal justice system or be incarcerated is the crux of the school-to-prison pipeline.<sup>16</sup> For example, studies show that a student who is suspended or expelled for a discretionary violation is almost three times as likely to interact with the criminal justice system in some way the following year as compared to students who are neither suspended nor expelled.<sup>17</sup>

#### *A. How the School-to-Prison Pipeline Affects Students of Color*

Black and Brown students throughout the United States are disproportionately subjected to the school-to-prison pipeline.<sup>18</sup> Black and Brown students in the U.S. are more likely to receive a referral to law enforcement or experience a school related arrest than white students.<sup>19</sup> In

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<sup>14</sup> Gullapalli, *supra* note 5.

<sup>15</sup> *Id.*

<sup>16</sup> EXEC. OFF. OF THE PRESIDENT, REPORT: THE CONTINUING NEED TO RETHINK DISCIPLINE 7 (2016).

<sup>17</sup> Tony Fabelo et al., *Breaking Schools' Rules: A Statewide Study of How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, COUNCIL OF STATE GOV'T JUST. CENT. xii (July 2011), [http://knowledgecenter.csg.org/kc/system/files/Breaking\\_School\\_Rules.pdf](http://knowledgecenter.csg.org/kc/system/files/Breaking_School_Rules.pdf) [<https://perma.cc/DZL8-QMAU>].

<sup>18</sup> U.S. DEP'T OF EDUC. OFF. FOR C.R., 2013-2014 CIVIL RIGHTS DATA COLLECTION: A FIRST LOOK 3 (2016), [https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf?utm\\_source=The+Appeal&utm\\_campaign=cec5cce173-EMAIL\\_CAMPAIGN\\_2018\\_08\\_09\\_04\\_14\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_72df992d84-cec5cce173-58408851](https://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf?utm_source=The+Appeal&utm_campaign=cec5cce173-EMAIL_CAMPAIGN_2018_08_09_04_14_COPY_01&utm_medium=email&utm_term=0_72df992d84-cec5cce173-58408851) [<https://perma.cc/Y5EP-LYKK>].

<sup>19</sup> *Id.*

2011 and 2012, Black students comprised 16% of the nation’s public-school population, but represented 31% of those who experienced school-based arrests.<sup>20</sup> In contrast, white students made up 50% of the nation’s student population, but only made up 33% of those subject to school related arrests.<sup>21</sup> Black students are almost two times more likely to be expelled without access to educational services than white students.<sup>22</sup> Specifically, 8% of all students are Black boys, but they comprise 19% of students who are expelled without educational services.<sup>23</sup> Excluding children from schools without providing educational services limits the students’ opportunities to learn at the same rates as their peers.<sup>24</sup>

Beginning before secondary school, students of color are subject to harsher disciplinary procedures than white students. In the 2011-12 school year in Washington state, of the male students disciplined with out of school suspension, 7% were white, while 76% were students of color.<sup>25</sup> The Department of Education’s Civil Rights Data Collection from 2013-14 showed that Black preschoolers were 3.6 times more likely to be suspended than white preschoolers.<sup>26</sup> Specifically, Black children made up 19% of preschool enrollment yet represented 47% of preschoolers receiving one or more out of school suspensions.<sup>27</sup> Inflicting suspension on preschoolers, let alone introducing racial disparities in schooling before kindergarten, predisposes preschoolers to the same adverse effects of exclusionary practices experienced by older students.<sup>28</sup>

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<sup>20</sup> Gullapalli, *supra* note 5.

<sup>21</sup> EXEC. OFF. OF THE PRESIDENT, *supra* note 16, at 4.

<sup>22</sup> *Id.* at 3.

<sup>23</sup> *Id.* at 4.

<sup>24</sup> Wald & Losen, *supra* note 9, at 13.

<sup>25</sup> *Id.*

<sup>26</sup> U.S. DEP’T OF EDUC. OFF. FOR C.R., *supra* note 18, at 2.

<sup>27</sup> *Id.* at 3

<sup>28</sup> *See id.* at 7.

*B. How the School-to-Prison Pipeline Affects Students with Disabilities*

Students with disabilities and students experiencing trauma are also impacted at higher rates by the school-to-prison pipeline.<sup>29</sup> Students under the Individuals with Disabilities Education Act are more than twice as likely to receive out of school suspension than their peers and represent the majority of students who experienced physical restraints and seclusion at school.<sup>30</sup> Additionally, students with disabilities represent 25% of students referred to law enforcement or subjected to school-related arrests, while only representing 12% of the student population.<sup>31</sup>

While federal law requires schools to provide adequate support for students with disabilities, districts may fail to address the disability—leading to inadequate support for those students.<sup>32</sup> For example, many students facing a status offense—a noncriminal behavior such as truancy, running away, ungovernability, etc.—are likely to be denied special education services, even when they are necessary.<sup>33</sup> Specifically, when the student has poor attendance records, schools and behavioral specialists are less likely to identify the student as requiring a special education due to disabilities such as speech or language impairment, emotional disturbance, or attention deficit hyperactivity disorder.<sup>34</sup> Further, youth in the juvenile justice system are at a higher risk of having unmet special education needs and unidentified disabilities.<sup>35</sup>

The Individuals with Disabilities Education Act entitles students to a free and appropriate education individualized to meet the child's unique needs.<sup>36</sup>

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<sup>29</sup> See *id.* at 10.

<sup>30</sup> Gullapalli, *supra* note 5.

<sup>31</sup> Fabelo et al., *supra* note 17.

<sup>32</sup> Joseph B. Tulman & Douglas M. Weck, *Shutting Off the School-to-Prison Pipeline for Status Offenders with Education-Related Disabilities*, 54 N.Y. L. SCH. L. REV. 875, 878 (2009).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 883.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

Students with unmet special educational needs are less likely to be successful in school, leading to a greater likelihood that they will engage in behaviors such as poor school attendance and truancy.<sup>37</sup> Denying students the opportunity to access specialized disability services in schools denies them an adequate education, which they are entitled to.

### *C. How the School-to-Prison Pipeline Interacts with Students Experiencing Trauma*

Much of the impact of trauma is revealed in adulthood. For example, the Hammill Institute on Disabilities found that nearly 66% of incarcerated women reported four or more traumatic experiences,<sup>38</sup> while only 15% of women who are not incarcerated report four or more traumatic experiences.<sup>39</sup> The study also found that the occurrence of multiple experiences of childhood trauma had a greater impact on incarceration rates than the specific type of trauma itself.<sup>40</sup> Over half of the incarcerated women reported experiencing emotional, physical, and sexual abuse in childhood.<sup>41</sup> Since trauma can manifest as different psychiatric disorders such as attention deficit hyperactivity disorder, oppositional defiant disorder, or personality disorders, students experiencing trauma are at risk of being misdiagnosed leading to failed outcomes in receiving a free and appropriate education.<sup>42</sup> This research shows that consequences of

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<sup>37</sup> *Id.* at 886.

<sup>38</sup> The types of traumatic experiences were assessed by using the Adverse Childhood Experiences survey. Robert Stensrud et al., *The Childhood to Prison Pipeline: Early Childhood Trauma as Reported by a Prison Population*, REHAB. COUNSELING BULL. 1, 10 (May 2018), [https://www.researchgate.net/publication/325160333\\_The\\_Childhood\\_to\\_Prison\\_Pipeline\\_Early\\_Childhood\\_Trauma\\_as\\_Reported\\_by\\_a\\_Prison\\_Population](https://www.researchgate.net/publication/325160333_The_Childhood_to_Prison_Pipeline_Early_Childhood_Trauma_as_Reported_by_a_Prison_Population) [<https://perma.cc/786M-XMGR>].

<sup>39</sup> *Id.* at 3.

<sup>40</sup> *Id.* at 10.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 12.

childhood trauma can include exclusion from educational opportunities as well as criminal activity that can lead to imprisonment.<sup>43</sup>

As documented by the Adverse Childhood Experiences survey, most of the children in the juvenile justice system have been exposed to high doses of adversity.<sup>44</sup> Research from the National Institute of Justice shows that instances of abuse or neglect in childhood raise chances of juvenile arrest by 59%.<sup>45</sup> As noted earlier, discipline in school leads to a greater likelihood of student interaction with the juvenile justice system.<sup>46</sup> Linking childhood experiences of trauma to the juvenile justice system and discipline in schools makes clear the importance of identifying students experiencing trauma to eliminate the barriers to their education.

Unhoused students in Seattle Public Schools and nationwide are less likely to graduate high school than students with stable housing.<sup>47</sup> For example, just over 45% of students experiencing homelessness in the class of 2017 graduated high school compared with 82% of housed students.<sup>48</sup>

#### *D. How Trauma May Affect Behavior*

Experiences of trauma and post-traumatic stress disorder (PTSD) in children can manifest in behavior that many schools deem appropriate for punishment. For example, children subject to neglect, housing or food instability, and abuse may express emotion in ways that schools respond to

<sup>43</sup> *Id.* at 10.

<sup>44</sup> Emily Kochly, *Pipeline to Prison May Start with Childhood Trauma*, ACES CONNECTION NETWORK (Jan. 6, 2016), <https://www.acesconnection.com/g/aces-in-criminal-justice/blog/pipeline-to-prison-may-start-with-childhood-trauma> [<https://perma.cc/M66K-2DWF>].

<sup>45</sup> *Id.*

<sup>46</sup> EXEC. OFF. OF THE PRESIDENT, *supra* note 16, at 4.

<sup>47</sup> Becca Savransky, *As the School Year Starts up in Seattle, Homeless Students Face Anxiety, Instability*, SEATTLEPI (Sept. 16, 2019, 5:40 PM), <https://www.seattlepi.com/news/article/As-the-school-year-starts-up-in-Seattle-14438864.php> [<https://perma.cc/D7MW-4YBJ>].

<sup>48</sup> *Id.*

with suspension or expulsion.<sup>49</sup> Students experiencing homelessness face chronic stressors due to extreme poverty and trauma that can disrupt their development of emotional and behavioral regulation.<sup>50</sup> Additionally, some students experiencing homelessness struggle with anxiety and embarrassment from trying to hide their housing status.<sup>51</sup>

Exposure to trauma can lead to PTSD, separation anxiety, hyperactivity, and poor executive attention and inhibitory control.<sup>52</sup> Children who experience trauma can develop poor verbal skills, difficulty focusing and learning in school, and excessive temper tantrums, and they may act out in social settings.<sup>53</sup> Traumatic events can lead children to behave in ways that may lead to a greater likelihood of exclusionary discipline, while students who are stably housed with adequate developmental support are less likely to.<sup>54</sup>

Young children exposed to trauma suffer from nightmares, confusion, and even physical symptoms such as stomachaches and headaches.<sup>55</sup> Trauma in older children manifests as aggressive behavior, anger, regression to immature behaviors, inability to concentrate, and worsened school performance.<sup>56</sup> Adolescents experiencing trauma display social withdrawal, rebellion, increased risky activity, and a wish for revenge.<sup>57</sup> Students are punished for responses to traumatic experiences that correlate

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<sup>49</sup> Janette E. Herbers et al., *Trauma, Adversity, and Parent-Child Relationships Among Young Children Experiencing Homelessness*, 42 J. ABNORMAL CHILD PSYCH. 167 (Mar. 22, 2014), <https://link.springer.com/article/10.1007/s10802-014-9868-7> [<https://perma.cc/GW4D-E2EL>].

<sup>50</sup> *Id.*

<sup>51</sup> Savransky, *supra* note 39.

<sup>52</sup> *Id.*

<sup>53</sup> See Courtney Evans & Kelly Graves, *Trauma Among Children and Legal Implications*, COGENT SOC. SERVS. (Nov. 13, 2018) [<https://perma.cc/S7EW-AMP9>].

<sup>54</sup> *See id.*

<sup>55</sup> CTR. FOR SUBSTANCE ABUSE TREATMENT, TRAUMA-INFORMED CARE IN BEHAVIORAL HEALTH SERVICES (2014), <https://www.ncbi.nlm.nih.gov/books/NBK207191/> [<https://perma.cc/2EXL-547Z>].

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

to the above behaviors. These behaviors are difficult to recognize as the results of trauma, and as such, schools need to work with students on changing their behavior rather than suspending them.<sup>58</sup>

Children who are experiencing or who have experienced trauma represent a large number of students in the United States.<sup>59</sup> The U.S. Department of Justice estimates that as many as one in ten children in the United States have experienced more than one kind of victimization, including, but not limited to, the following: family violence, child physical and sexual abuse, and community violence exposure.<sup>60</sup> The final report of the U.S. Attorney General's National Task Force on Children Exposed to Violence found that this level of victimization increases the risk as well as severity of post-traumatic injuries and mental health disorders by up to ten times when compared to children who are not subject to such levels of victimization.<sup>61</sup> However, studies on children enduring the trauma of homelessness show that children experiencing trauma have fewer trauma symptoms and fewer emotional and behavioral problems when they are supported by positive structure, understanding, direction, and responsiveness from their parents, educators, shelter providers, and mental health clinicians.<sup>62</sup> These studies demonstrate the importance of supporting students experiencing trauma to mitigate the damaging impacts of PTSD.<sup>63</sup> It is imperative for Washington state schools to support students with disabilities and students experiencing trauma to reduce the barriers to their

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<sup>58</sup> Caroline Miller, *How Trauma Affects Kids in School*, CHILD MIND INST. (Oct. 14, 2019), <https://childmind.org/article/how-trauma-affects-kids-school/> [<https://perma.cc/FJQ8-4XLZ>].

<sup>59</sup> *Id.*

<sup>60</sup> ROBERT L. LISTENBEE, JR. ET AL., REPORT OF THE ATTORNEY GENERAL'S NATIONAL TASK FORCE ON CHILDREN EXPOSED TO VIOLENCE 4 (Dec. 12, 2012), <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf> [<https://perma.cc/4C7V-3LNL>].

<sup>61</sup> *See id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

educational success. Washington state can support these students by implementing the proposals recommended in this article to train additional staff to better the lives of students experiencing trauma.

*E. How the Intersections of These Identities Manifest*

Children’s intersecting identities—such as being a student of color with a disability or being a student of color experiencing trauma—can amplify misunderstandings about the students’ needs and require greater educational support. For example, Black male students in special education are at a higher risk of being suspended multiple times during sixth through eighth grades.<sup>64</sup> Further, one in five students of color with disabilities received one or more suspensions compared to one in ten white male students with disabilities and one in twenty white female students with disabilities.<sup>65</sup> Additionally, students with learning disabilities are up to three times more likely to have involvement with the criminal legal system, to face arrest in school, and to experience higher recidivism rates.<sup>66</sup>

Disparities among students experiencing trauma are also prevalent.<sup>67</sup> For example, one study showed that 71% of female students who were victims of sexual and physical abuse reported some type of school failure such as truancy, grade failure, suspension, and expulsion.<sup>68</sup> This study found that school failures are a likely indicator of future incarceration because parents and school personnel often ignore the abuse and leave the girls untreated.<sup>69</sup> Students of color with either disabilities or a history of trauma are adversely

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<sup>64</sup> See Wald & Losen, *supra* note 9, at 9–15.

<sup>65</sup> U.S. DEPT. OF EDUC. OFF. FOR C.R., *supra* note 18.

<sup>66</sup> Christopher A. Mallett, *The School-to-Prison Pipeline: Disproportionate Impact on Vulnerable Children and Adolescents*, 49 EDUC. & URB. SOC’Y 563, 569 (Apr. 19, 2016), <https://journals.sagepub.com/doi/abs/10.1177/0013124516644053?journalCode=eusa> [<https://perma.cc/2KKP-6ZKS>].

<sup>67</sup> See Wald & Losen, *supra* note 9.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

impacted in schools, which may lead to incarceration or other experiences with the criminal justice system.

Moreover, maltreated children—children subject to neglect, abuse, abandonment, or other forms of maltreatment—are up to 35% more likely to be diagnosed with an educational disability in early school years.<sup>70</sup> Specifically, research shows that foster children are 96% farther behind in reading comprehension and 95% farther behind in mathematics compared to children not in foster care.<sup>71</sup> In Washington state, teens in foster care score 15 to 20 points lower on average on statewide achievement tests than students not in foster care.<sup>72</sup>

Further, studies show that the prevalence of mental disorders in juvenile justice programs are much higher than in the general community, with conduct disorders being the most common diagnosis.<sup>73</sup> Disparities within the juvenile justice system exist even when probation officers make reports.<sup>74</sup> Officers more often blame external forces like neglect, abuse, and difficult living situations for offenses by white children, but attribute internal forces like weak morals or poor socialization for offenses by children of color.<sup>75</sup>

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<sup>70</sup> Mallett, *supra* note 66, at 567.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 568.

<sup>73</sup> John F. Edens & Randy K. Otto, *Prevalence of Mental Disorders Among Youth in the Juvenile Justice System*, 11 FOCAL POINT 8 (1997).

<sup>74</sup> Emily R. Cabaniss et al., *Reducing Disproportionate Minority Contact in the Juvenile Justice System: Promising Practices*, 12 AGGRESSION & VIOLENT BEHAV. 395, 397 (July 2007), [https://www.njjn.org/uploads/digital-library/resource\\_1639.pdf](https://www.njjn.org/uploads/digital-library/resource_1639.pdf) [<https://perma.cc/BJF8-JZ4W>].

<sup>75</sup> *Id.*

#### IV. DOWNFALL OF EXCLUSIONARY PRACTICES: KEEPING STUDENTS OUT OF SCHOOL IS MORE HARMFUL THAN HELPFUL

Exclusionary practices such as suspension and expulsion keep kids out of school and do not rehabilitate or further the education of the students.<sup>76</sup> For example, 31% of students who were suspended or expelled repeated a grade at least once while only 5% of students with no exclusionary discipline repeated a grade.<sup>77</sup> Further, 10% of students who were suspended or expelled in either eleventh or twelfth grade dropped out of school altogether.<sup>78</sup> These data are illustrative of the damage exclusionary practices can have on students.

Additionally, disciplining students by keeping them out of school can contribute to adverse outcomes in personal health and education.<sup>79</sup> For example, evaluation and necessary services for students with disabilities become unavailable when students are disciplined with suspension or expulsion.<sup>80</sup> Suspensions are consistently associated with higher drop-out and grade repeat rates and lower academic performance.<sup>81</sup> Specifically, in Washington state, TeamChild, a non-profit organization, found that 771 students who dropped out of school cited the reason to be suspension or expulsion in the 2009-10 school year.<sup>82</sup> One study shows that nearly two-thirds of first time ninth graders and over three-fourths of students who

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<sup>76</sup> See Letter from Sue Swenson, Acting Assisting Secretary, U.S. Dep't of Educ. Off. of Special Educ. Rehab. Servs., & Ruth E. Ryder, Acting Director, U.S. Dep't of Educ. Off. of Special Educ. Rehab. Servs., to Colleagues (Aug. 1, 2016), <https://www2.ed.gov/policy/gen/guid/school-discipline/files/dcl-on-pbis-in-ieps-08-01-2016.pdf> [<https://perma.cc/2AAL-49YC>].

<sup>77</sup> Libby Nelson & Dara Lind, *The School to Prison Pipeline, Explained*, JUST. POL'Y INST. (Feb. 24, 2015), <http://www.justicepolicy.org/news/8775> [<https://perma.cc/CCF3-26RU>].

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Swenson & Ryder, *supra* note 76.

<sup>82</sup> Shepard, *supra* note 8.

repeated the ninth grade who were incarcerated before returning to school withdrew or dropped out within one year of re-enrolling in high school.<sup>83</sup>

It is well established that the use of exclusionary practices to discipline students is harmful to the students' education because of its impact on student educational success and its increase in student involvement in the criminal justice system.<sup>84</sup> Studies on a group of ninth grade students found that each suspension contributed to a 20% decrease in the chances of graduating high school.<sup>85</sup> Further, students who received at least one out of school suspension were lower-achieving and had more frequent unexcused absences.<sup>86</sup>

## V. WASHINGTON STATE MUST ABOLISH EXPULSION AND SUSPENSIONS

Schools must abolish expulsion and suspension regulations and must implement trainings and practices which recognize and support students experiencing trauma and students with disabilities. Schools must also focus on supporting students from the beginning of their education in order to first identify potential barriers and then work to dismantle such barriers.

### *A. Amendments to Current Washington Law*

While Washington state's laws may be more progressive and sensitive to the school-to-prison pipeline than other jurisdictions, current Washington state law supporting the education of students of color experiencing trauma or with disabilities falls short of the support these students deserve. Many Washington state statutes regarding discipline in schools limit the use of exclusionary procedures such as expulsion and suspension, but give great

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<sup>83</sup> Gullapalli, *supra* note 5.

<sup>84</sup> See Johanna Lacoé & Matthew P. Steinberg, *Do Suspensions Affect Student Outcomes?*, 41 EDUC. EVALUATION & POL'Y ANALYSIS 34 (Aug. 17, 2018), <https://doi.org/10.3102/0162373718794897> [<https://perma.cc/4XZD-JST7>].

<sup>85</sup> *Id.* at 36.

<sup>86</sup> *See id.* at 57.

discretion to school personnel to exclude students for behaviors they deem unsafe or disruptive to the classroom without offering those students adequate support for rehabilitation.<sup>87</sup> Although Washington state law has made a good start to limit the use of exclusionary practices compared to less progressive states, Washington state must abolish suspension and expulsion altogether to achieve the greatest effect.

For example, Washington teachers are allowed to exclude a student from their education for up to two days if a student “creates a disruption of the educational process in violation of the building disciplinary standards.”<sup>88</sup> This law requires teachers and other school personnel to attempt forms of discipline other than exclusionary practices, and allows teachers or personnel to consider using listed best practices and strategies but does not require their use.<sup>89</sup> The practices and strategies include providing tutoring, employing parent and family engagement coordinators, and developing academic and nonacademic supports to students who are at risk of not being successful in school.<sup>90</sup> However, teachers are not required to employ the above strategies in place of exclusionary discipline.<sup>91</sup>

While requiring school personnel and teachers to attempt some other form of discipline that does not include expulsion or suspension is a great step towards keeping students in schools, school personnel and teachers are not required to implement any of the listed strategies.<sup>92</sup> The law must include mandatory language that requires teachers and school personnel to exclusively use best practices and strategies to implement discipline. The law needs to remove suspension as an option.

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<sup>87</sup> WASH. REV. CODE § 28A.600.020 (2019).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

Additionally, Washington state law allows suspension and expulsion for gang activity.<sup>93</sup> The statute defines a gang as “a group consisting of three or more persons; with identifiable leadership; and on an ongoing basis conspires and acts together mainly for criminal purposes.”<sup>94</sup> The statute does not state that students may be expelled or suspended based on the criminal activity itself, but rather, simply for being part of a group who may have criminal purposes. Young people join gangs for a variety of reasons including financial security, support, and a sense of belonging or protection.<sup>95</sup> Students who are exposed to gangs should receive the necessary support from schools. In fact, failure to identify and prevent delinquent activities by the age of ten and younger is a main risk factor for later gang involvement.<sup>96</sup> Gary D. Gottfredson, a professor at the University of Maryland, has studied school safety for over thirty years; he states that schools can prevent gang joining by providing a safe environment in schools.<sup>97</sup> Washington state schools should not suspend or expel students simply for being involved in a gang when that very school system is capable of preventing gang involvement.

The law requires expulsion for not less than one year for any elementary or secondary school student who brings a firearm into any facility that is used exclusively by public schools.<sup>98</sup> This law may relate to the use of guns by students involved with gangs. Students who are more exposed to gang involvement may feel it is necessary to carry a firearm for protection.<sup>99</sup>

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<sup>93</sup> WASH. REV. CODE § 28A.600.455 (1997).

<sup>94</sup> *Id.*

<sup>95</sup> THOMAS R. SIMON ET AL., U.S. DEP’T OF JUST. & U.S. DEP’T OF HEALTH & HUM. SERVS., CHANGING COURSE: PREVENTING GANG MEMBERSHIP 20 (2012), <https://www.ncjrs.gov/pdffiles1/nij/239234.pdf> [<https://perma.cc/NJ3U-DU5P>].

<sup>96</sup> *Id.* at 12.

<sup>97</sup> GARY D. GOTTFREDSON & DENISE C. GOTTFREDSON, GOTTFREDSON ASSOCIATES, INC., GANG PROBLEMS AND GANG PROGRAMS IN A NATIONAL SAMPLE OF SCHOOLS (2001), <https://files.eric.ed.gov/fulltext/ED459408.pdf> [<https://perma.cc/U5AU-47RQ>].

<sup>98</sup> WASH. REV. CODE § 28A.600.420 (2009).

<sup>99</sup> SIMON ET AL., *supra* note 95, at 5.

Students who are victims of gang involvement are faced with harsh penalties without outside support or the opportunity to seek solace in schools by automatic, mandatory expulsion.<sup>100</sup> As such, expulsion and other exclusionary practices should instead be replaced by preventative measures.

It is important to address concerns of gun violence in schools when discussing punishments for students who bring guns into schools. Because zero tolerance of violent threats does little to create a sustainable safe learning environment, schools should adopt other solutions.<sup>101</sup> Both the FBI and the U.S. Secret Service study school shootings and recommend adopting a threat assessment approach to investigate whether a student who makes a threat is likely to carry out the threat.<sup>102</sup> The threat assessment models include criteria and guidelines to use in responding to a student's threat of violence to best support the threatening student and their classmates by responding effectively.<sup>103</sup> It would be worthwhile for Washington state law to include guidelines for assessing risk assessment to provide support where it is necessary.

One seemingly progressive Washington state law, Wash. Rev. Code § 28A.600.420, addresses cultural competence, professional development, and training, but the law still falls short of achieving a completely competent education system.<sup>104</sup> The statute requires educators to join with community organizations and representatives to develop training in cultural competence for school staff, but this requirement is subject to funds appropriated for this specific purpose.<sup>105</sup> Further, there is no definition of the requirement for community representatives, which thus is subject to

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<sup>100</sup> *Id.*

<sup>101</sup> Randy Borum et al., *What Can Be Done About School Shootings? A Review of the Evidence*, 39 EDUC. RESEARCHER 27, 34 (Feb. 2010), [https://www.researchgate.net/publication/41492724\\_What\\_Can\\_Be\\_Done\\_About\\_School\\_Shootings\\_A\\_Review\\_of\\_the\\_Evidence](https://www.researchgate.net/publication/41492724_What_Can_Be_Done_About_School_Shootings_A_Review_of_the_Evidence) [<https://perma.cc/UTM2-2E45>].

<sup>102</sup> *Id.* at 31.

<sup>103</sup> *Id.* at 32.

<sup>104</sup> WASH. REV. CODE § 28A.415.420 (2016).

<sup>105</sup> *Id.*

varied interpretation that may not include community representatives with adequate knowledge in cultural competency.<sup>106</sup> Additionally, the statute does not require all school faculty and staff to receive the outlined professional development and training and instead only encourages the training of all school district and school staff.<sup>107</sup> The language in this statute must be changed to mandate trainings for all staff rather than only encourage trainings. Instead of including “subject to funds appropriated specifically for this purpose,” as the statute currently stands, the quoted language should be removed altogether to simply state that schools must develop trainings in cultural competency for school staff.<sup>108</sup>

Further, Washington state law provides for suspensions and expulsions subject to certain conditions.<sup>109</sup> These limitations require early involvement of parents to help students meet behavioral expectations but does not specify when this early involvement must take place nor the extent of the support the school will offer to the parents or the student.<sup>110</sup> Additionally, this regulation requires a school district to provide an opportunity to receive educational services when a student is suspended or expelled.<sup>111</sup> While this requirement seems adequate, it does not require continued instruction by an educator, such as a teacher.<sup>112</sup> The extent of the educational services is not specified and is thus subject to an undue gap in the student’s education.

Washington state law also allows for emergency expulsion of a student if the student poses “an immediate and continuing danger to other students or school personnel, or an immediate and continuing threat of material and substantial disruption of the educational process.”<sup>113</sup> The only limit to this

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<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> WASH. ADMIN. CODE § 392-400-430 (2019).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> WASH. ADMIN. CODE § 392-400-510 (2018); WASH. ADMIN. CODE § 392-400-025 (2018).

type of emergency expulsion is that school personnel must have exhausted reasonable attempts to administer other forms of discipline to meet behavioral expectations.<sup>114</sup> The language in the statutes allows for an extreme level of discretion and subjectivity to determine when students may experience a substantial disruption to their education. This level of decision making, without appropriate cultural competency trainings or understanding, is likely to lead teachers and school personnel to give undue weight to potential implicit biases that could further harm students of color or students experiencing trauma.

*B. Abolishing Exclusionary Practices in Terms of Rethinking Violence*

The way experiences of trauma manifest through violence or inappropriate behaviors gives reason to address violence and how cultural norms shape the ways society thinks of violence. For example, studies show that almost all people who commit acts of violence report having survived or witnessed violence before first engaging in violence, and most people who commit acts of violence report regularly surviving violent incidents themselves.<sup>115</sup> This system is most accurately depicted in the following example:

[A] young person may ditch school one day and be beaten up while outside. He may then affiliate with a person or group of young people he believes can protect him from further harm. He may participate in hurting someone with that person or group. He may then be retaliated against for his actions, survive a serious assault, and decide to carry a weapon. On his rap sheet, he will have advanced from truancy to a serious violent felony. As a victim, he is a survivor of multiple potentially traumatic assaults over a short period. And of course, both of these realities require a

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<sup>114</sup> WASH. ADMIN. CODE § 392-400-510 (2018).

<sup>115</sup> DANIELLE SERED, *UNTIL WE RECKON: VIOLENCE, MASS INCARCERATION, AND A ROAD TO REPAIR* 197 (2019).

response. But what it comes down to is this: almost no one's entry point into violence is committing it.<sup>116</sup>

Although this example is a simplified version of how violence may first manifest in a young person, it provides a representation of how one person can commit violent acts without having much conscious control over those acts. Further, the same young person from the above example may then suffer from hypervigilance which makes them perceive nonviolent situations as dangerous and requiring immediate attention, which could then cause them to commit the first act of violence in an act of self-defense—even if no defense was needed in the first place.<sup>117</sup> This exaggerated sense of threat can cause survivors of trauma to engage in self-protective actions due to a perceived life-threatening danger when the threat may be minimal.<sup>118</sup> Greater society, schools, and the criminal justice system may see these acts of violence as retaliatory when they actually may be a coping mechanism.<sup>119</sup>

Specifically, research shows that the above pattern of violence is compounded by cultural norms that directly affect these coping strategies.<sup>120</sup> For example, survivors of violence, with pain which society repeatedly diminishes and devalues, cope by minimizing it; that is, they see their pain as significantly less serious than it is.<sup>121</sup> When survivors of violence can minimize the violence placed upon them, it becomes easier to inflict that violence upon others.<sup>122</sup> Because society has normalized their pain, violence against others becomes normalized. It seems counterintuitive to place the harshest punishments onto acts of violence when society itself has created a culture where that violence is normal.

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 199.

<sup>118</sup> Tulman & Weck, *supra* note 33.

<sup>119</sup> SERED, *supra* note 115.

<sup>120</sup> *Id.* at 200–02.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

Further, the way U.S. society punishes violence changes based on what types of violence our society deems worthy of punishment.<sup>123</sup> For example, people’s assessments of the violence<sup>124</sup> they experience affect the state’s interest in punishing that violence when the incident comes to the attention of the criminal justice system.<sup>125</sup> Specifically, studies show that the individual victim’s social standing and other social characteristics, such as the race and social standing of the individual who allegedly committed the violent act, strongly influence the criminal justice system when deciding whether to prosecute.<sup>126</sup> Because a person’s characteristics, rather than their conduct, are a determining factor in whether they engage with the criminal legal system, it is even more necessary to mitigate these disparities, starting with school disciplinary practices. Schools in Washington state must support students in restoring the person harmed as well as the person causing the harm.

To best support the students whose schools’ disciplinary practices are most connected to the school-to-prison pipeline, Washington state law should abolish exclusionary practices such as suspension and expulsion in nearly all situations. Current disciplinary practices exercise harsh punishments on incidents unworthy of such severity. Students have been arrested for passing gas, writing on desks, and wearing politically charged merchandise.<sup>127</sup>

In one current case of excessive disciplinary practices, a twelve-year-old student with poor emotional regulation was arrested and held in secure detention, against the wishes of the student’s psychiatrist, for bringing a toy

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<sup>123</sup> GAIL LEWIS ET AL., *RETHINKING SOCIAL POLICY* 250 (2000).

<sup>124</sup> In this particular instance, the author defines violence as “any behavior by an individual that intentionally threatens, attempts to inflict, or does cause, physical, sexual or psychological harm to others or to her or himself.” *Id.* at 246.

<sup>125</sup> *Id.* at 250.

<sup>126</sup> *Id.*

<sup>127</sup> Aaron J. Curtis, *Tracing the School-to-Prison Pipeline from Zero-Tolerance Policies to Juvenile Justice Dispositions*, 102 *GEO. L.J.* 1251, 1259 (2014).

pistol to school, which eventually led to greater mental health concerns for the child.<sup>128</sup> When the school administration, teachers, and decision makers are not equipped to understand notions of violence, trauma, and the brain science behind why students act out when they do and the way they do, students are subject to harsh punishments that affect their education and their future in the long run. If students are subject to arrest in schools for minor offenses, they may struggle in future endeavors such as applying for jobs or housing.

### *C. Trainings for All Educational Staff*

In addition to abolishing suspension and expulsion, the law must require all staff who interact with students in every district in Washington state to participate in regular and evolving cultural competency trainings that extensively teach educators the risks of the school-to-prison pipeline and how to best support their students. Evidence shows that implementing evidence-based, multi-tiered behavioral frameworks helps improve school safety overall and academic achievement for all children.<sup>129</sup> These behavioral frameworks should be implemented at the onset of the child's education to provide the best support for each student.

The Massachusetts Youth Screening Instrument-Second Version (MAYSI-2) is a brief screening tool implemented at youths' entry points into the juvenile justice system to identify any potential mental, emotional, or behavioral problems from the onset of a child's involvement.<sup>130</sup> A similar screening method could be implemented when students first enter any Washington state school district, starting as early as preschool, to identify

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<sup>128</sup> *Id.* at 1268.

<sup>129</sup> Thomas Grisso et al., *Massachusetts Youth Screening Instrument for Mental Health Needs of Juvenile Justice Youths*, 40 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 541 (2001), <https://www.sciencedirect.com/science/article/abs/pii/S0890856709606845> [<https://perma.cc/95AU-XXTT>].

<sup>130</sup> *Id.*

potential barriers the student may have to behaving appropriately or getting an adequate education.

Additionally, a variety of organizations provide support for families, school districts, and students to identify students' barriers to education. The organizations also provide modules and offer trainings to provide behavioral and educational support dedicated to student success.<sup>131</sup> Equity in Education and the Washington State Minority and Justice Commission created a five-part professional growth series in 2017, including trainings and relevancy workshops, connecting schools and educators with courts and those working in the justice system to eliminate the school-to-prison pipeline.<sup>132</sup>

Parents, students, and communities affected the most by disproportionate disciplinary procedures should be at the center of making change in order to focus on the specific needs of those who the changes are intended to support. Those most affected by the school-to-prison pipeline should be the anchors in planning restorative changes. Research shows that when schools, families, and communities work together, students earn higher grades, attend school more regularly, and enroll in higher level programming.<sup>133</sup>

An example of community-based action, when affected communities plan and adopt changes to combat systemic inequities, includes the Integrated Student Supports (ISS) and Family Engagement framework. The ISS model promotes the academic success of students by organizing both academic and nonacademic supports to decrease barriers to student

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<sup>131</sup> *Ideas that Work*, U.S. DEP'T OF EDUC., <https://ccrs.osepideasthatwork.org/> [<https://perma.cc/7268-U3MF>]. Such organizations include the Positive Behavioral Interventions and Supports Center, the Center for Parent Information and Resources, Schoolwide Integrated Framework for Transformation, the IRIS Center, and National Center on Intensive Intervention in combination with the Department of Education. *Id.*

<sup>132</sup> EQUITY IN EDUCATION COALITION, <https://eec-wa.org/event/discipline-series/> [<https://perma.cc/33L3-B7JF>].

<sup>133</sup> CLIVE R. BELFIELD & HENRY M. LEVIN, *THE PRICE WE PAY: ECONOMIC AND SOCIAL CONSEQUENCES OF INADEQUATE EDUCATION* (2007).

success.<sup>134</sup> The ISS resources include tutoring, physical and mental health care, parent education, family counseling, food bank resources, and employment assistance.<sup>135</sup>

The 2016 Washington House Bill 1541 currently recommends a version of the ISS framework; however, it does not require it.<sup>136</sup> The language in House Bill 1541 needs to be rectified to require the delivery of academic and nonacademic services so students can have equitable access to success. House Bill 1541's language regarding a workgroup to determine implementation should not be predicated on the availability of funds. Instead, it must allot funding for this group to ensure these support services. All school districts must be required to offer academic as well as nonacademic support services for students and families at the onset of the child's education to ensure the students' success.

#### *D. Implementing Exclusionary Measure Abolition and Supportive Trainings to Promote Change*

Simply abolishing suspension and expulsion without trainings or implementing trainings without abolishing suspension and expulsion would have a zero-sum effect because each is necessary to best support the impact of the other. For example, research shows that adopting cultural competency trainings, adopting community-based detention alternatives, removing decision-making subjectivity, reducing barriers to family involvement, and cultivating system-level change through legislation were key to reducing Disproportionate Minority Contact (DMC) for youth.<sup>137</sup> Enacting law that includes abolishing exclusionary discipline practices in concert with requiring community based and parent involved trainings for school staff is necessary to adequately support the most affected students.

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<sup>134</sup> H.B. 1541, 64th Leg., Reg. Sess. (Wash. 2016).

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> Cabaniss et al., *supra* note 74.

One methodology that implements both trainings and decreased exclusionary measures is called Positive Behavioral Interventions and Supports (PBIS).<sup>138</sup> This technique shifts away from imposing harsh exclusionary practices and instead focuses on establishing productive positive behavioral expectations with teachers, administrators, students, and parents.<sup>139</sup> For example, a school district in South Los Angeles implemented the PBIS technique and found a 13.3% decrease in suspensions, a 55.6% decrease in expulsions, a 20% decrease in daily office referrals, and a general reduction in misbehavior, all without having to rely on harsh disciplinary procedures.<sup>140</sup> Adopting the PBIS or a similar approach in schools can promote a positive and healthy learning environment and can lead to higher rates of graduation and a decreased dropout rate in schools.<sup>141</sup>

Another alternative approach to exclusionary procedures may include Functional Family Therapy (FFT). FFT focuses on family interactions and referring students to community-based programs rather than admitting youth to juvenile court or to out of home placements in a detention facility.<sup>142</sup> FFT provides a therapist who helps students and their families overcome negative feelings, such as anger or hopelessness, and who offers skills development for the parents or adults in the best position to supervise and teach the child.<sup>143</sup> FFT focuses on both immediate and long-term change that is culturally appropriate, context sensitive, and personalized to the characteristics of each individual family.<sup>144</sup>

In addition to the previously mentioned impacts, research shows that FFT is highly effective at preventing re-offending. For example, one study found

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<sup>138</sup> Curtis, *supra* note 127, at 1272.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 1273.

<sup>141</sup> *Id.* at 1275.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

that only 8.7% of youth who participated in FFT committed a criminal offense within five years of completing the program, while 40.9% of youth subject to probation services committed a criminal offense.<sup>145</sup> An FFT approach is cost effective in that it is an effective tool to keep youth from re-offending, which would ultimately keep students from expensive out of home placements.<sup>146</sup> While FFT is focused on keeping youth out of the criminal justice system, a similar approach should be taken in Washington state schools to prevent re-offending and support healthy behaviors in both the student and their family.

The combination of abolishing suspension and expulsion in schools with all-staff trainings in cultural competency and behavioral management needs to be implemented to diminish the school-to-prison pipeline. Simply enacting one piece will not promote change.<sup>147</sup> For example, congressional amendments to the Juvenile Justice and Delinquency Prevention Act in 1992 required states to demonstrate their efforts to reduce disproportionate minority contact, but how this reduction should be achieved systematically has not been addressed, and thus the amendments have not resulted in the desired changes.<sup>148</sup> Simply changing the law without a commitment to transforming educators will have little effect because teachers and educators have the greatest daily impact on students.

The relevant Washington state law must be changed to include mandatory trainings for school staff. The language of the law must also be specific enough to exclude suspensions or expulsions. Changing Washington state law to include preventive measures, such as identifying barriers, training staff and administrators on trauma informed care, providing behavioral specialists and therapists, and implementing community-based solutions may save more money than it costs to enact.

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<sup>145</sup> *Id.*

<sup>146</sup> *Id.*

<sup>147</sup> Grisso et al., *supra* note 129.

<sup>148</sup> *Id.*

A good example of how community based preventive measures have monetary benefits comes from the Washington State Institute for Public Policy cost-benefit analysis of its juvenile delinquency prevention programs in 2004.<sup>149</sup> The analysis found that individual therapy, family therapy, and other effective programs saved taxpayers as much as \$31,243 per youth enrolled in the juvenile delinquency prevention programs through a reduction in criminal offending, substance abuse, teen pregnancy, child abuse and neglect, and an improvement in youth education.<sup>150</sup> By diverting youth out of the criminal justice system, Washington state can use the funds saved to staff experts in behavioral development and mental health to support students and continue to keep them out of juvenile detention.

The U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) through the Juvenile Justice Reform Act of 2018 (JJRA) requires states to implement State Advisory Groups that can be comprised of expert members trained in adolescent development and mental health or substance abuse as well as representatives from community groups.<sup>151</sup> These State Advisory Groups must create plans to enact juvenile crime analysis in addition to mental health and substance abuse assessments, reentry plans for incarcerated youths, and plans to eliminate the use of unreasonable restraints and unreasonable isolation.<sup>152</sup> The JJRA allows funds for the State Advisory Group to be up to 5% of each state's allocation to carry out the title.<sup>153</sup> Although the JJRA is limited to youth already affected by the juvenile justice system, Washington state schools should enact similar procedures.

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<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> U.S. DEP'T OF JUST., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION FACT SHEET 2, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/252961.pdf> [<https://perma.cc/6N2Y-3H8C>].

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

Washington state schools should follow these guidelines to include advisory groups that focus on limiting juvenile detention and work toward sustainable rehabilitative services. Several counties in the United States have developed race neutral youth risk assessments.<sup>154</sup> These assessments evaluate a youth's risk probation status and prior record while simultaneously giving weight to social factors—such as the youth's number of guardians.<sup>155</sup> Such factors can exacerbate a minority youth's likelihood that the youth will be detained and guide decisions about the level of supervision appropriate for individual youths.<sup>156</sup> These services, like those required by the State Advisory Group, should also include an evaluation for other impactful factors, such as assessments of mental health and substance abuse and the adequacy of their education. Further, school districts should also conduct self-assessments of schools' disciplinary procedures. If these additional assessments are not implemented, students requiring supportive services could fall through the cracks. Supporting these students requires a holistic approach because it is unlikely there is only one factor creating barriers in the students' lives, so consideration needs to be given to all the ways in which the students face challenges.

California law has prohibited suspensions for willful defiance—actions such as chewing gum, tapping feet, violating the dress code, or playing with a phone—in grades four and five, and prohibits them in grades six to eight.<sup>157</sup> This law change is an example of high-powered policy makers joining to create change.

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<sup>154</sup> Grisso et al., *supra* note 129.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> CAL. EDUC. CODE § 48901.1 (2019); Nina Agrawal & Sonali Kholi, *California Schools Can No Longer Suspend Students for Being on Their Phones. Now What?*, MSN (Oct. 3, 2019), <https://www.msn.com/en-us/news/us/california-schools-can-no-longer-suspend-students-for-being-on-their-phones-now-what/ar-AAIdlUt?li=BBnbcA1> [<https://perma.cc/FW4A-CQNB>].

The proposed law changes have the potential to be implemented by 2023 because the Washington State Legislature typically follows a two-year framework to pass a bill through the legislature.<sup>158</sup> Once this law is proposed to the Legislature, the Legislature should begin the process of getting the bill amended and accepted by both the House of Representatives and the Senate.<sup>159</sup> Finally, the Governor should sign the bill and the law should be enacted by 2023.<sup>160</sup>

The proposed law should be titled “Washington State School Discipline Reform,” and will take the form of a typical bill proposed to the Legislature. The first section of the bill will include background information necessary for understanding what the law is and why this law is being implemented. This information will include some of the data in this article explaining the harsh and damaging effects of suspending and expelling students as well as the importance of abolishing suspension and expulsion in combination with implementing trainings and additional support services for students.

Next, the bill will define key terms within the proposed law. Key terms will include: defining academic support to include mandatory language to provide in-person, in-class educational services; and defining non-academic support to include family support counselors, behavioral psychologists, and community resources.

The next section will contain the terms of the law itself. Because this bill will propose two prongs—abolishing suspension and expulsion as well as implementing additional services—the bill will outline each section separately. The bill will eliminate the option for suspension and expulsion of any kind. Because the current Washington state statute allows for

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<sup>158</sup> WASH. STATE LEGISLATURE, OVERVIEW OF THE LEGISLATIVE PROCESS, [https://leg.wa.gov/LIC/Documents/EducationAndInformation/Overview\\_of\\_Legislative\\_Process.pdf](https://leg.wa.gov/LIC/Documents/EducationAndInformation/Overview_of_Legislative_Process.pdf) [https://perma.cc/434R-EYQA].

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

suspensions and expulsions in some circumstances, the proposed bill will eliminate these exceptions altogether.

The section of the bill requiring the implementation of additional support services will be more in depth. This section will include mandatory steps that schools must take before taking any disciplinary actions. These steps involve:

- (1) Utilizing a Positive Behavioral Interventions and Support (PBIS) framework that mandates focus on positive behavioral expectations
- (2) The hiring of one additional school counselor for every 100 students
- (3) The hiring of one specialized behavioral psychologist for every 200 students
- (4) The hiring of one Functional Family Therapist for every 600 students
- (5) The creation and implementation of a State Advisory Group that includes members trained in child development, mental health or substance abuse, and representatives from the community
- (6) Mandatory yearly cultural competency trainings that include trainings in de-escalation and trauma informed care

As stated earlier in this section, the PBIS framework will assist in increasing student success.<sup>161</sup> Hiring counselors and specialists will assist in reducing students' barriers to having a positive educational experience.<sup>162</sup> Finally, competency trainings will provide teachers and school staff with the tools to better support their students.<sup>163</sup>

The next section in the bill will discuss how the above requirements will be funded. The JJRA allots 5% of state funds to carry out the title, and the

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<sup>161</sup> Curtis, *supra* note 127, at 1272–73.

<sup>162</sup> *Id.* at 1273.

<sup>163</sup> *Id.*

proposed bill should suggest using these funds for schools as well.<sup>164</sup> The 2004 Washington State Institute for Public Policy cost-benefit analysis of its juvenile delinquency prevention programs showed savings of around \$30,000 per youth who was enrolled in family therapy and other similar programs.<sup>165</sup> These savings will allow for the hiring of the additional staff members and trainings the bill proposes. Because the proposed State Advisory Group includes multiple members of the community, the bill will require these State Advisory Groups to be parents or other volunteers to reduce costs.

The most successful juvenile justice reform efforts include top-level policymakers who forcefully embrace change and encourage their colleagues to join in the transformative justice.<sup>166</sup> Washington state law makers must adopt this approach and encourage and challenge their colleagues and other influencers to engage in lawmaking that focuses on keeping students in schools and addressing barriers to success.

### *E. Alternatives to Suspension and Expulsion*

Abolishing suspension and expulsion will require alternative approaches to ensuring students are acting safely both for their benefit and for the benefit of their classmates. The U.S. Department of Education (the Department) addresses behavioral interventions and supports through educational opportunities for students with disabilities or those requiring an individualized education program (IEP).<sup>167</sup> The Department states that

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<sup>164</sup> U.S. DEP'T OF JUST., OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION FACT SHEET 2, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/252961.pdf> [<https://perma.cc/6N2Y-3H8C>].

<sup>165</sup> WASH. STATE INST. FOR PUB. POL'Y, BENEFITS AND COSTS OF PREVENTION AND EARLY INTERVENTION PROGRAMS FOR YOUTH 6 (Sept. 17, 20014), <http://www.episcenter.psu.edu/sites/default/files/ebp/Benefits%20and%20Costs%20of%20Prevention%20and%20Early%20Intervention%20Programs%20for%20Youth.pdf> [<https://perma.cc/V87Y-FJLN>].

<sup>166</sup> *Id.*

<sup>167</sup> Swenson & Ryder, *supra* note 76.

when students' behavior impedes the learning of others or of themselves, school personnel must consider implementing an IEP and engage in the use of positive behavioral interventions and supports.<sup>168</sup> The Department suggests that IEPs must be reviewed no less than annually to address any goals the child is not meeting or other matters that may be barriers to the child's education.<sup>169</sup> The Department also suggests implementing IEP teams to determine whether an individual student requires special education or related services, and any program modifications or support for school personnel.<sup>170</sup> While the Department has not enacted any of these procedures into law, Washington state must implement the suggestions to best support students with an existing IEP or students who could benefit from the services of an IEP.

Some forms of objective threat assessment can act as an alternative to exclusionary practices. Objective threat assessments allow school personnel to determine whether a student is likely to act out the potential threat they have made.<sup>171</sup> A study including 600 schools that use the threat assessment protocols found 25% fewer students received long-term suspensions than students in schools that do not use threat assessment protocols.<sup>172</sup>

The Youth Violence Project at the University of Virginia developed a set of guidelines for threat assessments.<sup>173</sup> These guidelines include receiving input from school counselors and school psychologists to interview students who make potential threats and to provide the appropriate response to

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<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> JENNI OWEN ET AL., DUKE CTR. FOR CHILD & FAM. POL'Y & DUKE L. SCH., *INSTEAD OF SUSPENSION: ALTERNATIVE STRATEGIES FOR EFFECTIVE SCHOOL DISCIPLINE* 25 (2015), [https://web.law.duke.edu/childedlaw/schooldiscipline/downloads/instead\\_of\\_suspension.pdf](https://web.law.duke.edu/childedlaw/schooldiscipline/downloads/instead_of_suspension.pdf) [<https://perma.cc/Z6JH-CC2Z>].

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

ensure that all students involved receive the necessary care.<sup>174</sup> A field test of the practicality of threat assessment tools showed that 70% of alleged threats were found to not pose any risk of danger.<sup>175</sup> Nearly all of the students in the field test would have been suspended or expelled in a zero-tolerance policy school.<sup>176</sup>

The solutions to eliminating the school-to-prison pipeline must start when youth first enter the educational system as young as preschool. By design, this approach may not have immediate effects on students who are currently facing discipline for behaviors that schools may struggle to rehabilitate. In the meantime, schools may seek alternatives to exclusionary practices.

One such alternative may include the Monarch Room. The Monarch Room provides a space in schools for escalated students to self-refer, or for teachers to refer students, where expert school personnel can enact various intervention strategies such as problem-solving, talk therapy, and sensory-motor activities to de-escalate the student and allow them to return back to the classroom with limited time away from instruction.<sup>177</sup> Research shows that incorporating a Monarch Room in schools reduces suspensions and expulsions while also allowing for staff to document triggers specific to students and provide an opportunity for students to practice emotional and behavioral control.<sup>178</sup>

Additionally, suggestions for alternatives to exclusionary discipline can seek guidance from existing alternatives to juvenile detentions. For example, the Detention Diversion Advocacy Project in San Francisco monitors youth who are diverted from detention to alternative programs

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<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> Beverly Baroni et al., *Use of the Monarch Room as an Alternative to Suspension in Addressing School Discipline Issues Among Court-Involved Youth*, 55 URB. EDUC. 153 (2016).

<sup>178</sup> *Id.*

and found that nearly 80% of those involved in the program did not reoffend.<sup>179</sup> Additionally, Washington State can follow other states that currently require status offenders to receive diversion or intervention services that increase family functioning and avoid court involvement before they may be punished.<sup>180</sup> The most effective of these alternative solutions incorporate structured programs with supervision, shelters for youth who need 24-hour supervision, or house arrest with unannounced visits and phone calls by probation officers.<sup>181</sup> While these solutions are focused on reducing juvenile detention, school personnel can introduce equivalent programming to reduce suspension or expulsion. Examples of how these programs may look in a school format include school discipline practices that incorporate instruction into alternative classroom programming with supervision by experts trained in de-escalation.

A combination of the above alternatives may be necessary to provide individualized support for each student. Other alternatives to suspensions or expulsions can also include problem solving to help students engaging in disruptive or harmful behavior identify solutions for themselves while being held accountable for any continuing behavioral issues.<sup>182</sup> Additionally, some sort of restitution could substitute for exclusionary discipline. This restitution should be in the form of community service or some other way to address and mend any problems the child's behavior may have contributed to.<sup>183</sup> For example, if a student commits vandalism, the student should repair any property they damaged.<sup>184</sup>

Finally, schools should require students to attend or watch courses or skills modules regarding the inappropriate behavior the student engaged in

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<sup>179</sup> Cabaniss et al., *supra* note 74, at 367–97.

<sup>180</sup> Curtis, *supra* note 127, at 1273–74.

<sup>181</sup> Cabaniss et al., *supra* note 74, at 397.

<sup>182</sup> Reece L. Peterson, *Ten Alternatives to Suspension*, IMPACT (2005), <https://ici.umn.edu/products/impact/182/over5.html> [<https://perma.cc/Z8F6-NZY7>].

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

to focus on relevant skills related to issues like conflict resolution, anger control, social skills, or understanding drug and alcohol abuse.<sup>185</sup> All the above alternatives to suspension and expulsion should include the involvement and supervision of parents or guardians to ensure that students are getting the necessary support both in school and at home. Additionally, any alternatives to exclusionary discipline should still incorporate the services of school counselors and behavioral specialists to reduce recidivism.<sup>186</sup>

## VI. ADDRESSING ARGUMENTS IN SUPPORT OF EXCLUSIONARY DISCIPLINE AND IN SUPPORT OF TEACHERS

Proponents of exclusionary discipline practices rely on two main theories. The first theory relies on the premise that suspensions and expulsions are necessary to keep other students safe.<sup>187</sup> The second theory suggests that if expulsions and suspensions were abolished, teachers would bear the brunt of teaching, keeping students safe, and disciplining rather than excluding the child from the classroom and focusing solely on teaching.<sup>188</sup>

### *A. Suspension or Expulsion Can Seem Necessary to Keep Other Students Safe*

Arguments in support of exclusionary discipline practices rely on preventing students who make threats of violence from acting on those threats.<sup>189</sup> Additionally, proponents for exclusionary discipline seek to deter “violent” behavior by setting a precedent that students who threaten violence will be punished firmly and quickly.<sup>190</sup>

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<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> Curtis, *supra* note 127, at 1254–55.

<sup>188</sup> OWEN ET AL., *supra* note 171, at 40.

<sup>189</sup> Curtis, *supra* note 127, at 1254–55.

<sup>190</sup> *Id.*

People who support exclusionary discipline practices believe students who behave against the school's code of conduct should be removed to prevent negative effects on other students.<sup>191</sup> Further, proponents for expelling students believe it is the teacher's duty to exclude "really aggressive, possibly bonkers"<sup>192</sup> children to limit distractions in order to allow the teacher to teach and the other students to learn.<sup>193</sup>

However, the proposed solutions limit disruptions in class by providing students with tools to work through any behavioral issues they may be experiencing. In contrast, exclusionary discipline procedures produce violence and do not reduce recidivism.<sup>194</sup> Students exposed to violence need support from school behavioral specialists, and denying that support can induce additional trauma and more inappropriate behaviors.

Exclusionary discipline practices are not only harmful to the suspended or expelled students, but also to their classmates.<sup>195</sup> For example, one study shows that greater use of suspensions is associated with decreased educational achievement for non-suspended students.<sup>196</sup> Further, when students are expelled and forced to enter a new school, local students already attending the new school experience increased disciplinary issues and absenteeism.<sup>197</sup> Research shows that when students are enrolled in their preferred schools, student committed crimes decrease.<sup>198</sup>

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<sup>191</sup> *What Does Expelling Kids from School Accomplish?*, QUORA (Feb. 16, 2017), <https://www.quora.com/What-does-expelling-kids-from-school-accomplish> [<https://perma.cc/SMN3-27F2>].

<sup>192</sup> This author acknowledges the highly offensive language this particular article uses but finds it important to acknowledge how proponents for keeping kids out of school as a discipline tactic view restorative justice and alternative means to punishment.

<sup>193</sup> Cameron Wyllie, *Why Some Children Will Always Need to Be Expelled from School*, SCOTSMAN (Apr. 6, 2019, 6:00 AM), <https://www.scotsman.com/news/opinion/why-some-children-will-always-need-to-be-expelled-from-school-cameron-wyllie-1-4902976> [<https://perma.cc/D5U8-A8VG>].

<sup>194</sup> See discussion *infra* section V.

<sup>195</sup> Lacoë & Steinberg, *supra* note 84, at 34–62.

<sup>196</sup> *Id.*

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

*B. More Responsibility on Teachers*

Some critics argue that abolishing exclusionary practices may create an increased burden and responsibility on teachers. One argument is that teachers will be unable to effectively teach because disciplining students will consume the entirety of their attention. California schools that have implemented nonacademic and academic supports and a reduction in exclusionary practices have found that there are too many students referred to one-on-one support and insufficient school personnel to provide that support.<sup>199</sup> Proponents for exclusionary practices may think it is necessary to provide outside supports for students; however, without adequate funding, it may not be possible.

Even proponents who believe in providing adequate mental health support for students with behavioral challenges believe that teachers should retain the right to exclude children from the classroom.<sup>200</sup> One critic of abolishing exclusionary discipline practices acknowledges the disproportionality of punishment but does not think teachers should provide the support for every child with individualized learning techniques.<sup>201</sup>

Additionally, studies have found that when “gatekeepers”—teachers or court officials—in both the juvenile crime and educational systems are tasked with making subjective judgments about a youth’s potential for rehabilitation and academic success, students of color are over-selected for the harshest treatment within the juvenile justice system and under-selected for high academic tracks.<sup>202</sup>

While there is merit to arguments about increased burdens on teachers, these issues can be avoided if schools are supplied with sufficient funds to hire more staff equipped with the skills to support students who need behavioral assistance. Washington state law will need to require the

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<sup>199</sup> Agrawal & Kholi, *supra* note 157.

<sup>200</sup> See OWEN ET AL., *supra* note 171, at 39.

<sup>201</sup> *Id.*

<sup>202</sup> See Wald & Losen, *supra* note 9, at 13.

allotment of funds sufficient to staff additional behavioral psychologists, counselors, or therapists in addition to ongoing intensive trainings to ensure that all school staff are educated on cultural competency and biases. Washington state will avoid placing the burden on teachers if adequate experts are on staff and available to assist students who would otherwise be subject to discipline.

## VII. CONCLUSION

Ample research shows that students of color experiencing trauma or disabilities are disproportionately affected by exclusionary discipline practices in schools which lead to higher rates of dropping out, involvement in the criminal justice system, and overall limited opportunity for success.<sup>203</sup> To combat these adverse effects and to provide a supportive and safe environment for all students, Washington state law must change to abolish suspension and expulsion. Additionally, all schools in Washington state must staff behavioral health experts to identify and address any potential barriers to an individual student's education at the outset of the child's matriculation into a Washington state school.

Specifically, Washington state law must include language to require school personnel to enact alternative approaches to discipline that are based on in depth input from parents, students, and community organizations. Additionally, Washington state law must require all school staff to have ongoing trainings in cultural competency, trauma informed care, and de-escalation. The combination of abolishing suspensions and expulsions with trainings for staff is necessary to provide the best support for all students in Washington state. In the words of Angela Davis, "[w]hen children attend schools that place a greater value on discipline and security than on knowledge and intellectual development, they are attending prep schools

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<sup>203</sup> Mallett, *supra* note 66, at 563–592.

for prison.”<sup>204</sup> If Washington state takes action on the proposed bill, Ms. Davis’s words will not come to fruition and the flow of Washington students to prisons will be diminished.

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<sup>204</sup> ANGELA DAVIS, ARE PRISONS OBSOLETE? 38 (2003).