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## A Plan for Meeting the Social, Emotional, and Behavioral Health Needs of Washington's Students

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Ellen Evans

### I. INTRODUCTION

Halee, a senior at Gulf Shore's high school in Gulf Shores, Alabama, was finally back at school.<sup>1</sup> September 2020 would no doubt be different; teachers wore masks and football games were played with masked cheerleaders, but after months of social distancing and worry, Halee had been elected to the homecoming court and was looking forward to some semblance of normalcy.<sup>2</sup> Then, Hurricane Sally hit.<sup>3</sup> A few hundred miles north, Alejandra De La Cruz, a Boston Public Schools student, knew she wouldn't be returning to school: she lives with her father and 83-year-old grandmother, both of whom have cancer.<sup>4</sup> "[Learning remotely is] going to be really difficult, but I'm willing to do it because I'm not going to put my grandmother and my dad's health at risk," said De La Cruz, whose Hyde Park neighborhood was hit hard by the virus.<sup>5</sup> On the other side of the country, 15-year-old Monserrat was just a few days into her first high school year online when she and her family were evacuated from their

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<sup>1</sup> Richard Fausset, Rick Rojas, & Giulia McDonnell Nieto del Rio, *First the Pandemic. Now the Storm. Gulf Shores High School Can't Catch a Break*, N.Y. TIMES (Sept. 17, 2020), <https://www.nytimes.com/2020/09/17/us/hurricane-sally-florida-alabama.html> [<https://perma.cc/V7QE-K9SS>].

<sup>2</sup> *Id.*

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

<sup>4</sup> Meghan E. Irons, *As Schools Reopen, Students Struggle with COVID Trauma*, BOSTON GLOBE (Oct. 12, 2020, 10:54 AM), <https://www.bostonglobe.com/2020/03/24/nation/still-waiting-laptops-some-boston-students-struggle-stay-connected-teachers-school/> [<https://perma.cc/5LH6-NAR8>].

<sup>5</sup> *Id.*

Douglas County, Washington home amid the wildfires that ravaged the West in August and September of 2020.<sup>6</sup> Monserrat's family was one of three in the district who lost their homes,<sup>7</sup> and Monserrat was among countless students who faced one hurdle after another in a year that had been anything but normal. Now, as the 2021 school year begins, the Delta variant poses the threat of even more severe illness, particularly in unvaccinated populations, once more plunging schools and students into a school year marked with uncertainty.

In this unprecedented time, the need for school-based mental health supports has never been more pronounced. Public health research shows a dramatic increase in the numbers of young people experiencing mental health crises.<sup>8</sup> Students who are already experiencing emotional trauma, such as those dealing with social isolation, the uncertainty of their immigration status, racial injustice, homelessness, food insecurity, or loss of family income, are doubly impacted by the stresses of the pandemic.<sup>9</sup> The Centers for Disease Control and Prevention (CDC) reported that beginning in April 2020, the proportion of children's mental health-related emergency department visits among all pediatric emergency department visits increased and remained elevated through October.<sup>10</sup>

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<sup>6</sup> Hannah Furfaro, *Children whose Homes Burned Down in Wildfires Struggle to Return to Online Schooling*, SEATTLE TIMES (Sept. 25, 2020, 5:00 AM), <https://www.seattletimes.com/education-lab/children-whose-homes-burned-down-in-wildfires-struggle-to-return-to-online-schooling/> [<https://perma.cc/T4NL-SM6H>].

<sup>7</sup> *Id.*

<sup>8</sup> Chris Talbott, *As We Near 6 Months In Washington's Stay-Home Order, Mental Health Experts Warn That Things May Get Worse*, SEATTLE TIMES (Sept. 1, 2021, 4:36 PM) <https://www.seattletimes.com/life/is-this-rock-bottom-as-we-near-the-six-month-mark-of-washingtons-covid-19-stay-home-order-mental-health-experts-warn-that-things-may-get-worse/> [<https://perma.cc/W43Y-H4A2>].

<sup>9</sup> Meghan McCann & Emily Warren, *State Mental Health Actions in the COVID-19 Era*. EDUC. COMM'N OF THE STATES (Oct. 30, 2020), <https://ednote.ecs.org/state-mental-health-actions-in-the-covid-19-era/> [<https://perma.cc/KM6U-HXHT>].

<sup>10</sup> Rebecca T. Leeb, et. al., *Mental Health-Related Emergency Department Visits Among Children Aged <18 Years During the COVID-19 Pandemic*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Nov. 13, 2020),

Compared with 2019, the proportion of mental health-related visits for children aged 5–11 and 12–17 years increased approximately 24% and 31%, respectively.<sup>11</sup>

In Washington State, the Department of Health (DOH) reported that approximately three million Washingtonians will experience clinically significant behavioral health symptoms as a result of the global pandemic.<sup>12</sup> Rates of depression are likely to be much higher (potentially 30–60% of the general population, which is equivalent to 2.25 to 4.5 million people in Washington) due to the chronic and ongoing social and economic disruption in people's lives as a result of the COVID-19 pandemic.<sup>13</sup> Additionally, DOH distinguishes COVID-19 from a typical natural disaster in that the rate of depression is higher than is typical following a natural disaster with a single point of impact.<sup>14</sup>

For some students, the global pandemic added to preexisting trauma, adversity, and disparities.<sup>15</sup> For others, the pandemic brought new grief, loss, and trauma, which may include increased risk for violence and abuse in the home.<sup>16</sup> The DOH reports that child abuse and domestic violence increase significantly in post-disaster settings such as the COVID-19 pandemic,<sup>17</sup> and remote learning may intensify the danger to children. In a

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<https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm> [https://perma.cc/9SZC-JW6F].

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

<sup>12</sup> WASHINGTON STATE DEP'T OF HEALTH, AUGUST UPDATE: STATEWIDE HIGH-LEVEL ANALYSIS OF FORECASTED BEHAVIORAL HEALTH IMPACTS FROM COVID-19 (Aug. 2020), <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/BHG-COVID19StatewideSummaryForecastofBHImpacts-Aug2020Update.pdf> [https://perma.cc/A9ZK-ZLFB] [hereinafter WASHINGTON STATE DEP'T OF HEALTH].

<sup>13</sup> *Id.* at 9.

<sup>14</sup> *Id.*

<sup>15</sup> J. Halladay Goldman et al., *Trauma Informed School Strategies During COVID-19*, NAT'L CHILD TRAUMATIC STRESS NETWORK 1 (2020), [https://www.bightought.org/wp-content/uploads/2020/06/trauma\\_informed\\_school\\_strategies\\_during\\_covid-19.pdf](https://www.bightought.org/wp-content/uploads/2020/06/trauma_informed_school_strategies_during_covid-19.pdf) [https://perma.cc/89U3-UJEE] [hereinafter NCTSN].

<sup>16</sup> *Id.*

<sup>17</sup> WASHINGTON STATE DEP'T OF HEALTH, *supra* note 12, at 4.

virtual learning environment, an abuser may be present during all interactions between the child and educator, which may change and limit opportunities for the educator to ask directly about abuse and neglect and to make inquiries into whether or not a child feels safe in the home.<sup>18</sup>

Teenagers face increased challenges as well. According to the CDC, as a result of the ongoing pandemic, teenagers may be more likely to experience feelings of isolation, depression, anxiety, and other emotional or financial stresses that are known to raise the risk for suicide.<sup>19</sup> In addition, the virtual learning environment has revealed inequities in students' access to resources and impeded continuity in students developing athletic or vocational skills, with potential impacts on students' higher education and professional future.<sup>20</sup> Family members already struggling with mental health or substance abuse problems may now find these issues exacerbated by the pandemic.<sup>21</sup> Both the DOH and the CDC report that the trauma students currently experience as a result of COVID-19 is not restricted to one moment in time; trauma faced at this developmental stage may have long-term consequences across a student's lifespan.<sup>22</sup> For the foreseeable

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<sup>18</sup> *Id.*

<sup>19</sup> *Support For Teens and Young Adults*, CTRS. FOR DISEASE CONTROL AND PREVENTION (July 22, 2021, 12:00 AM), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/stress-coping/young-adults.html> [<https://perma.cc/U32L-6BHY>] [hereinafter CDC].

<sup>20</sup> *COVID-19 Parental Resources Kit – Adolescence Social, Emotional, and Mental Well-being of Adolescents during COVID-19*, CTRS. FOR DISEASE CONTROL AND PREVENTION (July 27, 2021), <https://www.cdc.gov/mentalhealth/stress-coping/parental-resources/adolescence/> [<https://perma.cc/BJC7-CVCW>].

<sup>21</sup> WASH. STATE DEP'T OF HEALTH, *BEHAVIORAL HEALTH TOOLBOX FOR FAMILIES: SUPPORTING CHILDREN AND TEENS DURING THE COVID-19 PANDEMIC* (July 2020), <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/BHG-COVID19-FamilyToolbox.pdf> [<https://perma.cc/NN6V-GCMW>].

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

future, educators will be grappling with symptoms of the trauma many students have lived through in the past year.<sup>23</sup>

This comment argues that the impact of the global pandemic upon young people has underscored the need to equip all of Washington's schools with system-wide, trauma-informed mental and behavioral health solutions for students. Although Washington's Office of the Superintendent of Public Schools (OSPI) has launched behavioral and mental health initiatives for Washington's schools, Washington has not implemented a systemic approach to implementing a behavioral health framework. I argue here that the Washington legislature must prioritize the behavioral health of the state's students and teachers; failing to do so not only jeopardizes the general welfare of schools, but also makes them more vulnerable to trauma-based litigation. To effectively meet the mental health needs of students and teachers, I propose that Washington take the bold step of mandating that all school districts adopt a system-wide mental health framework that incorporates trauma-informed practices and supports by 2025.

In Section II, I outline the effects of trauma on student outcomes and present research on school-based behavioral and mental health programs aimed at addressing student trauma, focusing primarily on the implementation of social emotional learning (SEL) and trauma-informed teaching practices through a multi-tiered system of support (MTSS) that addresses the needs of both teachers and students. Next, I survey the state of SEL benchmarks and trauma-informed supports in Washington's schools. Finally, I discuss two recent examples of trauma-based litigation against school districts, *P.P. v. Compton Unified School District*<sup>24</sup> and *Stephen C. v.*

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<sup>23</sup> Arianna Prothero, *The Pandemic Will Affect Students' Mental Health for Years to Come*, EDUCATION WEEK (Mar. 31, 2021), <https://www.edweek.org/leadership/the-pandemic-will-affect-students-mental-health-for-years-to-come-how-schools-can-help/2021/03> [<https://perma.cc/MR7N-UV2A>].

<sup>24</sup> *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1098, 1103 (C.D. Cal. 2015).

*Bureau of Indian Education*,<sup>25</sup> both of which involved class action suits alleging that the districts failed to provide trauma sensitive supports in violation of Section 504 of the Rehabilitation Act of 1973.<sup>26</sup>

Section III presents a path toward full state-wide implementation of trauma-informed MTSS by 2025 by balancing local control and accountability, using implementation science, prioritizing staffing, and adjusting the current funding model. I then propose that the Washington legislature take the next step by enacting legislation to make the following changes to the Common School Provisions of the Revised Code of Washington (RCW): (1) implement a plan for statewide implementation of a framework of MTSS following OSPI guidelines with an aim toward complete statewide implementation with fidelity by 2025, (2) mandate trauma-informed professional development training for all district personnel, and (3) mandate secondary-trauma support for all personnel.

## II. METHODS FOR ADDRESSING TRAUMA AND REDUCING THE “OPPORTUNITY GAP”

Educators, researchers, and lawmakers have long recognized the national “opportunity gap”<sup>27</sup> that continues to plague schools and creates barriers to

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<sup>25</sup> Stephen C. by Frank C. v. Bureau of Indian Educ., No.17-08004, 2018 WL 1871457, at \*3 (D. Ariz. Mar. 29, 2018).

<sup>26</sup> 29 U.S.C. § 794.

<sup>27</sup> The terms “achievement gap” and “opportunity gap” are often erroneously used interchangeably. Achievement gap “broadly refers to the disparity in academic performance between groups of students, primarily between white students and their black and Hispanic peers . . . [T]he term opportunity gap addresses real differences between middle class and low-income schools and the students who attend them. It accounts for the difference in exposure and resources in the form of classroom materials, books, field strips, technology and experienced teachers . . . [T]he term achievement gap does not account for the lack of opportunities and exposure many children of color and low income students live with outside of the classroom.” Kayla Patrick, *Why We Need to Stop Calling it the ‘Achievement Gap,’* EDUC POST (July 22, 2015), <https://educationpost.org/why-we-need-to-stop-calling-it-the-achievement-gap/> [<https://perma.cc/K222-HLN2>]; see also Prudence Carter & Kevin Welner, *It’s the Opportunity Gap, Stupid*, N.Y. DAILY NEWS (May 13, 2013, 4:05 AM),

success for vulnerable youth.<sup>28</sup> Efforts to narrow the opportunity gap have historically involved increased focus on testing and accountability, but a growing body of research has shown that students' unmet social, emotional, and mental health needs are a major barrier to academic achievement.<sup>29</sup> The following section explains how "adverse childhood experiences" (ACEs) contribute to the opportunity gap. Section B describes the benefits of incorporating social and emotional learning (SEL) and evidence-based programs that offer MTSS, which provide valuable school-based support for students who experience the kind of trauma most students have now been exposed to as a result of the global pandemic.

### *A. How Trauma Contributes to the Opportunity Gap*

Long before COVID-19, researchers documented the widespread exposure of children to trauma.<sup>30</sup> The original ACE Study was conducted at Kaiser Permanente from 1995 to 1997, when over 17,000 Health Maintenance Organization members from Southern California receiving physical exams completed confidential surveys regarding their childhood

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<https://www.nydailynews.com/opinion/opportunity-gap-stupid-article-1.1340946> [<https://perma.cc/44J5-Z668>]; *Opportunity Gap*, GLOSSARY OF EDUC. REFORM (Sept. 3, 2013), <https://www.edglossary.org/opportunity-gap/> [<https://perma.cc/5GTA-NMYV>].

<sup>28</sup> 20 U.S.C.S. § 6301 ("The purpose of this title is to provide all children significant opportunity to receive a fair, equitable, and high-quality education, and to close educational achievement gaps."); see also Eric A. Hanushek et al., *The Achievement Gap Fails to Close*, EDUC. NEXT 19 (Mar. 2019), <https://www.educationnext.org/achievement-gap-fails-close-half-century-testing-shows-persistent-divide/> [<https://perma.cc/TKF4-6R54>].

<sup>29</sup> ANNIE E. CASEY FOUNDATION, SUPPORTING SOCIAL-EMOTIONAL LEARNING WITH EVIDENCE-BASED PROGRAMS 3 (Apr. 2018), <https://assets.aecf.org/m/resourcedoc/AECF-SupportingSELwithEBP-2018.pdf> [<https://perma.cc/WM4E-KQ22>] [hereinafter AECF].

<sup>30</sup> See generally Christopher Blodgett & Jane D. Lanigan, *The Association Between Adverse Childhood Experience (ACE) and School Success in Elementary School Children*, 33 SCH. PSYCH. Q. 137 (2018).

experiences and current health status and behaviors.<sup>31</sup> Almost two-thirds of the study participants reported at least one ACE, and more than one in five reported three or more ACEs.<sup>32</sup> Some populations are more vulnerable to ACEs because of the social and economic conditions in which they live, learn, and play. As the number of ACEs increases, so does the risk for negative outcomes, including depression, anxiety, PTSD, cancer, and diabetes.<sup>33</sup> Other studies have independently replicated the findings of the original ACE study:<sup>34</sup> “We understand better than we ever have before how the exposure to early adversity affects the developing brains and bodies of children . . . it inhibits the prefrontal cortex, which is necessary for impulse control and executive function, a critical area for learning.”<sup>35</sup>

The CDC defines ACEs as potentially traumatic events that occur in children up to seventeen years old which include: experiencing or witnessing violence in the home or community; experiencing abuse or neglect; having a family member attempt or die by suicide; growing up in a household with substance abuse; suffering from mental health problems; and undergoing instability due to parental separation.<sup>36</sup> The July 2020 National Survey of Children’s Health reported that in 2017–2018, one in

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<sup>31</sup> *About the CDC-Kaiser ACE Study*, CTNS. FOR DISEASE CONTROL & PREVENTION (Apr. 30, 2020), <https://www.cdc.gov/violenceprevention/aces/about.html> [<https://perma.cc/YMA6-5UJ4>].

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

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

<sup>34</sup> See, e.g., Frank Putnam et al., *Opportunities To Change The Outcomes Of Traumatized Children*, CHILDHOOD ADVERSITY NARRATIVES (2015), [https://static1.squarespace.com/static/552ec6c7e4b0b098cbafba75/t/56915f539cadb61a0a0d94a2/1452367700722/CAN\\_Narrative\\_1-5-16-v4L.pdf](https://static1.squarespace.com/static/552ec6c7e4b0b098cbafba75/t/56915f539cadb61a0a0d94a2/1452367700722/CAN_Narrative_1-5-16-v4L.pdf) [<https://perma.cc/N6TM-AH3T>].

<sup>35</sup> Nadine Burke Harris, *How Childhood Trauma Affects Health Across a Lifetime*, TEDMED (Sept. 2014), [https://www.ted.com/talks/nadine\\_burke\\_harris\\_how\\_childhood\\_trauma\\_affects\\_health\\_across\\_a\\_lifetime](https://www.ted.com/talks/nadine_burke_harris_how_childhood_trauma_affects_health_across_a_lifetime) [<https://perma.cc/PRD2-2GVP>].

<sup>36</sup> *Preventing Adverse Childhood Experiences*, CTNS. FOR DISEASE CONTROL & PREVENTION (Apr. 3, 2020), <https://www.cdc.gov/violenceprevention/aces/fastfact.html> [<https://perma.cc/FTG7-2TDW>].

three children under the age of eighteen had experienced at least one ACE, and 14% experienced two or more ACEs.<sup>37</sup> The most prevalent ACE was “Parent/guardian divorced or separated” (23.4%), followed by “Lived with anyone with alcohol/drug problem” (8.0%), and Parent/guardian served time in jail (7.4%).<sup>38</sup> If one accounts for other traumas such as car accidents, community violence, and natural disasters, the number of young people experiencing trauma increases.<sup>39</sup> COVID-19 has presented additional sources of trauma; because children are exposed to increased parental anxieties, they may be experiencing more toxic stress that may impair brain development.<sup>40</sup> The pandemic’s impact on family stress may linger for months and years, and it will continue to disproportionately affect low-income and minority populations.<sup>41</sup>

Some populations of young people are particularly vulnerable to traumatic events, which have been exacerbated since the pandemic.<sup>42</sup> The National Child Traumatic Stress Network (NCTSN) reports that the COVID-19 pandemic, along with severe immigration enforcement policies in recent years, and historical and present structural inequities, have all had a disproportionate impact on BIPOC communities, including marginalized immigrant populations in the U.S.<sup>43</sup> This has resulted in increased risk factors, including decreased access to financial, technological, social,

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<sup>37</sup> *2017-2018 National Survey of Children’s Health – Overview*, HEALTH RES. & SERV. ADMIN. (July 2020), <https://mchb.hrsa.gov/sites/default/files/mchb/Data/NSCH/nsch-data-brief.pdf> [<https://perma.cc/U7WP-568W>].

<sup>38</sup> *Id.*

<sup>39</sup> Erik J. Reinbergs & Sarah A. Fefer, *Addressing Trauma in Schools: Multitiered Service Delivery Options for Practitioners*, 55 PSYCH. SCHS. 250, 250 (Mar. 1, 2018).

<sup>40</sup> Lee M. Sanders, *Is COVID-19 an Adverse Childhood Experience (ACE): Implications for Screening for Primary Care*, 222 J. PEDIATRICS 4, 4–6 (July 2020).

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

<sup>42</sup> See Sanders, *supra* note 40, at 6.

<sup>43</sup> TRAUMATIC IMPACTS OF COMMUNITY VIOLENCE, AND CIVIL UNREST ON IMMIGRANT FAMILIES, NAT’L CHILD TRAUMATIC STRESS NETWORK (Mar. 10, 2021), <https://learn.nctsn.org/course/index.php?categoryid=84> [<https://perma.cc/G2F5-ZKSK>].

educational, and healthcare resources resulting in an increased risk of infection, family separation and loss, trauma exposure, and victimization.<sup>44</sup>

For Black children and families in urban communities, traumatic events are often born out of a vicious cycle of poverty, lack of access to resources, poor educational opportunities, and histories of abuse.<sup>45</sup> There is increasing evidence that the direct experience of racism and race-based stressors is a strong predictor of emotional distress, psychiatric symptoms, and the development of PTSD. Black children and families often must cope with the effects of historical trauma and the intergenerational legacy of racism.<sup>46</sup>

Lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ) youth experience trauma at higher rates than their straight and cisgender peers.<sup>47</sup> Common traumas experienced by these youth include bullying, harassment, traumatic loss, intimate partner violence, physical and sexual abuse, and traumatic forms of societal stigma, bias, and rejection.<sup>48</sup> According to NCTSN, professionals have historically failed to recognize and meet the needs of traumatized LGBTQ youth, leading to poor engagement and ineffective treatments that, in some cases, perpetuate the youth's traumatic experiences.<sup>49</sup>

Exposure to ACEs is associated with multiple risks that have effects on school outcomes: toxic stress from ACEs can change brain development and affect such things as attention, decision-making, learning, and response to stress.<sup>50</sup> Studies have shown that increased ACE exposure leads to

<sup>44</sup> *Id.*

<sup>45</sup> COMPLEX TRAUMA IN URBAN AFRICAN-AMERICAN CHILDREN, YOUTH, AND FAMILIES, NAT'L CHILD TRAUMATIC STRESS NETWORK 2 (Mar. 2017) [https://www.nctsn.org/sites/default/files/resources//complex\\_trauma\\_facts\\_in\\_urban\\_african\\_american\\_children\\_youth\\_families.pdf](https://www.nctsn.org/sites/default/files/resources//complex_trauma_facts_in_urban_african_american_children_youth_families.pdf) [<https://perma.cc/ZNP2-BA8Q>].

<sup>46</sup> *Id.* at 2.

<sup>47</sup> *LGBTQ Youth*, NAT'L CHILD TRAUMATIC STRESS NETWORK (Mar. 19, 2021), <https://www.nctsn.org/what-is-child-trauma/populations-at-risk/lgbtq-youth> [<https://perma.cc/5HRR-QGZ7>].

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

<sup>49</sup> *Id.*

<sup>50</sup> *Preventing Adverse Childhood Experiences*, *supra* note 36.

increases in learning and behavior problems in schools, and that single and co-occurring adversities negatively affect reading.<sup>51</sup> Students exposed to traumatic events are at increased risk for declines in attendance and grade point averages and more negative assessments in their school records than other students, and some research has shown they are at greater risk of repeating a grade and lower school engagement.<sup>52</sup>

A school's primary mission is to support students' educational achievement and address opportunity gaps, but schools must first acknowledge that mental health and wellness are integrally connected to student success.<sup>53</sup> Schools must become trauma-informed systems where educators, staff, and administrators infuse and sustain trauma awareness, knowledge, and skills into their school climate, programs, and classrooms.<sup>54</sup> When schools adopt a trauma-informed framework, all educators, administrators, staff, students, families, and community members are able to recognize and respond to the behavioral, emotional, relational, and academic impact of traumatic stress on those within the school system.<sup>55</sup>

### *B. Creating Trauma-Informed Schools with a Multi-Tiered Support Systems Framework*

In order to address the behavioral health needs of students, school district leaders across the country have begun implementing programs that address

<sup>51</sup> Blodgett & Lanigan, *supra* note 30, at 138.

<sup>52</sup> TRAUMA-INFORMED SCHOOLS FOR CHILDREN IN K-12: A SYSTEM FRAMEWORK, NAT'L CHILD TRAUMATIC STRESS NETWORK 1 (Mar. 2021), [https://www.nctsn.org/sites/default/files/resources/fact-sheet/trauma\\_informed\\_schools\\_for\\_children\\_in\\_k-12\\_a\\_systems\\_framework.pdf](https://www.nctsn.org/sites/default/files/resources/fact-sheet/trauma_informed_schools_for_children_in_k-12_a_systems_framework.pdf) [<https://perma.cc/GW2H-K6TD>].

<sup>53</sup> See CREATING, SUPPORTING, AND SUSTAINING TRAUMA-INFORMED SCHOOLS: A SYSTEM FRAMEWORK, NAT'L CHILD TRAUMATIC STRESS NETWORK 1 (2017), [https://www.nctsn.org/sites/default/files/resources/creating\\_supporting\\_sustaining\\_trauma\\_informed\\_schools\\_a\\_systems\\_framework.pdf](https://www.nctsn.org/sites/default/files/resources/creating_supporting_sustaining_trauma_informed_schools_a_systems_framework.pdf) [<https://perma.cc/6NQL-JR3W>].

<sup>54</sup> TRAUMA-INFORMED SCHOOL STRATEGIES DURING COVID-19, NAT'L CHILD TRAUMATIC STRESS NETWORK 1 (2020), <https://www.nctsn.org/resources/trauma-informed-school-strategies-during-covid-19> [<https://perma.cc/UC83-JVMA>].

<sup>55</sup> *Id.*

social emotional learning (SEL).<sup>56</sup> SEL is defined as “the process through which children and adults understand and manage emotions, set and achieve positive goals, feel and show empathy for others, establish and maintain positive relationships, and make responsible decisions.”<sup>57</sup> According to the Collaborative for Academic, Social, and Emotional Learning (CASEL), all fifty states have implemented preschool SEL competencies or standards, and eighteen states have K-12 SEL competencies.<sup>58</sup> In 2018, a majority of school district leaders nationally expressed interest in implementing SEL programs.<sup>59</sup> The start of the 2019–2020 school year brought even more focus on SEL in the face of a country that was “politically divided, [where] school shootings seem commonplace, racial divisions and hate crimes are on the rise and the world is a scary place.”<sup>60</sup> Teachers cannot focus on academic standards and curriculum without also addressing their students’ mental health, and SEL must be explicitly taught.<sup>61</sup> As one commentator to *Education Week* wrote, “Children can’t process and retain new information if their brains are overwhelmed with anxiety. That’s especially true now for students who are feeling deeply stressed by the coronavirus, the economic recession, and the racial unrest that is sweeping the country.”<sup>62</sup> At the very

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<sup>56</sup> Blodgett & Lanigan, *supra* note 30, at 138.

<sup>57</sup> *Fundamentals of SEL*, COLLABORATIVE FOR ACAD., SOC., AND EMOTIONAL LEARNING, <https://casel.org/what-is-sel/> [<https://perma.cc/L48A-VU2N>].

<sup>58</sup> Linda Dusenbury et al., *State Scorecard Scan*, COLLABORATIVE FOR ACAD., SOC., AND EMOTIONAL LEARNING (Feb. 2018), <https://www.cfchildren.org/wp-content/uploads/policy-advocacy/2018-State-Scan-FINAL.pdf> [<https://perma.cc/6SQN-5WY2>].

<sup>59</sup> Holly Yettick, *Demand for Social-Emotional Learning Products and Services Is High and Expected to Grow*, EDWEEK MKT. BRIEF (Sept. 28, 2018), <https://marketbrief.edweek.org/exclusive-data/sel/> [<https://perma.cc/6UFG-V9W4>] (reporting that “nearly 90% of district leaders say they have already invested in social-emotional learning products or plan to do so”).

<sup>60</sup> Amy Clark, *Social Emotional Learning Is Becoming A Focus In Schools Across The Country*, 25 SPECIAL EDUC. L. BULL. (Oct. 2019).

<sup>61</sup> *Id.*

<sup>62</sup> Arianna Prothero & Sarah D. Sparks, *Teaching Social-Emotional Skills Amid COVID-19*, EDUC. WK. (Sept. 9, 2020), <https://www.edweek.org/leadership/teaching-social-emotional-skills-amid-covid-19/2020/09> [<https://perma.cc/7T58-QVER>].

least, educators emphasize the need for grief counseling for all students in recognition of the loss of important life experiences and rites of passages they have experienced over the past year: from canceled proms and athletic seasons, to long separation from family members, and even lack of access to reliable resources.<sup>63</sup>

Recognizing the need for SEL supports is one step in meeting the needs for students, but researchers and policy makers agree that a systemic approach is required.<sup>64</sup> One way to approach meeting the social emotional needs of students is through a multi-tiered system of supports (MTSS). MTSS is an integrated set of practices and interventions directed to academics and behavior that has been shown to have a direct and positive relationship with student academic and socio-behavioral outcomes.<sup>65</sup> MTSS is one example of an evidence-based SEL program.<sup>66</sup> An MTSS is a framework to provide academic and behavioral supports for all students based on their individual needs.<sup>67</sup> “Multi-tiered” refers to three tiers that correspond to different levels of support.<sup>68</sup> In an MTSS framework, Tier I involves a universal screening process for potentially traumatic events; intervention at Tier I would include broad mental health prevention and

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<sup>63</sup> Shanna Sloyer-Martin, *Social-Emotional Learning is the Elephant in the Room: Three Challenges to Consider*, EDUC. WK. SPOTLIGHT 12 (Aug. 3, 2020), [https://fs24.formsite.com/edweek/images/Spotlight\\_ImpactsofCOVID-19onEducation\\_2020.pdf](https://fs24.formsite.com/edweek/images/Spotlight_ImpactsofCOVID-19onEducation_2020.pdf) [<https://perma.cc/P9RP-7Q8D>].

<sup>64</sup> U.S. DEP’T. OF EDUC. OFF. OF SECONDARY AND ELEMENTARY EDUC., PARENT AND EDUCATOR GUIDE TO SCHOOL CLIMATE RESOURCES 9 (Apr. 2019), <https://www2.ed.gov/policy/elsec/leg/essa/essaguidetoschoolclimate041019.pdf> [<https://perma.cc/JP84-5SDA>] (“Schools can work toward achieving safe, positive environments by integrating a behavioral support framework for students with a systematic approach to identifying students in need of mental health services.”).

<sup>65</sup> Wayne Sailor et al., *Preparing Teacher Educators for Statewide Scale-Up of Multi-Tiered System of Support (MTSS)*, 44 TCHR. EDUC. AND SPECIAL EDUC. 24, 24 (2020).

<sup>66</sup> See AECF, *supra* note 29, at 10.

<sup>67</sup> Yunsoo Park et al., *Multi-tiered Frameworks: Understanding RTI, PBIS, MTSS*, STUDENT BEHAV. BLOG, <https://studentbehaviorblog.org/multi-tiered-frameworks-understanding-rti-pbis-mtss/> [<https://perma.cc/J9LH-JKCB>].

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

promotion, including SEL curricula.<sup>69</sup> In Tier II, students who have screened positive for social, emotional, or behavioral concerns at the universal level may receive additional targeted supports, like cognitive behavioral intervention for trauma in schools (CBITS) or dialectical behavioral therapy (DBT).<sup>70</sup> In Tier III, students are assessed for psychological trauma,<sup>71</sup> and intensive supports are provided to students who need to overcome significant barriers to learning and development.<sup>72</sup> Thus, each tier increases in intensity and adjusts to student needs.<sup>73</sup> For example, Tier I supports could be integrated into classroom instruction, Tier II supports could be applied in small group settings, and Tier III supports could be used in one-on-one sessions between a counselor and a student.<sup>74</sup> It is important to remember that an MTSS is not a program or intervention itself; rather, it is a system of organizing programs or interventions that are delivered appropriately to students. Tiered prevention logic in education is much like the public health model.<sup>75</sup> Just as most diseases and illnesses can be prevented, managed, or overcome, so can learning and development challenges.<sup>76</sup>

Researchers in the area of trauma-informed practices argue that when schools implement MTSS, they hold tremendous promise to serve students who have experienced trauma.<sup>77</sup> It is important to note that students who experience ACEs may not meet the diagnostic and access to care standards

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<sup>69</sup> Reinbergs & Fefer, *supra* note 39, at 254–55.

<sup>70</sup> *Id.* at 256.

<sup>71</sup> *Id.* at 257.

<sup>72</sup> CENT. FOR IMPROVEMENT OF STUDENT LEARNING, WASHINGTON INTEGRATED STUDENT SUPPORTS PROTOCOL 3 (Oct. 1, 2017), <https://www.k12.wa.us/sites/default/files/public/cisl/iss/pubdocs/wissp.pdf> [<https://perma.cc/H7ZP-VUSM>].

<sup>73</sup> *Id.* at 3.

<sup>74</sup> U.S. DEP'T OF EDUC. OFF. OF SECONDARY AND ELEMENTARY EDUC., *supra* note 64.

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

<sup>76</sup> *Id.*

<sup>77</sup> Reinbergs, *supra* note 39, at 250.

that define most intervention systems;<sup>78</sup> that is, some ACEs can remain undiagnosed, which means students may not have access to interventions such as 504 plans or IEPs (individualized education plans).<sup>79</sup> The most practical and effective way to respond to a wide scope of ACE exposure (some of which may be undetermined) may be through the adoption of trauma-informed school practices to create “a responsive educational climate that understands the potential effects of adversity.”<sup>80</sup> School policies that are not trauma-informed may address these issues in punitive and harmful ways.<sup>81</sup> For example, rigid enforcement of zero tolerance policies aimed at safety on school campuses disproportionately affects Black students, and results in higher school dropout rates or greater juvenile justice involvement of students who are removed from school.<sup>82</sup>

Implementing MTSS allows schools to embed trauma-informed practices and concepts that support students’ learning as well as their emotional and behavioral needs.<sup>83</sup> For example, Tier I universal screening would provide for the kind of widespread screening and support that is needed when entire communities experience trauma, such as a natural disaster.<sup>84</sup> The impact of COVID-19 on students is like that of a natural disaster,<sup>85</sup> and schools who

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<sup>78</sup> Blodgett & Lanigan, *supra* note 30, at 144.

<sup>79</sup> Importantly, if a student is not identified as having a specific learning disability (SLD), an intervention is not mandated by the IDEA. “The IDEA only mentions RTI [response to intervention] for determining SLD eligibility and does not define RTI (or MTSS). IDEA funds may not be used to provide special education within an RTI framework before determining the child is eligible, but afterwards the IEP may include RTI strategies.” Perry A. Zirkel, *The Law on RTI and MTSS*, 373 ED. LAW REP. 1, 8 (2020).

<sup>80</sup> *Id.* at 144.

<sup>81</sup> TRAUMA-INFORMED SCHOOLS FOR CHILDREN IN K-12: A SYSTEM FRAMEWORK, *supra* note 52, at 2.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 4.

<sup>84</sup> Reinbergs & Fefer, *supra* note 39, at 254.

<sup>85</sup> See WASHINGTON STATE DEP’T OF HEALTH, AUGUST MONTHLY FORECAST 1 (Aug. 2020), <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/BHG-COVID19StatewideSummaryForecastofBHImpacts-Aug2020Update.pdf> [<https://perma.cc/HV7U-HAK4>] (“This forecast is heavily informed by disaster research

have implemented MTSS are therefore better prepared to meet the needs of students.

A successful MTSS framework must include trauma-informed training for pre-service teachers, consistent professional development in trauma-informed practices, and embedded supports to mitigate the effects of secondary trauma on all the adults in school settings. Due to the high prevalence of childhood trauma and adversity, coupled with the lack of trauma-informed training available to teachers, supporting adversity-affected students can be a source of amplified teacher stress.<sup>86</sup> Without adequate training, teachers may fail to identify the underlying causes of disruptive behaviors and respond to misbehaviors by using control-focused disciplinary actions, which may aggravate students' symptoms of chronic stress.<sup>87</sup> Trauma-informed professional development training has been demonstrated to help teachers develop trauma-sensitive attitudes to build a classroom environment that is responsive to the needs of traumatized students.<sup>88</sup> Research has shown that trauma-informed professional development results in a reduction of referrals to the office for disciplinary actions because teachers are better able to defuse defiant behavior before resorting to traditional disciplinary procedures, teachers feel more confident in de-escalating classroom disturbances, and teachers respond to behavioral issues with compassion.<sup>89</sup> Additionally, self-care is a critical element for educators who are exposed daily to students dealing with trauma and

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and response and the latest national and international data and findings specific to this pandemic.”).

<sup>86</sup> Sue Kim et al., *Impact of Trauma-Informed Training and Mindfulness-Based Social-Emotional Learning Program on Teacher Attitudes and Burnout: A Mixed-Methods Study*, 13 SCH. MENTAL HEALTH 55, 56 (2021).

<sup>87</sup> *Id.* (“Focus group participants expressed their changed views, from using a control-focused approach to adopting an empathy-focused approach in the classroom. An educator reflected, ‘At the beginning of the year, I thought that every child that had a behavioral issue had to be dealt with in one way. I’ve learned over the year . . . that it’s not always that disciplinary measure.’”).

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

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

adversity.<sup>90</sup> School leadership must promote an organizational culture that includes policies and practices to support staff by being proactive in supporting stress management, building and reinforcing support systems for employees, and continually evaluating their efforts.<sup>91</sup>

### C. SEL and MTSS in Washington's Schools

Prior to the arrival of COVID-19, stakeholders had already identified mental health in Washington schools as a significant issue: a 2018 “landscape scan” of mental health and wellness in Washington state, commissioned by Kaiser Permanente Washington Community Health, reported that in Washington state, just over one-third of youth (36%) have experienced one or two ACEs, with 11% experiencing three or more ACEs.<sup>92</sup> The report echoes national ACEs studies in identifying schools as playing a critical role in offering young people the mental health care they need and emphasizing the importance of schools implementing an MTSS framework to enable successful prevention, early intervention, and monitoring of adolescents' mental health and wellness. However, while the Washington legislature has passed some measures addressing SEL and trauma-informed practices in schools, the result has been a piecemeal approach rather than a cohesive and systemic solution.<sup>93</sup>

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<sup>90</sup> See generally M. Shelley Thomas et al., *Trauma-Informed Practices in Schools Across Two Decades: An Interdisciplinary Review of Research*, 43 REV. RSCH. EDUC. 422 (2019).

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

<sup>92</sup> KAISER PERMANENTE WASHINGTON COMMUNITY HEALTH, EXPLORING THE LANDSCAPE OF MENTAL HEALTH AND WELLNESS IN WASHINGTON'S K-12 EDUCATION SYSTEM 6 (2018), <https://wa.kaiserpermanente.org/static/pdf/public/about/mental-health-wellness-summary-report.pdf> [<https://perma.cc/MSSK-FVQV>].

<sup>93</sup> In 2020, the Washington legislature passed the following measures: S.S.B. 6191, which added ACEs questions to the voluntary Healthy Youth Survey administered every two years to students from sixth to twelfth grade (note, however, that schools are “encouraged to use the information in their decision making.”); S.S.B. 6191, 66<sup>th</sup> Leg. Reg. Sess. (June 11, 2020); and 2 S.S.B. 5903, which requires that school districts use one professional learning day to train staff “in one or more of the following topics: social-emotional learning, trauma-informed practices, recognition and response to

In January 2019, Education Northwest conducted a second landscape scan in order to provide the Office of Superintendent of Public Instruction (OSPI) and a legislatively appointed SEL Workgroup with information about activities and trends related to SEL for K-12 students in Washington schools.<sup>94</sup> The results of the landscape scan show that there is a growing interest in SEL, but lack of a shared, culturally responsive framework and a common language was cited as a barrier to adoption.<sup>95</sup> Schools reported that more professional development for teachers and additional guidance is needed, as well as funding and access to local resources.<sup>96</sup> Importantly, participants highlighted the need for an integrated, cohesive, and systemic approach to SEL, and the need for state and local education leaders to develop relevant policies, procedures, and infrastructure.<sup>97</sup>

Washington's OSPI recognizes the need for a more systemic and cohesive approach to SEL. OSPI's 2021 biennial operating budget specifically requests funds for the development of a statewide MTSS:

Washington students, including students with disabilities, multilingual/English learners, students of color, and students from low-income families continue to experience persistent gaps in opportunities, growth, and achievement. In order to close these

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emotional or behavioral distress, consideration of adverse childhood experiences, mental health literacy, antibullying strategies, or culturally sustaining practices." S.S.B. 5903, 66<sup>th</sup> Leg. Reg. Sess. (July 28, 2020). Additionally, RCW 28A.410.270 was amended to include social, emotional learning standards and benchmarks and trauma-informed practices in professional educator standards.

<sup>94</sup> JULIE PETROKUBI ET AL., A K-12 SOCIAL AND EMOTIONAL LEARNING ACROSS WASHINGTON: A STATEWIDE LANDSCAPE SCAN (2019), <https://www.k12.wa.us/sites/default/files/public/studentssupport/sel/pubdocs/Appendix%20K%20WA%20SEL%20Landscape%20Scan%20Report.pdf> [https://perma.cc/Z3DT-8QAD] [hereinafter LANDSCAPE SCAN].

<sup>95</sup> *Id.* at *ii*.

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

<sup>97</sup> *Id.*

gaps, schools must have systems to identify students requiring additional supports and respond to their needs.<sup>98</sup>

Washington's schools lack the infrastructure and capacity to implement a comprehensive system of supports, and they need a statewide system of technical assistance in order to help them implement one.<sup>99</sup> OSPI reports that because schools are working without systemwide state support, only 13.24% of schools statewide rated themselves as implementing Tier I (universal supports) of the MTSS "with fidelity"; that is, with quality.<sup>100</sup> OSPI is currently proposing the establishment of state and regional MTSS, noting that, "As students (and adults) are experiencing the additional traumatic effects of a global pandemic, MTSS also provides a framework for more effectively integrating behavioral health supports into the school setting."<sup>101</sup>

#### *D. The Potential for Litigation if Washington Fails to Implement Statewide MTSS*

Recent litigation also underscores the importance of the widespread adoption of trauma-sensitive practices. Two lawsuits address whether schools should be required to provide students with trauma-informed practices and supports: *P.P. et al. v. Compton Unified School District* and *Stephen C. v. Bureau of Indian Education*.

In *P.P.*, a class of students and three teachers sued the Compton Unified School District, seeking that the district incorporate proven practices that

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<sup>98</sup> WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, SUPPORTING STUDENTS THROUGH MULTI-TIERED SYSTEMS OF SUPPORT, <https://www.k12.wa.us/sites/default/files/public/legisgov/A4-Supporting-Students-through-Multi-Tiered-Systems-of-Support-ADA.pdf> [<https://perma.cc/BH9Q-D3K4>].

<sup>99</sup> *Id.* at 2.

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

<sup>101</sup> *Id.*

address barriers to learning caused by trauma.<sup>102</sup> The traumatic incidents of violence experienced by the plaintiffs included experiencing and witnessing physical and sexual abuse, the loss of friends and family members, and incidents of racism and discrimination.<sup>103</sup> The complaint filed by the plaintiffs in *P.P.* drew from ACEs research and research on the efficacy of tiered systems of support:

Experiences in California and across the country have repeatedly shown that appropriate interventions, which teach skills proven to bolster the resilience of young people, can effectively accommodate the disabling effects of trauma. This gives students affected by trauma meaningful access to the public education they deserve. Experts agree that to effectively provide reasonable accommodations to students whose learning is impaired by complex trauma, particularly in schools that serve high concentrations of trauma-impacted students, access to an individualized plan is insufficient. Rather, implementation of schoolwide trauma-sensitive practices that create an environment in which students are able to learn is required.<sup>104</sup>

In *P.P.*, the plaintiffs alleged that the neurobiological effects of the complex trauma, to which the student plaintiffs were subjected, impaired their ability to perform activities essential to education and therefore constituted a disability under both Section 504 of the Rehabilitation Act and the Americans with Disabilities Act (ADA).<sup>105</sup> The plaintiffs further alleged that the defendants' failure to provide school-wide trauma-sensitive accommodations denied the plaintiffs meaningful access to public education on account of their disabilities.<sup>106</sup> While the Court did not rule on

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<sup>102</sup> *Historic Ruling in Landmark Complaint on Unique Learning Needs of Children Affected by Trauma*, PUB. COUNS. (Sept. 30, 2015), <http://www.publiccounsel.org/stories?id=0172> [https://perma.cc/D5LJ-7WH5].

<sup>103</sup> *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1126, 1129 (C.D. Cal. 2015).

<sup>104</sup> Complaint at 5, *P.P. v. Compton Unified School Dist.*, 135 F. Supp. 3d 1098 (C.D. Cal. 2015) (No. LA CV15 3726 MWF (PLAX)).

<sup>105</sup> *P.P.*, 135 F. Supp. 3d at 1131.

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

the merits of the case, the Court did note that traumatic events may be cognizable as disabilities under the ADA and Section 504 of the Rehabilitation Act.<sup>107</sup>

The Court does not endorse the legal position that exposure to two or more traumatic events is, without more, a cognizable disability under either of the Acts. The Court simply acknowledges the *allegations* that exposure to traumatic events *might* cause physical or mental impairments that *could* be cognizable as disabilities under the two Acts. In other words, the Court has determined that, for purposes of surviving a motion to dismiss, the allegations in the Complaint suffice for now.<sup>108</sup>

In *Stephen C.*, plaintiffs were nine Havasupai students who attended Havasupai Elementary School (HES). The students sued HES and the parties responsible for its administration, including the Bureau of Indian Education and the U.S. Department of the Interior. The students filed a claim under Section 504 stating that the defendants failed to provide the requisite system and resources necessary to educate children impacted by childhood adversity or complex trauma.<sup>109</sup> The *Stephen C.* plaintiffs'

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<sup>107</sup> Recognizing traumatic events as disabilities would give the student access to required accommodations and would mark a shift to Section 504: "Section 504 requires schools to accommodate a student's disability, provide students with disabilities with equal opportunities to participate in extracurricular activities, account for disabilities when imposing disciplinary measures, and prohibits retaliation against students who request accommodations. To state a discrimination claim under the Rehabilitation Act, Plaintiff must allege that he was: '(1) an individual with a disability; (2) otherwise qualified for the benefit sought; (3) discriminated against solely because of his handicap; and (4) discriminated against by an entity that received federal financial help.'" *Khan v. Midwestern University*, 47 F. Supp. 3d 718, 722–23, 2015 WL 7710369, at \*4 (N.D. Ill. 2015). *Thurmon v. Mount Carmel High Sch.*, 191 F. Supp. 3d 894, 898 (N.D. Ill. 2016).

<sup>108</sup> *P.P. v. Compton Unified Sch. Dist.*, 135 F. Supp. 3d 1098, 1103 (C.D. Cal. 2015).

<sup>109</sup> *Stephen C.* by Frank C. v. Bureau of Indian Educ., No.17-08004, 2018 WL 1871457, at \*3 (D. Ariz. Mar. 29, 2018) (granting the BIE's motion for partial summary judgment because defendants, as part of the Executive branch, are not subject to Section 504), *order vacated in part by Stephen C. v. Bureau of Indian Educ.*, No. 17-08004, 2020 WL 2319976 (D. Ariz. May 5, 2020) (finding the Defendants were subject to 504, granting the Plaintiff's motion for summary judgment on the issue of liability, and declining to reconsider its finding that "there is a dispute of material facts of whether the Defendant's

complaint referenced historical, environmental, and socioeconomic factors that contributed to the prevalence of trauma within the students' community.<sup>110</sup> Like the plaintiffs in *P.P.*, the *Stephen C.* plaintiffs also included in their complaint allegations relating each student plaintiffs' unique exposure to complex trauma and adverse childhood experiences to their ability to read, think, and concentrate; that is, how their brains' physical response to trauma substantially limits their ability to learn.<sup>111</sup> The Court in *Stephen C.* denied the defendant's motion to dismiss, finding that the plaintiffs had sufficiently alleged facts that make it plausible the defendants were on notice of the plaintiffs disabilities by virtue of their exposure to trauma and adversity.<sup>112</sup>

These two cases were brought before the events of 2020 made an indelible impression on students; it is imperative that Washington's legislature prioritizes schools and SEL by swiftly implementing a comprehensive statewide MTSS framework.<sup>113</sup> If the Washington legislature waits to adopt, or fails to adopt, legislation and budget appropriations that provide supports and build capacity for widespread implementation for SEL and MTSS, thousands of Washington students will return to schools that may not be equipped to address their needs, which will not only increase the opportunity gap but will also make school districts vulnerable to litigation.

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failed to provide the requisite system and resources necessary to educate children impacted by childhood adversity or complex trauma").

<sup>110</sup> *Stephen C. by Frank C. v. Bureau of Indian Educ.*, No.17-08004, 2018 WL 1871457, at \*4.

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

<sup>112</sup> *Id.* at \*5.

<sup>113</sup> LETTER FROM THE WASHINGTON STATE SOCIAL EMOTIONAL LEARNING ADVISORY COMMITTEE TO SUPERINTENDENT REYKDAL (June 9, 2020), <https://www.k12.wa.us/sites/default/files/public/studentsupport/sel/pubdocs/OSPI%20SEL%20Advisory%20Committee%20Letter%20Final.pdf> [<https://perma.cc/55CD-JQYC>] [hereinafter LETTER TO SUPERINTENDENT REYKDAL].

### III. MOVING FORWARD: CLEARING THE PATH FOR IMPLEMENTING STATEWIDE MTSS IN WASHINGTON'S SCHOOLS

The following section examines potential roadblocks to the implementation of system-wide MTSS and suggests a path forward toward full implementation of statewide MTSS. Section A highlights two recent pieces of legislation that reflect the difficult balance between local control and holding schools accountable for student achievement, as well as the importance of achieving that balance to successfully implement a single comprehensive system-wide framework of supports. Section B suggests the use of implementation science strategies to set stakeholders' and policy-makers' expectations. Section C emphasizes the importance of continuing to enact budgetary measures that would build capacity and provide for staffing so that these supports can be fostered and maintained well into the future. Section D explains how OSPI's staffing model can support and sustain implementation. Section E proposes an additional bold step: mandating all Washington schools implement MTSS with fidelity by 2025. Finally, Section F addresses the potential objections to statewide implementation of MTSS that may arise as a result of budgetary shortfalls and local control.

#### *A. Balancing Local Control and School Accountability*

Historically speaking, the relationship between local control of schools and the interests of state and federal government is fraught with tension: on the one hand, intervention by the federal government and the judiciary enabled the enforcement of civil rights, while on the other hand, the federal government has also created much maligned and now-abandoned top-down reforms like No Child Left Behind.<sup>114</sup> As a result, education policies and reforms often face resistance as local communities respond with skepticism

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<sup>114</sup> CAMPBELL F. SCRIBNER, *THE FIGHT FOR LOCAL CONTROL: SCHOOLS, SUBURBS, AND AMERICAN DEMOCRACY* 184 (2016).

toward any national educational movement.<sup>115</sup> For example, when Idaho’s state education leaders pitched a social-emotional learning proposal to lawmakers, one member of Idaho’s state House Education Committee compared the plan to the dystopian behavior control in *Brave New World*, while others said that it is a parent’s job, not a school’s, to help children develop social, emotional skills.<sup>116</sup>

Washington is largely considered a “local control” state, which means that each school district is governed by a locally-elected school board with broad discretionary power to determine and adopt policies not in conflict with other law that “provide for the development and implementation of instructional programs, activities, services, or practices that the school district board of directors determine will promote the education or effective management and operation of the school district.”<sup>117</sup> Local control also means that buy-in from local school districts is crucial for successful implementation of any legislative action. A struggle to balance local control and state accountability often exists in the background of every school reform initiative, and Washington’s attempts to implement SEL and MTSS are no exception.

As noted in Section C, the January 2019 SEL “Landscape Scan” reported that while school districts expressed interest in establishing social and emotional health supports, their efforts were stymied by a lack of a shared framework and clear definitions of what constitutes social and emotional supports for students.<sup>118</sup> Not long after the report was issued, Governor

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<sup>115</sup> Evie Blad, *There’s Pushback to Social-Emotional Learning. Here’s What Happened in One State*, EDUC. WK.: BLOG (Feb. 13, 2020, 5:05 PM), <https://blogs.edweek.org/edweek/campaign-k-12/2020/02/social-emotional-learning-political-pushback-idaho.html> [<https://perma.cc/FD9C-WJNX>].

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

<sup>117</sup> SENATE WAYS AND MEANS COMMITTEE, A CITIZEN’S GUIDE TO WASHINGTON STATE K-12 FINANCE 3 (2020), <https://leg.wa.gov/LIC/Documents/EducationAndInformation/Citizens%20Guide%20to%20K-12%20Finance.pdf> [<https://perma.cc/R4JY-V425>].

<sup>118</sup> See *supra* Section II.C.

Inslee signed SB 5082, which created a permanent Social Emotional Learning Committee<sup>119</sup> tasked with developing a statewide framework for “social emotional learning that is trauma-informed, culturally sustaining, and developmentally appropriate.”<sup>120</sup> Among other responsibilities, the committee was also asked to update the SEL standards and benchmarks,<sup>121</sup> identify professional development opportunities for teachers and staff, and identify strategies for coordinating with community partners and culturally-based providers.<sup>122</sup> These tasks reflected the concerns reported by practitioners in the Landscape Scan.<sup>123</sup>

In January 2020, the legislature seemed poised to follow through on the SEL committee’s work with the proposed SHB 2816,<sup>124</sup> which included language that reflected a commitment to ensure that schools comply with the findings of the SEL workgroup and committee. The proposed bill addressed many of the issues identified by the Landscape Scan by requiring school districts to adopt policies and procedures consistent with the model

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<sup>119</sup> Martin Mueller, et al., *Social Emotional Learning in Washington's K-12 Public Schools*, WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, <https://www.k12.wa.us/sites/default/files/public/communications/2021docs/SEL-Legislative-Report.pdf> [<https://perma.cc/29MP-TRMT>]. The initial SEL workgroup was formed in 2017 and made into an advisory committee by SB 5082.

<sup>120</sup> S.B. 5082, 66<sup>th</sup> Leg., 2019 Reg. Sess. (Wash. 2019).

<sup>121</sup> The social emotional benchmarks and indicators help educators understand what to look for—i.e., those behaviors that indicate a specific level of competency. They provide examples of observable behaviors across developmental levels to guide educators’ decisions about which learning opportunities are critical, relevant, and appropriate for use with their students. For example, Standard 2 is self-management or the ability to regulate emotions, thoughts, and behaviors. One associated benchmark is the ability to manage emotions, thoughts, impulses, and stress in constructive ways. WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, SOCIAL EMOTIONAL LEARNING STANDARDS, BENCHMARKS, AND INDICATORS Appendix D (Mar. 20, 2021), <https://www.k12.wa.us/sites/default/files/public/studentssupport/sel/pubdocs/Standards%20C%20Benchmarks%20Indicators%20-%20creative%20commons.pdf> [<https://perma.cc/66UV-P34L>].

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

<sup>123</sup> *See supra* Section II.C.

<sup>124</sup> S.B. 2816, 66<sup>th</sup> Leg., 2020 Reg. Sess. (Wash. 2020).

policy and procedures.<sup>125</sup> Section two of the bill particularly addressed the issue of inconsistency raised in the Landscape Scan by requiring that the model policy and procedures “define and describe the essential elements of a positive social and emotional school and classroom climate,” and “describe a framework for an effective and informed positive social and emotional school and classroom climate improvement process that includes a continuous cycle of planning and preparation, evaluation, action planning, and implementation.”<sup>126</sup> However, the final enacted form of the bill only requires that schools adopt “*elements* of the model policy and procedure that protect the integrity of learning environments” and *allows* school districts to “adopt other elements of the model” (emphasis added).<sup>127</sup> In the rather watered-down final version, schools “*may* adopt or amend” the policies and procedures in section two, and “may periodically review their policies and procedures for consistency with updated versions of the model policy” (emphasis added).<sup>128</sup> Thus, while the final bill may have provided schools greater flexibility and choice, in doing so it failed to address the concerns practitioners identified in the Landscape Scan, particularly the need for a shared framework and common language.<sup>129</sup>

This tension between local control and accountability at the state level was taken up by HB 1182, proposed in the 2019–2020 legislative session. HB 1182 required that schools who receive Learning Assistance Program (LAP) funds<sup>130</sup> expend the funds in a manner consistent with Washington

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

<sup>126</sup> S.B. 2816, 66<sup>th</sup> Leg., 2020 Reg. Sess., § 2(b), (d) (Wash. 2020).

<sup>127</sup> *Id.*

<sup>128</sup> S.B. 2816, 66<sup>th</sup> Leg., 2020 Reg. Sess., § 6(b) (Wash. 2020).

<sup>129</sup> *See supra* Section II.C.

<sup>130</sup> Learning Assistance Program (LAP) is designed to provide supplemental instruction and assist students who are not meeting academic standards, and to reduce disruptive behaviors in the classroom. *See Learning Assistance Program*, WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, <http://www.k12.wa.us/student-success/support-programs/learning-assistance-program-lap> [https://perma.cc/AZ2Y-EKLP].

Integrated Student Supports Protocol (WISSP). While not a comprehensive MTSS, WISSP implements a support system that employs the same kind of tiered support framework as an MTSS.<sup>131</sup> WISSP was created via legislative mandate in 2016<sup>132</sup> with the understanding that addressing opportunity gaps in Washington schools requires “a collaborative and systemic approach.”<sup>133</sup> HB 1182 sought to strike a balance between “local control and state accountability by making the allowable uses of program funds more flexible and requiring that the expenditure of funds be consistent with the [WISSP].”<sup>134</sup> For example, HB 1182 would have given school districts the ability to use LAP funds to support best practices that are not approved by the state, and, rather than providing districts with a “menu” of best practices, OSPI would convene a panel to identify best practices and other nonacademic supports being used by school districts and help to ensure they align with federally required assessment standards.<sup>135</sup>

The bill also provided for accountability measures by requiring reporting to the Center for the Improvement of Student Learning, which would review and report to the legislature a summary of innovations made by school districts to reduce barriers to student achievement.<sup>136</sup> Public testimony for HB 1182 further emphasized the balance the bill strikes between local control and state accountability by allowing practitioners to have the flexibility to identify how best to help struggling students but also providing for some accountability for how funds are used.<sup>137</sup> The most

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<sup>131</sup> See CENT. FOR IMPROVEMENT OF STUDENT LEARNING, *supra* note 72, at 3 (“The key components of the WISSP framework are integrated supports which are also found in comprehensive multi-tiered systems of support (MTSS).”).

<sup>132</sup> 4 Substitute H.B. 1541, 64th Leg., 2016 Reg. Sess., (Wash. 2016).

<sup>133</sup> CENT. FOR IMPROVEMENT OF STUDENT LEARNING, *supra* note 72, at 4.

<sup>134</sup> 2 Substitute H.B. 1182, 66th Leg., 2020 Reg. Sess. (Wash. 2020).

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

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

<sup>137</sup> H.B. REP., MODIFYING THE LEARNING ASSISTANCE PROGRAM, 2 SUBSTITUTE H.B. 1182, at 6 (Mar. 4, 2020) <http://lawfilesexet.leg.wa.gov/biennium/2019-20/Pdf/Bill%20Reports/House/1182-S2%20HBR%20SA%2020.pdf?q=20201029150516> [<https://perma.cc/T445-CAPG>].

flexibility in spending state appropriations would come from employing WISSP, a program that is “well-researched, it is understood by educators, it is flexible, it allows educators to teach and students to learn, and encourages partnerships with the community.”<sup>138</sup>

HB 1182 died in committee in 2020, but a similar bill (HB 1208) was introduced in the 2020–2021 legislative session and signed into law in April 2021.<sup>139</sup> Under the new law, school districts must budget and expend LAP funds using the WISSP framework.<sup>140</sup> The bill’s passage presents an important step in addressing tensions between local control and accountability by allowing greater flexibility in how LAP funds are used but still holding schools accountable for improvement in student achievement.<sup>141</sup> The successful implementation of MTSS requires fidelity to the framework; therefore, the delicate balance of local control and accountability will continue to be an important factor and will require the community engagement discussed below in Section F.

### *B. Using Implementation Science Strategies to Set Expectations*

Other potential roadblocks to state-wide implementation of MTSS may arise when policymakers and stakeholders do not embrace the full scope of the process or have unrealistic expectations. Research in the field of implementation science can help leaders improve outcomes by providing strategies that ensure that implemented programs have a greater likelihood of success.<sup>142</sup> Implementation is a lengthy and iterative process that involves planning, service integration, post-training support, evaluation, and

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<sup>138</sup> *Id.* at 7.

<sup>139</sup> H.B. 1208, 67th Leg., 2021 Reg. Sess. (Wash. 2021).

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

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

<sup>142</sup> AARON R. LYON, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION, IMPLEMENTATION SCIENCE AND PRACTICE IN THE EDUCATION SECTOR 1, <https://education.uw.edu/sites/default/files/Implementation%20Science%20Issue%20Brief%20072617.pdf> [<https://perma.cc/B5DN-QK8W>].

collaborative problem-solving.<sup>143</sup> Research in implementation science shows that sustainable educational practices have to do more than produce outcomes.<sup>144</sup> These practices must also be implemented with relevant policy, recurring adequate funding, embedded professional development, coaching, distributed team-based leadership, effective school leaders, and efficient decision-based data systems.<sup>145</sup> It is also important that realistic expectations are established to manage the “awkwardness” of the implementation stages of MTSS reform.<sup>146</sup> Washington’s legislators must approach legislation with the understanding that “systemic change is a slow, deliberate process and that even though it won’t always go smoothly, it will get better over time as staff gain more competencies, experience, and efficiency with the process.”<sup>147</sup>

### C. Prioritizing Staffing Capacity, Training, and Support

Stakeholders in Washington agree that student and staff well-being must be an immediate legislative priority. In their proposed legislative platform for 2021, the Washington Board of Education supports: (1) prioritizing the health and safety of staff, including school counselors, school nurses, social workers, psychologists, family engagement coordinators, and (2) providing school staff with professional development to support mental health, SEL, trauma-informed instruction, Positive Behavior Intervention and Supports (PBIS), and MTSS.<sup>148</sup>

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<sup>143</sup> *Id.* at 6.

<sup>144</sup> Robert H. Horner et al., *Implementing Effective Educational Practices at Scales of Social Importance*, 20 *CLINICAL CHILD & FAM. PSYCH. REV.* 25, 27 (2017).

<sup>145</sup> *Id.* at 26.

<sup>146</sup> John W. Eagle et al., *Implementing a Multi-Tiered System of Support (MTSS): Collaboration Between School Psychologists and Administrators to Promote Systems-Level Change*, 25 *J. EDUC. & PSYCH. CONSULTATION* 160, 168 (2014).

<sup>147</sup> *Id.*

<sup>148</sup> WASH. STATE BD. OF EDUC., COVID-19 POLICY RESPONSE – WORK SESSION FOLLOW UP 41 (July 2020), <https://www.sbe.wa.gov/sites/default/files/public/meetings/Jul-2020/0500s%20covid.pdf> [<https://perma.cc/MYA6-MKAW>].

Similarly, the Social Emotional Learning Advisory Committee emphasizes the need to prioritize SEL supports:

Let us recognize that, from pandemic to racial injustice and related unrest, students and educators alike may have experienced trauma during this time. Responding to that trauma is necessary in its own right, but also we cannot expect high levels of academic learning without responding to that trauma with supports in place that prioritize SEL.<sup>149</sup>

Toward that end, the SEL Committee recommends the formal adoption of a statewide MTSS framework that incorporates SEL standards and benchmarks into Tier I, and the prioritization of both MTSS and SEL funding.<sup>150</sup> Additionally, the SEL Committee calls for local school districts to articulate how they will prioritize SEL under an MTSS framework, develop adult SEL professional learning, and coordinate in-school and out-of-school time SEL offerings.<sup>151</sup>

#### *D. Funding Supports to Accommodate Students' Mental and Behavioral Health Needs*

In the 2021–2023 legislative session, OSPI's operating budget request sought to eliminate opportunity gaps by adjusting the prototypical school model.<sup>152</sup> Washington uses the prototypical school funding model to allocate funding according to a distribution formula that supports the operations and minimum instructional program of "basic education."<sup>153</sup> As

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<sup>149</sup> LETTER TO SUPERINTENDENT REYKDAL, *supra* note 113.

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

<sup>151</sup> *Id.*

<sup>152</sup> WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, OSPI'S 2021-23 OPERATING BUDGET PRIORITIES, <https://www.k12.wa.us/sites/default/files/public/legisgov/2021-23-Operating-Budget-Requests-Summary.pdf> [<https://perma.cc/2HUG-XF94>]. Washington's funding model is known as the prototypical school funding model. RCW 28A.150.260.

<sup>153</sup> WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, STAFFING ENRICHMENT WORKGROUP RECOMMENDATIONS 4 (2019),

the needs of students have changed significantly, the existing prototypical funding model is inadequate to meet the social-emotional and safety need of students, in part because it fails to provide for high quality, ongoing professional development for educators.<sup>154</sup> In its proposed budget, OSPI requested an increase in the basic education allocation to school districts through the prototypical school funding formula by: (1) increasing the allocation for social-emotional health and safety staff (including school counselors, school nurses, social workers, psychologists, and family engagement coordinators); (2) providing more staff professional development focusing on racial literacy and cultural responsiveness to close persistent opportunity gaps; (3) increasing the allocation for principals; and (4) providing an allocation for continuous improvement coaches.<sup>155</sup>

OSPI's proposed budget also included funding for statewide implementation of MTSS for Washington's K–12 students.<sup>156</sup> This funding would provide twelve MTSS implementation specialists to support nine Educational Service districts, a data manager, training and support for the specialists and data manager, and a database to measure fidelity, effectiveness, and student outcomes.<sup>157</sup>

Although the 2020–2021 legislature did not fully fund OSPI's operating budget request for supporting students through MTSS,<sup>158</sup> OSPI received a federal grant to support MTSS through the Office of Special Education

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<https://www.k12.wa.us/sites/default/files/public/communications/2019-12-Staffing-Enrichment-Workgroup.pdf> [<https://perma.cc/NNG5-M98Z>].

<sup>154</sup> WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, BUILDING STAFFING CAPACITY TO SUPPORT STUDENT WELL-BEING, <https://www.k12.wa.us/sites/default/files/public/legisgov/A6-Building-Staffing-Capacity-to-Support-Student-Well-Being-ADA.pdf> [<https://perma.cc/T3M4-MF3X>].

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

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

<sup>157</sup> *Id.*

<sup>158</sup> Email from Jenny Plaja, Assistant Director, Government Relations, OSPI (Aug. 13, 2021, 10:21 AM PST) (on file with author).

Services at the U.S. Department of Education.<sup>159</sup> In addition, OSPI has received federal COVID-19 recovery dollars through the Elementary and Secondary Schools Emergency Relief (ESSER) fund, which can be used to respond to the impact of the pandemic on social, emotional, mental health, and academic needs of students.<sup>160</sup> While federal grants play a crucial role in filling the gap between OSPI's proposed budget and the Legislature's final budget decision, federal grant programs are subject to political changes. Furthermore, fiscal compliance rules are often complex and the absence of transparency in how the federal dollars may be used can lead to a greater lack of accountability.<sup>161</sup> Given this uncertainty, more effort is required at the state level to ensure that MTSS supports are ensured long-term funding and are implemented with fidelity.

### *E. Taking the Next Bold Step*

Washington's OSPI has worked hard to lay a foundation for systemwide implementation of SEL and MTSS: it has created the SEL frameworks and benchmarks, established standards for rolling out systemwide MTSS, and laid the groundwork to fund staffing, training, and support through the state budget and federal grants. However, MTSS frameworks require more than planning and funding. MTSS must be implemented correctly and consistently in order to improve outcomes for all student and narrow the opportunity gaps and disparities in academic growth experienced by

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<sup>159</sup> *Federal Grant to Provide Coaching to Washington Districts on Multi-Tiered System of Supports*, WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION (Jan. 14, 2021), <https://waospi.medium.com/federal-grant-to-provide-coaching-to-washington-districts-on-multi-tiered-system-of-supports-c5f9ab9a0e97> [https://perma.cc/TWB9-QEWX].

<sup>160</sup> *State and Federal Funding*, WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, <https://k12.wa.us/about-ospi/press-releases/novel-coronavirus-covid-19-guidance-resources/state-federal-funding> [https://perma.cc/V9R5-6HXW].

<sup>161</sup> See Nora Gordon & Eloise Pasachoff, *Fiscal Compliance Rules for Federal Funding of Elementary and Secondary Education: Transparency, Reason-Giving, and Agency Accountability in OXFORD HANDBOOK OF U.S. EDUCATION LAW* 2, 12–15 (Kristine L. Bowman ed., 2018).

African American and Native American students.<sup>162</sup> To properly implement a statewide system of supports, the legislature should take the lead in establishing a clear mandate for all schools in Washington.

The next step must be for the Washington State Legislature to mandate that MTSS be implemented systemwide by 2025. Thus, I propose making the following additions and changes to Chapter 28A, Common School Provisions:

1. Add to RCW 28A.150.220(3) a requirement that schools must implement a MTSS based upon OSPI's MTSS framework and SEL standards and benchmarks. Schools must implement the MTSS with fidelity by 2025.
2. Add to RCW 28A.410 a section that requires pre-service teachers to be trained in trauma-informed practices.
3. Add to RCW 28A.415 a provision requiring that all teachers be provided professional development in trauma-informed teaching.
4. Add to RCW 28A.400 a provision that all adults in schools, including, but not limited to, support staff, bus drivers, and school resources officers, be trained in trauma-informed practices. Additionally, all adults in schools must be provided with supports to mitigate the harm of secondary trauma.

In drafting these statutes, Washington could look to similar statutes enacted in Michigan. In Michigan, local education agencies (LEAs) that implement MTSS are assured funding through the State School Aid Act of 1979, Section 31a.<sup>163</sup> The statute reads as follows:

(3) For a district or public school academy to be eligible to receive funding under this section, other than funding under subsection (7) or (8), the district or public school academy, for grades K to 12, shall comply with the requirements under section 1280f of the revised school code, MCL 380.1280f, and shall use resources to

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

<sup>163</sup> MICH. COMP. LAWS ANN. § 388.1601.

address early literacy and numeracy, and for at least grades K to 12 or, if the district or public school academy does not operate all of grades K to 12, for all of the grades it operates, must implement a multi-tiered system of supports that is an evidence-based framework that uses data-driven problem solving to integrate academic and behavioral instruction and that uses intervention delivered to all pupils in varying intensities based on pupil needs. The multi-tiered system of supports described in this subsection must provide at least all of the following essential components:

- (a) Team-based leadership.
- (b) A tiered delivery system.
- (c) Selection and implementation of instruction, interventions, and supports.
- (d) A comprehensive screening and assessment system.
- (e) Continuous data-based decision making.<sup>164</sup>

Michigan's statute also requires that the funding must be used for instruction and non-instructional services that include behavioral health supports, but not for administrative costs:

[F]unding under this section shall use that money only to provide instructional programs and direct noninstructional services, including, but not limited to, medical, mental health, or counseling services, for at-risk pupils; for school health clinics; and for the purposes of subsection (6), (7), or (8) . . . A district or public-school academy shall not use any of that money for administrative costs.<sup>165</sup>

Michigan's statute provides that in schools where more than 40% of students are identified as at risk, the school may use funds under Section 31a to implement Tier I of the MTSS framework and make classroom-based interventions available to all students:

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<sup>164</sup> MICH. COMP. LAWS ANN. § 388.1631a.

<sup>165</sup> *Id.*

(11) Subject to subsections (6), (7), and (8), for schools in which more than 40% of pupils are identified as *at-risk*, a district or public school academy may use the funds it receives under this section to implement Tier 1, evidence-based practices in schoolwide reforms that are guided by the district's comprehensive needs assessment and are included in the district improvement plan. Schoolwide reforms must include parent and community supports, activities, and services, that may include the pathways to potential program created by the department of health and human services or the communities in schools program. As used in this subsection, "tier 1, evidence-based practices" means research-based instruction and classroom interventions that are available to all learners and effectively meet the needs of most pupils.<sup>166</sup>

Michigan's statute also outlines the amount of funding to be used for professional development, noting that the professional development must be related to implementing the MTSS with fidelity, and using data gathering as a part of the MTSS implementation to inform curriculum and instruction:

(12) A district or public school academy that receives funds under this section may use up to 7.5% of those funds to provide research-based professional development and to implement a coaching model that supports the multi-tiered system of supports framework. Professional development may be provided to district and school leadership and teachers and must be aligned to professional learning standards; integrated into district, school building, and classroom practices; and solely related to the following:

- (a) implementing the multi-tiered system of supports . . . with fidelity and utilizing the data from that system to inform curriculum and instruction.
- (b) Implementing section 1280f of the revised school code, MCL 380.1280f, as required under subsection (3), with fidelity.<sup>167</sup>

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

<sup>167</sup> *Id.*

Finally, the Michigan statute states that funds used for instructional or behavioral coaches are not subject to a 7.5% cap in Section (12) above.<sup>168</sup>

Washington legislators can use language similar to that used in the Michigan statutes to ensure that all school districts implement the frameworks developed by OSPI with fidelity, in addition to the necessary training and supports for teachers and staff. Michigan's statutes make implementing MTSS a requirement to receive Section 31a funding, and almost all districts receive some funding according to the number of at-risk students they have.<sup>169</sup> In Washington, incorporating a MTSS requirement into RCW 28A.150.222(3) would make MTSS part of the instructional program of basic education provided by each school district. Thus, in Washington, MTSS would be funded through the prototypical school model as described in the previous section above. A section, (section "h"), would be added to RCW 28A.150.222(3), which states, "A program of multi-tiered systems of supports under RCW," and then refers to a more comprehensive RCW that mirrors the essential components of the OSPI framework.<sup>170</sup> The RCW's language should be drafted in concert with the OSPI's SEL and MTSS workgroups and should incorporate community and educator feedback. Although the MTSS framework itself may not change, some components must remain flexible to respond to students' needs; therefore, the statutory language would be most effective if it refers more generally to components that were established by OSPI.

#### *F. Protecting Against Budgetary Shortfalls and Balancing Local Control*

In 2020, state revenue collections across the country plummeted as commerce slowed down to curb the spread of COVID-19; as a result, most

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

<sup>169</sup> E-mail from Michelle Williams, Special Populations Unit Manager, Office of Educational Supports (March 30, 2021, 8:45 AM PST) (on file with author).

<sup>170</sup> *Multi-Tiered System of Supports (MTSS)*, WASH. OFF. OF SUPERINTENDENT OF PUB. INSTRUCTION, <https://www.k12.wa.us/student-success/support-programs/multi-tiered-system-supports-mtss> [<https://perma.cc/7Z99-426N>].

states faced major budget shortfalls.<sup>171</sup> In April 2020, Governor Inslee used his line item veto to trim \$235 million from the 2020 supplemental operating budget, and in May 2020, Washington's Office of Financial Management directed agencies to propose budget reductions for their 2021–2023 budget submittals.<sup>172</sup> Unfortunately, many of the events that led to a sense of crisis in 2020 still exist, including the continued spread of COVID-19, the effects of climate change, and political unrest. It is more important than ever, then, for state leaders to prioritize and protect mental health supports in schools.

Washington State's leaders and legislators must not forget that Washington's opportunity gap stubbornly persists. A recent report by the Education Trust notes that even though Washington had the fastest growing economy in 2018, one in nine students did not graduate in 2019: "Washington is doing even worse for its students of color and students from low-income backgrounds. One in 7 Black students, 3 in 20 Latino students, 1 in 4 Native students, and 1 in 6 students from low-income backgrounds did not graduate high school."<sup>173</sup> The report continues, "Washington has a moral and economic imperative to take bold and targeted action to address the growing disparities in Washington's education system."<sup>174</sup> A

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<sup>171</sup> *State Actions to Close Budget Shortfalls in Response to COVID-19*, NAT'L CONF. OF STATE LEGISLATURES (Jan. 11, 2021), <https://www.ncsl.org/research/fiscal-policy/state-actions-to-close-budget-shortfalls-in-response-to-covid-19.aspx> [<https://perma.cc/Q6HW-VHXB>].

<sup>172</sup> David Schumacher, Director, Memo to Agency Directors: Immediate Actions to Capture Operating Budget Savings (May 13, 2020), [https://www.ofm.wa.gov/sites/default/files/public/legacy/agencycommunications/FY2020/ImmediateActionstoCaptureOperatingBudgetSavings\\_0.pdf](https://www.ofm.wa.gov/sites/default/files/public/legacy/agencycommunications/FY2020/ImmediateActionstoCaptureOperatingBudgetSavings_0.pdf) [<https://perma.cc/2A9K-FX42>].

<sup>173</sup> THE EDUC. TRUST, RIGHT DIRECTION. MILES TO GO: CLOSING THE WIDENING ACHIEVEMENT GAPS IN WASHINGTON STATE 2 (Nov. 2020), <https://edtrust.org/wp-content/uploads/2014/09/Right-Direction.-Miles-to-Go-November-2020.pdf> [<https://perma.cc/2HEV-7LWN>].

<sup>174</sup> *Id.* at 1.

commitment to fully implementing MTSS across all of Washington’s school districts will go a long way toward addressing these disparities.

As discussed in Section A, any legislative action must address the tensions that exist between local, community control, and statewide comprehensive programs. The best way to meet skepticism and “standards fatigue” arising at the district level is to listen to the concerns of communities and identify clear messages.<sup>175</sup> When parents, administrators, and community leaders wonder whether SEL programs are really effective or necessary,<sup>176</sup> education leaders must be ready to explain how developing social and emotional competencies as well as academic skills are tied to college and career-readiness.

In Michigan, the MTSS framework initiative involves engaging learners, families, and the communities.<sup>177</sup> Learners are engaged by identifying and understanding their own needs, developing goals, and monitoring progress. Families are engaged as meaningful stakeholders in the implementation of MTSS through effective home to school collaborations that support the continuity of learning and outcomes for learners and families. For example, families are invited to partner on leadership teams and committees that make systemic decisions and together inform and influence the creation and selection of policies, practices, and programs. Community partners are similarly engaged by being invited to partner on leadership teams that make systemwide decisions, and by informing and influencing policy, practice, and programs.<sup>178</sup>

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<sup>175</sup>Linda Dusenbury & Roger P. Weissberg, *Emerging Insights from States’ Efforts to Strengthen Social and Emotional Learning*, COLLABORATIVE FOR ACAD. & SOC. LEARNING (June 2018), <https://casel.org/wp-content/uploads/2018/06/CSI-Insights.pdf> [<https://perma.cc/V3F9-5R7X>].

<sup>176</sup>See Blad, *supra* note 115.

<sup>177</sup>MICH, DEP’T OF EDUC., MICHIGAN’S MULTI-TIERED SYSTEM OF SUPPORTS (MiMTSS) FREQUENTLY ASKED QUESTIONS (Aug. 2020), [https://www.michigan.gov/documents/mde/MiMTSS\\_FAQ\\_v\\_7-15-21\\_730428\\_7.pdf](https://www.michigan.gov/documents/mde/MiMTSS_FAQ_v_7-15-21_730428_7.pdf) [<https://perma.cc/7F3N-F3KS>].

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

A truly outstanding example of community involvement and cultural responsiveness is Alaska's framework for trauma-engaged schools. Alaska's Department of Education and Early Development partnered with community members across the state to create "Transforming Schools: A Framework For Trauma Engaged Practice in Alaska," which emphasizes community support in order for trauma-engaged schools to be successful.<sup>179</sup> The Alaska framework suggests that schools and districts prepare for implementing trauma-engaged practices by understanding what the community would stand to gain through trauma-engaged practice, assessing the community's readiness and capacity to provide supports, gaining buy-in and trust through collaboration and communication, promoting a culture of safety and respect, developing a common understanding of terms, and expecting setbacks.<sup>180</sup> Alaska's framework acknowledges the impact of historical and cultural trauma as a result of colonization.<sup>181</sup> The guide emphasizes the importance of connecting with culture and community to build strength and resilience in the face of ACEs, and the potential for more successful learning outcomes when cultural knowledge and prior experiences are woven into education.<sup>182</sup> Alaska's guide notes,

Authentic relationships – which are at the heart of trauma-engaged work – stem from understanding a person's worldview, cultural background, values and customs. This context is important for fostering trust and healing. This is also important so students can be free to be who they are, and not have to "check their identity at the door" in order to be seen as a successful or model student.

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<sup>179</sup> ALASKA DEP'T OF EDUC. AND EARLY DEV., TRANSFORMING SCHOOLS: A FRAMEWORK FOR TRAUMA ENGAGED PRACTICE IN ALASKA 9 (2019), <https://education.alaska.gov/tls/safeschools/pdf/transforming-schools.pdf> [<https://perma.cc/T2KS-LMPU>] (This beautifully illustrated guide not only explains the importance of cultural responsiveness, but models it as well by utilizing story-telling in addition to research and practical advice).

<sup>180</sup> *Id.*

<sup>181</sup> *Id.* at 58.

<sup>182</sup> *Id.*

Students should have the ability to be themselves culturally at home, in the community, and in school.<sup>183</sup>

If Washington school leaders take the approach to community involvement outlined in Alaska's framework, the potential for resistance is likely to be minimal.

The comprehensive implementation of MTSS and SEL in Washington schools faces formidable challenges in the face of budget constraints and ideological values. Nevertheless, these unprecedented times require that the mental health and well-being of students and educators be recognized as a priority in state budgetary considerations. Nothing less than "the success and well-being of our communities and the state's next generation of leaders depends on it."<sup>184</sup> Leaders and stakeholders in education must be clear in their message about how and why MTSS and SEL should be comprehensively implemented. MTSS specifically employs community support and emphasizes cultural responsiveness. If implemented with the necessary supports in place, an MTSS can result in positive outcomes in the form of narrowing Washington's opportunity gap and overcoming any perceived dichotomy between local control and state intervention.

#### IV. CONCLUSION

Washington's students have now experienced an unthinkable combination of a global pandemic, racial injustice, civil unrest, and natural disasters. Our students deserve schools and educators that are equipped to address their social, emotional, and behavioral needs today and as we move forward into an uncertain future. Since 2019, OSPI workgroups have conducted research and compiled comprehensive reports that describe how to implement SEL and MTSS, and how to provide the necessary staffing, training, and data reporting to ensure they are implemented effectively.

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

<sup>184</sup> LETTER TO SUPERINTENDENT REYKDAL, *supra* note 113.

Now, it is incumbent upon the Washington legislature to take the next step toward implementation of a comprehensive, statewide MTSS by mandating implementation by 2025. The Washington legislature must approach these measures with an understanding that systemic change takes time, and that success requires adequate funding for staffing, professional development, and community support. Prioritizing Washington's students means that the legislature must ensure that the MTSS model is fully funded and staffed, and that evaluative measures are in place. The Legislature must avoid passing watered-down bills that fail to establish the frameworks, professional development, and reporting mechanisms necessary for successful implementation. At the same time, lawmakers must acknowledge the tension between local and state interests by ensuring that stakeholders, families, and community partners are involved in establishing supports that are culturally appropriate. Failing to successfully implement MTSS in Washington raises the possibility of future trauma-based litigation; however, a much greater incentive must be the desire to help *all* students achieve success.

