

## ARTICLES

### PLACE, POWER, AND SCHOOL PUSHOUT: DEFENSIVE LOCALISM AND SCHOOL DISCIPLINE

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*Suspensions, expulsions, and school-based arrests: These exclusionary and overly punitive disciplinary responses disproportionately impact Black students and have become normalized throughout the nation. In reality, school pushout, or the disciplinary sanction of removing students from the classroom, contravenes the very purpose of public education to prepare children to engage as full citizens in our democratic republic.*

*This Article attributes school pushout to harmful exercises of local authority over education, an authority given constitutional cover under the democratic ideology of localism and decentralized governance. Many communities, however, exercise local power to exclude and hoard resources to the detriment of neighboring communities.*

*This Article examines how many majority-Black districts deprived of the benefits of “classic localism” exert parochial power to control their educational communities, often resorting to overly punitive disciplinary responses. This Article applies the concept of defensive localism to describe this destructive exercise of local power, which imposes citizenship harms on impacted students. Like their wealthier, white neighbors, these school communities are not immune to the impulse to exclude.*

*Meanwhile, the carefully curated “community” in wealthy, white suburban enclaves often incentivizes reliance on ineffective school discipline interventions and a false sense of safety, obscuring signs of potential school violence. Black children suffer a range of citizenship harms resulting from exclusionary discipline, including increased likelihood of involvement with the criminal legal system.*

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*This Article urges communities to reimagine school discipline to not alienate or exclude students, but embrace them by providing needed services and supports that foster genuine community and participation.*

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*“[I]f a society permits one portion of its citizenry to be menaced or destroyed, then, very soon, no one in that society is safe.”*

— James Baldwin.<sup>1</sup>

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1. James Baldwin, *Nothing Personal* 26 (Beacon Press 2021) (1964).

## INTRODUCTION

Black children are disproportionately and negatively impacted by exclusionary and overly punitive school discipline practices that result in their removal from the classroom, a phenomenon known as school push-out.<sup>2</sup> For example, recent national data show that Black children comprised 37% of all children suspended during the 2017 to 2018 academic year (the most recent available national data), despite representing just 15% of the 2.5 million students enrolled in public schools.<sup>3</sup> Reviews of data have found that Black students are subjected to more frequent punishment for subjective<sup>4</sup> and low-level infractions, more likely to receive harsher punishment for the same infractions as their white peers,<sup>5</sup> more likely to be subjected to exclusionary interventions,<sup>6</sup> and more likely to have the police called on them.<sup>7</sup> These disciplinary responses begin early in Black children's educational trajectories, with one study of early child-

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2. Exclusionary discipline occurs when students are removed from the classroom, either temporarily, in the case of suspension, or permanently, in the case of expulsion. See Susanna K. Jain, Nathaniel Beers & Ryan Padrez, *Am. Acad. of Pediatrics, School Suspension and Expulsion: Policy Statement*, Pediatrics, Oct. 2024, at 1, 1. Exclusionary discipline is one of the more severe forms of disciplinary responses that schools can institute. See *id.* School pushout is the latest in a centuries-old endeavor to maintain racial hierarchy through American public education. Cara McClellan, *Challenging Legacy Discrimination: The Persistence of School Pushout as Racial Subordination*, 105 B.U. L. Rev. 641, 699 (2025). Another way of pushing a student out of school is through disenrollment, which occurs when administrators strike a student from the enrollment rolls. See Tonja Jacobi & Riley Clifton, *The Law of Disposable Children: Discipline in Schools*, 2023 U. Ill. L. Rev. 1123, 1156–57.

3. See Lora Henderson Smith, Jessika H. Bottiani, Joseph M. Kush & Catherine P. Bradshaw, *The Discipline Gap in Context: The Role of School Racial and Ethnic Diversity and Within School Positionality on Out-of-School Suspensions*, 98 J. Sch. Psych. 61, 61 (2023).

4. See Jason P. Nance & Michael Heise, *Law Enforcement Officers, Students, and the School-to-Prison Pipeline: A Longitudinal Perspective*, 54 Ariz. St. L.J. 527, 552 (2022) (finding that racial bias influences educators' decisions related to subjective discipline categories, such as "disrespect" or "defiance").

5. Race has been a consistent factor when Black students receive harsh punishment, even when compared to students of other races "who have the same disciplinary records or who committed the same infraction." Harold Jordan, *Why School Discipline Reform Still Matters*, ACLU (Oct. 19, 2023), <https://www.aclu.org/news/racial-justice/why-school-discipline-reform-still-matters> [<https://perma.cc/ZCD3-BB6X>].

6. This is compared to white students who commit the same infractions. *Id.* "By age 9, about 40% of Black boys and 15% of Black girls who live in urban areas have already been suspended or expelled at least once." See Jain et al., *supra* note 2, at 2. But expulsion data do not capture the informal ways that students are pushed out of school, including by being encouraged to transfer to other schools. See Jacobi & Clifton, *supra* note 2, at 1128.

7. Data also show that administrators are more likely to report incorrect data that understates the impact of discriminatory discipline on Black students and that administrators are unable to provide explanations for such disparate treatment. See Jordan, *supra* note 5.

hood educators concluding that they expected Black students to misbehave.<sup>8</sup> Consistent with this finding, national data show that Black preschoolers are 2.5 times more likely to receive one or more suspensions than their share of the total preschool population.<sup>9</sup> Black preschoolers were expelled at two times their share of the total preschool population.<sup>10</sup> Despite research showing that Black children do not misbehave at higher rates than their white peers, Black children are punished more frequently and more severely (often for minor, nonviolent offenses).<sup>11</sup>

These exclusionary practices are especially pervasive in majority-Black schools. Data show that many majority-Black districts employ what is termed “hard discipline,”<sup>12</sup> or the use of carceral-like disciplinary measures, which includes the widespread use of metal detectors, random sweeps for contraband, employment of School Resource Officers (SROs),<sup>13</sup>

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8. See Benjamin W. Fisher, Ethan M. Higgins, Aaron Kupchik, Samantha Viano, F. Chris Curran, Suzanne Overstreet, Bryant Plumlee & Brandon Coffey, *Protecting the Flock or Policing the Sheep?: Differences in School Resource Officers’ Perceptions of Threats by School Racial Composition*, 69 *Soc. Probs.* 316, 319 (2022) (citing Walter S. Gilliam, Angela N. Maupin, Chin R. Reyes, Maria Accavitti & Frederick Shic, Yale Child Study Ctr., *Do Early Educators’ Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?* (2016), <https://marylandfamiliesengage.org/wp-content/uploads/2019/07/Preschool-Implicit-Bias-Policy-Brief.pdf> [<https://perma.cc/R6DJ-ZZ3F>]).

9. Off. for C.R., U.S. Dep’t of Educ., *Discipline Practices in Preschool: 2017–18 Civil Rights Data Collection (CRDC)* (2021), <https://civilrightsdata.ed.gov/assets/downloads/crdc-DOE-Discipline-Practices-in-Preschool-part1.pdf> [<https://perma.cc/2T6J-3HAS>]. In addition, Black preschool girls comprised 8.6% of the total preschool enrollment but received 9.1% of one or more out-of-school suspensions. *Id.*

10. See *id.* And disparities compound over time, with one study noting that some teachers who stereotype Black children as troublemakers respond to their misbehavior more harshly. Jason A. Okonofua & Jennifer L. Eberhardt, *Two Strikes: Race and the Disciplining of Young Students*, 26 *Psych. Sci.* 617, 618 (2015). Thus, the expectation of misbehavior can feed future misbehavior, becoming a kind of self-fulfilling prophecy, contributing to a cycle of discipline infractions. *Id.*

11. Black children are suspended and arrested at higher rates than white children, despite empirical research showing that Black children do not misbehave at higher rates. See Barbara A. Fedders, *The End of School Policing*, 109 *Calif. L. Rev.* 1443, 1489 (2021); see also Russell J. Skiba, Robert H. Horner, Choong-Geun Chung, M. Karega Rausch, Seth L. May & Tary Tobin, *Race Is Not Neutral: A National Investigation of African American and Latino Disproportionality in School Discipline*, 40 *Sch. Psych. Rev.* 85, 87 (2011).

12. Scholar Jason Nance refers to such disciplinary approaches as “strict security measures,” which he defines as including metal detectors, random sweeps for contraband, surveillance cameras, and the hiring of police or guards who surveil students. Jason P. Nance, *Students, Security, and Race*, 63 *Emory L.J.* 1, 5 (2013).

13. “SROs are a common form of school-based policing in which sworn officers with arrest power are assigned to a school . . . and typically are not trained as educators. Although some work for school district police departments . . . others report to local law enforcement agencies and are . . . not school district employees.” F. Chris Curran, Benjamin W. Fisher, Samantha Viano & Aaron Kupchik, *Why and When Do School Resource Officers Engage in School Discipline? The Role of Context in Shaping Disciplinary Involvement*, 126 *Am. J. Educ.* 33, 35 (2019) (citation omitted).

controlled access to school grounds, and security cameras.<sup>14</sup> Specifically, studies find that schools with larger proportions of students of color are more prone to rely on exclusionary school discipline and security policies.<sup>15</sup> One study found that more Black students within a school correlated with increased discipline and suspension rates as well as decreased use of restorative practices.<sup>16</sup> The kinds of offenses that students are sanctioned for are also notable as they tend to be subjective, low-level offenses that often do not mirror the level of sanction imposed.<sup>17</sup>

Students impacted by these punitive and exclusionary discipline practices suffer a range of “citizenship harms”<sup>18</sup> that jeopardize their educational futures. These citizenship harms include decreased likelihood of graduating from high school,<sup>19</sup> lost instructional time, stigmatization, and

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14. See Nance, *supra* note 12, at 5; see also LaToya Baldwin Clark, *Barbed Wire Fences: The Structural Violence of Education Law*, 89 U. Chi. L. Rev. 499, 509–10 (2022) (noting that many Black children growing up in segregated communities attend segregated schools that leave them “intergenerationally ‘stuck in place,’” marginalized as children and later as adults (quoting Patrick Sharkey, *Stuck in Place: Urban Neighborhoods and the End of Progress Toward Racial Equality* (2013))).

15. Fisher et al., *supra* note 8, at 319. And research indicates that punitive discipline is more severe in segregated schools that primarily serve Black and Latinx students. See McClellan, *supra* note 2, at 687.

16. Odis Johnson Jr., Jason Jabbari, Maya Williams & Olivia Marcucci, *Disparate Impacts: Balancing the Need for Safe Schools With Racial Equity in Discipline*, 6 *Pol’y Insights From Behav. & Brain Scis.* 162, 165 (2019).

17. According to one study, 55% of out-of-school suspensions and 72% of in-school suspensions issued in Washington, D.C., schools in 2018 and 2019 were for nonviolent incidents. Melanie Leung-Gagné, Jennifer McCombs, Caitlin Scott & Daniel J. Losen, *Learning Pol’y Inst., Pushed Out: Trends and Disparities in Out-of-School Suspension* 21 (2022), [https://learningpolicyinstitute.org/media/3885/download?inline&file=CRDC\\_School\\_Suspension\\_REPORT.pdf](https://learningpolicyinstitute.org/media/3885/download?inline&file=CRDC_School_Suspension_REPORT.pdf) [<https://perma.cc/6VE8-5S3U>].

18. Professor Robin Lenhardt describes these “citizenship harms” as those that occur when a policy or action marks a group or person as inferior to white people, who are considered the norm against whom others are measured. These citizenship harms prevent individuals who are marked as racially different from fully participating in society. See R.A. Lenhardt, *Understanding the Mark: Race, Stigma, and Equality in Context*, 79 N.Y.U. L. Rev. 803, 844 (2004). School discipline creates “uniquely racial harm” for nonwhite students by pushing them into the school-to-prison pipeline and inflicting citizenship harms, including economic and psychological injuries. See David Simson, *Exclusion, Punishment, Racism and Our Schools: A Critical Race Theory Perspective on School Discipline*, 61 UCLA L. Rev. 506, 519 (2014).

19. See U.S. Gov’t Accountability Off., *GAO-20-455, K–12 Education: Characteristics of School Shootings* 10 (2020), <https://www.gao.gov/assets/gao-20-455.pdf> (on file with the *Columbia Law Review*) [hereinafter U.S. Gov’t Accountability Off., *Characteristics of School Shootings*] (“[R]esearch has shown that students who are suspended from school lose important instructional time, are less likely to graduate on time, and are more likely to repeat a grade, drop out of school, and become involved in the juvenile justice system.” (citing U.S. Gov’t Accountability Off., *GAO-18-258, K–12 Education: Discipline Disparities for Black Students, Boys, and Students With Disabilities* (2018), <https://www.gao.gov/assets/700/692095.pdf> (on file with the *Columbia Law Review*))). Furthermore, high rates of discipline disparities among students of color contribute to more exposure to the criminal legal system and decreased likelihood of higher education attendance and completion. See

lower grades.<sup>20</sup> Students subjected to arrest are exposed to early contact with the criminal legal system and are vulnerable to immigration authorities as well as other agencies to which their criminal status may be reported.<sup>21</sup> These harms contravene the aspirations of *Brown v. Board of Education*, which established that education was foundational to full citizenship.<sup>22</sup>

Certainly, racial bias—specifically anti-Black carceral logic—plays a role in the perpetuation of these discipline disparities among Black children. Anti-Black carceral logic is defined as a punitive mindset that centers on control and punishment—including physical control, surveillance, and even violence—in the name of safety.<sup>23</sup> Indeed, Black students are often perceived as threats to school safety and as inherently criminal.<sup>24</sup> Furthermore, educational decisionmakers’ perceptions of Black children translate into negative disciplinary responses to them.<sup>25</sup> These assumptions are often unshakeable, regardless of good behavior.<sup>26</sup> One study reported that

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Adai A. Tefera, Genevieve Siegel-Hawley, Ashlee Sjogren & David Naff, *Disrupting Disparities in School Discipline*, Kappan Online (Mar. 25, 2024), <https://kappanonline.org/disrupting-disparities-in-school-discipline> [https://perma.cc/UK3M-SMTN]. “In sum, the complex, coinciding, and cumulative impacts of discriminatory policies and court rulings over time have created and sustained educational disparities over decades and diminished educational opportunities for Black students.” Smith et al., *supra* note 3, at 63 (citation omitted).

20. See D.C. Police Reform Comm’n, *Decentering Police to Improve Public Safety: A Report of the DC Police Reform Commission* 68 (2021), <https://dccouncil.gov/wp-content/uploads/2021/04/Police-Reform-Commission-Full-Report.pdf> [https://perma.cc/D5EK-V4EC] (“Once arrested, youth as well as their families can face an array of seemingly endless collateral consequences, including: loss of instructional time and course credits, lower grades, legal costs and court fees, separation from family, . . . [and] harmful psychological effects . . .”).

21. See *id.*

22. 347 U.S. 483, 493 (1954) (“Compulsory school attendance laws . . . demonstrate our recognition of the importance of education to our democratic society. . . . It is the very foundation of good citizenship . . . [and] it is doubtful that any child may reasonably be expected to succeed in life if . . . denied the opportunity of an education.”).

23. See Christy E. Lopez, *Abolish Carceral Logic*, 17 *Stan. J. C.R. & C.L.* 379, 386 (2022).

24. Black students are arrested and suspended at higher rates, despite research showing that they do not misbehave at higher rates. See Fedders, *supra* note 11, at 1488–89; see also Skiba et al., *supra* note 11, at 1088. As scholar Michael Dumas concludes of anti-Blackness in education policy, “the Black is constructed as always already problem—as nonhuman; inherently uneducable, or at very least, unworthy of education; and, even in a multiracial society, always a threat to what Sexton described as ‘everything else.’” Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 *Theory Into Prac.* 11, 16 (2016) (citation omitted) (quoting Jared Sexton, *Amalgamation Schemes: Antiblackness and the Critique of Multiracialism* 13 (2008)).

25. See Johnson et al., *supra* note 16, at 164 (describing how school personnel’s discretion when determining discipline is impacted by the student’s racial background).

26. Cf. James Forman Jr., *Locking Up Our Own: Crime and Punishment in Black America* 155 (2017) (“Even proof of innocence is dismissed by a system incapable of questioning the assumptions that led it to mark you as guilty.”).

school authorities perceive Black students to be more threatening than their white counterparts.<sup>27</sup> This bias is evidenced in another study's findings that Black students received more punitive sanctions than white students did—even when involved in the same fight as their white peers.<sup>28</sup> But anti-Black carceral logic alone does not account for the prevalence of hard discipline in many majority-Black schools.

This Article locates the exercise of what is termed throughout as “classic localism” as a contributing factor in the shaping of school discipline regimes. Classic localism refers to the theory favoring decentralized and autonomous local governance structures.<sup>29</sup> Classic localism prioritizes the ability of local communities to exercise the absolute right to govern themselves.<sup>30</sup> For example, a state is considered a centralized governance structure, while a city council is considered a local governing structure. States are responsible for the provision of public education, as a federal right to education is not articulated in the U.S. Constitution.<sup>31</sup> In turn, state legislatures delegate educational decisionmaking power to districts.<sup>32</sup> But school districts are shaped by local government decisions, including school siting decisions and the drawing of district boundary lines.<sup>33</sup> Courts have provided significant deference to classic localism as described in detail in Part I—essentially opting to not interfere with local education decisions.

In the education context, district boundary lines often define the parameters of local education governance, with most students attending schools in the communities in which they live—with a few exceptions.<sup>34</sup> For example, in Washington, D.C., students can attend schools outside of their local attendance zones (e.g., close to where their families live) by

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27. Fisher et al., *supra* note 8, at 331.

28. Nathan Barrett, Andrew McEachin, Jonathan N. Mills & Jon Valant, Disparities and Discrimination in Student Discipline by Race and Family Income, 56 J. Hum. Res. 711, 744–45 (2021) (concluding that, although it is hard to provide conclusive evidence of racial bias, intentional discrimination plays a role in disciplinary responses).

29. See Erika K. Wilson, The New School Segregation, 102 Corn. L. Rev. 139, 179 (2016) [hereinafter Wilson, New School Segregation] (“Localism is broadly defined as an ideological preference for decentralized, independent local government structures.”).

30. *Id.* at 179–80 (“[O]ne of the central tenets of classic localism is that the provision of government services should be subject *primarily* to the control of local governments . . .”).

31. See S.A. Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973) (“Education, of course, is not among the rights afforded explicit protection under our Federal Constitution. Nor do we find any basis for saying it is implicitly so protected.”).

32. See Erika K. Wilson, Toward a Theory of Equitable Federated Regionalism in Public Education, 61 UCLA L. Rev. 1416, 1421 n.17 (2014) [hereinafter Wilson, Equitable Federated Regionalism] (“Though the provision of public education is one of the powers reserved to the states under the Tenth Amendment to the U.S. Constitution, most state legislatures delegate this power to school districts.”).

33. *Id.* at 1421.

34. See *id.*

opting into a lottery system known as “My School DC.”<sup>35</sup> But district boundaries are not benign accidents of geography, as they are often crafted by local governance structures and tend to perpetuate racial and economic segregation.<sup>36</sup> Indeed, Professor Erika Wilson identifies deference to localism as well as municipal fragmentation, or the existence of multiple local governments within a metropolitan area, as primary contributors to racial and economic segregation.<sup>37</sup> This Article uses the term “localities” to refer to the various fragmented local government structures (e.g., municipalities, cities, counties, school boards, zoning commissions, and so on) that shape the provision of public services for a defined local geographic area. It also recognizes that schools as well as districts can be “localities” in the sense that they are loci of educational decisionmaking. These localities’ decisions have significant repercussions for the provision of public education. For example, segregated neighborhoods, resulting from zoning commission decisions, beget segregated school districts.<sup>38</sup>

This Article proposes that a significant contributor to reliance on exclusionary discipline in many majority-Black schools and districts is the exercise of “defensive localism”—or parochial power exercised in a destructive manner—by majority-Black schools and districts. As a result of segregative policies, these districts tend to be not only racially segregated but also economically segregated, with high numbers of low-income students.<sup>39</sup> This Article notes how segregated, under-resourced, majority-Black schools and districts are deprived of the benefits of classic localism.<sup>40</sup> Instead, these schools and districts employ defensive localism to exclude.

While no school or district is a monolith, this Article concludes that considerations like resources, political capital (i.e., power), and community (such as neighborhood, society, social group, or place comprised of similarly situated individuals) shape school disciplinary regimes. Many

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35. See My School DC, <https://www.myschooldc.org/> [https://perma.cc/K68R-KRTZ] (last visited Aug. 20, 2025).

36. See Wilson, *Equitable Federated Regionalism*, *supra* note 32, at 1418 (noting that district boundary lines are the product of structures that foster residential segregation based on race and class).

37. See *id.* at 1421.

38. See *id.* at 1420.

39. Wilson, *New School Segregation*, *supra* note 29, at 187 (observing that when school district boundary lines track municipal boundary lines, school districts in less affluent areas absorb a disproportionate share of poor and minority students).

40. This is consistent with Professor Richard Briffault’s conclusion that localism masks the ways that public life has become privatized. See Richard Briffault, *Our Localism: Localism and Legal Theory* (pt. 2), 90 *Colum. L. Rev.* 346, 452 (1990) [hereinafter Briffault, *Localism II*]. “When municipalities feel powerless, a parochial mindset takes over and prompts them to use the limited power they do have to protect their resources from those outside of the municipality.” Wilson, *New School Segregation*, *supra* note 29, at 198. This Article argues that districts (and their schools) deprived of the authority and autonomy to exclude ultimately do so through exclusionary discipline practices.

majority-Black, urban school districts tend to be under resourced due to the exercise of what Wilson terms “destructive localism,” which occurs when white suburban districts hoard resources and exclude low-income and Black families to the detriment of neighboring Black school districts, which must take all comers because they cannot exercise the power of exclusion.<sup>41</sup> Consequently, many majority-Black, urban schools are left in the wake of destructive localism and must absorb those students and families who are not only considered undesirable but also tend to carry more costs due to the effects of living in areas of concentrated poverty.<sup>42</sup> Yet these schools also seek to exercise autonomy and authority, however limited, by pushing out students whose behavior is particularly hard or costly to manage.

This Article applies the concept of defensive localism to school discipline to describe the motivations undergirding the prevalence of exclusionary discipline in many majority-Black schools. Other scholars have applied the theory of classic localism to analyze how it perpetuates educational inequities through facially neutral policies, such as municipal secessions, which occur when a territory incorporates itself as a new municipality (detaching itself from one recognized municipality and forming its own) or joins another one.<sup>43</sup> Essentially, municipal secessions result when a territory forms new geographic boundary lines that have social, legal, and political meaning.<sup>44</sup> Wilson has described how municipal secessions have perpetuated school segregation, such as in Alabama’s Jefferson County School District, from which several predominantly white suburbs seceded despite the district being under a federal school desegregation order.<sup>45</sup> She cites three main reasons for the allowance of such secessions: (1) permissive Alabama state law allowing school districts to easily leave county-based districts (which are usually larger and centrally governed) to form a new district; (2) lack of resistance from the Jefferson County Board of Education (despite the Board’s power to challenge a secession as

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41. As Wilson notes, destructive localism occurs when one group is afforded local autonomy and its members enjoy the benefits of classic localism to the detriment of their neighbors. See Wilson, *New School Segregation*, *supra* note 29, at 202.

42. See *id.* at 187; see also Bruce D. Baker, Learning Pol’y Inst., *How Money Matters for Schools 10* (2017), [https://learningpolicyinstitute.org/media/384/download?inline&file=How\\_Money\\_Matters\\_REPORT.pdf](https://learningpolicyinstitute.org/media/384/download?inline&file=How_Money_Matters_REPORT.pdf) (on file with the *Columbia Law Review*) (concluding that as student poverty increases, the costs of achieving any given academic outcome also increase and that these costs can amount to more than double for a district with 100% children from low-income households compared to a low-poverty district with no children from low-income households).

43. See Wilson, *New School Segregation*, *supra* note 29, at 164; see also Christopher Tyler Burks & Peter A. Jones, *Understanding the Determinants of School District Secessions*, 2 J. Soc. Equity & Pub. Admin., no. 2, 2024, at 81, 81. A common consequence of district secessions is further segregation by race and income, with white and affluent students often separated into suburban school districts. Burks & Peter, *supra*, at 181; see also Wilson, *New School Segregation*, *supra* note 29, at 195–96.

44. See Wilson, *New School Segregation*, *supra* note 29, at 164.

45. *Id.* at 166.

violative of the active school desegregation order); and (3) lack of court intervention to prevent such secession.<sup>46</sup> Driven by local residents and policymakers, the decision to secede was shrouded in the rationale of classic localism, including the desire to have local educational decisionmaking reflect the wishes of local residents, increased efficiency resulting from smaller school district size, and the creation of quality schools that would attract more employers and businesses.<sup>47</sup> The demographic changes aligned with new municipal boundary lines, however, often reflect the underlying racially segregative motivations of municipal secession—indeed, a national study found that newly created seceded districts often have whiter and more affluent student populations.<sup>48</sup>

Another example of classic localism can be found in local school funding systems, which tend to perpetuate interlocal inequality by relying on property values. Under such funding systems—because property values are often higher in wealthy, white communities than in poor, Black communities due to discriminatory policies—wealthy, white communities are able to raise more in funding for education.<sup>49</sup> This is the case even when poor, Black communities tax themselves at higher rates and wealthy, white communities tax themselves at lower rates.<sup>50</sup>

Like municipal secession and school funding laws, school discipline codes are facially race- and class-neutral, yet they perpetuate racial segregation and educational inequality.<sup>51</sup> Whether consciously or unconsciously, in seeking to take advantage of the “community” principle of classic localism, schools exercise defensive localism through punitive discipline that pushes out undesirable students.<sup>52</sup> Therefore, in analyzing this

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46. See *id.* at 166–67 (noting that after originally concluding that municipal secession would violate the active school desegregation order, the Fifth Circuit Court of Appeals reversed itself and permitted the creation of new school systems separate from the Jefferson County School District).

47. See *id.* at 168.

48. See Kendra Taylor, Erica Frankenberg & Genevieve Siegel-Hawley, *Racial Segregation in the Southern Schools, School Districts, and Counties Where Districts Have Seceded*, AERA Open, July–Sep. 2019, at 1, 6–10.

49. See Derek W. Black, *Localism, Pretext, and the Color of School Dollars*, 107 Minn. L. Rev. 1415, 1493 (2023) [hereinafter Black, *Color of School Dollars*] (concluding that “it is now, ironically, the local district itself—with its sacrosanct borders and funds—that creates barriers and entrenches inequality”).

50. See *id.* at 1417–19 (explaining that, while poor districts are unable to generate necessary resources despite “herculean efforts,” wealthier districts are easily able to meet their own needs).

51. See Thalia González & Will Martel, *Education Equity and Brown: Reform, Retrenchment, and Exclusionary School Discipline*, 16 Geo. J.L. & Mod. Critical Race Persp. 11, 18–19 (2024) (arguing that the facial neutrality of discipline codes serves as a “disguise” to “preserve white exclusivity in educational spaces”).

52. This Article acknowledges that majority-Black schools are not monolithic, and many lawmakers have acted in good faith to implement strategies that they believe will benefit students and communities. But discipline has also been weaponized in some schools to the detriment of students, depriving them of educational opportunities. It is important

phenomenon, this Article draws a throughline between place, power exercised through localism, and school pushout.

Part I analyzes how classic localism has been exercised by localities to perpetuate educational exclusion along racial and socioeconomic lines. It identifies the goals and principles of classic localism and details how localities have exploited them to segregate students and hoard educational resources and opportunities. It examines how classic localism has been exercised in many majority-white schools, including through the use of exclusionary discipline practices originating during the era of school desegregation. It also considers how these schools have employed so-called “race-neutral” strategies created through local power to reify larger societal racial divisions.

Part II analyzes disciplinary regimes in majority-white schools that enjoy citizenship benefits—like democratic participation, efficiency, and community—as a result of classic localism exercised by their surrounding communities.<sup>53</sup> It outlines how these schools also harm students through exclusion by making assumptions about who constitutes “community,” thereby obscuring real dangers that permit school violence to occur.

Part III analyzes how defensive localism manifests in many majority-Black schools through exclusionary school discipline practices. Many majority-Black schools implement punitive practices that shape the makeup of school communities and permit local officials to exert authority and autonomy. This Part also underscores the citizenship harms that such regimes wreak on impacted students.

Part IV explores alternatives to exclusionary school discipline regimes. It begins with a critique of the current federal role in further entrenching exclusionary discipline regimes. This critique is noteworthy because the federal government often sets the tone for state and local action. Furthermore, the current federal Administration is implementing policies that are re-entrenching the citizenship harms that undermine the promise of public education as critical to democratic participation.

To address these harms, Part V of this Article shares some practical considerations and lessons learned from localities that have taken steps to transform their exclusionary discipline regimes. This Article does not propose a one-size-fits-all solution for every school or district with unique circumstances, resources, or students. Instead, the discipline reform efforts outlined in Part V provide some practical insights into the tensions at play and various matters to consider when engaging in efforts to transform

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to recognize that many traditional, majority-Black schools succeed in providing nurturing, inclusive, and supportive environments for Black children. This Article seeks to highlight how defensive localism functions in many majority-Black schools to the detriment of students subjected to overly punitive disciplinary practices.

53. This section draws from Briffault’s observations, including his recognition that local autonomy, with its emphasis on “the decentralization of responsibility for the provision of public services and exercise of public power,” has been acknowledged by courts and academic theorists. Briffault, *Localism II*, *supra* note 40, at 452.

exclusionary disciplinary regimes shaped by ineffective exercises of defensive localism.

I. CLASSIC LOCALISM, DEFENSIVE LOCALISM, AND THE ORIGINS OF  
EXCLUSIONARY SCHOOL DISCIPLINE

Localism reflects a preference for decentralized, independent local government structures that mirror local preferences and promote autonomy.<sup>54</sup> The Supreme Court has recognized the sanctity of local control over public education.<sup>55</sup> The lauded principles of localism are (1) democratic participation, (2) efficiency in the allocation of resources, and (3) community formation through shared decisionmaking.<sup>56</sup> Indeed, proponents of localism considered schools to be the focal points of local communities, and, therefore, local control of education was understood as central to local autonomy.<sup>57</sup> A central tenet of classic localism is the idea that the provision of government services should be under local governments' control because they can center residents' interests.<sup>58</sup>

But local power can also be used to exclude and hoard educational opportunity to the detriment of other surrounding neighborhoods.<sup>59</sup> Critics of localism argue that, under "defensive localism," the confinement of power and autonomy to lower levels of government ensures that problems attendant with poverty are contained within "spatial and political boundaries."<sup>60</sup> Indeed, as Professor Richard Briffault has asserted, "Local governments are frequently created and defended not to strengthen local interests against the state but to insulate one set of local people or interests from the regulatory authority and population of another local government."<sup>61</sup> This

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54. See Richard Briffault, *Our Localism: The Structure of Local Government Law* (pt. 1), 90 *Colum. L. Rev.* 1, 1 (1990) [hereinafter Briffault, *Localism I*] ("The scholarly proponents of greater local power . . . make their case in terms of economic efficiency, education for public life and popular political empowerment . . ."); see also Wilson, *New School Segregation*, *supra* note 29, at 180 (outlining that a central tenant of classic localism is that government services are under the control of local governments that center the interest of local residents in decisionmaking).

55. See *Milliken v. Bradley*, 418 U.S. 717, 741–42 (1974) ("No single tradition in public education is more deeply rooted than local control over the operation of schools; local autonomy has long been thought essential both to the maintenance of community concern and support for public schools and to quality of the educational process.").

56. Wilson, *New School Segregation*, *supra* note 29, at 181.

57. Briffault, *Localism I*, *supra* note 54, at 26.

58. See Wilson, *New School Segregation*, *supra* note 29, at 180.

59. Accordingly, "[l]ocalism in this setting enables residents to believe that their range of concerns is, and ought to be, limited by local boundary lines." Briffault, *Localism II*, *supra* note 40, at 446.

60. See, e.g., Wilson, *New School Segregation*, *supra* note 29, at 195 (citing Margaret Weir, *Urban Poverty and Defensive Localism*, *Dissent Mag.*, Summer 1994, at 337, 342, <https://www.dissentmagazine.org/pdfs/weir%2094.pdf> [<https://perma.cc/6YQM-YUZW>]).

61. Briffault, *Localism I*, *supra* note 54, at 84.

use of localism to exclude is frequently critiqued for the racial animosity underlying it.<sup>62</sup> But that racial animosity is often shrouded, as classic localism ignores racial and economic divisions that shape American communities.<sup>63</sup> As Professor Sheryll Cashin argues, “[F]ragmentation gives effect to and inculcates a narrow conception of self-interest, one premised on cultural, racial, and economic differences that effectively blinds citizens to their potential regional allies.”<sup>64</sup>

Indeed, local authority has been granted constitutional cover for the facilitation of educational inequities between districts.<sup>65</sup> This assertion contravenes long-held legal reverence for localism<sup>66</sup> as a cornerstone of American democracy.<sup>67</sup> But localism “is not the foundation or natural order of public education.”<sup>68</sup> Instead, localism has been shown to undermine the primary goal of education—to prepare citizens for participation in American democracy.<sup>69</sup> As described in detail herein, education governance evolved from a regional to a local endeavor consistent with increasing efforts to entrench racial inequality in education. Local governance in education has often been leveraged to perpetuate inequities in education, such as through the drawing of school district boundary lines in segregative ways.

Despite the evidence of inequality, interlocal education inequities, which undermine the concept of education as a public good, have evaded legal critique due to deference to the concept of localism.<sup>70</sup> And interlocal wealth disparities can be significant.<sup>71</sup> Therefore, localism can have significant

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62. See, e.g., Wilson, *New School Segregation*, *supra* note 29, at 195 (explaining how localism is used to justify the allocation of public education resources along racial lines).

63. *Id.* at 194.

64. Sheryll D. Cashin, *Localism, Self-Interest, and the Tyranny of the Favored Quarter: Addressing the Barriers to New Regionalism*, 88 *Geo. L.J.* 1985, 2015 (2000) [hereinafter Cashin, *New Regionalism*].

65. “Despite the evidence of profound interlocal inequalities and the asserted tradition of legal powerlessness, state judges were often moved to vindicate local autonomy and were frequently unwilling to disturb the education funding and zoning responsibilities of local governments.” Briffault, *Localism I*, *supra* note 54, at 24.

66. See, e.g., *id.* at 1 (“Localism as a value is deeply embedded in the American legal and political culture.”). Furthermore, the Supreme Court has validated states’ delegation of power to local governments, despite the resulting inequities. *Id.* at 4.

67. See Margaret Weir, *Urban Poverty and Defensive Localism*, *Dissent Mag.*, Summer 1994, at 337, 339, <https://www.dissentmagazine.org/pdfs/weir%2094.pdf> [<https://perma.cc/6YQM-YUZW>] (explaining the federal government’s dual role in creating defensive localism).

68. Black, *Color of School Dollars*, *supra* note 49, at 1493.

69. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (“[E]ducation is perhaps the most important function of state and local governments. . . . It is the very foundation of good citizenship.”).

70. Briffault, *Localism I*, *supra* note 54, at 24, 112 (recognizing that state governments and courts have been hesitant to limit local power, even when the exercise of localism results in interlocal inequities).

71. *Id.* at 19 (observing that variations in interlocal wealth can be “enormous”).

implications for the provision of public education, which is often funded through local property tax revenue.<sup>72</sup> Under these local education funding schemes, wealthier communities can fund robust education, while poorer communities (which often require more funding to meet students' needs) cannot. Even when state aid is designed to fill local funding gaps, it is often insufficient.<sup>73</sup> As a result, local wealth largely dictates the quality of public education.

The next section describes how such communities often act in harmful ways to protect their wealth and entrench interlocal inequalities.

A. *Localism and Interlocal Inequities*

Interlocal educational disparities are bolstered by local governments' ability to exclude. In particular, those municipalities that make decisions regarding land use have exerted significant exclusionary power, such as through the creation of homogenous, wealthy, suburban communities that result in racially and economically homogenous school districts.<sup>74</sup> Land use policies restricting communities to single family homes and prohibiting the building of multifamily and low-income housing perpetuate this kind of racial and economic exclusion, as lower-income families are effectively priced out.<sup>75</sup> These zoning policies, which didn't amount to government restrictions on whom property could be sold to, instead restricted *how* the land could be used: Essentially, single-family land use zoning became a covert way of excluding Black families, who often could not afford single family homes.<sup>76</sup> Furthermore, state legislatures have validated these exercises of exclusionary power through the delegation of zoning power to local entities<sup>77</sup>—despite the reality that this power has often been weaponized to maintain racially and economically segregated communities.<sup>78</sup> These exclusionary zoning practices gained more popularity as de

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72. See Briffault, *Localism II*, *supra* note 40, at 355 (discussing how a city's self-reliance is relative to its local resource capacity).

73. See *id.* (“The core of local legal autonomy is defensive and preservative, enabling residents of more affluent localities to devote local taxable resources to local ends, exclude unwanted land uses and users and protect the autonomous local political structure that allows them to pursue local policies.”).

74. See Wilson, *New School Segregation*, *supra* note 29, at 143 (discussing how state and local laws permit municipalities to create distinct communities).

75. See Briffault, *Localism I*, *supra* note 54, at 22 (“Many localities exclude multi-family housing, mobile homes and all forms of subsidized housing.” (footnotes omitted)).

76. George Fatheree, *A Brief History of Racial Zoning and How to Reverse the Lasting Effects of Housing Discrimination*, *Urb. Land* (Feb. 20, 2024), <https://urbanland.uli.org/a-brief-history-of-racial-zoning-neighborhood-associations-and-municipal-zoning> [https://perma.cc/6MLP-8B5U].

77. Zoning and education in particular are areas in which state legislatures have been supportive of local power. Briffault, *Localism I*, *supra* note 54, at 113. Further, the Supreme Court has strongly validated the use of local power for land use regulation. *Id.* at 109.

78. The “favored quarter” insulates itself by engaging in “fiscal zoning,” a method of pricing out lower-income families and others deemed undesirable and in need of social

jure restrictions on residential properties—such as deed restrictions and racially restrictive covenants prohibiting the buying or selling of property to any nonwhite person—became legally impermissible.<sup>79</sup> Zoning power, or the regulation of land use, emerged as a new method of exclusion.

Communities seeking to protect their advantage often do so through the enactment of facially neutral laws (like those that determine how district boundary lines are drawn) that facilitate the exclusion and hoarding of education resources.<sup>80</sup> This opportunity hoarding perpetuates interlocal inequities, creating a system of “winners,” who successfully exercise localism and exclude and hoard resources, and “losers,” who must absorb otherwise excluded children and shoulder the social and fiscal costs of educating a more challenging population (due to factors like concentrated poverty and long-time deprivation of resources).<sup>81</sup> As aforementioned, due to many localities’ reliance on property values for education and a history of discriminatory practices affecting Black communities (like “redlining,” which resulted in lower property values for Black-owned homes,<sup>82</sup> or restrictive covenants<sup>83</sup> that prohibited the selling of property to Black

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services from their communities. See Cashin, *New Regionalism*, supra note 64, at 2015 (internal quotation marks omitted).

79. And it was not just the legal impermissibility of these kinds of racial restrictions that inspired reliance on zoning as an exclusionary tactic; it was also the difficulty of ensuring that all members of a community could agree to such restrictions. See Briffault, *Localism II*, supra note 40, at 367.

80. The United States government’s decentralized character has permitted the practice of exclusion. See Cashin, *New Regionalism*, supra note 64, at 1993 (attributing, in part, the prevalence of exclusionary regulation to the incentive structures created by the decentered character of American governance).

81. Localities’ power often deepens poverty and limits mobility for low-income people of color, deepening the gap between the haves who can afford higher costs and the have-nots who cannot. See Philip S. Voss, Rutgers L. Sch. Ctr. on L., Ineq. & Metro. Equity, *The End of the American Dream: How Localism Destroys Opportunity* (2013), <https://static1.squarespace.com/static/5b996f553917ee5e584ba742/t/5c1d4d990ebbe824dbfb8a18/1724083575925/The+End+of+the+American+Dream.pdf> [https://perma.cc/Q6V8-TKWN] (discussing the connection between zoning and inequality).

82. The Home Owners’ Loan Corporation created a four-color map and coded as red those communities that represented the “least desirable and least likely to receive loan assistance.” Erika K. Wilson, *The Legal Foundations of White Supremacy*, DePaul J. for Soc. Just., Summer 2018, at 1, 9, <https://via.library.depaul.edu/cgi/viewcontent.cgi?article=1168&context=jsj> [https://perma.cc/SU6Z-P8HL]. These were overwhelmingly Black, nonwhite, and immigrant communities. *Id.* This practice became known as “redlining” and resulted in lower property values for homes in many Black communities. *Id.*; see also Ta-Nehisi Coates, *The Case for Reparations*, *The Atlantic* (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631> (on file with the *Columbia Law Review*) (“Redlining . . . spread to the entire mortgage industry, which was already rife with racism, excluding black people from most legitimate means of obtaining a mortgage.”).

83. See Sheryll Cashin, *Brown v. Board of Education: Enduring Caste and American Betrayal*, 2024 Am. J.L. & Equal. 141, 153 [hereinafter Cashin, *Enduring Caste*] (discussing the “architecture of inequality” created by discriminatory policies, including racially restrictive covenants). Policies such as exclusionary zoning restricting the building of

people), majority-Black communities are unable to raise the same revenue through property taxes as white, wealthier communities.<sup>84</sup>

For example, Baltimore City and Baltimore County—geographies crafted by racially exclusionary and inequitable practices—are testaments to the enduring effects of intentional racially exclusionary residential practices. Baltimore was a port city distinguished by a Southern political economy and Northern industrialization.<sup>85</sup> By act of the state legislature, Baltimore City separated from Baltimore County in 1851.<sup>86</sup> Developers began crafting exclusive, segregated, white, suburban outlier communities—like those created by the Roland Park Company—as early as the 1890s.<sup>87</sup> Later, in the 1910s and 1920s, developers built single-family homes like those in Hunting Ridge to attract white Protestants.<sup>88</sup> The city enacted its (and the nation’s) first racial ordinance in 1910, and Black residents were subjected to fines or fees if they moved onto blocks that were designated only for white residents.<sup>89</sup> Although the Supreme Court declared such ordinances unconstitutional in 1917,<sup>90</sup> other mechanisms like local zoning became tools of exclusion to confine Black Baltimoreans to West and East Baltimore.<sup>91</sup> Black residents confined to redlined West and East Baltimore were also subjected to high rents and lower-quality housing conditions.<sup>92</sup> Subsequent development adhered to racial borders, including

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multifamily structures, the building of highways to create racially demarcated areas, the creation of racially restrictive covenants, the enactment of redlining, and the implementation of urban renewal projects have displaced Black people and restricted Black mobility. See Leland Ware, *Plessy’s Legacy: The Government’s Role in the Development and Perpetuation of Segregated Neighborhoods*, RSF: Russell Sage Found. J. Soc. Scis., Feb. 2021 at 92, 93.

84. See Cashin, *Enduring Caste*, supra note 83, at 154.

85. Baltimore, Maryland, Mapping Ineq., <https://dsl.richmond.edu/panorama/redlining/map/MD/Baltimore/context#loc=11/39.2984/-76.6417> [https://perma.cc/7XPL-9U43] [hereinafter *Baltimore Map*] (last visited Aug. 20, 2025).

86. Hist. & Architectural Pres. Div., Balt. City Dep’t of Plan., *History of Inequity in Baltimore* 2, <https://planning.baltimorecity.gov/sites/default/files/History%20of%20Inequity%20in%20Baltimore%209-12-18.pdf> [https://perma.cc/L47Q-C5QU] (last visited Aug. 20, 2025).

87. See *Baltimore Map*, supra note 85 (explaining that the Roland Park Company used restrictive covenants to create segregated communities in the Baltimore suburbs).

88. See *id.* (“Meanwhile, developer George R. Morris followed suit in the 1910s and 20s with his own clusters of segregated single-family detached homes on . . . Hunting Ridge . . . [and] channeled Baltimore’s white Protestant elites away from rowhouse neighborhoods . . .”).

89. *Fatheree*, supra note 76; see also *Baltimore Map*, supra note 85 (“African Americans faced fines and jail time if they moved onto a white block, as did the seller or landlord.”).

90. See *Buchanan v. Warley*, 245 U.S. 60, 78–79 (1917) (holding that the Civil Rights Act of 1866 and the Fourteenth Amendment prohibited local ordinances that prevented Black people from realizing the same civil rights as white people, including the right to live where one chose).

91. See *Baltimore Map*, supra note 85.

92. *Id.*

the construction of Martin Luther King Jr. Boulevard and high-rise public housing, which isolated redlined West Baltimore from downtown.<sup>93</sup> Community protest prevented the building of an interstate highway that would have further isolated Black Baltimoreans, but the building of a “highway to nowhere” displaced over 1,500 West Baltimore residents.<sup>94</sup>

Baltimore City’s and Baltimore County’s residential segregation has also perpetuated school segregation. In 1826, the Maryland General Assembly created schools only for white children under the age of ten.<sup>95</sup> Black children went without education or received religious instruction.<sup>96</sup> The Colored Sabbath School Union of Baltimore later created schools for Black children and trained Black educators, but Black children were prohibited from attending public high schools in Baltimore County.<sup>97</sup> It was not until 1952, due to efforts of the NAACP and the Baltimore Urban League, that the Polytechnic Institute enrolled twelve Black male students, making it the first integrated high school in Baltimore County (two years before *Brown v. Board of Education* would mandate school desegregation nationwide<sup>98</sup>).<sup>99</sup> Recent data reported to the Department of Education’s Office for Civil Rights (OCR) shows that, in the 2020 to 2021 school year, Baltimore City’s public school district was 75.7% Black (with only 7.5% of students identifying as white),<sup>100</sup> while Baltimore County’s public school district had a population of around 35% white students and 40% Black students<sup>101</sup>—enrollments that testify to the enduring effects of racial residential segregation.

Relatedly, under many education funding laws that link public services to the local tax base, those with the greatest needs (who are also frequently low-income and have lower tax payments) are more likely to receive worse public service.<sup>102</sup> Consequently, this lack of available public

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93. *Id.*

94. *Id.*

95. School Desegregation and Segregation in Maryland, Wide Angle Youth Media, <https://www.wideanglemedia.org/desegregation-timeline> [https://perma.cc/4EQB-MYSQ] (last visited Aug. 20, 2025).

96. See *id.* (explaining that, in the 1850s, only 1,200 Black students attended new schools opened by Black and white church congregations).

97. See *id.*

98. 347 U.S. 483, 495 (1954).

99. David Armenti, A Thorny Path: School Desegregation in Baltimore, Md. Ctr. for Hist. & Culture (May 15, 2014), <https://www.mdhistory.org/a-thorny-path-school-desegregation-in-baltimore> (on file with the *Columbia Law Review*).

100. Baltimore City Public Schools, U.S. Dep’t of Educ., [https://civilrightsdata.ed.gov/profile/us/md/baltimore\\_city\\_public\\_schools?surveyYear=2020&nces=2400090](https://civilrightsdata.ed.gov/profile/us/md/baltimore_city_public_schools?surveyYear=2020&nces=2400090) [https://perma.cc/CD5B-6AZM] (last visited Aug. 20, 2025).

101. Baltimore County Public Schools, U.S. Dep’t of Educ., [https://civilrightsdata.ed.gov/profile/us/md/baltimore\\_county\\_public\\_schools?surveyYear=2020&nces=2400120](https://civilrightsdata.ed.gov/profile/us/md/baltimore_county_public_schools?surveyYear=2020&nces=2400120) [https://perma.cc/W74G-L4HC] (last visited Aug. 20, 2025).

102. See Briffault, *Localism I*, *supra* note 54, at 21 (explaining that a difference in tax bases leads to interlocal wealth inequality, which in turn leads to inequalities in the quality of public education).

services contributes to concentrated poverty and both physical and social isolation of residents in high-poverty communities.<sup>103</sup> In these ways, classic localism can perpetuate racial and economic inequities and benefit what Professor Cashin calls the “favored quarter”—comprising white citizens who can build enclaves and exclude those deemed to be less desirable.<sup>104</sup>

Such hoarding of school resources contributes to inequities as groups form homogenous communities and reap the benefits of classic localism, while neighboring communities that must absorb the social and financial costs of the exclusion suffer harm.<sup>105</sup> Consequently, the way that children are assigned to schools based on residential boundaries deepens their isolation and denies quality educational opportunities to low-income Black children relegated to low-income and low-resourced schools.<sup>106</sup>

Resource hoarding perpetuates double segregation by both racial and economic composition.<sup>107</sup> One national study highlighting the school funding disparities between majority-white school districts and majority-Black and -Latinx<sup>108</sup> districts in the 2015 to 2016 school year found that nonwhite school districts received twenty-three billion dollars less than white

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103. See *id.* (explaining that the lower tax revenue available to be extracted from impoverished communities incentivizes local governments to isolate these communities and preserve the tax base of other, wealthier neighborhoods).

104. Cashin defines an area as a favored quarter if:

(1) it captures the largest or a disproportionate share of public infrastructure investments in the region; (2) it has the region's largest tax base and is the area of highest job growth; and (3) it retains local powers, which it uses in a manner that closes its housing markets to non-affluent regional workers, thus becoming “both socially and politically isolated from regional responsibilities.”

Cashin, *New Regionalism*, *supra* note 64, at 2004 (quoting Myron Orfield, *Seattle Metropolitix: A Regional Agenda for Community and Stability in the Puget Sound Region* 1–2 (1999)).

105. See Wilson, *New School Segregation*, *supra* note 29, at 202.

106. Baldwin Clark, *supra* note 14, at 514–15. Racial and economic segregation compound to bar many students from accessing high-quality education. See Erika K. Wilson, *Leveling Localism and Racial Inequality in Education Through the No Child Left Behind Act Public Choice Provision*, 44 *U. Mich. J.L. Reform* 625, 647 (2011) [hereinafter Wilson, *Leveling Localism*]. As Cashin similarly argues, racism birthed the Black ghetto, which birthed more racism. See Cashin, *Enduring Caste*, *supra* note 83, at 154 (discussing the vicious cycle of racial discrimination and residential segregation).

107. Indeed, legally sanctioned segregation along with resource inequities deepened racial inequality. See Victor Ray, *A Theory of Racialized Organizations*, 84 *Am. Socio. Rev.* 26, 34 (2019) (“Legalized school segregation coupled the racial schema of segregation with school resources to create meso-level structures that entrenched racial inequality.”). Briffault also notes how class divisions breed economic localism, which, he observes, “reflects and reinforces existing interpersonal and interlocal inequalities. By accepting the pre-existing distribution of wealth, economic localism prefers the interests of . . . the affluent over those of the poor and those of localities with healthy tax bases over those of localities with limited fiscal capacity.” Briffault, *Localism II*, *supra* note at 40, at 425.

108. Latinx is a gender-neutral term used to refer to people with roots in Latin America. Why Latinx/é?, *Colo. State U.: El Centro*, <https://elcentro.colostate.edu/about/why-latinx/> [https://perma.cc/SES6-VTRC] (last visited Sep. 8, 2025).

districts received that year, which translates to \$2,226 less in per-student spending in those schools compared to peer white schools.<sup>109</sup> These disparities exemplify the harm of segregated education. Indeed, the harm of segregation is not only racial separation but also the resource inequities that accompany segregated school systems. Stated another way, school funding disparities manifest in teacher salaries, instructional supports, class sizes, and other school characteristics that make a difference in student learning opportunities.<sup>110</sup> And the consequences of inadequate funding are long lasting. Poor children confined to underfunded schools are economically subordinated throughout their lifetimes, as their employment options are limited and, when they have families, their children are similarly likely to attend underfunded schools.<sup>111</sup> Interlocal educational inequities thus feed a cycle of poverty and inequality.<sup>112</sup> Furthermore, the motivations underlying separations are often racial and economic antagonisms, of which racial animus is the most enduring.<sup>113</sup> The nation's pervasive segregation has been termed "American apartheid."<sup>114</sup>

The history of education governance exposes the racial animus underlying resource disparities. Historically, education governance was not always localized. Education governance was originally centralized and

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109. EdBuild, \$23 Billion 4 (2019), <https://www.edbuildna.org/content/23-billion/full-report.pdf> [<https://perma.cc/ZBA9-PFCD>] (highlighting school funding disparities by drawing on census data on state and local school funding for the 2015 to 2016 school year). The study notes that because most education funding relies on local wealth, this gap mirrors the wealth divide in America, reinforced by the deeply fragmented nature of school district boundary lines, which are designed to exclude poorer families and protect wealth and resources. See *id.* at 1 ("Wealthy communities can use existing laws and political power to draw borders around themselves, keeping deep pockets of money in while leaving less-privileged children out."); see also Wilson, *New School Segregation*, *supra* note 29, at 148 (describing how secession from county-based school districts was, and remains, a common method used to avoid the desegregation of school districts).

110. See Baker, *supra* note 42, at 1.

111. See Baldwin Clark, *supra* note 14, at 521 ("Structural violence traps people in spaces of violence, poverty, and subordination where pain and suffering concentrate."). Furthermore, funding distribution determines the quality of teachers and support offered by schools. Leung-Gagné et al., *supra* note 17, at 26.

112. As sociologist Douglas Massey notes, those born into poverty are less likely to complete school, attend college, or secure employment, and more likely to be incarcerated—their opportunities are cut off from birth. Douglas S. Massey, *Segregation and Stratification: A Biosocial Perspective*, 1 *Du Bois Rev.* 7, 8 (2004).

113. Weir, *supra* note 67, at 339. A study of motivations behind the incorporation of new governments from the 1950s through the 1980s found that racial exclusion was the primary motivation. See Cashin, *New Regionalism*, *supra* note 64, at 1993–94. In addition, empirical literature has shown that race, not attractive local service offerings, as proposed by theorists who focus on the "market" aspects of localism, has been the strongest factor in influencing location decisions. See *id.*

114. See Weir, *supra* note 67, at 339 (internal quotation marks omitted) (quoting Douglas S. Massey & Nancy A. Denton, *American Apartheid: Segregation and the Making of the Underclass* (1993)).

largely under the control of the states.<sup>115</sup> During Reconstruction, state constitutions articulated the state's responsibility for the provision of public education and compulsory school attendance.<sup>116</sup> But when Reconstruction was halted by backlash known as Redemption,<sup>117</sup> local authorities largely wrested control over education matters from state governments and instituted localized means of creating racially inequitable education.<sup>118</sup> This history illustrates localism's roots as an exercise in entrenching racial divisions and concentrating power in the hands of local white decisionmakers.<sup>119</sup>

Despite the documented harms that can result from communities reaping the benefits of localism, courts have done little to address how it perpetuates racial inequities in education broadly. As early as 1850, in the case of *Roberts v. City of Boston*, the Supreme Judicial Court of Massachusetts deferred to the judgment of a local school committee in deciding to let school segregation stand in Boston.<sup>120</sup> In arriving at its decision to uphold segregated education, the court recognized the committee's power to assign students, which, so long as it was exercised reasonably, the court was inclined to uphold.<sup>121</sup> In deference to the committee, the court concluded:

The committee, apparently upon great deliberation, have come to the conclusion, that the good of both classes of schools will be best promoted, by maintaining the separate primary schools for colored and for white children, and we can perceive no ground to doubt, that this is the honest result of their experiences and judgment.<sup>122</sup>

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115. See Black, Color of School Dollars, *supra* note 49, at 1463.

116. During Reconstruction, Southern states created and implemented centralized state education governance with the intent that states would control the provision of public education. *Id.* (noting the role of state governments in funding and regulating public schools in the Reconstruction South).

117. By 1873, white Southerners called for an end to Reconstruction and the elimination of the civil rights granted to formerly enslaved Black people. Using mob violence, they killed Black leaders and terrorized emancipated Black people. See Reconstruction v. Redemption, Nat'l Endowment for the Humans. (Feb. 11, 2014), <https://www.neh.gov/news/reconstruction-vs-redemption#:~:text=In%20the%20aftermath%20of%20the,re%20Demerged%20in%20the%20South> [<https://perma.cc/PD3V-JNKN>].

118. With the end of Reconstruction came the end of state funding and control of education. Local education governance became a mechanism for implementing school segregation and educational inequality. See Black, Color of School Dollars, *supra* note 49, at 1465 ("When Reconstruction stalled and ended, . . . [l]ocal control and funding became the means for achieving segregation, discrimination, and inequality.").

119. Racism undergirded the decentralization of social policy in the 1980s and 1990s. See Weir, *supra* note 67, at 341 (highlighting how racial antagonism provided the subtext for the devolution of social policy to localities that were increasingly divided along racial lines).

120. 59 Mass. (5 Cush.) 198, 209–10 (1849).

121. *Id.*

122. *Id.* at 209.

The *Roberts* case was later relied on by the Supreme Court in *Plessy v. Ferguson* to validate the “separate but equal” regime of Jim Crow.<sup>123</sup> *Roberts* set the precedent for the constitutional insulation of localism in education matters.

In another example of courts’ reluctance to condemn the use of local power to perpetuate racial inequities in education, the Supreme Court upheld racially inequitable local school funding laws in *Cumming v. Richmond County Board of Education*.<sup>124</sup> *Cumming* involved a challenge brought by Black residents against the Richmond Board of Education’s decision to close the existing high school for Black children while still taxing Black residents to maintain the white high school.<sup>125</sup> The Court held that the decision to tax Black residents to fund the white high school (in maintenance of segregated education) was not a violation of equal protection.<sup>126</sup> It reasoned that education matters belonged to the respective states and it could only interfere in the case of clear and unmistakable disregard of constitutional rights.<sup>127</sup> Consequently, the Court refused to grant an injunction against the collection of taxes from Black residents to maintain the white high school.<sup>128</sup>

In addition, school finance litigation challenging interlocal resource disparities perpetuated by localism has resulted in limited relief. In *San Antonio Independent School District v. Rodriguez*, the Court refused to recognize a federal right to education when denying relief to plaintiffs isolated in segregated, low-wealth, and low-resourced school districts.<sup>129</sup> This ruling essentially foreclosed federal relief for interlocal resource inequities.<sup>130</sup> The Court validated states’ delegation of regulatory power and fiscal responsibility to local governments in spite of the inequities localism perpetuates.<sup>131</sup> The Court deferred to localities in funding public education, in essence holding that local control was worth any interlocal

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123. 163 U.S. 537, 544 (1896) (relying in part on *Roberts*’s reasoning to enshrine the separate but equal regime); *id.* at 552 (Harlan, J., dissenting) (coining the phrase “separate but equal”).

124. 175 U.S. 528, 542 (1899). All states, excluding North Carolina, established constitutional requirements to fund education through property taxes. See Black, Color of School Dollars, *supra* note 49, at 1465. Five states enacted segregated school funding laws, allowing local officials to implement discriminatory funding schemes. See *id.* at 1466–67.

125. *Cumming*, 175 U.S. at 529–31.

126. *Id.* at 544–45.

127. *Id.* at 545.

128. *Id.*

129. 411 U.S. 1, 33–37 (1973). Many scholars have written extensively about this case, and this Article does not seek to analyze it closely. It is worth mentioning because it exemplifies how reluctant the Court has been to intervene in local education matters, even while acknowledging the prevalence of racial and socioeconomic inequities perpetuated by local decisionmaking.

130. See Charles J. Ogletree Jr. & Kimberly Jenkins Robinson, Inequitable Schools Demand a Federal Remedy, *Educ. Next*, Spring 2017, at 71, 72.

131. See Briffault, Localism I, *supra* note 54, at 5.

inequities resulting from local spending decisions.<sup>132</sup> The Court demonstrated that it favored localized education over the ability of poor children of color to access quality education.<sup>133</sup> As a result, school resource inequities along the lines of race and geography have endured in the decades following *Rodriguez*.<sup>134</sup>

In *Milliken v. Bradley*, decided a year after *Rodriguez*, the Court's deference to localism provided constitutional cover to school districts formed as the result of white flight to the suburbs to evade federal school desegregation orders in Detroit.<sup>135</sup> In reaching its ruling, the Court recognized the significance of local control over public education and concluded that the dozens of surrounding all-white suburban school districts could not be required by a state law to participate in a school desegregation plan with majority-Black Detroit city schools absent a showing that the district boundary lines were drawn with racist intent.<sup>136</sup>

As they criticized *Rodriguez*'s foreclosure of federal relief for school funding inequities, scholars have similarly criticized *Milliken* as the death knell for *Brown*'s promise of continued federal court support for school desegregation.<sup>137</sup> In *Milliken*, localism trumped the need for a desegregation remedy. Essentially, a preference for local control subverted the right of Black children to attend desegregated schools.<sup>138</sup> Furthermore, the *Milliken* case demonstrates how exclusion perpetuates resource and opportunity hoarding.<sup>139</sup> The Court's jurisprudence has legally and culturally

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132. See *id.* at 99.

133. Wilson, *Leveling Localism*, *supra* note 106, at 639.

134. As one report notes, "Recent analyses of data prepared for [school funding lawsuits] in more than 20 states have found that . . . schools serving large numbers of students of color and students from low-income families have significantly fewer resources than schools serving more affluent White students." Linda Darling-Hammond, Learning Pol'y Inst., Investing for Student Success: Lessons From State School Finance Reforms I (2019), [https://learningpolicyinstitute.org/media/348/download?inline&file=Investing\\_Student\\_Success\\_REPORT.pdf](https://learningpolicyinstitute.org/media/348/download?inline&file=Investing_Student_Success_REPORT.pdf) [<https://perma.cc/AM74-V3VZ>].

135. See 418 U.S. 717, 751–53 (1974); Michelle Adams, *The Containment: Detroit, the Supreme Court, and the Battle for Racial Justice in the North* 309–76 (2025) (providing a compelling portrait of Detroit and the social and political dynamics influencing the *Milliken* decision and its aftermath).

136. See *Milliken*, 418 U.S. at 745–47.

137. See generally Adams, *supra* note 135, at 309–76 (describing the struggle of Detroit to integrate its public schools against the Court's decision in *Milliken*).

138. Like the *Rodriguez* Court, the Court in *Milliken* deferred to local control at the price of effectuating school integration. See Wilson, *New School Segregation*, *supra* note 29, at 641 (arguing that the Court's approach in *Milliken* favored local control, particularly of school district boundary lines).

139. As Cashin has described:

The [*Milliken*] decision essentially insulated predominately white suburban school districts from the constitutional imperatives of *Brown*; gave suburban citizens more incentive to create their own separate school districts; and offered white parents in urban districts, fearful of school desegregation, havens of predominately white public schools to which they could flee.

normalized racially segregated education, as if it were inevitable.<sup>140</sup>

One need only see the current geography of educational inequities along racial and socioeconomic lines to understand *Milliken*'s impact in providing constitutional refuge for white flight. A 2022 report by the Government Accountability Office (GAO) outlined the nation's state of segregated education, noting that during the 2020 to 2021 school year, more than one-third of students nationwide (about 18.5 million) attended schools in which 75% or more of students were of a single race or ethnicity.<sup>141</sup> The report also found that 14% of students attended schools in which 90% or more of the students were of a single race or ethnicity.<sup>142</sup> The report attributed this racial division to the drawing of district boundary lines in segregative ways.<sup>143</sup>

This research shows that exercises of local power are not neutral; often, wealthy, white communities act to exclude and isolate themselves, hoarding educational resources and deepening interlocal inequality.<sup>144</sup> These exercises of defensive localism—particularly exclusionary practices, which have been termed “fiscal zoning”—are responsible for perpetuating racial and socioeconomic educational inequities.<sup>145</sup>

The next section locates the roots of exclusionary school discipline as an outgrowth of local power following the onset of school desegregation,

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Sheryll D. Cashin, *American Public Schools Fifty Years After Brown: A Separate and Unequal Reality*, 47 *How. L.J.* 341, 347 (2004). Dean James Ryan observed that *Milliken* essentially eliminated the possibility that the educational futures of children in urban and suburban schools would be tied. See News Editor, *Brown* at 60 and *Milliken* at 40, *Harv. Graduate Sch. of Educ.: Ed. Mag.* (June 4, 2014), <https://www.gse.harvard.edu/ideas/ed-magazine/14/06/brown-60-and-milliken-40> (on file with the *Columbia Law Review*) (“*Milliken* . . . limited the reach of *Brown* by making clear that desegregation would not touch the suburbs. As a result, the education of urban and suburban students remains a world apart.”); see also Wilson, *New School Segregation*, *supra* note 29, at 200 (arguing that, due to the current state of the American education system, “there exists an almost ironclad link between a child’s ZIP code and her chances of success” (emphasis omitted) (quoting Corydon Ireland, *The Costs of Inequality: Education Is the Key to It All*, *U.S. News* (Feb. 16, 2016), <http://www.usnews.com/news/articles/2016-02-16/the-costs-of-inequality-education-is-the-key-to-it-all?page=2> [<http://perma.cc/7AFQ-6RJ6>])).

140. Wilson, *New School Segregation*, *supra* note 29, at 209 (arguing that, due to the Supreme Court’s school segregation jurisprudence, such segregation has become normalized).

141. U.S. Gov’t Accountability Off., GAO-22-104737, *K-12 Education: Student Population Has Significantly Diversified, but Many Schools Remain Divided Along Racial, Ethnic, and Economic Lines* 11 (2022), <https://www.gao.gov/assets/gao-22-104737.pdf> [<https://perma.cc/KJT3-9QJM>].

142. *Id.*

143. *Id.* at 19 (“Because school district boundaries typically define which schools a student can attend, school district boundaries can contribute to continued division along racial/ethnic lines.”).

144. See Cashin, *New Regionalism*, *supra* note 64, at 2015 (questioning the so-called neutrality of choices in community formation).

145. See *id.*

as segregated, white Southern communities fought to retain the educational advantage secured under the regime of Jim Crow segregation.

B. *School Desegregation, Localism, and Exclusionary School Discipline*

While this Article identifies a new connection between defensive localism and punitive school discipline regimes, the origins of the connection between localism and discipline are rooted in resistance to school desegregation.<sup>146</sup> Indeed, the South's response to the *Brown v. Board of Education (Brown I)* ruling not only provides a compelling demonstration of how localism has provided constitutional cover for discriminatory local acts but also ties this local power to the origins of exclusionary school discipline practices.<sup>147</sup> Southern lawmakers interpreted federal desegregation orders as unwanted federal interference in local education governance and a betrayal of long-held deference to localism.<sup>148</sup> The Supreme Court capitulated to this resistance in *Brown v. Board of Education (Brown II)*, essentially permitting Southern states and localities to outline their own timelines and means for effectuating school desegregation with a vague "prompt and reasonable" requirement for compliance.<sup>149</sup> The Court left it to local courts to evaluate whether Southern school districts' desegregation efforts were adequate, noting:

Full implementation of [*Brown I*] may require solution of varied local school problems . . . . [C]ourts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal.<sup>150</sup>

Once implementation of desegregation was back in the hands of local lawmakers throughout the South, they had the cover of localism to implement a variety of tactics to avoid school desegregation. For example,

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146. "[A]s the promise of integration threatened to end segregated educational spaces, segregationists maintained control through the legal removal of Black students vis-à-vis suspensions and expulsions, thereby preserving the 'spatial dimensions' of white supremacy." González & Martel, *supra* note 51, at 13 (footnote omitted) (quoting Subini Ancy Annamma, Mapping Consequential Geographies in the Carceral State: Education Journey Mapping as a Qualitative Method With Girls of Color With Dis/abilities, 24 *Qualitative Inquiry* 20, 20–21 (2017)).

147. 347 U.S. 483 (1954).

148. Framed under the theory of interposition—or resistance to federal interference in education matters—Southern lawmakers asserted that the *Brown* Court overstepped its authority by mandating that states desegregate schools. See Black, *Color of School Dollars*, *supra* note 49, at 1485.

149. See 349 U.S. 294, 300 (1955) (discussing the timeline for compliance with desegregation).

150. *Id.* at 299; see also Trina Jones, *Brown II: A Case of Missed Opportunity?*, 24 *Law & Ineq.* 9, 13–14 (2006) (noting that the Court handed desegregation back to the hands of district courts, some of which had supported segregation).

local policymakers throughout the South employed tactics such as creating student assignment schemes that maintained segregated schools, establishing “freedom of choice” programs that permitted white parents to choose segregated schools, redrawing district boundary lines in segregated ways, and invoking privatization using public funds to evade public school desegregation mandates.<sup>151</sup>

By 1957—just three years after *Brown I*—lawmakers in Southern and border states had enacted 136 new laws and state constitutional amendments designed to defy the ruling.<sup>152</sup> It wasn’t until the Supreme Court stepped back in and wrested responsibility for desegregation back into the hands of federal courts that Southern districts were required to act to eliminate vestiges of segregated education “root and branch” and fulfill requirements outlined by the Court to meet unitary status and be declared desegregated.<sup>153</sup>

Local lawmakers and white families resistant to school desegregation were able to access the benefits of localism, including democratic participation, efficiency (often by enacting anti-integration policies under emergency police power), and community.<sup>154</sup> In particular, white lawmakers and families coalesced around resistance to integration. Consequently, these communities found in school discipline a way to control school desegregation.<sup>155</sup> School discipline became a new method

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151. William M. Gordon, *School Desegregation: A Look at the 70’s and 80’s*, 18 J.L. & Educ. 189, 191 (1989) (discussing how freedom of choice plans in the South operated to perpetuate segregated school districts). As Southern districts were compelled to desegregate, Southern lawmakers found ways to push Black students out of classrooms, including criminalization of and overly punitive discipline responses to even minor infractions. See Jon N. Hale & Candace Livingston, “If You Want Police, We Will Have Them”: Anti-Black Student Discipline in Southern Schools and the Rise of a New Carceral Logic, 1961–1975, 49 J. Urb. Hist. 1035, 1036 (2023) (noting that “Southern school districts and state legislators worked in tandem with law enforcement to increase discipline and surveillance in newly desegregated spaces”). Southern school districts came up with a variety of creative ways to achieve segregated results without de jure segregation or prohibitions against integrated schools. See Jones, *supra* note 150, at 17.

152. Janel A. George, *Deny, Defund, and Divert: The Law and American Miseducation*, 112 Geo. L.J. 509, 524 (2024).

153. See *Green v. Cnty. Sch. Bd.*, 391 U.S. 430, 440 (1968) (holding that schools have a duty to create a unitary system and eliminate discrimination).

154. “Put another way, decentralization through localism allows the state to do implicitly what it cannot do explicitly for both legal and political reasons: divide and allocate public education resources on the basis of race and class.” Wilson, *New School Segregation*, *supra* note 29, at 195.

155. “If white schools could not keep African Americans from entering, they could still try to treat African Americans differently, including kicking out enough to keep the remaining students ‘in their place.’” Derek W. Black, *Ending Zero Tolerance: The Crisis of Absolute School Discipline* 12–13 (2016) [hereinafter Black, *Ending Zero Tolerance*]. Indeed, today’s rates of disproportionate school discipline can be traced to the early days of school desegregation. See González & Martel, *supra* note 51, at 20 (asserting that exclusionary school discipline laws and policies converted racist ideologies into legal mechanisms that justified the exclusion of Black students).

for excluding Black children from integrated schools, including by drawing on racial tropes of Black youth as criminal, dangerous, and disruptive to school environments.<sup>156</sup>

Essentially, school discipline and concerns about school safety became racially neutral ways to resist the eventuality of school desegregation.<sup>157</sup> Accordingly:

Southern school districts and state legislators worked in tandem with law enforcement to increase discipline and surveillance in newly desegregated spaces, changed laws to swiftly prosecute and remove youth from schools, and increasingly targeted youth with harsh disciplinary policies grounded in racist assumptions categorizing Black students as inherently violent.<sup>158</sup>

By 1974, two decades after *Brown I*, thirty-six states had codified the grounds on which a student could be suspended or expelled.<sup>159</sup> Furthermore, in the absence of state law, seven states granted legal authority to local administrators to define grounds for suspension and expulsion.<sup>160</sup> During the 1972 to 1973 school year, schools in 399 districts across five states suspended 7.8% of their Black students (compared to 3.9% of white students), and the following year, Black students comprised 66% of suspensions in thirty districts across nine states and the District of Columbia.<sup>161</sup>

Recognizing the racially discriminatory administration of school discipline during integration, advocacy groups like the Children's Defense Fund (CDF) and the NAACP Legal Defense and Educational Fund (LDF) urged federal lawmakers to address these practices. The CDF's 1974 report, *Children Out of School in America*, provided powerful insight into the ways that exclusionary discipline was being employed to push Black children out of integrated schools.<sup>162</sup> In analyzing data OCR collected from schools, CDF found that approximately one out of every twenty school-age children was suspended in the 1972 to 1973 school year.<sup>163</sup>

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156. White resistance to desegregation is integral to understanding the origins of exclusionary discipline. See McClellan, *supra* note 2, at 641.

157. *Id.* at 665 (associating the rise of school desegregation with the adoption of new disciplinary codes and high suspension and expulsion rates among Black students in newly desegregated schools); see also Kathryn E. Wiley, Miguel Trujillo & Yolanda (Yoli) Anyon, In-School Suspension Through the Lens of Whiteness as Property: Exploring a School District's Role in Maintaining Educational Inequality, 34 J. Sch. Leadership 210, 217 (2024) (theorizing that school discipline is a mechanism that protects white people's access to quality education and marginalizes those subjected to punitive policies).

158. See Hale & Livingston, *supra* note 151, at 1036.

159. See González & Martel, *supra* note 51, at 7.

160. *Id.*

161. *Id.* at 20.

162. Child's Def. Fund, Wash. Rsch. Project, Inc., *Children Out of School in America* (1974), <https://digital.lib.utk.edu/collections/islandora/object/cdf%3A385/datastream/PDF/view> [<https://perma.cc/JW9M-JQ5K>].

163. *Id.* at 124.

Closely reviewing OCR data from Arkansas, Maryland, New Jersey, Ohio, and South Carolina, CDF found that over 50% of the students suspended in those states were people of color, although minority students comprised less than 40% of the districts' total enrollment.<sup>164</sup> Further, review of the data found that Black students were suspended at three times the rate of their white peers.<sup>165</sup>

School discipline policies instituted by local lawmakers at the height of school desegregation were undergirded by racial animus. For example, the CDF report found that, in South Carolina, Sumter County School District No. 2 amended its conduct code to prohibit the possession of a metal pick, classifying it as a weapon offense.<sup>166</sup> It was almost exclusively Black children who used metal picks—to comb afro hairstyles—therefore, the new offense became one that only Black students could violate. Across the South, anti-Black discipline policies made schools more carceral, with desegregated schools ruled by carceral logic.<sup>167</sup> A Black parent from Canton, Mississippi, shared a leaflet with CDF staff that included an oath for white teachers and principals that sought to achieve: (1) 240 suspensions per month of Black students and (2) suspension of fifteen Black boys and ten Black girls who were seniors—preventing them from graduating.<sup>168</sup> The racially invidious motivations behind suspensions and expulsions were not always hidden. Furthermore, the CDF report also identified discipline disparities related to income (not just race), finding that children from low-income families or female-headed households were more likely to be suspended.<sup>169</sup> The report noted that disciplinary processes symbolize larger biases against children from marginalized backgrounds, whether by race, income, disability, language, or some other characteristic.<sup>170</sup>

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164. See *id.* at 130. For example, in Denver, “31 percent of the black secondary students were suspended.” *Id.*

165. Black students were suspended at a rate of 12.8%, compared with 4.1% for white children. *Id.*

166. See *id.* at 132.

167. See Hale & Livingston, *supra* note 151, at 1039 (describing Southern school discipline-related legislative acts).

168. See Child’s Def. Fund, *supra* note 162, at 133. A consequence of increasing carceral schools for Black and other impacted students of color was less confidence in education as a means for uplift and the increasing perception of education as a site of injustice. See also *Juvenile Justice and Delinquency Prevention and Runaway Youth: Hearings on H.R. 6265 and H.R. 9298 Before the Subcomm. on Equal Opportunities of the H. Comm. on Educ. & Lab.*, 93d Cong. 474–84 (1974) (statement of Peter E. Holmes, Dir., Off. for C.R., Dep’t of Health, Educ. & Welfare).

169. See Child’s Def. Fund, *supra* note 162, at 135.

170. See *id.* (“While precise measurement of the psychological and educational harm done by a suspension is impossible, it is clear that any exclusion from school interrupts the child’s educational process and forcibly removes the child from his normal daily environment.”).

Finally, the report documented the consequences that such discriminatory discipline held for impacted students, including the loss of valuable instruction time (further undermining academic performance); the lack of supports, services, or efforts to address the roots of any misbehavior; and the stigmatization that could follow a child to future academic and employment pursuits.<sup>171</sup>

The CDF report also found a lack of consistency, transparency, and fairness in disciplinary procedures, exacerbating the subjectivity and arbitrariness of discipline decisions. For example, in one county, CDF staff found that there were no limitations on the number or length of suspensions and no allowance for hearings.<sup>172</sup> Despite evidence of the profound racial disparities in school discipline, the use of exclusionary discipline as a racially motivated exercise of local power has largely escaped legal scrutiny given the constitutional deference that courts have in view of principles of localism, which permit such practices to escape proper scrutiny.

The next section explores courts' responses to claims of discriminatory school discipline and the legal parameters on arbitrary and discriminatory school discipline policies instituted in response.

C. *In Defense of Localism and Exclusionary Discipline: Courts and Constitutional Limits on Exclusionary Discipline*

Less discussed in the school discipline literature is *Goss v. Lopez*, a case involving the weaponization of exclusionary school discipline against Black students protesting their mistreatment in integrated schools.<sup>173</sup> *Goss* was decided in 1975, the apex of school desegregation efforts, when Black students—as they began to integrate majority-white schools—were faced with racism embedded within disciplinary responses.<sup>174</sup> As numbers of Black students in majority-white districts increased, racial tensions rose.<sup>175</sup> But Black students didn't just accept mistreatment from white school administrators. In the tradition of the Civil Rights Movement, many Black students staged protests and walkouts in opposition to hostile school environments and discriminatory treatment.<sup>176</sup> In response, many districts, like

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171. See *id.*

172. See *id.* at 139–40. “[L]ack of procedural regularity . . . [allows] easy and unjustified resort to the sanction of suspension. But for years, the courts would not open their eyes to these facts. Their vision was clouded by a fog of legal doctrine that shrouded the decisions of school administrators to throw out their students.” *Id.* at 141.

173. 419 U.S. 565, 570 (1975).

174. The facts of *Goss v. Lopez* also demonstrate how Black students were often disciplined for protest and political activism. See McClellan, *supra* note 2, at 671–72.

175. *Id.* at 671 (discussing a study that found that harsh discipline stemmed from unrest due to conflicts generally associated with racial dynamics between students and faculty).

176. See *id.* at 671–72 (describing the student protest in Columbus, Ohio, in response to a white student shooting two Black students). The protest and the subsequent

the Columbus Public Schools system at issue in *Goss*, adopted “get tough” discipline policies.<sup>177</sup> Initially aimed at protests conducted off school grounds, states began to enact legislation that targeted and criminalized student protest.<sup>178</sup> In *Goss*, plaintiff Dwight Lopez was one of nine students suspended for ten days for alleged misconduct during student demonstrations.<sup>179</sup> Lopez testified that seventy-five other students were suspended on the same day he was and that he was not involved in a demonstration but was merely a bystander.<sup>180</sup> Lopez and other plaintiffs alleged that the suspensions violated their Fourteenth Amendment rights of property and liberty, particularly because the suspensions would be included in their school records without due process of law.<sup>181</sup> The Court held that the Due Process Clause required school officials to recognize that students’ property right in education could not be deprived without minimal notice and an opportunity to be heard.<sup>182</sup>

Records show that underlying the complaint were concerns, which civil rights organizations expressed, that white school officials were increasingly using unjustified exclusionary disciplinary responses against increasing numbers of Black students in the city districts.<sup>183</sup> Notably, LDF and the Southern Christian Leadership Conference jointly filed an amicus brief on behalf of the *Goss* plaintiffs, outlining concerns with the frequent use of suspensions against Black students during school desegregation.<sup>184</sup> These concerns are consistent with those outlined in the CDF report about the high rates of suspensions among Black children in integrated schools. The same year that *Goss* was decided, in response to pressure from advocates like CDF, the U.S. Senate Committee on Labor and Public Welfare held an

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punishment of Black and Latinx students led to the filing of *Goss v. Lopez*. See *Goss*, 419 U.S. at 568–71 (describing the student unrest).

177. *Goss*, 419 U.S. at 584; Hale & Livingston, *supra* note 151, at 1041 (internal quotation marks omitted).

178. Hale & Livingston, *supra* note 151, at 1039.

179. *Goss*, 419 U.S. at 568–69. The students were suspended under an Ohio law that allowed principals to suspend students for up to ten days, mandated that schools notify students’ caregivers of the suspension within twenty-four hours, and required that schools state the reasons for the suspension, but did not require schools to hold disciplinary hearings. See Ohio Rev. Code Ann. § 3313.66 (1972).

180. See *Goss*, 419 U.S. at 570.

181. See *id.* at 568–69 (describing the plaintiffs’ complaint, which argued that the Ohio statute violated the Fourteenth Amendment).

182. See *id.* at 573–74.

183. See Warren Weaver, Jr., Supreme Court, 5-4, Backs Rights of Suspended Pupils, N.Y. Times, Jan. 22, 1975, at 1, <https://timesmachine.nytimes.com/timesmachine/1975/01/23/issue.html> (on file with the *Columbia Law Review*); see also Lisa L. Swem, Nat’l Sch. Bds. Ass’n, *Goss v. Lopez* to Today: The Evolution of Student Discipline 10–25 (2017), <https://cdn-files.nsba.org/s3fs-public/08.%20Goss%20v.%20Lopez%20to%20Today%20Paper.pdf> [<https://perma.cc/ZL5Z-JQ2C>] (exploring the evolution of student discipline in various areas, like substantive due process, after the *Goss* decision).

184. See Justin Driver, *The School House Gate: Public Education, the Supreme Court, and the Battle for the American Mind* 156 (2018).

oversight hearing on the Department of Health, Education, and Welfare's enforcement of school-related civil rights problems.<sup>185</sup> The *New York Times* also illuminated the racial tension underlying the facts of the case, noting civil rights groups' concerns that white school officials were retaliating against increasing numbers of Black students in their districts.<sup>186</sup> It is also important to note that, during desegregation, the large Southern Black teaching workforce was displaced (including by firings and demotions), which left Black students entering hostile, desegregated schools without the protection and care of Black educators who understood Black culture, behavior, and speech and who supported, rather than criminalized, them.<sup>187</sup>

The *Goss* case stands not only for the minimal process due in school discipline but also for the recognition that there are some—albeit minimal—constitutional limitations on districts' administration of school discipline.<sup>188</sup> Even with *Goss*'s guardrails, local school leaders retain broad discretion for administering school discipline. The case merely established a minimum constitutional procedural floor for school districts.<sup>189</sup> It did not prescribe any protocols besides mere notice and an opportunity for students to object to the reason for the exclusionary disciplinary measure.<sup>190</sup> Notably, the case did recognize that state and local authority was not without constitutional limits and could not be wholly arbitrary,<sup>191</sup> which still has some salience considering the increased reliance on use of exclusionary discipline as a cover to preserve segregated education.<sup>192</sup>

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185. See McClellan, *supra* note 2, at 676.

186. See Driver, *supra* note 184, at 157.

187. See Hale & Livingston, *supra* note 151, at 1037 (discussing the critical role of Black teachers and community leaders before and after desegregation); see also Leslie T. Fenwick, Jim Crow's Pink Slip: The Untold Story of Black Principal and Teacher Leadership 7–27 (2022) (providing a thorough and enlightening examination of the systematic dismissal of Black educators post-*Brown*).

188. Indeed, *Goss* is a story of deference to schools, similar to the Court's deference to school searches and questioning of students. See Jacobi & Clifton, *supra* note 2, at 1126–27 (exploring how the limited jurisprudence on school searches and discipline created standards that are highly deferential to school officials).

189. Driver, *supra* note 184, at 149 (noting that *Goss* stopped short of requiring procedures for long suspensions and expulsions).

190. See *Goss v. Lopez*, 419 U.S. 565, 579 (1975) (concluding that, at a minimum, students must receive notice and an opportunity to be heard).

191. See *id.* at 574 (“The authority possessed by the State to prescribe and enforce standards of conduct in its schools although concededly very broad, must be exercised consistently with constitutional safeguards. . . . The Due Process Clause also forbids arbitrary deprivations of liberty.”).

192. The district court recognized that arguments against due process in discipline, such as Washington, D.C.'s, claims that providing due process would interrupt school operations, were contrary to the purpose of education and did not outweigh the educational and psychological harm endured by the student subjected to exclusionary discipline. See *Lopez v. Williams*, 372 F. Supp. 1279, 1292, 1301–02 (S.D. Ohio 1973); cf. *Goss*, 419 U.S. at 597–99 (Powell, J., dissenting) (arguing that due process procedures for exclusionary school

## II. DISCIPLINE IN MAJORITY-WHITE SCHOOLS

Many wealthy, white communities benefit from the exercise of classic localism, reflected in the disciplinary regimes they implement in schools. For example, localism has provided constitutional cover to white families to create racially and socioeconomically segregated school districts.<sup>193</sup> Consequently, these districts comprise a “community” made up of students, families, and resources (including experienced educators) that fit their desired characteristics—namely, wealthy and white. The justifications for localism enable them to reject or exclude those who do not fit their desired community characteristics. As illustrated in Part I, white communities threatened by desegregation were able to create a range of facially neutral maneuvers to evade it, with exclusionary discipline becoming a primary tactic for pushing Black children out of integrated schools. For example, Alabama passed legislation permitting local school boards to set rules and regulations related to discipline and behavior for students.<sup>194</sup> Although these policies appear race-neutral, they disproportionately impacted Black students. Across the South, Black students were subjected to carceral school climates that punished them in the name of keeping “law and order.”<sup>195</sup> In South Carolina, white parents petitioned the district for a police presence, arguing that it was required to remove disruptive students from schools.<sup>196</sup> Legislative acquiescence to white parents’ calls for law enforcement to penalize Black students demonstrates how white parents exercised their power and political influence in opposition to increasingly desegregated schools.<sup>197</sup>

Understanding this history of exclusionary discipline and policing within white resistance to school desegregation in the South is important as it illuminates how racial violence infiltrated schools to serve the interests of white middle-class parents in the face of inevitable school desegregation.<sup>198</sup> It was during this desegregation era that carceral violence against Black children in schools became normalized, if not encouraged.

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discipline would lead to a gross expansion of the courts’ role in what have traditionally been “discretionary school decisions”).

193. See Wilson, *New School Segregation*, *supra* note 29, at 162 (“The Court’s focus on local control comes at the cost of allowing ongoing segregation in schools to persist . . .”).

194. Hale & Livingston, *supra* note 151, at 1038–39 (discussing the Southern legislation that followed a campaign of student-led protests in 1963).

195. See *id.* at 1036 (internal quotation marks omitted) (discussing the increasing frequency of anti-Black, carceral school policies in the 1960s and ’70s).

196. *Id.* at 1041.

197. See *id.* (“White parents thus flexed their power and political weight in the changing school order, and school and police officials acquiesced in North Charleston and across the South.”).

198. See *id.* at 1044 (“An examination of the South provides deeper historical understanding of how state-sanctioned violence extends into schools, serving the interests of the White middle class and elite.”).

The use of local power to oppose school desegregation was not a reality just in the South. For example, in the North, white parents in city centers like Boston and New York expressed virulent opposition to desegregation and bussing.<sup>199</sup> The criminalization, punishment, and policing of Black children in integrated schools reflects the exertion of local power to exclude Black children that endures today and is reflected in discipline regimes in many majority-white communities and schools.

A. *White Innocence and Anti-Black Carceral Logic*

Underlying these exclusionary exercises of localism in majority-white communities is anti-Black carceral logic,<sup>200</sup> which casts Black children as criminal and white children as innocent. Under this schema, white children largely enjoy a presumption of innocence in school disciplinary matters.<sup>201</sup> Disciplinary responses to white youth tend to be supportive and permissive, rather than overly punitive.<sup>202</sup> In short, white children are allowed to be children.<sup>203</sup> This is consistent with one study's conclusion that schools have become places where white bodies are easily forgiven, while Black bodies are punished.<sup>204</sup> Perceptions of white innocence reify racial stereotypes of Black children as inherently misbehaving and ineducable—and, therefore, not possessing childlike innocence or deserving of support. Consistent with this logic, Black children in majority-white schools are subjected to exclusionary discipline at high rates. For example, while Black students experience disparities at majority-Black schools, one

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199. *Id.* at 1040 (describing “significant” rallies of Northern white parents against busing and desegregation).

200. For a definition of carceral logic, see Lopez, *supra* note 23, at 386 (“Carceral logic can be understood as a punishment mindset that views retribution and control, including by physical constraint (e.g. imprisonment), surveillance (e.g. electronic monitoring via ankle bracelet), or violence, as central components of a public safety system.”).

201. Due to bias, school authorities are more likely to negatively interpret Black students’ behavior compared to white students’ same behavior. See McClellan, *supra* note 2, at 649 (describing several empirical studies showing teachers exhibiting racial bias in disciplining students); see also Jayanti Owens, *Double Jeopardy: Teacher Biases, Racialized Organizations, and the Production of Racial/Ethnic Disparities in School Discipline*, 87 *Am. Socio. Rev.* 1007, 1008 (2022) (“Black and Latino boys are typified as ‘dangerous,’ ‘threatening,’ ‘less childlike,’ and ‘more criminally inclined’ than their White peers, leading to disproportionately harsh punishment.” (citations omitted)).

202. See Neha Sobti & Richard O. Welsh, *Adding Color to My Tears: Toward a Theoretical Framework for Antiracism in School Discipline*, 52 *Educ. Researcher* 500, 504 (2023) (“School environments then become places where White bodies are easily forgiven or empathized with, whereas Black bodies are punished despite the availability of flexibility and leniency extended to White students.”).

203. *Id.* at 504 (discussing how leniency is afforded to white children while the same is not given to Black children). Conversely, the anti-Black, carceral logic embedded into disciplinary responses reflects how Black childhood is obscured and Black girls and boys are ascribed with adult behavior. *Id.* at 502 (describing how school discipline patterns rob Black children of the right to act like children).

204. See *id.* at 504.

study found that Black students' risk for suspensions was highest at majority-white schools.<sup>205</sup> In addition, SROs in diverse or predominantly white schools seek out students of color, subjecting them to more surveillance for childlike behavior.<sup>206</sup>

Likewise, educator bias often favors white children. For example, when white children are referred to principals or administrators for disciplinary infractions, these referrals tend to be for so-called "objective" offense categories, such as smoking, possession of a weapon, or vandalism, compared to their Black peers who are more likely to be punished for "subjective" offenses like "disrespect" or dress code violations.<sup>207</sup>

Another example can be found in disciplinary responses against many Black girls whose behavior is perceived as not conforming with white notions of passive femininity because they are deemed loud, disruptive, or noncompliant, often resulting in punishment from school officials.<sup>208</sup> Stated another way, Black girls are more likely to be penalized than white girls for behaviors that challenge society's stereotypes about appropriate feminine behavior. This includes interpreting student behavior as too assertive or opinionated when students state that they believe something is unfair or unjust.<sup>209</sup> In addition, some school dress codes penalize styles of dress or grooming that are tied to specific racial or cultural expressions. Black girls featured in a recent report capturing their experiences with discipline in Philadelphia public schools shared that they were punished and criticized by school officials for wearing Black hairstyles like afros or locs.<sup>210</sup> They described feeling stigmatized by both race and gender norms

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205. See Smith et al., *supra* note 3, at 75 ("Black students are generally at higher risk of suspension than other students, but their adjusted risk was highest in predominantly White schools.").

206. See Fisher et al., *supra* note 8, at 330 (noting that SROs used race as a consideration when assessing threats, even in schools with low numbers of students of color).

207. See Daniel J. Losen, *Discipline Policies, Successful Schools, Racial Justice, and the Law*, 51 *Fam. Ct. Rev.* 388, 391 (2013) (concluding that Black schoolchildren were more likely to receive discipline for subjective offenses, while white children were more likely to receive discipline for objective offenses).

208. See Janel A. George, *Stereotype and School Pushout: Race, Gender, and Discipline Disparities*, 68 *Ark. L. Rev.* 101, 108 (2015) [hereinafter George, *Stereotype and School Pushout*] ("For African American girls, who are already perceived via racial stereotype as not conforming to the ideals of womanhood, the consequences of falling short are particularly punitive.").

209. See Leticia Smith-Evans, Janel George, Fatima Goss Graves, Lara S. Kaufmann & Lauren Frohlich, NAACP LDF & Nat'l Women's L. Ctr., *Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity* 18 (2014), [https://www.naacpldf.org/wp-content/uploads/Unlocking-Opportunity-for-African-American\\_Girls\\_0\\_Education.pdf](https://www.naacpldf.org/wp-content/uploads/Unlocking-Opportunity-for-African-American_Girls_0_Education.pdf) [<https://perma.cc/L9MH-RUX7>].

210. See Paige Joki, Educ. L. Ctr., *We Need Supportive Spaces that Celebrate Us: Black Girls Speak Out About Public Schools* 22 (2023), <https://www.elc-pa.org/wp-content/uploads/2023/05/FINAL-Supportive-Spaces-for-web.pdf> [<https://perma.cc/8V2P-LZKU>] (explaining that Black girls are reported and scrutinized for wearing their hair in culturally expressive ways such as afros, braids, and locs).

and stereotypes, including feeling that their developing bodies were vilified.<sup>211</sup> In another example, when twelve-year-old Vanessa VanDyke complained to school officials about experiencing bullying for her long, flowy afro, she was threatened with expulsion and told that her hair was a “distraction” and that she should cut it to conform with the school’s dress code.<sup>212</sup> The threats of expulsion were eventually rescinded after media attention, but the psychological and educational costs were already paid by Vanessa and other similarly situated students who experienced shame and stigma imposed by the school. For those subjected to exclusionary discipline because of minor infractions, educational continuity is disrupted. White children are not subjected to bias in the same manner that drives the interpretation of the disciplinary categories for which Black children are penalized.

In the public imagination, white innocence casts white children—even those who commit acts of violence—as childlike and innocent, which has implications for discipline. For example, as one commentator observes of white male shooters, the murderer is infantilized as a “youth” by the media, no matter his actual age.<sup>213</sup> The Black eighteen-year-old Michael Brown, who was killed by Ferguson police officer Darren Wilson,<sup>214</sup> was referred to as a “man” by a media outlet, while the white eighteen-year-old shooter Payton Grendon, who committed a hate crime killing of Black people at a Buffalo supermarket, was referred to as a “teenager.”<sup>215</sup> Similarly, Kyle Rittenhouse, a seventeen-year-old white vigilante who killed two protesters at a Black Lives Matter demonstration in Kenosha, Wisconsin, was not only found not guilty of charges related to the shooting

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211. *Id.* at 21.

212. Deborah Douglas, Opinion, Black Females Should Have the Right to Wear an Afro, *The Guardian* (Dec. 3, 2013), <https://www.theguardian.com/commentisfree/2013/dec/03/vanessa-vandyke-florida-girl-threatened-expulsion-afro> [https://perma.cc/Z7ZB-5GY] (internal quotation marks omitted).

213. See Alexia Hudson-Ward, We Must Stop Infantilizing White Mass Shooters and Treating BIPOC Youth as Adults, *Choice Blog* (May 19, 2022), <https://www.choice360.org/tie-post/we-must-stop-infantilizing-white-mass-shooters-and-treating-bipoc-youth-as-adults/> [https://perma.cc/2Q99-TZGM] (“We must examine and address why BIPOC children are so readily stripped of their innocence while at the same time destructive white males are continuously given the benefit of the doubt.”).

214. Mansee Khurana, Michel Martin & Lindsay Totty, 10 Years After Michael Brown’s Death, We Went to Ferguson to Ask: What’s Changed?, *NPR* (Aug. 9, 2024), <https://www.npr.org/2024/08/09/nx-s1-5064675/michael-brown-ferguson-killing-10-years> [https://perma.cc/SB8B-R4XH].

215. See Hudson-Ward, *supra* note 213 (internal quotation marks omitted) (quoting Dr. Thrasher (@thrasherxy), X (May 15, 2022), <https://x.com/thrasherxy/status/1525851085461766144> [https://perma.cc/5WZT-VQEL]).

deaths<sup>216</sup> but also infantilized in the media.<sup>217</sup> One magazine described how Rittenhouse's "chubby cheeks" and "arched eyebrows" gave his face a "bemused, childish quality."<sup>218</sup> Conversely, seventeen-year-old Trayvon Martin, who was stalked and killed by then-twenty-eight-year-old George Zimmerman, was also subject to media mischaracterization: "[B]y the end of the trial, the 200-pound Zimmerman, despite martial arts training and a history of assaulting others, was transformed into a 'soft,' retiring marshmallow of a weakling. The 158-pound Martin had been reimagined as an immense, athletically endowed, drug-addled 'thug.'"<sup>219</sup>

White children's misbehavior is often cast as rare, atypical, or uncommon,<sup>220</sup> which is consistent with exclusionary localities' conception of a community that is white and, therefore, nonthreatening. For example, when white children do commit violent acts like school shootings, they are often framed as "outliers" or "loners," and such occurrences are otherwise framed as abnormal and aberrant.<sup>221</sup> Indeed, white youth who commit shootings are more likely to have their crimes rationalized as being due to a mental illness or some other social ill than are Black shooters.<sup>222</sup> To be

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216. See Maya Yang & Joanna Walters, Kyle Rittenhouse Found Not Guilty After Fatally Shooting Two in Kenosha Unrest, *The Guardian* (Nov. 19, 2021), <https://www.theguardian.com/us-news/2021/nov/19/kyle-rittenhouse-verdict-kenosha-shooting> [<https://perma.cc/XUX3-SDYC>].

217. One media report noted how "the teenager" told the jury he had feared for his life. *Id.*

218. Paige Williams, Kyle Rittenhouse, American Vigilante, *New Yorker* (June 28, 2021), <https://www.newyorker.com/magazine/2021/07/05/kyle-rittenhouse-american-vigilante> [<https://perma.cc/9AH2-KKCC>].

219. Patricia J. Williams, The Monsterization of Trayvon Martin, *The Nation* (July 31, 2013), <https://www.thenation.com/article/archive/monsterization-trayvon-martin/> [<https://perma.cc/G5M9-PPL5>].

220. "[E]very time media commentators discuss the similarities in these crimes they mention that the shooters were boys, they were loners, they got picked on, but never do they seem to notice a certain highly visible melanin deficiency." William Mingus & Bradley Zopf, White Means Never Having to Say You're Sorry: The Racial Project in Explaining Mass Shootings, 31 *Soc. Thought & Rsch.* 57, 67 (2010) (internal quotation marks omitted) (quoting Tim Wise, School Shootings and White Denial, 3 *Multicultural Persps.*, no. 4, 2001, at 3, 4).

221. See Laura Frizzell, Sadé L. Lindsay & Scott Duxbury, Race of Mass Shooters Influences How the Media Covers Their Crimes, New Study Shows, *The Conversation* (July 27, 2018), <https://theconversation.com/race-of-mass-shooters-influences-how-the-media-cover-their-crimes-new-study-shows-100152> [<https://perma.cc/B8QU-A7R7>] (describing how media coverage often casts white shooters as mentally ill or victims of society and shootings as unexpected occurrences).

222. Fedders, *supra* note 11, at 1456 n.75; see also Mingus & Zopf, *supra* note 220, at 69 ("White privilege . . . allowed the discourse to be shifted away from a generalized social problem associated with race, to one of personal issues representing individualized pathologies."); A.C. Nikolaidis, Race in Education Policy: School Safety and the Discursive Legitimation of Disproportionate Punishment, 38 *J. Educ. Pol'y* 713, 722 (2023) ("The implication of emphasizing mental health conditions and bullying victimization as contributing factors of school shootings is that school shooters may not be fully responsible for their actions.").

clear, school shootings impact children of all racial demographics. The GAO found that although urban and poorer schools with a majority of students of color have more shootings overall, certain kinds of shootings, specifically “school-targeted” shootings<sup>223</sup> and suicides—which have the highest fatalities per incident—are more prevalent in suburban and rural, wealthier schools with low numbers of students of color.<sup>224</sup> Notably, 6% of shootings in urban schools were school targeted, while 22% of shootings in suburban schools and 29% of shootings in rural schools were school targeted.<sup>225</sup> And although high-profile school shootings like the Columbine and Sandy Hook shootings are relatively rare, they tend to dominate news headlines due to the high death tolls associated with them.<sup>226</sup>

But the responses to such incidents are usually carceral ones.<sup>227</sup> For example, after the Sandy Hook shooting, the White House issued a plan called *Now is the Time*, which, in addition to providing mental health support, encouraged schools to hire more SROs.<sup>228</sup> Notably, the race of white school shooters often goes unmentioned by the media and the “insidious effects of manipulative silence on school shooter demographics are underscored . . . [by] the implications of the recommendations most likely to affect students of color.”<sup>229</sup> A report issued by the Federal Commission on School Safety, headed by former Secretary of Education Betsy DeVos, even pleaded for the media to not mention the identities of school shooters.<sup>230</sup> This anonymity provides coverage to school shooters,

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223. School-targeted shootings are defined as those broadly targeted toward school staff or students without specific targets. See U.S. Gov’t Accountability Off., *Characteristics of School Shootings*, supra note 19, at 3 n.9.

224. More than half of the 166 fatalities (a total of 89 fatalities) resulted from school-targeted shootings occurring between 2009 and 2010 and 2018 and 2019. *Id.* at 15. Shootings associated with grievances or with unknown targets increased relative to school poverty level. *Id.* at 21. Although mass shootings at white schools attract more media attention, children of color were found to be more likely than white children to experience gun violence—nearly twice as likely for Hispanic students and three times as likely for Black students. John Woodrow Cox & Steven Rich, *Scarred by School Shootings*, *Wash. Post* (Mar. 21, 2018), <https://www.washingtonpost.com/graphics/2018/local/us-school-shootings-history> (on file with the *Columbia Law Review*) (last updated Mar. 25, 2018).

225. U.S. Gov’t Accountability Off., *Characteristics of School Shootings*, supra note 19, at 25.

226. See Cox & Rich, supra note 224.

227. See Johnson et al., supra note 16, at 162; see also Cheryl Lero Jonson, *Preventing School Shootings: The Effectiveness of Safety Measures*, 12 *Victims & Offenders* 956, 961 (2017) (“[T]he number of schools employing uniformed officers has skyrocketed in recent years, from only 13% in 1994 to over 51% [in] 2014.” (citations omitted)).

228. U.S. Gov’t Accountability Off., *Characteristics of School Shootings*, supra note 19, at 8.

229. Nikolaidis, supra note 222, at 722.

230. Labeled the No Notoriety Campaign, the report urged the media to consider “focusing on facts and victims” instead of “using shooters’ names or photos.” *Final Report of the Federal Commission on School Safety* 13 (2018), <https://www.ed.gov/sites/ed/files/documents/school-safety/school-safety-report.pdf>

many of whom are white, allowing them to avoid stigma from negative media and the attendant repercussions if their identities are revealed.

B. *The Harm of “Community” and Assumptions of Safety*

Many majority-white, suburban communities buy into the illusion that exclusion guarantees safety and, as a result, they often overlook genuine threats to student safety.<sup>231</sup> Having successfully exercised their ability to exclude Black children deemed to be threats, many white families nurse a false sense of security that their children are safe in all-white, suburban schools, ignorant to the reality that violence persists even in their carefully curated, exclusionary communities. In the aftermath of school shootings, grieving communities may ask “How could this happen here?” Yet racialized assumptions about which students are prone to violence, rooted in anti-Black carceral logic, obscure genuine threats to school safety and the reality that racial exclusion cannot guarantee safety.

As previously noted, most high-fatality school shootings occur in suburban schools, in which the majority of shooters and victims are white.<sup>232</sup> But the signs of potential violence often go unaddressed. Before killing four of his classmates and wounding seven others (including a teacher), fifteen-year-old Ethan Crumbley bragged about his plans to commit the biggest school shooting in history, even while asking his parents (who a court ruled provided him easy access to weapons) for mental health care.<sup>233</sup> Crumbley also had a history of violence against

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[<https://perma.cc/4TYC-6LCW>] [hereinafter Final Report of the Federal Commission] (internal quotation marks omitted).

231. “[W]hite folk live in a state of self-delusion. We think danger is black, brown and poor and, if we can just move far enough away from ‘those people’ . . . [and] find an ‘all-American’ town, life will be better, because ‘things like this just don’t happen here.’” Tim Wise, *The Price of White Denial*, 30 *Index on Censorship*, no. 3, 2001, at 166, 166.

232. “White privilege involves more than the ability to ignore race. It also controls the focus of official attention [o]n crimes that involve white victims. Not only have most school shooters been white, but coming from predominately white social environments, their victims were mostly white as well.” Mingus & Zopf, *supra* note 220, at 67.

233. See Ray Sanchez, Nicki Brown & Aditi Sangal, *Ethan Crumbley Sentenced to Life in Prison Without Parole for Killing 4 Students in Michigan School Shooting*, CNN, <https://www.cnn.com/2023/12/08/us/oxford-shooting-ethan-crumbley-sentencing> [<https://perma.cc/UDL2-RBC4>] (last updated Dec. 8, 2023) (noting that Crumbley documented his desire to be recognized as the biggest school shooter in Michigan history and failed to receive mental health treatment due to his parents’ negligence). Crumbley was sentenced to life in prison without the possibility of parole, an exception to the Supreme Court’s prohibition on juvenile life without parole sentences that is reserved for the most violent offenders. *Id.*; see also *Miller v. Alabama*, 567 U.S. 460, 479–80 (2012) (holding that “appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon”). Crumbley’s parents were later sentenced for their roles in their son’s killings. See Ed White, *Michigan School Shooter’s Parents Sentenced to 10 Years in Prison for Not Stopping a ‘Runaway Train’*, AP News, <https://apnews.com/article/james-crumbley-jennifer-crumbley-oxford-school-shooting-e5888f615c76c3b26153c34dc36d5436> [<https://perma.cc/7RBN-G45B>] (last updated Apr. 9, 2024) (noting that Jennifer and James

animals.<sup>234</sup> And before eighteen-year-old high school senior Payton Gendron killed ten Black people in a racially motivated shooting in Buffalo, New York, as mentioned above, he wrote in an economics paper that he wanted to commit murder–suicide.<sup>235</sup> After his school’s assistant principal notified state law enforcement, he underwent a day-and-a-half mental health evaluation and was released.<sup>236</sup> He did not experience any punitive or exclusionary disciplinary action.<sup>237</sup> Similarly, before killing his own brother and nine others at a shooting in Dayton, Ohio, Connor Betts had a documented history of harassing girls at his middle and high school and making “a hit list and rape list in high school.”<sup>238</sup> Media requests for Betts’s high school disciplinary records were denied, making it unclear whether his behavior was addressed by school administrators.<sup>239</sup> Before

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Crumbley, parents of school shooter Ethan Crumbley, were the first parents convicted in a U.S. mass shooting when they were sentenced to at least 10 years in prison).

234. See Lauren del Valle & Holly Yan, Ethan Crumbley, Who Was 15 When He Killed 4 Michigan Students, Could Spend the Rest of His Life Behind Bars, Judge Rules, CNN (Sep. 29, 2023), <https://www.cnn.com/2023/09/29/us/ethan-crumbley-trial-shooting-sentencing> [https://perma.cc/AW6Z-WESD] (noting that Crumbley exhibited violent behavior before committing a school shooting, including disturbing writings and violence against animals).

235. See Luke Barr, Pierre Thomas & Jack Date, Missed Signals in 4 Mass Shootings: What Went Wrong?, ABC News (May 20, 2022), <https://abcnews.go.com/Politics/missed-signals-mass-shootings-wrong/story?id=84846610> [https://perma.cc/P8NN-A4WM] (noting that Gendron admitted to lying to law enforcement and mental health officials when confronted about his economics paper detailing thoughts of murder–suicide).

236. *Id.*

237. Gendron was cleared after claiming that his murder–suicide threat was a joke to get out of class in a psychiatric evaluation. See Shawn Boburg, ‘I Lied to Them for Months’: Buffalo Shooting Suspect Kept Plans From Family, He Wrote, Wash. Post, [https://www.washingtonpost.com/investigations/2022/05/17/payton-gendron-parents-buffalo-shooting/?nid=top\\_pb\\_signin&arcId=CNFSWNFGOND27PB44E3Q24WURE&account\\_location=ONSITE\\_HEADER\\_ARTICLE](https://www.washingtonpost.com/investigations/2022/05/17/payton-gendron-parents-buffalo-shooting/?nid=top_pb_signin&arcId=CNFSWNFGOND27PB44E3Q24WURE&account_location=ONSITE_HEADER_ARTICLE) (on file with the *Columbia Law Review*) (last updated May 17, 2022).

238. See Barr et al., *supra* note 235 (discussing Betts’s harassment of female students and the creation of a hit list and rape list—among other concerning behaviors—as demonstrating an “enduring fascination with mass violence” (internal quotation marks omitted) (quoting Press Release, FBI Cincinnati Field Off., Investigation Report on the August 4, 2019 Attack in Dayton, Ohio (Nov. 29, 2021), <https://www.fbi.gov/contact-us/field-offices/cincinnati/news/press-releases/investigative-report-on-the-august-4-2019-attack-in-dayton-ohio> (on file with the *Columbia Law Review*))).

239. The Ohio Supreme Court cited both federal (the Family Educational Rights and Privacy Act) and state law (the Ohio Student Privacy Act) to address requests from media outlets to access Betts’s high school records, ruling that the laws protected both current and former students’ information. See Susan Tebben, Ohio Supreme Court: Dayton Shooter’s School Records Not Part of Public Record, Ohio Cap. J. (Nov. 6, 2020), <https://ohiocapitaljournal.com/2020/11/06/ohio-supreme-court-dayton-shooters-school-records-not-part-of-public-record/> (on file with the *Columbia Law Review*). Two of Betts’s former classmates told media that he was suspended during their junior year at Bellbrook High School after a hit list was found scrawled in a school bathroom and after he wrote a “rape list” of female classmates, although school officials declined to comment. Dayton, Ohio, Shooter Kept a “Hit List” and “Rape List,” Classmates Claim, CBS News,

opening fire and killing seventeen people at Marjory Stoneman Douglass High School in Parkland, Florida, in 2018, Nikolas Cruz was reported to the FBI's public tipline—the reporter detailing his disturbing social media posts and erratic behavior.<sup>240</sup> The tip was not forwarded, and Parkland families later sued the FBI for failing to assign the call to the Miami Field Office.<sup>241</sup> The DOJ settled with the families for \$127 million.<sup>242</sup>

The pervasiveness of school shootings in white communities exposes how racialized conceptions of community can harm community members. Many white families ignore the warning signs of violence because, in their minds, “the warning signs don’t live in [their] neighborhood, but across town, in that place where [they] lock [their] car doors on the rare occasion [they] have to drive there. That false sense of security—the result of race and class stereotypes—then gets people killed.”<sup>243</sup> A carefully curated community does not guarantee safety, but the assumption that it will, the belief that exclusivity insulates, is persuasive enough that school shootings have not dissuaded white families from retreating to suburban enclaves in search of safety. Furthermore, the reality that warning signs of violence are often ignored by authorities in these communities is proof that early intervention to deter violence is also illusory. White students who are not disproportionately subjected to exclusion are advantaged, while their Black peers, subjected to exclusionary discipline, are dispossessed of and denied quality educational experiences.<sup>244</sup>

In addition, the same racialized assumptions about “community” and safety have implications for how police in majority-white schools perceive their roles. For example, one study found that in majority-white, suburban

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<https://www.cbsnews.com/news/dayton-shooting-hit-list-rape-list-bellbrook-high-school-classmates-say-ohio-shooter-connor-betts/#> [https://perma.cc/W7Q5-VTML] (last updated Aug. 5, 2019).

240. See Kelli Kennedy, Curt Anderson & Tamara Lush, FBI Received Tip on Florida Suspect But Did Not Investigate, WHYY (Feb. 16, 2018), <https://whyy.org/articles/fbi-received-tip-florida-suspect-not-investigate/> [https://perma.cc/KVQ3-V42H] (noting that the caller reported her concern that Cruz could attack a school).

241. See Barr et al., *supra* note 235 (“More than a month before the shooting, the FBI was warned about Cruz . . . . The information, the FBI admitted, should have been forwarded to the FBI Miami field office and . . . [t]he FBI was later sued by the families . . .”).

242. See Ayana Archie, Families of Parkland Shooting Victims Are Awarded \$127.5 Million, NPR (Mar. 17, 2022), <https://www.npr.org/2022/03/17/1087125396/families-of-parkland-shooting-victims-awarded-127-5-million> [https://perma.cc/SQ32-BKUN] (describing how the forty civil cases, which included sixteen of the seventeen families of those killed in the shooting, included claims that the FBI was negligent for ignoring tips about Cruz’s potential for violence and failing to intervene).

243. Wise, *supra* note 231, at 168.

244. See Christine Zabala-Eisshofer, Kate Somerville & Kathryn Wiley, Recommending Reform: A Critical Race and Critical Policy Analysis of Research Recommendations About School Resource Officers, 46 *Educ. Evaluation & Pol’y Analysis* 358, 375 (2024) (discussing the connection between the use of SROs as a “solution” to student conflict and a school system that worsens students of colors’ educational opportunities).

schools, SROs envision their roles more as protectors and perceive students as “needing protection from outside threats.”<sup>245</sup> Therefore, SROs in many majority-white schools may focus their efforts on monitoring the exterior of the school.<sup>246</sup> Within the school, they may focus more on “tasks unrelated to crime-monitoring,” such as community–police relationship building.<sup>247</sup> Police in these school settings function more like an “amenity” for students rather than a controlling presence.<sup>248</sup>

Like how the students are “chosen” to be in these school communities, police placed in these schools provide more of a community service—they are part of a community and envision themselves as students’ protectors. This reflects how white communities often associate police with ideas of safety, since “the framing of school safety often leaves unquestioned who should be safe at schools and what school safety means.”<sup>249</sup> And importantly:

“[S]afety” is typically understood as that which reassures white families, and the preference to use law enforcement as a strategy to assure that safety ideologically reflects the long-standing role of law enforcement in serving and protecting predominantly white communities at the expense, over-policing, and use of violence against communities of color, particularly during times of civil rights gains.<sup>250</sup>

Therefore, white families that support police in schools do so with assumptions about the protective role that police in schools will play, consistent with how they function in majority-white communities empowered by localism. But reality belies this presumption. While the federal government does not track school shootings, a *Washington Post* study found that there have been 435 school shootings since the Columbine shooting in 1999.<sup>251</sup> In a 2018 study of two hundred school shooting incidents, the *Post* found that SROs intervened only twice.<sup>252</sup> Essentially, school police make

245. See Fisher et al., *supra* note 8, at 332.

246. Rebecca D. Gleit, *Cops on Campus: The Racial Patterning of Police in Schools*, *Socius: Socio. Rsch. for Dynamic World*, June 28, 2022, at 1, 4, <https://journals.sagepub.com/doi/full/10.1177/23780231221108037> (on file with the *Columbia Law Review*).

247. *Id.*

248. *Id.*

249. Zabala-Eisshofer et al., *supra* note 244, at 375. Furthermore, the predominant narrative assumes that law enforcement is necessary and magnanimous. *Id.* at 362.

250. *Id.* at 375.

251. The study found that 215 individuals were killed and 486 injured. John Woodrow Cox, Steven Rich, Lucas Trevor, John Muyskens & Monica Ulmanu, *More Than 398,000 Students Have Experienced Gun Violence at School Since Columbine*, *Wash. Post*, <https://www.washingtonpost.com/education/interactive/school-shootings-database/> (on file with the *Columbia Law Review*) (last updated Sep. 11, 2025).

252. One intervention occurred in 2001 at a California high school, and another in Washington state in 2015. Furthermore, the *Post*’s analysis found that SROs and security guards were present at four of the five most fatal school shooting incidents, including at Columbine and Marjory Stoneman Douglas High Schools. *Id.*

some community members feel safer, but not necessarily because they actually keep students safe. “The catch, however, is that subjective feelings of safety are multilayered, idiosyncratic, and highly related to a student’s race, class, and trauma history.”<sup>253</sup> As one study notes, police in wealthy, majority-white communities function to “protect the advantages of the most well-resourced.”<sup>254</sup> This reliance on school policing as a protective tactic is consistent with the self-interested reflex of classic localism to protect resources and exclude outsiders. Indeed, the dominant worldview has privileged the perception of law enforcement as necessary, noble, and benevolent.<sup>255</sup> What school police protect, through exclusion, is white children’s access to quality educational experiences, at the expense of excluded Black children deemed threats to this exclusive education.

### III. DEFENSIVE LOCALISM AND SCHOOL DISCIPLINE IN MAJORITY-BLACK SCHOOLS

Segregation profoundly undermines some localities’ ability to exercise classic localism and contributes to the exercise of defensive localism. Due to the segregation, opportunity hoarding, and exclusion perpetuated by many majority-white communities, neighboring majority-Black communities have fewer educational opportunities. These segregative acts, borne out of anti-Blackness and white supremacy, have been termed “structural containment”<sup>256</sup> and “racial territoriality” and rely on segregation to allow a racial hierarchy to persist.<sup>257</sup> This contravenes economist Charles Tiebout’s market-based model of classic localism, which assumes that people are free to relocate from one locality to another based upon services offered.<sup>258</sup> In reality, economic inequality and segregation lock many families into areas of profound social and fiscal inequality.<sup>259</sup>

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253. Fedders, *supra* note 11, at 1458.

254. Gleit, *supra* note 246, at 14.

255. Zabala-Eisshofer et al., *supra* note 244, at 362.

256. See Cashin, *Enduring Caste*, *supra* note 83, at 152 (noting that the contemporary response to diversity has been “structural containment”).

257. “[R]acial territoriality [framework] seeks to place space at the center of the legal conversation about racial disadvantage. It emphasizes that the ability to choose space and to move unimpeded through and across the local spaces of everyday life are basic components of freedom, social belonging, status, and dignity.” Elise C. Boddie, *Racial Territoriality*, 58 UCLA L. Rev. 401, 420 (2010) (footnotes omitted).

258. See Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. Pol. Econ. 416, 419, 424 (1956) (recognizing the assumption that consumer-voters are mobile and willing to move to a community that best fits their preferences); see also Briffault, *Localism II*, *supra* note 40, at 400 (observing that, under Tiebout’s model, the “consumer-voter” freely chooses a locality based on public goods, including the taxes, services, and policy packages offered that best match their interests).

259. Under Tiebout’s approach, individuals move from place to place based on the market of public services. Briffault, *Localism II*, *supra* note 40, at 400 (“By moving from one locality to another, an individual can select from among these diverse local tax, service and policy packages the one that best matches her interests.”).

They cannot base residential choices on a locality's offerings of democratic participation, efficiency, or community. In addition, local zoning policies prohibiting multifamily buildings or low-income housing preclude many low-income families from moving to wealthier communities with better schools.<sup>260</sup> Namely, because most metropolitan areas are delineated by racial segregation and majority-Black schools tend to have higher levels of social control, Black families are limited in their ability to choose schools with less punitive discipline practices.<sup>261</sup>

Indeed, in many economically disadvantaged localities, the "community" aspect of classic localism is characterized by shared disadvantage, not shared decisionmaking or values. Consequently, many Black and low-income families locked into racially isolated communities are locked in for life, and their children often experience the impacts of this isolation, including through their educational experiences. They are unable to move to communities of their choice and to avail themselves of resources such as quality education. Conversely, communities exercising classic localism do so to maintain racial and economic exclusivity. As a result, children locked into under-resourced, segregated, majority-Black communities are deprived of the education needed to transition out of these communities and achieve upward mobility.<sup>262</sup> Indeed, people can only reside in communities that they can afford.<sup>263</sup>

And like majority-white districts, these districts also seek to protect what is theirs. This Article acknowledges that majority-Black schools are not uniform in their disciplinary approaches and many implement policies in good faith with the goal of keeping children safe. But, when required to take in all children, including those who may pose significant

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260. See *How Zoning Laws Prevent Affordable Housing and Separate Classes*, Scripps News (Jan. 31, 2022), <https://www.scrippsnews.com/us-news/in-the-loop/how-zoning-laws-prevent-affordable-housing-separating-rich> [<https://perma.cc/XE28-68NY>] (last updated July 24, 2024) (reporting on how exclusionary zoning laws preventing the building of affordable housing effectively contain some people to low-income communities—separating the rich and the poor).

261. Johnson et al., *supra* note 16, at 163.

262. Voss, *supra* note 81 (noting that because of the low level of educational completion endemic to areas of concentrated poverty, children born into such communities lose opportunity before they are even born). As Briffault observes, proponents of localism often emphasize its participatory benefits while overlooking how inequities shape individuals' ability to engage in local government. Briffault, *Localism II*, *supra* note 40, at 425. Furthermore, proponents often fail to recognize how race and class impact one's ability to move from one jurisdiction to another to participate in a community in which they feel aligned. See Briffault, *Localism II*, *supra* note 40, at 425 n.343. But those residents confined to low-income, urban communities have little choice about where they live or work, and due to poor education in these communities, they are not prepared for career options the way their suburban peers are. See Cashin, *New Regionalism*, *supra* note 64, at 2045.

263. Suburban communities exclude through mechanisms such as ordinances prohibiting multifamily and subsidized housing, which drive up housing costs and effectively prevent those who are unable to afford high prices from living in these communities. See Briffault, *Localism II*, *supra* note 40, at 420.

challenges, these districts are often forced to resort to tactics of exclusion.<sup>264</sup> This is how defensive localism functions in many majority-Black schools to the detriment of impacted students. Discipline has been weaponized in many communities to control the composition of school communities.

This Article asserts that many majority-Black districts seeking to exercise power through defensive localism can be prone to the same exclusionary impulses, expressed through exclusionary discipline, as neighboring majority-white districts wielding the power of classic localism. This is just as destructive as the racial exclusion exercised in classic localism, as exclusionary discipline, including expulsions or arrests, poses significant citizenship harms for impacted students.

Defensive localism is the exertion of parochial power by these localities deprived of the benefits of classic localism. In seeking to define “community” by pushing “undesirable” students out, these communities exercise defensive localism through punitive discipline—to the detriment of impacted and excluded Black students. For example, in some schools exercising their limited power, suspensions or expulsions may take place around testing time—as a mechanism for boosting test scores by excluding lower-performing students.<sup>265</sup> As described in detail in this Part, evidence suggests that majority-Black schools replicate power structures in which Black students are expected to submit to authority and subject themselves to control.<sup>266</sup> Accordingly, the disciplinary structures of schools in these communities reflect this carceral mindset of control and surveillance.<sup>267</sup>

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264. Washington, D.C., (described in detail herein) exemplifies this phenomenon. In Washington, D.C., public schools have among the highest exclusionary discipline rates in the nation, with more than one out of every seven secondary students (15%) receiving at least one out-of-school suspension in the 2017 to 2018 school year (triple the rates in California and Massachusetts). Leung-Gagné et al., *supra* note 17, at 10.

265. Some scholars and advocates accuse the No Child Left Behind Act’s test-and-punish regime of pressuring schools to push out lower-performing students to artificially boost test scores. See Daniel J. Losen, *The Color of Inadequate School Resources: Challenging Racial Inequities that Contribute to Low Graduation Rates and High Risk for Incarceration*, 38 *Clearinghouse Rev. J. Poverty L. & Pol’y* 616, 621 (2005) (“Since the Act’s accountability is primarily focused on test scores, it will more likely worsen the push-out crisis if the graduation rate accountability is not emphasized, or test accountability not mitigated in some meaningful way.”).

266. See, e.g., Leung-Gagné et al., *supra* note 17, at 11 (noting how majority-Black public schools in Washington, D.C., had one of the highest suspension rates in the nation).

267. For example, a quarter of Washington, D.C., public schools have SROs. Metro. Police Dep’t, *MPD School Resource Officer Deployment: School Year 2025–2026* (as of August 19, 2025), [https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/SRO%20Deployment%20SY25-26\\_08%2019%2025.pdf](https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/SRO%20Deployment%20SY25-26_08%2019%2025.pdf) [<https://perma.cc/F649-L7AP>] (last visited Sep. 9, 2025).

A. *Defensive Localism and School Pushout*

In the literature on localism, very little has been said about how defensive localism is exercised by excluded, segregated, and under-resourced communities.<sup>268</sup> Indeed, defensive localism was developed as an alternative theory to localism to recognize not only the considerable power that communities able to exercise classic localism wield but also the resultant geographic, racial, and class demarcations created by this exercise of power.<sup>269</sup> In education, these show up as interlocal inequities between districts, including resource inequities—created by design—that are characteristic of many segregated, majority-Black schools. Critics of localism point out how it limits states' abilities to intervene to remedy such race and class inequities in education.<sup>270</sup> Essentially, some exercises of classic localism permit zip code to determine access to quality education.

New Jersey provides an example of a state marred by deeply segregated municipalities that impact school quality and discipline. For example, one report found that deeply segregated high schools serving majority students of color were more likely to practice exclusionary school discipline.<sup>271</sup> Another study describing the deep interlocal inequities between majority-white, wealthy, suburban Montville Township School District and neighboring majority-Black, urban Elizabeth School District illustrates how localism perpetuates educational inequities.<sup>272</sup> The study notes that Montville's robust property taxes "fueled by localism-based protections" allow it to direct over 60% of its overall tax revenue to go directly to schools.<sup>273</sup> These protections created through localism include exclusionary zoning, which prevents the building of multifamily apartments or low-income housing, and high property values that price

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268. See Briffault, *Localism I*, *supra* note 54, at 101 ("The Court has treated as unproblematic local practices with economically restrictive effects[,] [endorsing] . . . the right of localities to promote socially homogeneous communities; and it has raised procedural hurdles that make it difficult to test in federal court those local practices that may run afoul of constitutional limitations."); see also Wilson, *New School Segregation*, *supra* note 29, at 202 (noting that destructive localism, as practiced through school district secession, is based on exclusion rather than inclusion).

269. See Wilson, *New School Segregation*, *supra* note 29, at 200–09 (analyzing defensive localism in the context of school districts in the South).

270. See, e.g., *id.* at 161 (discussing how decisions by homeowners impede school officials from implementing desegregation plans).

271. Racially and economically segregated schools tend to rely more on exclusionary discipline—the most harmful form of discipline—than nonsegregated schools. See Cheon Lee, Elisabeth Crowell Kim, Vandeen A. Campbell, Charles M. Payne & Jamelia N. Harris with Dillon Turner, Rutgers N.J. State Pol'y Lab & Rutgers Joseph C. Cornwall Ctr. for Metro. Stud., *Discipline Disparities in New Jersey's High Schools* 7 (2022), <https://rutgers.app.box.com/s/m06y67re86tupjat9r467s7u7ns5fwnu> [<https://perma.cc/63RP-AV59>] (finding that patterns of segregation are related to patterns of discipline use).

272. Voss, *supra* note 81.

273. *Id.*

out low-income families.<sup>274</sup> Meanwhile, neighboring Elizabeth, burdened with high costs of municipal services to address the effects of concentrated poverty,<sup>275</sup> can only dedicate about 30% of its budget to schools.<sup>276</sup> As a result, although Montville's school population is less than one-fifth the size of Elizabeth's, its education budget is about \$14 million larger, which has significant implications for students' access to quality education, including experienced educators and advanced course offerings.<sup>277</sup>

These interlocal educational disparities are also reflected in disciplinary regimes. A report using 2015 national data detailed that Elizabeth schools, serving a majority of Black and Latinx students, relied heavily on exclusionary discipline, subjecting 2,170 students to out-of-school suspensions.<sup>278</sup> A disproportionate number of the suspended students were Black: 38% of the suspended students, despite comprising only 19% of the total students in the district.<sup>279</sup> By contrast, neighboring Montville Township School District, composed of 67% white students, subjected a total of forty-eight students to out-of-school suspensions.<sup>280</sup> Of those suspended, 17% were Black, although Black students comprised only 2% of students in the district.<sup>281</sup> Both districts exemplify how exercises of classic localism craft not only differences in access to quality education but also exposure to more punitive disciplinary practices.

Washington, D.C., provides another example of how a majority-Black district<sup>282</sup> exercises defensive localism through exclusionary discipline.

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274. *Id.* ("The Township relies primarily on the zoning, tax, and school funding powers (three of the major weapons in the localist's basket granted via home rule . . . ) to keep their town in a primarily white and wealthy state.").

275. These services are targeted to address aspects of concentrated poverty, including high unemployment and crime rates. *Id.*

276. *Id.*

277. *Id.*; see also Baker, *supra* note 42, at 1 (concluding that spending on schooling resources—such as smaller class sizes, instructional support, and competitive teacher compensation, which enables schools to recruit and retain high-quality educators—is positively associated with student outcomes).

278. Elizabeth City School District, ProPublica: Miseducation, <https://projects.propublica.org/miseducation/district/3404590> [<https://perma.cc/9RKX-5QAE>] (last updated Oct. 2018).

279. *Id.*

280. Montville Township School District, ProPublica: Miseducation, <https://projects.propublica.org/miseducation/district/3410650> [<https://perma.cc/J9WV-2KAK>] (last updated Oct. 2018).

281. *Id.*

282. The majority of students in D.C.'s public schools are Black. Public School Enrollment by Race and Ethnicity, Off. Deputy Mayor for Educ., <https://edscape.dc.gov/page/pop-and-students-public-school-enrollment-by-race-and-ethnicity#:~:text=The%20majority%20of%20the%20District's,school%20and%20high%20school%20grades> [<https://perma.cc/FY3S-PQBG>] (last visited Aug. 19, 2025). In the 2018 to 2019 school year, 68% of Washington, D.C.'s, public school population was Black. Chelsea Coffin, D.C. Pol'y Ctr., *Landscape of Diversity in D.C. Public Schools 6* (2018), <https://www.dcpolicycenter.org/publications/landscape-of-diversity-in-dc-public-schools/> [<https://perma.cc/G5PS-9CMK>].

Once a majority-Black city with about 71% Black residents in 1970, between the 2000 Census and the 2020 Census, the city's Black population dropped from 59% to 41%.<sup>283</sup> These changing demographics, fueled by high housing prices and rezoning initiatives targeting public housing,<sup>284</sup> have confined the majority of D.C.'s Black residents in the Southeast—with the Anacostia River serving as the divide between white and Black D.C.<sup>285</sup> Like other similarly segregated, majority-Black school systems, D.C.'s public schools heavily rely on exclusionary discipline. School discipline in D.C. has been shaped by Mayor Muriel Bowser, who has often advocated for carceral discipline, including police in schools.<sup>286</sup> Mayoral control shapes education governance in D.C.,<sup>287</sup> with the D.C. Council having some say in education but the mayor having primary discretion.<sup>288</sup> This contravenes classic localism's principle of participation and community decisionmaking.

Further, defensive localism, reflected in the limited power D.C. has to shape its community, is also reflected in its reliance on exclusionary discipline. Data from the 2017 to 2018 school year show that D.C. had one of the highest out-of-school suspension rates in the nation; approximately 15% of students in D.C. received at least one out-of-school suspension, triple the rate of students in California, Connecticut, and Massachusetts.<sup>289</sup> The data also show that in the 2017 to 2018 school year, D.C. suspended 19.2% of Black students, a figure that is 17.7% higher than the rate at which it suspended white students.<sup>290</sup> In 2019, 92% of school-based arrests in D.C. were of Black youth, and 60% of girls arrested were under the age

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283. See Steven Overly, Delece Smith-Barrow, Katy O'Donnell & Ming Li, Washington Was an Icon of Black Political Power. Then Came Gentrification., *Politico Mag.* (Apr. 15, 2022), <https://www.politico.com/news/magazine/2022/04/15/washington-dc-gentrification-black-political-power-00024515> (on file with the *Columbia Law Review*).

284. Adam Mahoney, From Watts to D.C.: How 500 Black Neighborhoods Vanished in 45 Years, *Cap. B News* (June 23, 2025), <https://capitalbnews.org/black-displacement-gentrification-watts-study/> [<https://perma.cc/WD2S-FZC8>].

285. See Overly et al., *supra* note 283.

286. For example, after the D.C. Council unanimously voted to remove police from schools, Mayor Bowser “redoubl[ed]” her efforts to reverse its decision. Martin Austermuhle, ‘They Don’t Know Our Worth’: As Police Officers Dwindle in D.C. Schools, a Fight Is On to Bring Them Back, *DCist* (Feb. 10, 2023), <https://dcist.com/story/23/02/10/dc-debates-police-in-schools/> [<https://perma.cc/3SSE-ZSGT>]. She also sparred with Councilmember Charles Allen over a plan to hire over 340 new police officers in her 2023 fiscal year budget proposal. See Martin Austermuhle, Mayor Bowser Spars With D.C. Councilmember Over Plan to Hire More Police Officers, *DCist* (Apr. 22, 2022), <https://dcist.com/story/22/04/22/mayor-bowser-spars-with-d-c-councilmember-over-plan-to-hire-more-police-officers/> [<https://perma.cc/BM58-G3XP>].

287. See Off. of the Student Advoc., Navigating the DC Public Education Landscape (2023), <https://studentadvocate.dc.gov/sites/default/files/dc/sites/studentadvocate.dc.gov/DC%20Governance%20Updated%202023%20%28Public%29%20%281%29.pdf> [<https://perma.cc/TZ5P-A8NK>].

288. D.C. Code § 38-172(a) (2025) (prescribing that “[t]he Mayor shall govern the public schools”).

289. Leung-Gagné et al., *supra* note 17, at vii, 11 fig. 4.

290. *Id.* at 38–39 tbl. B2.

of fifteen.<sup>291</sup> These arrests include arrests for nonviolent behavior. An article critiquing high discipline rates in D.C.'s charter schools scrutinized how amorphous infraction categories, such as "creating a classroom distraction" or engaging in conduct deemed "detrimental to the best interest" of the school, open the door for bias and contribute to discipline disparities.<sup>292</sup>

D.C.'s investment in SROs also reflects its commitment to defensive localism. Indeed, SROs have a strong presence in D.C. schools. In the 2024 to 2025 school year, the Metropolitan Police Department assigned SROs to sixty-one schools, including thirty-four public schools and twenty-seven public charter schools<sup>293</sup>—about a quarter of D.C.'s 240 public schools.<sup>294</sup> Nationally, schools with high concentrations (80% or more) of Black or Latinx students were more likely to have an SRO present, compared to schools with higher concentrations of white students.<sup>295</sup> Unlike SROs in majority-white schools, who perceive their roles more as protectors than punishers, SROs in majority-Black schools are focused on discipline and punishment.<sup>296</sup> Consistent with this finding, students reported to the DC

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291. See Wash. Laws.' Comm. for C.R. & Urb. Affs., Testimony of the Washington Lawyers' Committee for Civil Rights and Urban Affairs at the School Budget Oversight Hearing Before the D.C. Council 1–2 (2023), <https://www.washlaw.org/wp-content/uploads/2023/04/Banner-Testimony-4.5.2023-Education-Cluster-Budget-Hearing.pdf> [<https://perma.cc/453A-GYV9>].

292. Alejandra Matos, New Scrutiny on Suspension Rates in Some D.C. Charter Schools, Wash. Post (Feb. 17, 2017), [https://www.washingtonpost.com/local/education/new-scrutiny-on-suspension-rates-in-some-well-known-dc-charter-schools/2017/02/17/1616c19c-f2cc-11e6-a9b0-ecce7ce475fc\\_story.html](https://www.washingtonpost.com/local/education/new-scrutiny-on-suspension-rates-in-some-well-known-dc-charter-schools/2017/02/17/1616c19c-f2cc-11e6-a9b0-ecce7ce475fc_story.html) (on file with the *Columbia Law Review*) (internal quotation marks omitted) (reporting that "at any of the KIPP D.C. charter schools[,] [students] can be suspended for creating a classroom distraction or other conduct deemed 'detrimental to the best interest of' the schools").

293. Metro. Police Dep't, MPD School Resource Officer Deployment: School Year 2023–2024 (as of August 14, 2024), <https://web.archive.org/web/20250315190558/https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/SRO%20Deployment%20SY24-25.pdf> [<https://perma.cc/XF8H-6FNL>] (last visited Sep. 8, 2025).

294. Number of LEAs and Schools, Off. Deputy Mayor for Educ., <https://edscape.dc.gov/page/number-leas-and-schools> [<https://perma.cc/U999-E9K4>] (last visited Sep. 8, 2025).

295. Sagen Kidane & Emily Rauscher, Urb. Inst., Unequal Exposure to School Resource Officers, by Student Race, Ethnicity, and Income 4 tbl. 1 (2023), <https://www.urban.org/sites/default/files/2023-04/Unequal%20Exposure%20to%20School%20Resource%20Officers%2C%20by%20Student%20Race%2C%20Ethnicity%2C%20and%20Income.pdf> [<https://perma.cc/G88X-XN88>].

296. Performance Oversight Hearing on the Metropolitan Police Dep't Before the Comm. on the Judiciary & Pub. Safety, 24th Council Period 4 (Washington, D.C. 2021) (written testimony of Eduardo R. Ferrer, Pol'y Dir., Georgetown Juv. Just. Initiative); see also Jonathan Lightfoot, Zero Tolerance Policies Are Anti-Black: Protecting Racially Profiled Students From Educational Injustice, Nw. J. Tchr. Educ., Oct. 2021, at 1, 2, <https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1270&context=nwjte> [<https://perma.cc/7U53-UQ6N>] (noting that evidence supports the idea that police in schools don't keep children safe, but prepare them for the surveillance, trauma, and restrictions of the carceral state).

Police Reform Commission that SROs in schools often escalate situations, create hostile school environments, and trigger anxiety among young people surveilled in their presence, particularly since the SROs carry guns.<sup>297</sup> Youth advocates of the D.C.-based youth leadership organization Black Swan Academy noted, as part of their Police-Free Schools DC campaign, that SROs “make the classroom unsafe for youth, especially Black youth, ushering them into the school-to-prison pipeline and exposing them to state violence.”<sup>298</sup>

Anti-Black carceral logic also likely factors into how SROs perceive their roles in majority-Black schools like those in D.C., which has consequences for how they interact with students.<sup>299</sup> For example, one survey found that SROs in “urban-diverse” districts and majority-Black schools perceived threats as internal—specifically, they perceived the students themselves as “threats” and believed that “students had a potential for committing crime and violence that stemmed from their negative family and community environments.”<sup>300</sup> While the SROs in the survey did not overtly cite student race, they used euphemisms that correlated with student race and drew upon racialized tropes about Black low-income families as unsupportive and not family centered.<sup>301</sup> The study found that SROs used race to measure threats, even in schools with low numbers of students of color.<sup>302</sup> This perception of Black children as internal threats correlates with prior findings that authority figures often view Black students as more threatening than their white peers and affects *how* SROs police Black students.<sup>303</sup> Specifically, they may focus on tasks like searches, walking the halls, or intervening to respond to student misbehavior.<sup>304</sup> This focus often results in exclusionary sanction. Another study concluded that “the empirical and anecdotal evidence is overwhelming in support of the notion that police are not in schools to

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297. D.C. Police Reform Comm’n, *supra* note 20, at 17.

298. Police-Free Schools DC, Black Swan Acad., <https://www.blackswanacademy.org/policefree-schools> [<https://perma.cc/ZT8H-FU3P>] (last visited Aug. 20, 2025).

299. White norms often serve as the basis for defining misbehavior. See Nikolaidis, *supra* note 222, at 720 (analyzing this phenomenon in the context of public education).

300. Fisher et al., *supra* note 8, at 330. This finding is consistent with that of another study noting that student race influenced decisionmaking such that increased Black student presence was correlated with increased law enforcement contact. Jason P. Nance & Michael Heise, *Students, Threat, Race, and Police: An Empirical Study*, 50 Fla. St. U. L. Rev. 1, 7 (2022) [hereinafter Nance & Heise, *Students, Threat, Race, and Police*]; see also Gleit, *supra* note 246, at 4 (finding that officers in majority-Black schools or schools with high numbers of students of color often perceive students as sources of danger).

301. Fisher et al., *supra* note 8, at 330.

302. See *id.* (“The SROs used race as a key factor when assessing threats, even in schools with relatively low proportions of racial minority students.”).

303. See *id.* at 331 (collecting various studies on this topic); Nance & Heise, *Students, Threat, Race, and Police*, *supra* note 300, at 7 (“Several empirical studies show that individuals, including educators, implicitly and unfairly associate African Americans with disorder, danger, crime, aggression, and violence.”).

304. Gleit, *supra* note 246, at 4.

keep children in urban school settings safe but often traumatize them and prepare them for the carceral system that will surveil, restrict, and control their bodies for life.”<sup>305</sup>

Charter schools also add another dimension to the critique of defensive localism, as they can utilize their flexibility to push students out of schools, often under the banner of “no excuses” discipline policies.<sup>306</sup> Charter schools are not required to take all comers, and this has garnered critiques that charters engage in “cream skimming” by admitting high-achieving students and rejecting challenging students and that they “counsel out, or ‘push out,’ low-performing and/or poorly behaving students.”<sup>307</sup> One 2021 study failed to find any evidence that the charters studied engaged in such exclusionary practices.<sup>308</sup> But in a charter-heavy jurisdiction like D.C., where nearly half of all public school students attend charter schools,<sup>309</sup> fears about churn of students between charters and traditional public schools can abound when challenging students are expelled or not admitted to charters,<sup>310</sup> but traditional public schools are required to take them.

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305. Lightfoot, *supra* note 296, at 2.

306. The emergence of “no excuses” charter schools shows how this mindset can fuel practices that punish and marginalize Black students for the oppression they experience. See Sobti & Welsh, *supra* note 202, at 506 (internal quotation marks omitted).

307. Adam Kho, Andrew McEachin & Ron Zimmer, Evaluating Claims that Charter Schools Practice “Cream Skimming” and “Pushout”, *Educ. Next: Blog*, <https://www.educationnext.org/do-charter-schools-cream-skim-high-achievers-push-out-low-performing-students/> [<https://perma.cc/W9ZD-NN94>] (last updated Feb. 24, 2021) (sharing the results of a 2021 study of exclusionary discipline practices through analysis of exit and entrance patterns at select charter schools in Tennessee and North Carolina); see also Adam Kho, Ron Zimmer & Andrew McEachin, A Descriptive Analysis of Cream Skimming and Pushout in Choice Versus Traditional Public Schools, 17 *Educ. Fin. & Pol’y* 160, 162 (2022) [hereinafter Kho et al., A Descriptive Analysis] (analyzing student-level administrative data from Tennessee and North Carolina to determine whether charter school enrollment was correlated to students’ test scores and rates of suspension or expulsion).

308. See Kho et al., A Descriptive Analysis, *supra* note 307, at 182.

309. Charter schools comprise 134 of all of D.C.’s public schools, with nearly half of all D.C. public school students attending charter schools. See DC Pub. Charter Sch. Bd., 2025 Annual Report: Commitment to Students, Families, Staff, and Our Community 3, 5 (2025), [https://www.dcpsb.org/sites/default/files/media/file/DCPCSB%202025%20Annual%20Report\\_2\\_0.pdf](https://www.dcpsb.org/sites/default/files/media/file/DCPCSB%202025%20Annual%20Report_2_0.pdf) [<https://perma.cc/TH26-YBDG>]. These schools are authorized by the D.C. Public Charter School Board. *Id.* at 5.

310. For example, one report noted that while some charters may not systematically push out students, they often do not “backfill,” or enroll students midyear as traditional public schools must do. Neil Campbell & Abby Quirk, Ctr. for Am. Progress, Student Mobility, Backfill, and Charter Schools 1 (2019), <https://www.americanprogress.org/wp-content/uploads/sites/2/2019/08/Student-Mobility-Backfill-and-Charter.pdf> [<https://perma.cc/9QFF-AZT3>]. The report notes that this can result in fewer students being served by charters and can impact test score comparisons between charter and public schools because the students who stay in charters experience less mobility than students in public schools, whose test performance may be negatively impacted by mobility. *Id.* at 1–2.

D.C.'s public schools demonstrate how defensive localism can inform school discipline practices and impact school climate. A report by the DC Police Reform Commission found that "[y]outh of color in particular often do not feel comfortable, valued, or safe in educational spaces where they are interacting with representatives of a system that generally views Black and Brown people as a threat."<sup>311</sup> D.C. public school students reported to the DC Police Reform Commission that they felt criminalized and stigmatized by police presence and surveillance equipment in schools, like metal detectors.<sup>312</sup> Mary Balla, a teacher from D.C.'s Ward 8, shared during a hearing about a school safety bill that "[h]aving police presence in-house does not facilitate de-escalation or foster a safe learning space. Rather, it creates an environment that is threatening to [the] most vulnerable students and directly contributes to the school-to-prison pipeline."<sup>313</sup> Notably, school police also affect Black students' perceptions of government institutions and prepare them for governmental surveillance.<sup>314</sup>

Another example of defensive localism and school discipline is reflected in the D.C. mayor's decision to reverse the will of the D.C. Council and many community members to reinstate police in D.C.'s public schools. In 2021, the D.C. Council unanimously passed a provision in the fiscal year 2022 budget legislation to gradually reduce the number of SROs in public and charter schools, eventually sunseting the School Safety Division of the Metropolitan Police Department (MPD) by 2025.<sup>315</sup> But the D.C. Council's groundbreaking action to end police in schools was opposed by Mayor Muriel Bowser and MPD Chief Robert Contee.<sup>316</sup> In an

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311. D.C. Police Reform Comm'n, *supra* note 20, at 17.

312. *Id.* at 68.

313. Megan Cloherty, DC Leaders Consider Whether to Keep Police in Schools, WTOP News (Apr. 21, 2021), <https://wtop.com/dc/2021/04/dc-leaders-consider-whether-to-keep-police-in-schools/> [<https://perma.cc/X3HF-EUFG>] (internal quotation marks omitted) (quoting Mary Balla).

314. See Nance, *supra* note 12, at 25.

315. "By July 1, 2025, the School Safety Division shall be dissolved, and MPD no longer shall staff DCPS and public charter schools with school resource officers." Fiscal Year 2022 Budget Support Emergency Act of 2021, D.C. Act 24-159, sec. 3082(b), § 5-132.02(e)(4), 68 D.C. Reg. 8602, 8683 (2021) (repealed 2023). "The decision was largely informed by young people who, for years, have raised alarms about the negative impact of school police on their ability to learn and feel safe in school." "Police-Free Schools" Means Committing to D.C. Students' Health and Safety, ACLU D.C. (May 19, 2022), <https://www.acludc.org/en/news/police-free-schools-means-committing-dc-students-health-and-safety> [<https://perma.cc/YJA6-YYG5>]; see also Perry Stein & Peter Hermann, D.C. Mayor Wants to Restore Slashed Funding for Police in Schools, Wash. Post (Apr. 2, 2022), <https://www.washingtonpost.com/education/2022/04/02/dc-police-in-schools/> (on file with the *Columbia Law Review*) (noting that community groups sought to scale back police presence in schools to prioritize safe educational spaces for students of color and those with disabilities).

316. Martin Austermuhle, Bowser Uses Budget to Reverse D.C. Council on Police in Schools, Child Welfare Watchdog, DCist (Mar. 21, 2022), <https://dcist.com/story/22/03/21/bowser-dc-budget-revives-fight-over-police-in-schools/> [<https://perma.cc/9R6L-5VQ9>]. D.C. Public Schools Chancellor Lewis Ferebee also opposed the removal of

interview, Mayor Bowser asserted, “We never agreed with the idea of removing school resource officers from schools.”<sup>317</sup> Some argued that the push to zero out SRO funding was supported only by activists and not the wider D.C. community.<sup>318</sup> But it is not clear who the “we” is that Mayor Bowser was referring to in her statement. A survey of D.C. residents found that a significant majority (70%) favored investment in prevention and social services rather than in policing.<sup>319</sup> In addition, the Police Reform Commission, assembled by the D.C. Council to improve policing, also recommended that Washington, D.C., rededicate funds for police in schools to other services and supports for students.<sup>320</sup> But Mayor Bowser exercised her mayoral prerogative over education, bolstered by narratives of rising youth crime, to reinstate SROs in public schools, contrary to the expressed wishes of many residents and experts.<sup>321</sup>

#### B. *Exclusionary Discipline and Citizenship Harms*

Such exercises of defensive localism through punitive and exclusionary disciplinary practices inflict citizenship harms on impacted students, undermining education’s goal of preparing children for participation as citizens in a representative democracy.<sup>322</sup> If citizenship means being in community with others, then children impacted by exclusionary discipline are no longer part of their school community’s citizenry. Children excluded from school, whether through arrest, expulsion, or suspension, are often ostracized and stigmatized within the school community. This leads to disengagement from education and increased likelihood of dropping out of school. This exclusion is compounded by educational losses since excluded students lose out on classroom instruction time,<sup>323</sup>

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school police and argued that police presence helps children build relationships with law enforcement and fosters safety. *Id.*; see also Stein & Hermann, *supra* note 315.

317. See Stein & Hermann, *supra* note 315 (internal quotation marks omitted) (quoting Muriel E. Bowser, Mayor, Washington, D.C.).

318. See, e.g., *id.* (“Some city leaders dismissed the findings of the commission, suggesting that it reflected the view of activists, not the community.”).

319. Roshni Nedungadi, HIT Strategies, District Residents’ Support for a Gun Violence Reduction Plan 1 (2024), [https://hitstrat.com/wp-content/uploads/2024/09/HIT\\_PWF\\_May\\_Survey\\_Memo\\_f1.pdf](https://hitstrat.com/wp-content/uploads/2024/09/HIT_PWF_May_Survey_Memo_f1.pdf) [<https://perma.cc/5CZ5-62NB>]. The survey, conducted by HIT Strategies on behalf of the Public Welfare Foundation, surveyed 602 adult residents of Washington, D.C. *Id.*

320. See D.C. Police Reform Comm’n, *supra* note 20, at 69 (outlining that Washington, D.C., should divest from policing and militarizing schools and, instead, invest in alternatives that center community safety).

321. See *id.* at 68–69 (recommending the removal of police from Washington, D.C., public schools and reflecting the desires of residents and students to have them removed).

322. “From [its] inception[,] . . . public education was viewed as being vital to . . . American democracy. It was viewed, and still is in some ways today, as being the training ground for citizens . . . and as leveling the playing field so that social mobility across classes can occur.” Wilson, *New School Segregation*, *supra* note 29, at 189 (footnote omitted).

323. Most alarmingly, schools that focus on disciplining and controlling students dedicate less time and resources to instruction, depriving students of quality educational

are more likely to repeat a grade, are less likely to graduate on time, and are more likely to become involved with the criminal legal system.<sup>324</sup> In addition, students arrested at school can face legal fees, family separation, loss of immigration status, and loss of housing or employment due to criminal records.<sup>325</sup> As a result of school-based arrests, thousands of students enter adulthood with criminal records, warrants, debt, and other attendant disadvantages.<sup>326</sup>

The citizenship impacts of exclusionary discipline can be long term, triggering a cycle of civic disengagement at odds with classic localism. Students subjected to school-based arrests who garner criminal records may face disenfranchisement and not be able to vote for elected officials, hold elected office, or otherwise participate in local governance.<sup>327</sup> Students with criminal records are thus unable to access benefits of classic localism like democratic participation or community. In addition, exclusionary discipline can have consequences for students' future educational and employment prospects, deepening the already staggering inequities impacted students face.<sup>328</sup> Indeed, "[i]f one has been stigmatized, he or she exists outside the polity, on the margins, in some way. This is what it means to be stigmatized."<sup>329</sup> This stigma can be internalized, with parents who experienced punitive discipline as students feeling discouraged from being engaged in their own children's educational experiences. For example, one study of Black mothers noted that they felt "judged and marginalized by school discipline processes, expressing that educators assumed they were uneducated, bad parents and their children were inherently deserving of punishment, leading to constant cycles of retraumatization."<sup>330</sup> Just like many lower-income, majority-Black families are often locked into low-performing schools, families can become locked into the cycle of exclusionary discipline, with students being affected by the legacies of punitive discipline within their families and communities.<sup>331</sup>

While individual students may be excluded from their respective communities as a result of defensive localism, the harm of their criminalization also impacts the communities to which they belong,

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opportunities. Nance, *supra* note 12, at 25. Furthermore, this loss of instructional time undermines academic progress and reduces the possibility of students becoming productive and engaged citizens. See Simson, *supra* note 18, at 516.

324. U.S. Gov't Accountability Off., *Characteristics of School Shootings*, *supra* note 19, at 10.

325. D.C. Police Reform Comm'n, *supra* note 20, at 68; see also Amber Baylor, *Criminalized Students, Reparations, and the Limits of Prospective Reform*, 99 *Wash. U. L. Rev.* 1229, 1262 (2022).

326. Baylor, *supra* note 325, at 1230.

327. *Id.* at 1277.

328. Nance, *supra* note 12, at 25.

329. Lenhardt, *supra* note 18, at 845.

330. Sobti & Welsh, *supra* note 202, at 506.

331. See Baylor, *supra* note 325, at 1270.

resulting in divestment from those communities.<sup>332</sup> For example, students who are arrested cost communities the price of incarcerating them, which is often more costly than it would have been to provide them with mental health services or other more supportive interventions while they were still in school.<sup>333</sup> Communities lose out on children who could have become policymakers, government employees, or citizens who could contribute to the tax base and improve community resources. These citizenship harms contravene the community and democratic participation goals of classic localism and undermine the goal of public education to produce citizens prepared to participate in the nation's democracy.

#### IV. FEDERALIZING SCHOOL PUSHOUT AND THE URGENCY OF REIMAGINING SCHOOL DISCIPLINE

The Trump Administration's civil rights agenda, under which white people are cast as the primary victims of discrimination, seeks to upend decades of hard-won civil rights protections and fashion them as discriminatory.<sup>334</sup> This approach to understanding discrimination dismisses the race-conscious discrimination that alienated Black people from all facets of American public life for most of this nation's existence—first under slavery and then under Jim Crow. At bottom, this approach makes racism solely about physical attributes and ignores the role of racism in the shaping of inequality in America.<sup>335</sup> The current federal agenda reflects this denial of the existence of racial discrimination in America. As Professor Jonathan Feingold observes, the current attacks have evolved from rare arguments and have “metastasized into a nationwide campaign of regressive discourse” that equates antiracism with racism.<sup>336</sup> Under this ideology, something else must be responsible for the position of Black people in this country besides the enduring effects of racism.<sup>337</sup> This collective denial ignores the legacy of segregation in the form of today's resource-starved, majority-Black districts, borne from discriminatory design and not destiny. Rather, this agenda invokes racial tropes of Black inferiority

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332. Id. at 1239.

333. See Kayla Susalla, *The Costs of School Policing*, Cato Inst.: Blog (Dec. 20, 2023), <https://www.cato.org/blog/costs-school-policing> (on file with the *Columbia Law Review*) (arguing that community-centered alternatives to punitive policing should be prioritized as they have demonstrated positive outcomes and “are less costly for the individual and their families, as well as taxpayers”).

334. See Nikole Hannah-Jones, *How Trump Upended 60 Years of Civil Rights in Two Months*, N.Y. Times Mag. (June 27, 2025), <https://www.nytimes.com/2025/06/27/magazine/trump-civil-rights-law-discrimination.html> (on file with the *Columbia Law Review*) (arguing that “Trump has used his singular authority as the head of the federal government to recast the white majority as the primary victims of systemic racial discrimination . . . . When in the past the federal government stopped enforcing these laws, those rights have always deteriorated”).

335. Jonathan P. Feingold, *Colorblind Capture*, 102 B.U. L. Rev. 1949, 1955–56 (2022).

336. Id. at 1953 (footnote omitted).

337. Id. at 1955.

to explain inequality and to seek to once again erase Black people from public life, including through assertions that Black people in positions of power are there solely because of diversity, equity, and inclusion policies.<sup>338</sup> This argument is predicated on the belief that Black people could not possibly have the credentials, education, or intellectual acumen to serve in public leadership roles.<sup>339</sup>

Understanding the federal policy agenda being executed by the executive branch and endorsed by a conservative Congress and Supreme Court is important, as it can influence state and local action and circumscribe the kinds of relief available for those experiencing discrimination—including discriminatory school discipline. Further, the federal government often sets the tone for state and local action (as evidenced in the first Trump Administration’s vilification of critical race theory that inspired copycat legislation at state and local levels<sup>340</sup>).<sup>341</sup> When the federal government has played a leadership role in enforcing civil rights in education, like it did in the face of state and local opposition to the *Brown* ruling, the impact has been profound. In 1964, a decade after the *Brown* ruling, only 2% of Black children in the South attended schools with white children.<sup>342</sup> But by 1973, with federal enforcement from the executive branch, the Supreme Court, and Congress (including enactment of the Civil Rights Act of 1964 and the Elementary and Secondary Education Act of 1965), almost 90% of Southern schoolchildren attended integrated schools.<sup>343</sup>

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338. For example, Black government officials—including Librarian of Congress Carla Hayden and Chairman of the Joint Chiefs of Staff General Charles Q. Brown, Jr.—have been terminated due to such assertions. Jason Breslow, *Trump Fires the Chairman of the Joint Chiefs of Staff*, NPR, <https://www.npr.org/2025/02/21/nx-s1-5305288/trump-fires-chairman-joint-chiefs-of-staff-charles-brown-pentagon> [<https://perma.cc/9DBP-BR2F>] (last updated Feb. 22, 2025); President Trump Fires Librarian of Congress Carla Hayden, NPR (May 9, 2025), <https://www.npr.org/2025/05/09/g-s1-65271/librarian-of-congress-fired> [<https://perma.cc/FB49-Z2A8>].

339. For instance, part of the attack on former Harvard president Claudine Gay was undergirded by anti-Blackness and the invocation of racialized tropes of Black intellectual inferiority. See Janel George, *Miseducation and the Project of Panic, Propaganda and Power*, Ms. Mag. (Jan. 30, 2024), <https://msmagazine.com/2024/01/30/claudine-gay-black-women-university-critical-race-theory-dei-white-supremacy/> [<https://perma.cc/2L79-5KGY>]; see also Hannah-Jones, *supra* note 334 (explaining that Trump claims his anti-DEI efforts are an attempt to return the United States to a “meritocracy”).

340. See Jonathan Feingold, *Anti-Critical Race Theory Laws Are Actually Pro-CRT*, Bloomberg Law (Jul. 19, 2022), <https://news.bloomberglaw.com/us-law-week/anti-critical-race-theory-laws-are-actually-pro-crt> (on file with the *Columbia Law Review*) (“Although inoperative, Trump’s [2020] EO became a template for copycat state laws.”).

341. See Janel A. George, *The End of “Performative School Desegregation”: Reimagining the Federal Role in Dismantling Segregated Education*, 22 *Rutgers Race & L. Rev.* 189, 194 (2021) (explaining that the federal government can help “to bring an end to performative desegregation and to genuinely foster integrated education”).

342. Gary Orfield, *Joint Ctr. for Pol. Stud.*, *Public School Desegregation in the United States, 1968–1980*, at 5 (1983).

343. *Id.*

But the federalization of school pushout will likely mean that districts and schools will have little incentive to curb exclusionary discipline practices. Further, the Trump Administration is systematically eliminating components of the civil rights oversight and enforcement infrastructure that have been instrumental in effectuating the goals of the Civil Rights Act of 1964.<sup>344</sup> It is doing this through two primary means: (1) by eliminating the staff that oversees and enforces civil rights laws, and (2) by eviscerating the legal standard, disparate impact, that has enabled claimants to seek relief for covert, contemporary forms of discrimination that evade earlier de jure prohibitions.<sup>345</sup> The Supreme Court recently approved the Administration's demolition of the Department of Education,<sup>346</sup> even though Congress had elevated the Department to the agency level via statute.<sup>347</sup> These federal actions mean that localities will not face federal accountability for exclusionary discipline regimes.

#### A. *Eviscerating the Antidiscrimination Infrastructure*

Shortly after taking office, President Donald Trump announced his plans to cut the U.S. Department of Education's staff.<sup>348</sup> The Department experienced a reduction-in-force of over half of its staff of four thousand, with over six hundred taking early retirement or resigning and another 1,300 being fired.<sup>349</sup> Of those positions eliminated, over two hundred were in OCR, whose primary responsibility is to review, investigate, and resolve discrimination complaints.<sup>350</sup> The cuts to OCR hinder an already-

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344. See Hannah-Jones, *supra* note 334.

345. *Id.*

346. *McMahon v. New York*, 145 S. Ct. 2643, 2643 (2025) (mem.) (granting the federal government's request for a stay of a lower court's preliminary injunction halting the firings of Department of Education employees). The decision clears the way for the firing of 1,400 Department employees and for the outsourcing of its functions to other agencies. U.S. Supreme Court Allows Trump's Mass Firings at Department of Education, EdSource (July 15, 2025), <https://edsources.org/updates/supreme-court-oks-dismantling-of-u-s-dept-of-education> [<https://perma.cc/2FLP-RF9H>].

347. Department of Education Organization Act § 201, 20 U.S.C. § 3411 (2018).

348. See Collin Binkley & Chris Megerian, *Trump Orders a Plan to Dismantle the Education Department While Keeping Some Core Functions*, AP News, <https://apnews.com/article/trump-education-department-shutdownb1d25a2e1bdc24cfde8ad8b655b9843> (on file with the *Columbia Law Review*) (last updated Mar. 20, 2025).

349. Cory Turner, *The Education Department Is Being Cut in Half. Here's What's Being Lost*, NPR, <https://www.npr.org/2025/03/12/nx-s1-5325854/trump-education-department-layoffs-civil-rights-student-loans> [<https://perma.cc/2XJU-REYC>] (last updated Mar. 13, 2025).

350. See *id.* Since 1979, the Department's civil rights arm has worked to enforce the nation's antidiscrimination laws in schools. Department of Education Organization Act, Pub. L. No. 96-88, § 203, 93 Stat. 668, 673 (1979) (codified at 20 U.S.C. § 3413). It operates under a congressional mandate to uphold the Civil Rights Act of 1964 as well as the federal laws that prohibit discriminating against students because of gender or disability. Jodi S. Cohen & Jennifer Smith Richards, *Massive Layoffs at the Department of Education Erode Its Civil Rights Division*, ProPublica (Mar. 12, 2025), <https://>

understaffed office in its responsibility to address civil rights complaints, offer guidance to school districts and states, and otherwise fulfill its oversight duties as enshrined in federal law.<sup>351</sup> Elimination of OCR's field offices further frustrates its ability to provide districts with technical assistance or support in complying with federal civil rights laws. Seven of OCR's twelve field offices have been shuttered, including offices in Boston, Chicago, Cleveland, Dallas, New York, Philadelphia, and San Francisco.<sup>352</sup>

The Trump Administration has now weaponized the OCR to enforce anti-trans policies and penalize universities through threatened fund rescissions.<sup>353</sup> Specifically, universities are being penalized for teaching about the history and current reality of racism and for alleged antisemitism, which has become the Administration's new pretext for penalizing institutions not aligned with its ideology.<sup>354</sup>

#### B. *Diminishing Disparate Impact*

During the first Trump Administration, the Federal Commission on School Safety denied the reality that racial disparities in school discipline existed.<sup>355</sup> Specifically, the Commission issued a report that, in addition to invoking racial tropes that attributed discipline disparities to student behavior and "societal factors," rejected the disparate impact standard

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[www.propublica.org/article/education-department-civil-rights-division-eroded-by-massive-layoffs](https://www.propublica.org/article/education-department-civil-rights-division-eroded-by-massive-layoffs) [<https://perma.cc/66EX-5BVN>].

351. See Tyler Kingkade & Adam Edelman, What the Education Department Layoffs Could Mean for Students With Disabilities, NBC News (Mar. 12, 2025), <https://www.nbcnews.com/news/us-news/education-department-layoffs-students-disabilities-rcna196114> (on file with the *Columbia Law Review*) (reporting that the staffing cuts to the Office for Civil Rights and the Institute of Education Sciences impact the ability to address the twelve thousand pending federal investigations into allegations of civil rights violations at schools); see also id. ("Experts say they raise concerns about what the future will look like for civil rights enforcement as the Trump administration continues chipping away at federal oversight.").

352. Cohen & Richards, *supra* note 350. Currently, offices remain open in Atlanta, Denver, Kansas City, Seattle, and Washington, D.C. Id.

353. See Cory Turner, How the Education Department Is Using Civil Rights Laws to Bring Schools to Heel, OPB (Sep. 4, 2025), <https://www.opb.org/article/2025/09/04/how-trump-is-using-civil-rights-laws-to-bring-schools-to-heel/> (on file with the *Columbia Law Review*).

354. See Rose Horowitz, Trump Finally Drops the Anti-Semitism Pretext, *The Atlantic* (May 6, 2025), <https://www.theatlantic.com/politics/archive/2025/05/mcmahon-harvard-letter/682717/> (on file with the *Columbia Law Review*) (explaining how OCR has opened up new investigations related to curbing antisemitism, fighting trans women's participation in sports, and combating alleged discrimination against white students); see also Johanna Alonso, A Reduced Civil Rights Office Could Leave Students and Institutions in Limbo, *Inside Higher Ed* (Apr. 15, 2025), <https://www.insidehighered.com/news/students/safety/2025/04/15/students-and-institutions-limbo-after-mass-layoffs-ocr> (on file with the *Columbia Law Review*) (explaining how the Trump Administration's cuts to the OCR have dramatically increased workers' caseloads and thus made it more difficult to resolve complaints).

355. Final Report of the Federal Commission, *supra* note 230, at 70–72.

under Title VI of the Civil Rights Act of 1964.<sup>356</sup> The disparate impact standard recognizes contemporary forms of racial discrimination by illustrating how otherwise neutral laws can have a disproportionate impact on a protected class.<sup>357</sup> The Commission's report argued against a focus on "aggregate school discipline numbers" and suggested that the Obama-era guidance on the nondiscriminatory administration of school discipline was calling for "racial quotas" in discipline.<sup>358</sup> This disregards the ways that neutral discipline policies like dress codes may be implemented in discriminatory ways to negatively impact Black students. The report narrowly interpreted the disparate impact standard and essentially foreclosed relief under Title VI for students alleging disparate impact discrimination.<sup>359</sup>

Shortly after taking office for his second term, President Trump issued an executive order purporting to reinstate "common sense" in school discipline policies and accusing the Biden Administration of "weaponizing Title VI" and promoting "discriminatory equity ideology."<sup>360</sup> The order

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356. *Id.* The report also invokes deficit framing, which locates the source of discipline disparities in communities themselves and not within the discriminatory administration of school discipline. See Nikolaidis, *supra* note 222, at 722–23 (explaining how the rhetoric of the Federal Commission Report frames students of colors' behaviors as a natural outcome of the communities they are raised in, rather than as a product of a punitive school system).

357. Disparate impact claims can be brought under Title VI of the Civil Rights Act of 1964's section 602. 42 U.S.C. § 2000d (2018); 34 C.F.R. § 100.3(b)(2) (2025) (forbidding the use of "criteria or methods . . . which have the effect of subjecting individuals to discrimination because of their race, color, or national origin"). Plaintiffs alleging disparate impact must meet a three-part test: (1) whether the adverse outcome disproportionately impacts a group identified by race, color, or national origin (*prima facie* showing), (2) whether there is "a substantial legitimate justification for the policy or practice," and (3) whether a less discriminatory alternative exists. C.R. Div., DOJ, Title VI Legal Manual, Section VII: Proving Discrimination—Disparate Impact 7 (2021), [https://www.epa.gov/sites/default/files/2021-01/documents/titlevi\\_legal\\_manual\\_rev\\_ed\\_1.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/titlevi_legal_manual_rev_ed_1.pdf) [<https://perma.cc/2KVL-VYGE>] [hereinafter Title VI Legal Manual, Section VII]; see also George, Stereotype and School Pushout, *supra* note 208, at 121 ("Because intent is so difficult to prove, many have tried instead to bring claims under the 'disparate impact' theory, which 'occurs when students demonstrate that a facially neutral policy has a negative impact on a protected class of students.'" (quoting Russell J. Skiba, Suzanne E. Eckes & Kevin Brown, African American Disproportionality in School Discipline: The Divide Between Best Evidence and Legal Remedy, 54 N.Y. L. Sch. L. Rev. 1071, 1091 (2010))).

358. Final Report of the Federal Commission, *supra* note 230, at 68, 70.

359. The Supreme Court has recognized that policies that appear neutral can be traced back to the nation's history of racially discriminatory policies in education and other areas of American life. See, e.g., *City of Rome v. United States*, 446 U.S. 156, 176–77 (1980) (voting rights); *Griggs v. Duke Power Co.*, 401 U.S. 424, 430–31 (1971) (employment discrimination); *Gaston County v. United States*, 395 U.S. 285, 297 (1969) (voting rights); see also Title VI Legal Manual, Section VII, *supra* note 357, at 2 ("[E]ven benignly-motivated policies that appear neutral on their face may be traceable to the nation's long history of invidious race discrimination in employment, education, housing, and many other areas.").

360. Exec. Order No. 14,280, 90 Fed. Reg. 17,533, 17,533–34 (Apr. 23, 2025). The Administration blames the prior Administration's recognition of disparate impact in the application of school discipline for decreased student safety, accusing such policies of

exemplifies the Trump Administration's hands-off approach to school discipline, including its dismissiveness of discipline disparities negatively impacting the educational experiences and outcomes of many Black students. It echoes the Administration's prior disregard for disparate impact, invoking the idea of legally impermissible affirmative action quotas.<sup>361</sup> This interpretation runs counter to well-established research demonstrating that Black children are punished at higher rates despite not misbehaving more than their white peers, and it fails to recognize the ways that contemporary discrimination endures—cloaked in racially neutral language. Disparate impact recognizes that discrimination evolves into seemingly legally permissible forms. The discrediting of this standard denies the ways that contemporary discrimination manifests.

The Trump Administration is essentially federalizing school pushout by placing its imprimatur on policies and structures that facilitate exclusionary discipline and foreclose relief for students impacted by punitive discipline policies. Federalizing school pushout not only incentivizes states and localities to continue doing the same but also robs them of vital guidance and technical assistance to do something different like crafting and implementing inclusive school discipline systems as outlined in the Obama-era school discipline guidance.<sup>362</sup> Ending the cycle of exclusionary discipline is critical to ensuring that students do not continue to suffer the citizenship harms associated with school exclusion.

To be clear, like the current federal government, not all states desire to end exclusionary school discipline practices that are imposing citizenship harms on impacted students. For example, some states still permit corporal punishment, with data showing that Black and disabled students nationwide are twice as likely to receive corporal punishment as white students without disabilities.<sup>363</sup> But the evidence outlined throughout this Article illustrates the reality that reliance on exclusionary school discipline is not working.<sup>364</sup> Whether students are in under-

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exposing teachers and students to higher levels of school violence and disorder. *Id.* at 17,533.

361. *Id.*

362. See Catherine E. Lhamon, Assistant Sec'y for C.R., Dep't of Educ., & Jocelyn Samuels, Acting Assistant Att'y Gen. for C.R., DOJ, Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline (Jan. 8, 2014), <https://www.ed.gov/laws-and-policy/civil-rights-laws/race-color-and-national-origin-discrimination/dear-colleague-letter-nondiscriminatory-administration-of-school-discipline> [<https://perma.cc/U7PB-SXHX>] [hereinafter Lhamon & Samuels, 2014 Dear Colleague Letter] (rescinded) (outlining evidence-based school discipline interventions like restorative practices that can be implemented in lieu of more punitive approaches).

363. Aniya Greene-Santos, Corporal Punishment in Schools Still Legal in Many States, NEA Today (May 20, 2024), <https://www.nea.org/nea-today/all-news-articles/corporal-punishment-schools-still-legal-many-states> [<https://perma.cc/BCU5-FSL6>] (noting that the majority of students who received corporal punishment lived in Alabama, Arkansas, Mississippi, and Texas and discussing a study noting that states with higher utilization rates of corporal punishment also had long histories of lynching).

364. See *supra* section III.A.

resourced schools in urban centers or in suburban enclaves, current school discipline regimes are not functioning effectively. It becomes clear, then, that students are not safer, and impacted students are paying the cost of these ineffective regimes with their educational futures. Schools alone cannot reform school discipline systems—it will take cooperation with other local government structures that facilitate school segregation, resource inequities, and exclusion.<sup>365</sup>

Furthermore, no matter the intervention, the anti-Black carceral logic undergirding so many exclusionary discipline regimes must be eradicated for interventions to work effectively.<sup>366</sup> If not, exclusionary discipline practices will just be replaced with alternative practices (even those that keep children in schools) that also stigmatize and alienate Black students. And notably, the defensive and destructive exercises of local power, as outlined in this Article, complicate the consideration of interventions. Based on the evidence cited throughout this Article, it could be possible, even with changes to disciplinary codes, that the hoarding of educational resources and the limited power of some schools to craft their school environments will continue to perpetuate inequitable disciplinary systems that undermine students' futures.

Therefore, this Article will not (and cannot) attempt to settle all the complexities of school discipline regimes resulting from exercises of both classic and defensive localism. What it will attempt to do is offer some lessons for consideration for reimagining school discipline drawn from localities, namely Illinois and Washington, D.C., which was closely critiqued for its exercise of defensive localism in Part III, that have recognized the harm of exclusionary discipline and have attempted—with varying degrees of success—to take steps to transform their exclusionary school discipline regimes.

## V. DISMANTLING DESTRUCTIVE AND EXCLUSIONARY DISCIPLINE REGIMES

### A. *Illinois's Ongoing Discipline Transformation*

Illinois exemplifies a state impacted by school segregation, defensive localism, and consequent interlocal inequities. Like many urban centers, white flight to suburbs to flee school integration contributed to the segregation of Chicago.<sup>367</sup> As Professor LaToya Baldwin Clark notes, the trifecta of policies that shape educational inequality—residential requirements, tax funding, and local control—are pervasive in deeply segregated urban metros like Chicago where children are subjected to the

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365. See *supra* notes 144–145 and accompanying text (describing how local governments and school districts exclude students through exclusionary school discipline practices).

366. See Lopez, *supra* note 23, at 386.

367. See Baldwin Clark, *supra* note 14, at 514 (noting how school district boundaries and residency requirements co-construct residential and educational segregation).

structural violence of education stratification.<sup>368</sup> Echoing this Article's central argument, she locates the exercise of classic localism as a driver of this educational stratification in Chicago, noting that segregation and hoarding by wealthy, majority-white suburban districts created inequitable, under-funded, and segregated schools for Black children.<sup>369</sup> Black students in these segregated and underfunded schools are left with limited educational and life opportunities. For example, as a result of historic segregative practices like redlining,<sup>370</sup> the majority of students in the Chicago Public Schools district (CPS) are students of color, with 47% identifying as Hispanic and 35% identifying as Black.<sup>371</sup> Like many segregated, majority-Black cities, Chicago is also impacted by poverty: In 2020, 79% of CPS students were eligible for the National School Lunch Program.<sup>372</sup>

Furthermore, like many segregated and under-resourced districts with high numbers of Black students, Chicago relied on the overuse of exclusionary discipline practices. Although the CPS's code of conduct eliminated zero tolerance approaches and recommended the use of restorative practices as early as 2006, a lack of resources for schools to transition away from exclusionary discipline and the failure to impose limits on use of exclusionary discipline contributed to its endurance.<sup>373</sup> For example, analysis of national data from the 2019 to 2020 school year showed that students of color in one Illinois school district accounted for 86% of its suspensions, and CPS had the state's highest rates of suspensions and expulsions.<sup>374</sup> In 2018, Black students in Chicago were six times more likely to miss school days due to out-of-school suspensions than were their white peers.<sup>375</sup>

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368. *Id.* at 502.

369. *Id.*

370. See *supra* section I.A.

371. Crystal Paul & Becky Vevea, *Explaining Chicago Public Schools: The Students*, Chalkbeat Chi. (Sep. 16, 2024), <https://www.chalkbeat.org/chicago/2024/09/16/cps-student-demographics-and-enrollment-faq/> [<https://perma.cc/M95K-WY8R>].

372. See Baldwin Clark, *supra* note 14, at 504 n.28 (noting the National School Lunch Program caps eligibility at 185% of the federal poverty line); see also Food & Nutrition Serv., USDA, *National School Lunch Program* (2021), <https://fns-prod.azureedge.us/sites/default/files/resource-files/FNS-101-NSLP.pdf> [<https://perma.cc/Z435-Z8S8>] (explaining that students are deemed “categorically eligible” for free meals through participation in certain Federal assistance programs, such as the Supplemental Nutrition Assistance Program, or based on the status as a homeless, migrant, runaway, or foster child”).

373. See *Voices of Youth in Chi. Educ., Failed Policies, Broken Futures: The True Cost of Zero Tolerance in Chicago* 3 (2011), <https://voyceproject.org/wp-content/uploads/Failed-Policies-Broken-Futures.pdf> [<https://perma.cc/2YQM-BY6J>].

374. See Chuck Goudie, Barb Markoff, Christine Tressel, Ross Weidner, Jonathan Fagg & Adriana Aguilar, *Stark Racial Disparity in School Discipline Revealed by Data Investigation*, ABC7 Eyewitness News (Aug. 26, 2021), <https://abc7chicago.com/post/racial-disparity-discipline-in-schools-students-of-color-profiling/10978922/> [<https://perma.cc/G627-XJXK>].

375. *Id.*

The citizenship harms experienced by Illinois's impacted students were serious and included reduced high school graduation rates and decreased likelihood of post-secondary enrollment, as well as higher risk for involvement with the juvenile legal system.<sup>376</sup> Exclusionary discipline has also been found to negatively impact student mental health, including by triggering anxiety and depression.<sup>377</sup> Furthermore, evidence shows that pervasive use of exclusionary discipline has negative repercussions for all students in the school, not just directly impacted students.<sup>378</sup>

In response to these citizenship harms, community-driven advocates led by Voices of Youth in Chicago Education (VOYCE)<sup>379</sup> campaigned for school discipline transparency and reduced reliance on exclusionary discipline practices in Illinois.<sup>380</sup> The group convened the Campaign for Common Sense Discipline, composed of different stakeholders, including youth advocates, education experts, and others, to push for school discipline transformation in Illinois.<sup>381</sup> Their advocacy resulted in legislation, including one 2014 state bill that required the Illinois State Board of Education to compile and make publicly available school discipline data such as exclusionary suspensions and expulsions, disaggregated by student subgroups.<sup>382</sup> Another bill, Public Act 99-0456 (which took effect in 2016),<sup>383</sup> required districts to make substantive, prevention-oriented changes to their school discipline policies, including

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376. See Miranda Johnson & James Naughton, *Just Another School?: The Need to Strengthen Legal Protections for Students Facing Disciplinary Transfers*, 33 *Notre Dame J.L. Ethics & Pub. Pol'y* 69, 73 (2019) ("School suspensions and expulsions have been associated with a reduced likelihood of high school graduation, decreased chance of post-secondary enrollment, and a higher risk for entry into the juvenile and criminal justice system." (footnote omitted)); see also Pamela A. Fenning & Miranda B. Johnson, *Developing Prevention-Oriented Discipline Codes of Conduct*, 36 *Child's Legal Rts. J.* 107, 109 (2016) (discussing the correlation between exclusionary disciplinary actions and increased likelihood of subsequent arrest).

377. Ill. State Bd. of Educ., Public Act 103-0896: Guidance for Evidence-Based Intervention Procedures 3 (2025), <https://www.isbe.net/Documents/Evidence-Based-Intervention-June-2025.pdf> [<https://perma.cc/E4F5-FLX8>].

378. *Id.*

379. VOYCE is a youth-led advocacy organization that advanced the nation's most comprehensive set of statewide school discipline reforms, which ended zero-tolerance practices in all of Illinois's publicly funded schools, restricted the use of exclusionary practices, and expanded the use of restorative practices in schools. See About Us, Voices of Youth Chi. Educ., <https://voyceproject.org/about-us/> [<https://perma.cc/PKL6-F4P8>] (last visited Aug. 20, 2025).

380. See Fenning & Johnson, *supra* note 376, at 111–12 (discussing VOYCE's successful advocacy efforts).

381. See *id.* (discussing the collaboration between grassroots advocates and state actors in operationalizing federal guidance and expertise).

382. See, e.g., S.B. 2793, 98th Gen. Assemb., 2014 Ill. Legis. Serv. 98-1102 (West); see also Fenning & Johnson, *supra* note 376, at 111 ("Illinois enacted Public Act 98-1102, which requires the . . . State Board of Education . . . to compile and publically release discipline data . . . by specific subgroups . . .").

383. See, e.g., S.B. 100, 99th Gen. Assemb., 2015 Ill. Legis. Serv. 99-456 (West).

decreasing reliance on exclusionary discipline practices.<sup>384</sup> Specifically, the law requires districts to make “‘appropriate and available’ alternatives to exclusionary [school] discipline” practices.<sup>385</sup> These alternative practices include restorative practices, counseling, and structured systems of supports and services, aligned with evidence-based practices featured in the federal guidance issued by the Obama Administration’s Departments of Justice and Education.<sup>386</sup>

The aspirations of the legislation fell short in implementation, however, as educators and school administrators found themselves hindered in responding to student behavioral issues, including post-COVID-19 student violence against school educators and staff.<sup>387</sup> While statistics showed a reduction in schools’ uses of suspensions and expulsions, most schools failed to replace exclusionary practices with evidence-based alternatives like restorative practices.<sup>388</sup> Therefore, school administrators were left with few options to address student misbehavior, particularly when student violence spiked.<sup>389</sup> School staff and educators

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384. See Johnson & Naughton, *supra* note 376, at 94 (“Public Act 99-456 . . . significantly limits the scope of school administrators’ discretion to impose exclusionary discipline on students.”).

385. See Driving Change: Illinois Laws, Transforming Sch. Discipline Collaborative, <https://www.transformschooldiscipline.org/illaws> [https://perma.cc/BZ7L-C25A] (last visited Aug. 20, 2025) (quoting S.B. 100) (discussing a series of laws passed by the Illinois legislature, including Public Act 99-0456, requiring alternatives to exclusionary discipline).

386. See Fenning & Johnson, *supra* note 376, at 116 (identifying Public Act 99-0456’s requirement that schools consider alternatives to exclusionary discipline); see also Lhamon & Samuels, 2014 Dear Colleague Letter, *supra* note 362 (“The Departments are committed to promoting effective and appropriate school discipline policies and practices that create a safe and inclusive environment where all students can learn and succeed.”). The Obama-era guidance was later rescinded by the Trump Administration, but it nonetheless provided districts with information about evidence-based alternatives to exclusionary practices. See Kenneth L. Marcus, Assistant Sec’y for C.R., Dep’t of Educ., & Eric S. Dreiband, Assistant Att’y Gen., DOJ, Dear Colleague Letter (Dec. 21, 2018), <https://www.ed.gov/media/document/colleague-201812pdf-35093.pdf> [https://perma.cc/B9WW-6EJV].

387. Press Release, Ill. Educ. Ass’n, IEA Passes Bill to Address Student Discipline Issues Stemming From Senate Bill 100 (May 29, 2024), <https://ieanea.org/2024/05/29/iea-passes-bill-to-address-student-discipline-issues-stemming-from-senate-bill-100/> [https://perma.cc/N7P2-5P7Z].

388. See Eileen Pomeroy & Mauricio Peña, Chicago Schools Started Removing Police Two Years Ago. What’s Happened Since?, Chalkbeat Chi. (Aug. 16, 2022), <https://www.chalkbeat.org/chicago/2022/8/16/23308391/chicago-public-schools-police-school-resource-officers-restorative-justice-whole-school-safety-plan/> [https://perma.cc/DQF8-RJ3Q] (discussing how CPS “has not publicly shared a comprehensive list of what individual schools are doing to implement safety alternatives”).

389. According to a report by the Illinois Education Association, attacks on educators and school staff almost doubled in the state, and a national study found that almost half of educators and over 30% of school staff wished to transfer schools due to safety issues. Diana J. Zaleski, Ill. Educ. Ass’n, The Impact of Student Discipline Policy Reform on Illinois Educators 3 (2024), [https://ieanea.org/wp-content/uploads/2024/01/Impact-of-Student-Discipline-Policy-Reform-on-Illinois-Educators-1-17-2024\\_Final.pdf](https://ieanea.org/wp-content/uploads/2024/01/Impact-of-Student-Discipline-Policy-Reform-on-Illinois-Educators-1-17-2024_Final.pdf) [https://perma.cc/G76H-TK5X].

also expressed concerns about not being able to meet students' behavioral health needs.<sup>390</sup> A survey of teachers and administrators about Public Act 99-0446 found that some felt that their hands were tied and that students were running over administrators, while some students did not feel safe in schools.<sup>391</sup>

Rather than declaring school discipline reform efforts failures or abandoning them wholesale, organizations like the Illinois Education Association (IEA) coordinated with discipline reform advocates to identify where reform efforts fell short between aspiration and implementation to improve the law. For example, advocates recognized that failure to provide districts and schools with model policies, support, and guidance to implement legislative changes left many districts and schools unequipped to implement alternatives.<sup>392</sup> The law was not designed to completely eliminate suspensions or expulsions but to limit their use.<sup>393</sup>

Without guidance and support, however, schools were unclear about exactly how to limit their reliance on exclusionary discipline and which alternatives to implement. Essentially, without targeted state-supplied resources and support, the state's 852 school districts were left to amend their discipline policies to conform with the policy within one year on their own.<sup>394</sup> A report issued by the IEA noted that students and staff needed more support (such as additional training or staff like social workers or counselors) to address student behavioral needs effectively. To highlight educator, staff, and administrator concerns and priorities, the IEA issued a report outlining policy suggestions for other stakeholders and lawmakers to consider, including:

- Targeted resources for ongoing professional development opportunities on evidence-based classroom management, behavioral health interventions, and strategies;
- State-provided technical support and guidance to schools on discipline data collection;
- Targeted state support for expansion of school-based mental health services, which have been proven to effectively address student needs; and
- Inclusion of educator and staff voices in discipline decisionmaking, among other things.<sup>395</sup>

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390. Id. at 5–6.

391. Id. at 5.

392. Press Release, Ill. Educ. Ass'n, *supra* note 387.

393. Id.

394. Zaleski, *supra* note 389, at 3.

395. Id. at 7–8.

Although not all of the IEA's recommendations were incorporated when lawmakers amended the school discipline reform legislation,<sup>396</sup> many of them were incorporated in the new law known as Senate Bill 1400, enacted in the 2023 to 2024 session.<sup>397</sup> In addition, and consistent with school educator, administrator, and staff feedback on the need for guidance, the Illinois State Board of Education (ISBE) provided guidance to districts on how to implement alternatives to exclusionary discipline practices.<sup>398</sup> The guidance also encourages districts to create their own policies that are appropriate for their school communities.<sup>399</sup> It includes information about some evidence-based discipline interventions, consistent with Senate Bill 1400, that districts can use as a starting point, including:

- Implementing Positive Behavioral Interventions and Supports, which is a tiered framework that is intended to be implemented schoolwide and can enable school staff and educators to respond appropriately (and in culturally responsive ways) to students based on students' particular needs, with more intense interventions targeted for students with greater needs;<sup>400</sup>
- Implementing whole-school restorative practices that help school communities strengthen relationships through inclusive approaches to discipline that promote repair through teaching conflict resolution and social-emotional skills;<sup>401</sup>
- Providing school staff with ongoing training on restorative practices to ensure that the practices are implemented with fidelity;<sup>402</sup> and
- Although vilified by the current Administration and some state lawmakers,<sup>403</sup> implementing Social-Emotional Learning (SEL), an evidence-based approach to supporting students as they learn and apply skills to manage their emotions, build empathy, and create and sustain

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396. For example, the recommendations for state provision of technical support for student discipline data collection and increasing educators' and staff's voices in discipline decisionmaking were not included in the bill. See *id.*

397. S.B. 1400, 103d Gen. Assemb., Reg. Sess., 2024 Ill. Legis. Serv. 103-896 (West).

398. Ill. State Bd. of Educ., *supra* note 377, at 4–7 (mentioning alternatives such as Positive Behavioral Interventions and Supports and restorative practices).

399. See *id.* at 7.

400. *Id.* at 4.

401. *Id.* at 7. A national study found that implementation of restorative practices in Chicago public high schools reduced in-school arrests by 35% and out-of-school suspensions by 18%, among other positive effects. See Restorative Practices, U. Chi. Educ. Lab, <https://educationlab.uchicago.edu/projects/restorative-practices/> [<https://perma.cc/L82Y-ZHDU>] (last visited Aug. 20, 2025); see also Ill. State Bd. of Educ., *supra* note 377, at 6.

402. Ill. State Bd. of Educ., *supra* note 377, at 8.

403. Jennifer Vilcarino & Arianna Prothero, Ed. Dept. Says SEL Can 'Veil' Discrimination. What Does This Mean for Schools?, *EducationWeek* (Mar. 13, 2025), <https://www.edweek.org/policy-politics/ed-dept-says-sel-can-veil-discrimination-what-does-this-mean-for-schools/2025/03> (on file with the *Columbia Law Review*).

healthy relationships, which can positively shape school climate, among other suggested interventions.<sup>404</sup>

Importantly, the ISBE's guidance provides links to evidence-based resources, including access to information about trauma-informed and culturally responsive teaching, that school and district leaders, as well as educators, can access and learn from to inform their discipline interventions.<sup>405</sup>

While Illinois continues its long-term work to transform school discipline and reduce reliance on exclusionary discipline interventions, some localities, like D.C., appear to have backtracked on discipline reform. Lessons can still be learned, however, from D.C.'s efforts—despite political regression on the commitment to inclusive discipline practices.

#### B. *School Discipline Reform Lessons From Washington, D.C.*

As a result of advocacy, long led by the Every Student Every Day Coalition,<sup>406</sup> the D.C. Council voted unanimously to pass the Student Fair Access to School Amendment Act of 2018 on May 1, 2018.<sup>407</sup> The Act establishes limits on the use of exclusionary discipline, including suspensions, expulsions, and involuntary school transfers.<sup>408</sup> For example, it prohibits the use of exclusionary discipline in response to student absenteeism or late arrivals.<sup>409</sup> It also limits the duration of out-of-school suspensions to no more than five consecutive school days (for kindergarten through fifth grade), ten consecutive school days (for sixth through twelfth grade), and no more than twenty cumulative school days in a single school year.<sup>410</sup> The Act prohibits schools from penalizing students if their parents are not able to come to the school for a meeting or accompany them on their return to school, recognizing that students in foster care might not be able to comply with such a requirement.<sup>411</sup> In addition, it requires local education agencies (LEAs) to develop evidence-

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404. Ill. State Bd. of Educ., *supra* note 377 at 10–11. Studies show that SEL positively fosters students' social and emotional development and improves academic performance and long-term academic outcomes. See *id.* at 11.

405. See *id.* at 8, 14.

406. The Every Student Every Day Coalition includes advocacy organizations, researchers, and Washington, D.C., residents committed to addressing issues that negatively impact students' access to education. See Press Release, Child's L. Ctr., D.C. Council Passes Bill to Ensure Every D.C. Child Has the Right to Be in School, Learning (May 1, 2018), <https://childrenslawcenter.org/news/dc-council-passes-bill-ensure-every-dc-child-has-right-be-school-learning/> [<https://perma.cc/3L2Q-XJNJ>].

407. See *id.*; see also D.C. Code §§ 38-236.01 to 38-236.07 (2025).

408. D.C. Code §§ 38-236.01 to 38-236.07.

409. See Child's L. Ctr., Student Fair Access to School Amendment Act of 2018: Summary, [https://childrenslawcenter.org/wp-content/uploads/2021/07/FACTSHEET\\_2019\\_SFASA-Summary.pdf](https://childrenslawcenter.org/wp-content/uploads/2021/07/FACTSHEET_2019_SFASA-Summary.pdf) [<https://perma.cc/3LSM-3KN9>] (last updated July 2019).

410. *Id.*

411. *Id.*

based and transparent school discipline policies that are distributed to caregivers and made publicly available.<sup>412</sup>

The Act also prohibits the use of exclusionary discipline in response to certain infractions, including dress code violations, willful defiance,<sup>413</sup> or any non-school-sponsored incidents taking place off school grounds.<sup>414</sup> This recognizes and responds to schools' overreliance on exclusionary discipline for relatively minor discipline offenses (as described throughout this Article).<sup>415</sup> The Act outlines students' due process rights for suspensions of six or more school days.<sup>416</sup> Importantly, it also requires schools to craft educational continuity plans for excluded students, including ensuring that students receive all assignments and be provided an opportunity to complete any assignments they are unable to complete during the suspension.<sup>417</sup>

Finally, the Act establishes a School Safety and Positive Climate Fund for technical assistance, professional development opportunities, and educational programs so school officials can strengthen their credentials and better support students.<sup>418</sup> The establishment of such a dedicated fund addresses issues such as those raised in Illinois regarding lack of state-sponsored funding to support technical assistance and ongoing professional development.<sup>419</sup> The Act addressed many of the persistent issues related to overreliance on exclusionary discipline that advocates have raised across the country, including the need for educational continuity, student due process, and support for educators and school leaders.

Despite the achievement of passing the Student Fair Access to School Act, it was passed on the condition that funding be appropriated to implement it.<sup>420</sup> Its accompanying fiscal impact statement, however, noted that D.C. did not have sufficient funds in either the budget for fiscal year 2018 or the proposed budgets for fiscal years 2019 through 2022 to

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412. *Id.*

413. The law recognizes the research showing that Black students are more likely than their white peers to be perceived as disrespectful or defiant. *Id.*

414. *Id.*

415. See Marlana Wallace, Testimony of Marlana Wallace on Bill 22-0594, Student Fair Access to School Act of 2017 and Bill 22-0197 D.C. Public Schools Alternatives to Suspension Amendment of 2017, D.C. Fiscal Pol'y Inst. (Jan. 30, 2018), <https://www.dcfpi.org/all/testimony-marlana-wallace-bill-22-0594-student-fair-access-school-act-2017-bill-22-0179-d-c-public-schools-alternatives-suspension-amendment-2017/> [https://perma.cc/83HZ-XMWX] ("This bill would also limit out-of-school suspensions for the kinds of subjective infractions that disproportionately hurt special education students, low-income students and students of color.").

416. See Child.'s L. Ctr. *supra* note 409.

417. *Id.*

418. *Id.*

419. See *supra* notes 379–380 and accompanying text.

420. Child.'s L. Ctr. *supra* note 409.

implement the law.<sup>421</sup> The Act was estimated to cost approximately \$3.3 million in fiscal year 2019 and \$30.4 million over the budget and financial plan.<sup>422</sup> Estimated costs included the hiring of personnel needed to implement positive behavioral interventions and supports and to provide ongoing training for school staff.<sup>423</sup> Despite this documented need, funding for the law was not included in the fiscal year 2020 budget.<sup>424</sup> While some funding was eventually provided, it fell short of the required levels to enable LEAs to fully implement the law.<sup>425</sup> Further, the pandemic, loss of teachers and staff, and LEAs' focus on virtual learning contributed to inconsistent implementation of the law.<sup>426</sup> By the second full year of partial funding of the law, 2022 to 2023, D.C.'s suspension rates had returned to prepandemic levels.<sup>427</sup> The limited efficacy of the law illustrates the importance of funding in discipline reform efforts.

C. *Practical Considerations to Draw From Washington, D.C.'s and Illinois's Discipline Transformation Efforts*

The ongoing school discipline transformation efforts in Illinois and Washington, D.C., provide a few practical considerations for those localities that are seeking ways to reduce reliance on exclusionary discipline practices:

- Provision of sufficient and sustained state resources is vital to support school discipline transformation efforts, and this funding is necessary to support the ongoing training of school leaders, staff, and educators as well as the hiring of mental and behavioral health specialists;
- Continued review and revision of discipline laws and policies are needed; school- and district-level teams should continuously evaluate and

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421. Memorandum from Jeffrey S. DeWitt, Chief Fin. Officer, Washington, D.C., to Phil Mendelson, Chairman, Council of D.C., at 1 (Apr. 30, 2018), [https://app.cfo.dc.gov/services/fiscal\\_impact/pdf/spring09/UPDATED%20FIS%2022-594%20Student%20Fair%20Access%20to%20Schools%20ANS.pdf](https://app.cfo.dc.gov/services/fiscal_impact/pdf/spring09/UPDATED%20FIS%2022-594%20Student%20Fair%20Access%20to%20Schools%20ANS.pdf) [https://perma.cc/G6J4-B6WQ].

422. *Id.*

423. *Id.* at 3.

424. See Ed Lazere, What's in the Proposed Fiscal Year 2020 Budget for PreK-12 Education?, D.C. Fiscal Pol'y Inst. (Apr. 3, 2019), <https://www.dcfpi.org/all/whats-in-the-proposed-fiscal-year-2020-budget-for-prek-12-education/#:~:text=Lack%20of%20Investments%20in%20Positive%20Behavioral%20Supports&text=Under%20this%20approach%2C%20students%20acquire,is%20far%20below%20this%20goal> [https://perma.cc/ADA5-SRUQ] ("Counting the \$6 million in new mental health staffing through the Department of Behavioral Health, the FY 2020 budget is far below this goal.").

425. *Id.*

426. D.C. Off. of the Ombudsman for Pub. Educ., 2022 Annual Report 22 (2022), <https://educationombudsman.dc.gov/sites/default/files/dc/sites/educationombudsman/DCO%202022%20Annual%20Report%20%282%29.pdf> [https://perma.cc/B4FN-JJFJ].

427. Educ. Pol'y Initiative, D.C. Pol'y Ctr., 2022–23 State of D.C. Schools: Challenges to Pandemic Recovery in a New Normal 4 (2024), <https://www.dcpolicycenter.org/wp-content/uploads/2024/02/State-of-D.C.-Schools.pdf> (on file with the *Columbia Law Review*).

revise policies in response to feedback from educators, school leaders, staff, parents, and community members;

- LEAs need technical assistance as well as guidance featuring evidence-based school discipline interventions and best practices that can be adapted for specific school needs;

- It is important to continuously convene and communicate with various stakeholders about discipline reform developments and implementation; community is a key stakeholder that should be involved in developing alternatives to exclusionary discipline practices; and

- Continuous and disaggregated data collection (and technical support to districts on collecting data) and transparency about any analysis must be ensured—state resources should be targeted to districts to address any disparities and concerns illuminated by the data.

There may also be a limited role for courts to play in supporting discipline reforms. While state courts alone cannot reform punitive and destructive school discipline regimes, they are required to enforce state constitutional responsibilities<sup>428</sup> and may offer some relief for excluded students deprived of education as guaranteed by the state constitution. The citizenship harms that children suffer because of punitive discipline are well-documented,<sup>429</sup> and this research can be relied on by state courts to determine injury. Indeed, state courts have not proven as unwilling to take on discipline cases as federal courts have.<sup>430</sup> Specifically, state courts can “mark the outer boundaries of permissible school discipline [and] . . . take the most problematic discipline policies off the table and prompt policy makers to enact practical and holistic solutions . . . . In short, courts must be part of the solution, rather than complicit in the problem.”<sup>431</sup> Such relief would not require courts to supplant the roles of school administrators in the day-to-day provision of discipline but to ensure that discipline is not so egregious so as to deprive students of the educational opportunities that they are entitled to as citizens of a state.

Of course, it is important to recognize that not all states, localities, or courts are amenable to inclusive school discipline systems—as the school discipline ideology of the current federal Administration reflects. For example, some school districts and states have increased the punitive nature of their discipline policies in response to reports of postpandemic violence against teachers and staff.<sup>432</sup> One education expert argues that

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428. See Black, *Ending Zero Tolerance*, *supra* note 155, at 171 (“[A]ll state constitutions include specific provisions mandating that the state establish and maintain public schools.”).

429. See, e.g., *supra* notes 323–325 and accompanying text.

430. Black, *Ending Zero Tolerance*, *supra* note 155, at 205.

431. *Id.* at 98.

432. See Kara Arundel, *States Balance Supports and Discipline to Address Troubling Student Behaviors, K–12 Dive* (June 16, 2025), <https://www.k12dive.com/news/states-discipline-policies-student-behavior-supports/750291> [<https://perma.cc/ABF7-XJGZ>].

teachers must feel empowered to protect students from other disruptive students in a time of violence.<sup>433</sup> Indeed, many school leaders and lawmakers believe that a punitive approach to discipline is necessary, despite research demonstrating the inefficacy of such overly punitive and exclusionary discipline systems.<sup>434</sup>

Several states, bolstered by the federal Administration's stance, have passed punitive discipline policies. According to the National Conference of State Legislatures, ninety-seven state-level school discipline bills have been introduced in 2025, and ten have become law as of June 2025.<sup>435</sup> West Virginia is one of the states that enacted a punitive law, which allows teachers to remove students who are threatening or intimidating other students from the classroom.<sup>436</sup> A Texas law similarly allows teachers to remove students exhibiting disruptive or abusive behavior toward an adult or another student and extends in-school suspensions from a three-day maximum to a length deemed appropriate by administrators (with evaluation about whether to extend on the tenth day).<sup>437</sup> An Arkansas law, the Teacher and Student Protection Act, bars students removed from classrooms due to violent behavior from reentering if a targeted individual (student or teacher) is present in the classroom.<sup>438</sup> A Kentucky law permits school leaders to expel or suspend repeatedly violent or disruptive students.<sup>439</sup>

Given the research documented throughout this Article, however, the targets of such exclusionary and overly punitive practices are likely to be Black students whose educational futures will be negatively impacted. And these students will likely be sent to under-resourced, majority-Black schools that will be hindered in their ability to provide these students with the supports and services they need to address the root causes of any

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433. See Jonathan Butcher, *With Students Fighting More at School, Safety Should Come Before "Equity"*, Heritage Found., (Mar. 30, 2023), <https://www.heritage.org/education/commentary/students-fighting-more-school-safety-should-come-equity> [<https://perma.cc/DZQ4-2WS2>].

434. Rachel M. Perera & Melissa Kay Diliberti, *What Does the Research Say About How to Reduce Student Misbehavior in Schools?*, Brookings: Brown Ctr. Chalkboard (Sep. 21, 2023), <https://www.brookings.edu/articles/what-does-the-research-say-about-how-to-reduce-student-misbehavior-in-schools/> [<https://perma.cc/TWC4-QUL4>] (“[L]awmakers in at least eight states are working to make it easier for teachers and principals to remove misbehaving students from school[,] . . . a stunning about-face after 10+ years of . . . less-punitive approaches like restorative justice practices . . .”).

435. Arundel, *supra* note 432.

436. See W. Va. Code § 18A-5-1 (2025).

437. Arundel, *supra* note 432; see also Tex. Educ. Code Ann. § 37.005(b) (West 2025) (“An out-of-school suspension under this section may not exceed three school days. An in-school suspension under this section is not subject to any time limit.”).

438. Ark. Code Ann. § 6-18-511(e) (2) (2025).

439. See Butcher, *supra* note 433 (“In Kentucky, Gov. Andy Beshear recently approved a proposal that gives school leaders more authority to suspend or expel repeatedly disruptive and violent students.”).

behavioral issues. It becomes a cycle perpetuated by localism, opportunity hoarding, and ineffective and exclusionary discipline practices.

Indeed, no one-size-fits-all remedy will work to reform school discipline regimes—the efficacy of interventions will depend upon the cooperation of local governmental entities as well as the needs of students in particular communities. But recognizing education as a public good that should be available to all on an equal basis lies at the heart of any promising strategy to ensure that all children can learn and grow into citizens who can contribute to this nation’s multiracial democracy. What adherents of localism get wrong is their devotion to district borders, inequitable school funding schemes, exclusionary discipline practices, and other markers of educational stratification. Effectively rectifying the citizenship harms of overly punitive discipline regimes will require transcending these borders and barriers and building genuine, inclusive school communities.

### CONCLUSION

The valued principles of classic localism—democratic participation, efficiency, and community—have proved illusory for too many Black children and families on the losing end of localism. Those relegated to segregated, under-resourced communities with limited political capital have found themselves unable to break the cycle of educational inequality borne of exclusion and attendant poor education. Punitive discipline regimes in segregated, majority-Black schools have proved central in pushing students out of school and undermining their educational futures. The citizenship harms that excluded students suffer betray *Brown*’s promise of education as a foundation for good citizenship. Classic localism has normalized and obscured educational inequality along racial and socioeconomic lines.<sup>440</sup> In addition, majority-white schools and districts that exclude operate under a false sense of school safety and often overlook the signs of danger that threaten to undermine all students’ safety—as demonstrated by the enduring violence of school-targeted shootings. Students are left unsafe under both disciplinary regimes. Instead, schools can focus on providing all students with the needed supports, such as relationships with educators and school leaders and mental health services, that help them thrive.

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440. See Wilson, *New School Segregation*, *supra* note 29, at 209 (“The Supreme Court’s modern-day school desegregation jurisprudence severely undercut the progress made in desegregating public schools by decontextualizing the significance of racially identifiable schools.”).