

Critical Perspectives to Advance Educational Equity and Health Justice

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Abstract: A robust body of research supports the centrality of K-12 education to health and well-being. Critical perspectives, particularly Critical Race Theory (CRT) and Dis/ability Critical Race Studies (DisCrit), can deepen and widen health justice's exploration of how and why a range of educational inequities drive health disparities. The CRT approaches of counternarrative storytelling, race consciousness, intersectionality, and praxis can help scholars, researchers, policymakers, and advocates understand the disparate negative health impacts of education law and policy on students of color, students with disabilities, and those with intersecting identities. Critical perspectives focus upon and strengthen the necessary exploration of how structural racism, ableism, and other systemic barriers manifest in education and drive health disparities so that these barriers can be removed.

Introduction

Education is a critical component of health justice.¹ Health justice is an emerging framework that seeks to leverage law and policy in furtherance of health equity.² Health equity is achieved when “everyone has a fair and just opportunity to be healthy”³ and “everyone can attain their full potential for health and well-being.”⁴ Health justice, in turn, focuses on eliminating health disparities and establishing fair treatment for those who have been historically or currently marginalized.⁵ The word “justice” goes beyond a traditional vision of health equity to center the role of law and policy in causing and exacerbating health disparities — and also their potential to promote equity.⁶ Health justice requires more than an exploration of the connections between education and health; it requires

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scholars, researchers, advocates, and policymakers to explore how and *why* education drives health disparities.⁷ It necessitates an examination of how structural racism and other barriers impact minoritized communities,⁸ followed by action through law and policy reform and meaningful enforcement of existing laws to facilitate health equity.⁹ Critical perspectives, such as Critical Race Theory (CRT) and Dis/ability Critical Race Studies (DisCrit), provide approaches that advance this vision of the educational system as an important vehicle for health justice.

Health justice recognizes that only a small fraction of our health is driven by the care we receive at the doctor's office, while approximately 80% of our health is actually delineated by the social, structural, and political determinants of health, which are the conditions in which people live, eat, work, play, age — and

and argues that they should be deployed to strengthen scholarship, research, advocacy, and policy-making to promote justice and equity in education and health.

I. Education as a Critical Social Determinant of Health

While “public health has been largely underemphasized in [education] reform efforts” and the connections between education and health have also been largely “overlooked by the health law community,”¹⁴ a wide body of research shows the impacts of education on health and well-being.¹⁵ Those with more years of schooling are more likely to have better job opportunities, higher income, greater access to health care, healthier behaviors, better physical and mental health, less disability, and a longer lifespan.¹⁶ In particular, Americans with college degrees on average earn signif-

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learn.¹⁰ Health justice highlights that systemic and institutional barriers, including racism in both the provision of health care and in the social determinants of health, such as racism in education, lead to compromised health outcomes.¹¹ Health justice seeks to promote health equity by identifying and eliminating such barriers.

Thalia González, Alexis Etow, and Cesar De La Vega have argued that health justice should be expanded to be inclusive of education, highlighting the “co-influential” linkages between education and health.¹² They urge that problems such as school policing and exclusionary school discipline necessitate legal and policy interventions to eliminate long-standing disparities that harm the health of students of color and students with disabilities.¹³ To advance the movement towards education as health justice, we posit that critical perspectives should be used to deepen and broaden the understanding of the interconnections between health and education across a range of educational inequities. This article applies approaches from critical theories to a health justice examination of educational inequities

icantly more per year than those who do not complete high school.¹⁷ The lowest earners are Americans who do not complete high school, more than half of whom are unemployed.¹⁸ Lower educational attainment is associated with increased risk of teen pregnancy, poverty, maternal mortality, and incarceration.¹⁹

High quality K-12 education is necessary for young people to succeed in obtaining higher levels of education, with their related health benefits. During primary and secondary education, children learn academic, social, and executive functioning skills, including skills in meeting behavioral expectations, which are essential for admission and success in higher education.²⁰

Further, as highlighted by school closures caused by the COVID-19 pandemic, schools are important sources of wellbeing as spaces for social and emotional development, building relationships and community, obtaining food and limited health care, and engaging in physical exercise.²¹ Schools can be a haven from violence, abuse, or neglect.²² Schools have also promoted healthy lifestyles, health literacy, the ability to cope with stress, and management of chronic diseases.²³

Conversely, children can experience discrimination, exclusion, fear, or violence in schools due to the school-to-prison pipeline; school brutality, which is the unwarranted, excessive, and often traumatic use of force by state officials upon children at school;²⁴ inequitable investment of resources; and other systemic and institutional problems.²⁵ These problems, which disproportionately impact children of color, children living in low-income households, and children with disabilities, often manifest racism, ableism, and inadequate understanding of trauma and adversity.²⁶ They compromise students' educational experiences and well-being.²⁷

These problems also increase the risk of high school suspension, expulsion, poor attendance or grades, arrest, detention, and incarceration, all of which are significant barriers to completing high school and entering college.²⁸ Students who are suspended are at significantly increased risk of being suspended again and dropping out.²⁹ Receiving more severe or lengthy exclusionary discipline decreases the likelihood of graduation from high school.³⁰ Further, any form of exclusionary discipline increases the risk of experiencing criminal victimization and incarceration, each of which harms health independently.³¹ In these ways, inequities in education result in compromised health outcomes during and after childhood.³²

The health justice framework compels us to understand that educational inequities harm the health of children, especially children from historically and currently marginalized communities, during both childhood and adulthood. As González, Etow, and De La Vega observe, “[a]pplying and expanding health justice to be inclusive of education, and more specifically, [exclusionary] discipline and policing, is a critical first step in dismantling a pathway of negative individual and community health and well-being.”³³

This article argues that critical perspectives enhance the ability of policymakers, advocates, and scholars to identify and eliminate educational inequities across a range of educational domains through enforcement and reform of law and policy. Critical perspectives help elucidate connections between educational inequities and health inequities and strengthen arguments about the urgent need to address those inequities. By deploying approaches from critical perspectives such as CRT and DisCrit, health justice can powerfully inform and reinforce educational reform efforts.

II. Critical Perspectives in Understanding the Role of Education in Health Inequity

Notwithstanding recent political efforts to distort and denigrate CRT by, for instance, banning it from pub-

lic schools in some states,³⁴ CRT can help to deepen health justice's exploration of how and why educational inequities drive health disparities.³⁵ Insights from this exploration enhance the analysis and reform of educational law and policy in order to achieve educational and health equity. CRT can also help society avoid the “critical mistake” of lacking an “antiracist public-health response to practices, policies, and systems of racism in schools that maintain [W]hite supremacy.”³⁶

CRT is the practice of interrogating the role of law in protecting and perpetuating racial hierarchy and is one of a number of critical theories exploring inequity.³⁷ Several CRT approaches can facilitate and strengthen our understanding of education as health justice and can be used beyond education to explore law's impact on health equity, deepening the health justice framework. CRT and practice must serve as tools for protecting the lives, liberty, and dignity — including the health and well-being — of communities of color “because those are what are literally at stake” in the pursuit of health justice.³⁸

A. Counternarrative: Storytelling to Understand Education as Health Injustice

Scholars, researchers, and advocates of health justice and educational reform, along with policymakers, can deepen their impact in leveraging law in pursuit of health and educational equity through counternarrative storytelling, an important principle of CRT and DisCrit. Many scholars and researchers focus on theory and data, but the health justice framework can also benefit from stories, which CRT posits “are powerful means for destroying mindset — the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place.”³⁹ Dominant discourse is born of “comforting” stories that engender complacency, facilitate the view that the current state of health and health inequity in our country is inevitable and natural, and serve as a barrier to progress.⁴⁰ Counternarratives can disrupt that complacency⁴¹ and engage the conscience.⁴² When scholars, researchers, and advocates bring forward and amplify counternarratives, such stories can help policymakers understand why the status quo is unacceptable and what impactful reform would entail, in both the educational and health justice spheres. What follows is an example of counternarrative in furtherance of education as health justice.

It was 10 AM on a Wednesday. Her friends were in school, but twelve-year-old Jasmine⁴³ was sitting in a juvenile detention facility. The day before, she threw

her textbook to the ground, hitting the foot of another student. The school resource officer arrested Jasmine and she was sent to juvenile detention overnight. The principal told Jasmine's mother that she was expelled. He informed her that Jasmine had violated too many school rules, was insubordinate, and had not shown she could be a productive member of the school community. After continuing to get into trouble frequently and consistently receiving mediocre grades over the next several years, Jasmine dropped out of school in tenth grade.

Applying counternarrative, the same story can be told very differently, centering the perspectives of Jasmine and her mother and providing context that enables their story to engage the conscience: Jasmine is a Black girl who attended Title I schools that served primarily Black children from low-income families. When Jasmine was in elementary school, she struggled to learn to read. When she was nine years old, her mother sent an email to the school principal stating that she suspected Jasmine had a learning disability and asked that Jasmine be tested, but the school never provided any assistance. The school leadership was overwhelmed with a small budget and concern that directing additional resources to one child meant depriving other children of assistance. Her mother had heard that evaluations of children for possible learning disabilities cost thousands of dollars, and the family could not afford that. Jasmine grew more frustrated and sometimes she avoided doing assignments that were too difficult, prompting her to receive mediocre grades and school detention.

In sixth grade, her father was murdered. Jasmine frequently felt anxious, sad, and overwhelmed. Even though school staff knew what happened and knew that Jasmine was struggling with grief and trauma, they never referred her for counseling or an evaluation. She often had trouble focusing and following instructions. Teachers labeled her as insubordinate and frequently referred her to the school resource officer, who wore a uniform and often threatened to have her arrested if she didn't "grow up." Jasmine was intimidated by and did not trust the officer. The day she threw her textbook to the floor, she had been in tears over a difficult quiz with instructions that she had trouble understanding. She didn't mean for the book to hit anyone and the other student was not injured.

Jasmine's school did not give her or her family information in writing about her expulsion, the option to contest the expulsion, or any assistance staying on track for graduation. When she was ultimately psychologically evaluated through the juvenile justice system, she received diagnoses of dyslexia and post-

traumatic stress disorder (PTSD). No one shared these diagnoses with her educators, however. In tenth grade, overwhelmed by the difficulties of school, Jasmine dropped out. Afterwards, she had trouble finding and keeping a job with a decent wage and health insurance, and she was unable to escape poverty. She had several chronic health conditions, such as asthma and diabetes, and she struggled to meet her mental and physical health needs.

The first version of Jasmine's story is one that has been told again and again, a story that centers adult frustrations with children who fail to meet expectations and facilitates complacency about the numbers⁴⁴ of school dropouts and those entering the school-to-prison pipeline.⁴⁵ Health justice demands a shift to a counternarrative to uncover the ways in which education and the laws that shape it serve as a health injustice in the United States. The use of counternarrative as a tool to make these connections will help scholars, researchers, advocates, and policymakers provide compelling evidence and identify important solutions to advance the intertwined goals of health justice and educational equity.

The injustice of Jasmine's education harmed her health during and after childhood. In other words, the educational injustice that she endured was also a *health injustice*. Counternarrative storytelling allows the health justice framework to "center in the margins" or ensure that the perspectives of historically and currently marginalized groups are "the central axis around which discourse ... evolves."⁴⁶ Storytelling through counternarratives like Jasmine's can also facilitate the change that is necessary for health justice; it can "lead the way to new environments ... Telling stories invests text with feeling, gives voice to those who were taught to hide their emotions. Hearing stories invites hearers to participate, challenging their assumptions, jarring their complacency, lifting their spirits, lowering their defenses."⁴⁷

B. Race Consciousness and Intersectionality: Interrogating Education as Health Injustice

Race consciousness is a core component of CRT. It involves digging beneath the surface of information to develop deeper understandings of concepts, relationships, and personal biases, especially as ignoring the role of racism in American society through "color blindness" has allowed racism to endure.⁴⁸ The field of medicine is beginning to demonstrate understanding that racial differences in health are not biological and that race in fact is a social construct, with institutional racism in healthcare and in the social and political determinants serving as drivers of health disparities.⁴⁹

Health justice requires the growth and deepening of race consciousness, which is essential to fighting structural racism to advance health equity, and “education policies and practices must be interrogated through a race-conscious framework.”⁵⁰

A central principle of race consciousness is the concept of ordinariness, or the recognition that racism is integral to our society, rather than aberrational.⁵¹ Research shows that people from racially minoritized groups are chronically exposed to diverse forms of everyday racism,⁵² which directly harm health by causing stress that impacts the body in many ways.⁵³ Health justice must involve ongoing explorations of the ways laws and policies — and their operationalization — are mired in structural racism and function as everyday determinants of health inequity.⁵⁴

CRT also emphasizes that race intersects with other identities, such as gender and disability, and each of these identities can be grounds for marginalization. Intersectionality recognizes that a person may experience multiple marginalizations, such as racism, sexism, and ableism, and the distinct experiences of a multiply marginalized person, including their health, cannot be fully understood and addressed by looking at and treating each form of marginalization separately.⁵⁵ Of particular relevance to Jasmine’s story is Dis/ability Critical Race Studies, or DisCrit, which posits that “disabled persons of color are embodiments of intersectionality.”⁵⁶ In order to develop a complete understanding of ableism *and* of racism, health justice should build on DisCrit to analyze health inequities experienced by people of color with disabilities.⁵⁷ Along with CRT and DisCrit, Critical Race Feminism, QueerCrit, LatCrit, TribalCrit, and other critical perspectives⁵⁸ can enhance and deepen the exploration of education law and other forms of law as drivers of health equity, an exploration that is central to health justice.

DisCrit scholars have argued in particular for interrogation of “the ways in which race, racism, dis/ability, and ableism are built into the interactions, procedures, and institutions of education, which affect students of color with dis/abilities in a qualitatively different way than [W]hite students with dis/abilities.”⁵⁹ While education is “key to lifting people out of poverty and reducing socioeconomic and political inequalities,”⁶⁰ education is far from equitable. Students from low-income families, racially minoritized students, and students with disabilities — and those experiencing intersectionality through multiple forms of subordination — generally receive the least benefits from education and disproportionately experience

harms from school-inflicted trauma and the school-to-prison pipeline.⁶¹

i. DISPROPORTIONATE ACADEMIC ATTAINMENT

During the last forty years, on average, White students persistently and significantly scored higher on standardized tests in math and reading than Black and Latinx⁶² students, though the gap between average scores of each group is slowly narrowing.⁶³ For indigenous students, these disparities are particularly stark. Native American fourth-graders on average have both the lowest reading and math scores in the nation.⁶⁴ Standardized tests have long been criticized as being racially biased.⁶⁵

Similarly, Black, Latinx, and Native American students experience significantly higher rates of high school dropout than White students.⁶⁶ And students with disabilities have significantly lower graduation rates than their peers.⁶⁷ The lowest graduation rates are experienced by students of color with disabilities.⁶⁸ DisCrit helps to explain that students at the intersection of multiple minoritized identities (e.g., Black students with disabilities) experience the least benefits from education due to the unique experiences they encounter as a result of their intersecting identities and due to experiencing multiple forms and levels of oppression.⁶⁹

Research shows that non-completion of high school increases the risk of poor health and premature death.⁷⁰ The corresponding average incomes of Black, Latinx, and indigenous Americans are consistently significantly below that of White Americans.⁷¹ And the average income of Americans with a disability is significantly below that of Americans without a disability, even though Congress intended that the Individuals with Disabilities Education Act (IDEA) would ensure that children with disabilities had “equality of opportunity, full participation, independent living, and economic self-sufficiency.”⁷²

CRT asserts that racism is embedded in ordinary American social structures and functions to keep minorities in subordinate positions. The “ordinariness” of racism⁷³ helps to explain why Black children persistently experience fewer benefits from education. Studies of implicit bias among educators and police officers support such theories empirically and illuminate themes of bias in regular interactions with students, including themes of White fear and suspicion of Black people; perceptions of Black children being older than they are; and beliefs in the intrinsic guilt and inferiority of Black children.⁷⁴

ii. DISPROPORTIONATE DISCIPLINE

The implicit biases of educators and law enforcement officers not only lower expectations for the academic attainment of children of color and children with disabilities, they manifest in disproportionate school discipline and student referrals to the juvenile and criminal justice systems. González, Etow, and De Le Vega center school discipline and policing as important issues of health justice because they are public health crises for which legal and policy interventions are critical to an antiracist health equity agenda.⁷⁵

As part of race consciousness, CRT scholars advocate moving beyond the “colorblindness” that has allowed racism to flourish and has contributed to racial illiteracy.⁷⁶ A race-conscious examination of school discipline reveals that Black students are not misbehaving more frequently or with greater severity than White children.⁷⁷ However, Black students account for 45% of all of the school days lost due to suspension, even though they constitute only approximately 15% of the K-12 student population.⁷⁸ Black students are disproportionately suspended for minor, non-violent infractions, such as dress code violations.⁷⁹ Further, studies uniformly show that Black students are at heightened risk of disciplinary exclusion if they also have a disability.⁸⁰ Black students lose more days of instruction to suspension than Hawaiian/Pacific Islander students, Native-Americans students, and Latinx students (listed in decreasing order of average days lost to suspension), and each of these students of color on average lose more days to suspension than White students.⁸¹ Unfortunately, students suspended or expelled are nearly three times more likely to be in contact with the juvenile delinquency system the following year, and suspension or expulsion dramatically increases the likelihood of dropping out of high school.⁸²

Similarly, Black boys are 2.15 times more likely than White boys to be referred to law enforcement and 2.44 times more likely to be arrested at school.⁸³ Black girls are 3.01 times more likely than White girls to be referred to law enforcement and 3.66 times more likely to be arrested at school.⁸⁴ An arrest significantly diminishes the likelihood that a student will graduate from high school,⁸⁵ which, as discussed above, has significant health impacts.

Even though IDEA contains provisions to protect children with disabilities from suspensions and expulsion, and Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (ADA) (Section 504 and ADA together are hereinafter “Section 504”) prohibit discrimination against children with disabilities, students with disabilities are twice as likely to be suspended as their non-disabled peers.⁸⁶

They are also significantly more likely to be arrested at school.⁸⁷ As recognized in guidance recently issued by the U.S. Department of Education, many students with disabilities face discipline “because they are not receiving the support, services, interventions, strategies, and modifications to school or district policies that they need to manage their disability-based behavior.”⁸⁸ Moreover, many students with intersectional identities, such as students of color with disabilities and particularly Black girls with disabilities, are excessively selected for discipline and policing.⁸⁹

School brutality also disproportionately impacts Black students and students with disabilities.⁹⁰ Nationally, Black children are 2.5 times more likely to be corporally punished at school than other children.⁹¹ Black girls are 2.17 times more likely than White girls to be restrained at school, and Black boys are 1.58 times more likely than White boys to be restrained.⁹² In some states, such as Tennessee, students with disabilities are twice as likely as students without disabilities to be paddled at school.⁹³ The disproportionate application of school brutality upon Black children and students with disabilities is health injustice because such brutality is an adversity that is often traumatic. In turn, trauma dramatically increases the risk that a child will be diagnosed with a disability, enter the school-to-prison pipeline, fail to graduate from high school, and experience mental and physical health problems.⁹⁴

Intersectionality, a tenet of CRT and DisCrit, helps to explain why Black girls experience higher levels of arrest and restraint than both White children and Black boys and why Black students with disabilities experience higher levels of school discipline than Black students without disabilities.⁹⁵ Black girls often uniquely experience the intersection of multiple oppressions of sexism, racism, and ableism.⁹⁶ Adults tend to view Black girls as older than they are and thus less innocent and deserving of protection and support, a phenomenon known as “adultification.”⁹⁷ Black girls are more likely to be disciplined for cis-gendered and misogynistic expectations of femininity.⁹⁸ Consistent with implicit bias and historical stereotypes,⁹⁹ school officials more frequently punish Black girls for “talking back,” being “unladylike,” and being “disrespectful” and “uncontrollable.”¹⁰⁰ By disproportionately punishing Black girls, the education system “formally and informally reinforces racialized sexism.”¹⁰¹

DisCrit helps to explain that students at the intersection of multiple minoritized identities (e.g., Black students with disabilities) experience the highest levels of school discipline due to the unique experiences they encounter as a result of their intersecting identi-

ties and due to experiencing multiple forms and levels of oppression.¹⁰²

iii. LACK OF TRAUMA AWARENESS

The lack of awareness of the impact of trauma upon health, disability, and school performance entrenches the disproportionate discipline and failure to support the special education needs and school attainment of multiply-marginalized children. Recent research reveals that most Americans have at least one potentially traumatic adverse experience during childhood (an adverse childhood experience (ACE)), such as the death of a parent, child abuse, or parental incarceration.¹⁰³ Trauma can so significantly impact physical and mental health that it can create and exacerbate disabilities that impede learning and behavior at school, materially heighten the risk for a panoply of illnesses, and shorten lifespan.¹⁰⁴ Trauma dramatically increases the risk that a child will be diagnosed with ADHD, act with impulsivity or in fight-flight-or-freeze mode and be expelled, enter the school-to-prison pipeline, and fail to graduate.¹⁰⁵ Accordingly, trauma itself is a source of health injustice.

Schools can further traumatize students through expulsion, lengthy suspension, school brutality (which includes corporal punishment, seclusion, and restraint), and other harsh punishments, even though trauma can be the main reason for educational failure.¹⁰⁶ A lack of understanding of trauma impairs the ability to recognize and support, rather than harshly punish, a child who is manifesting the effects of trauma through behavioral challenges.¹⁰⁷ Schools can diminish the harms of trauma, however, by providing culturally responsive school-based mental health services and other supportive services such as restorative justice,¹⁰⁸ as well as services and accommodations for trauma-related disabilities pursuant to IDEA and Section 504.¹⁰⁹ They can improve educational performance and outcomes by creating emotionally and physically safe school environments for all students, as Jasmine required.¹¹⁰ They can also avoid traumatizing students by eliminating school brutality, referral to law enforcement, and harsh discipline, including expulsion and long-term suspension, both of which increase the likelihood of school dropout and associated health disparities.¹¹¹

iv. DECREASED INVESTMENT IN THE EDUCATION OF CHILDREN OF LOWER-INCOME FAMILIES

Critical analysis of the relationship between the income of students' families and educational and health outcomes is also necessary for illuminating education as health injustice. Generally, students

who live in low-income households have significantly worse educational attainment and outcomes than students who live in high-income households.¹¹² While racial disparities persist across socioeconomic groups, structural racism has also relegated a disproportionate share of people of color to lower income.¹¹³ And those who are both low-income and people of color face compounding health disparities as a result of intersecting marginality.¹¹⁴

Increased spending on education improves student outcomes, including in test scores, educational attainment, and wages, especially for low-income students.¹¹⁵ However, except in a few states, such as New Jersey and Ohio, school districts serving students in low-income households do not receive significantly more resources than districts that serve students in higher-income households.¹¹⁶ In fact, in 2015, twenty two states spent at least 5% less – and sometimes more than 25% less – on their highest-poverty school districts, rather than their lowest-poverty school districts.¹¹⁷ Further, school districts themselves often direct more money to schools serving students in the wealthiest households.¹¹⁸ The financing of public schools with revenue primarily from local property taxes also advantages students in the wealthiest communities, which are often majority-White due to our country's history of segregation.¹¹⁹ The overall result is that wealthier students and White students receive more funding for their education, and the academic outcomes reflect the differences in investment.¹²⁰

In contrast, school funding that would facilitate health justice would provide each school with enough funding “to provide qualified teachers, support staff, programs, services and other resources essential for all students to have a meaningful opportunity to achieve the state's academic standards and graduate [from] high school prepared for ... postsecondary education[] and the workforce.”¹²¹ Essential resources also include “school-based restorative justice practice, social and emotional learning, trauma-informed approaches, and mental health supports and services,” which address ACES, improve school climate and connectedness, and promote physical and mental health.¹²² Improved funding for schools would increase investments in areas of high poverty to address the additional cost of meeting the above goals in these locations.¹²³

v. CRITICALLY VIEWING JASMINE'S STORY

Race consciousness, including the principles of ordinariness and intersectionality, help to explain the *why* behind Jasmine's exclusion from school and the resulting harmful impacts. These critical perspectives highlight that Jasmine was denied the opportunity to

achieve academically, discriminated against as a Black girl with disabilities in her exclusion from school and deprivation of necessary special education services, and put into the school-to-prison pipeline because she experienced the intersection of multiple oppressions, including sexism, racism, and ableism.

Her exclusion reflects traditional expectations that a girl should be quiet and compliant and not show frustration or anger.¹²⁴ Her expulsion, arrest, and detention were consistent with racist expectations that Black children are disobedient and insubordinate, the adultification of Black girls, and racist fears that Black children are dangerous.¹²⁵ Rather than receive special education services and accommodations as required by law, Jasmine was harmed by the ableist belief that children who reject school work cannot be productive at school and should be excluded.¹²⁶ The lack of financial investment in Jasmine's Title I school contributed to school administrators' reluctance to spend limited funds to evaluate and assist Jasmine in compliance with disability law when there were other students who were also struggling at school and were less disruptive than Jasmine. And the expulsion and referral to the juvenile justice system revealed a lack of understanding and empathy regarding the relationship between trauma, disability, and education.¹²⁷

III. Using Praxis to Advance Action in Support of Education as Health Justice

Kimberlé Crenshaw, who coined the term CRT, notes that CRT is not a noun, but a verb, an evolving and malleable practice.¹²⁸ Health justice should also be a "verb" and function as an aspirational and dynamic vision involving action in pursuit of health equity. Health justice necessitates action to both enforce existing laws currently under-enforced for marginalized communities and systemically reform law and policy in pursuit of health equity.¹²⁹

The agenda for both forms of change must be driven by people from marginalized communities who continue to be harmed by laws and policies that facilitate health and educational disparities.¹³⁰ Health justice must promote their leadership and advance their goals as those goals evolve. One of the ways that CRT evolves is through praxis,¹³¹ which is an iterative process by which the knowledge gained from theory, research, personal experiences, and practice inform one another.¹³² Just as the theoretical underpinnings of health justice must be put into practice, the developing theory and the research under its umbrella should be guided by the lived experiences, visions, goals, and ideas of people from marginalized commu-

nities,¹³³ thereby making the health justice framework most relevant, useful, and impactful.¹³⁴

Informed by CRT and the concept of praxis, health justice can lead to the reformation and transformation, "through careful, strategic, thoughtful advocacy, [of] the very systems in place that are destroying our communities and maintaining the subordination of people of color,"¹³⁵ both in the area of education law and policy and in many other areas of law. In regards to education, critical perspectives require a range of interrogations. For example, what changes are necessary for K-12 public education to deliver, rather than thwart, health justice? How can health justice be effectuated through support for the goals of affected community members? How can health justice ensure the enforcement of extant laws that are currently under-enforced for marginalized communities, as well as the reform (and abolition) of flawed laws and systems?

Understanding education reform as a health justice issue, informed by critical perspectives, changes the analysis of both health and educational inequity. Critical perspectives underscore how interconnected these inequities are, how dependent health is on education and how structural racism and ableism underly inequities in education that drive inequities in health. In other words, using approaches from CRT and DisCrit reveals and emphasizes how structural racism and ableism facilitate educational harms that contribute to health harms that then facilitate health inequity. These revolving and "co-influential"¹³⁶ interconnections necessitate bringing in the health equity expertise of community members and organizations, scholars, advocates, and policymakers to inform education reform.¹³⁷ Conversely, they also necessitate bringing in those with educational equity expertise to inform health equity efforts, as health equity cannot be achieved without education reform.

Because education is such a powerful determinant of health, health equity will remain elusive if our education system continues to subordinate and marginalize minoritized students.¹³⁸ The health effects of injustice in the educational system provide compelling evidence on which scholars, advocates, and policymakers can rely in support of education reform on two levels: through new laws and policies and through better enforcement of existing laws. Ultimately, using critical perspectives will deepen and broaden the connections between health and education justice and will drive a more impactful agenda by giving scholars, researchers, advocates, and policymakers solutions that will improve outcomes for marginalized individuals and communities and facilitate equity in both spheres.

Jasmine's story provides some insight into these solutions. Jasmine experienced significant educational injustice in her life — and harms to her health as a result of under-enforced laws and systems in need of reform and abolition. Evidence suggests that racial and ethnic minorities are misidentified as having certain disabilities, including over-identification of Black students as having intellectual disabilities and under-identification of Black students as having specific learning disabilities.¹³⁹ When students are appropriately identified, special education can provide services critical to academic success.¹⁴⁰

Accordingly, long before she was expelled, Jasmine's school should have evaluated her for a disability, recognized and supported her struggle against the effects of trauma, and acted to avoid excluding her and discriminating against her as a Black girl with a suspected disability, pursuant to the IDEA, Section 504, and Title VI of the Civil Rights Act of 1964, and Title IX of the Education Acts of 1972.¹⁴¹ If Jasmine's school had timely assessed her for possible disabilities,¹⁴² a comprehensive evaluation at public expense, as required by law, would have revealed her dyslexia and PTSD. The school should have then provided individualized special education services and accommodations, such as specialized instruction to improve her reading skills,¹⁴³ as required by the IDEA and Section 504, rather than expulsion, lost instruction, and referral to the juvenile justice system.¹⁴⁴ With such proper implementation of these laws, Jasmine could have received the accommodations, services, and resources necessary to support her academic attainment and her well-being.

Before expelling Jasmine, school administrators should have provided her with written notice about the exclusion and the opportunity to be heard through a hearing.¹⁴⁵ They should have held a manifestation determination review to determine whether her behavior manifested a suspected disability, which would have prohibited her expulsion and required an individually tailored educational program.¹⁴⁶

Instead of surveillance by a School Resource Officer and further traumatization through the school-to-prison pipeline, which should be abolished, Jasmine required trauma-responsive education, such as counseling services,¹⁴⁷ help building relationships and experiencing a sense of belonging and acceptance at school,¹⁴⁸ a functional behavioral assessment to determine the root causes of her behavioral challenges,¹⁴⁹ and a behavioral intervention plan premised on positive supports.¹⁵⁰ Jasmine's Title I school should have received more intensive financial investment so that administrators did not feel pressure to ration resources for students, to the detriment of their educational

attainment. These approaches operate on two levels, both of which are necessary for health justice: they represent the need for enforcement of extant laws that often go under-enforced for marginalized students, as well as the reformation and abolition of laws, policies, and systems mired in inequality.

Applying praxis, educators, school administrators, policymakers, and advocates should listen to the voices of the many youth and parents across the country, especially youth and parents of color, who have called for increased access to culturally responsive school-based mental health services and police-free schools.¹⁵¹ Lawyers should serve as resource allies to youth and communities that are disproportionately harmed by school policies, including by enforcing anti-discrimination and disability laws, identifying the research that empirically supports their goals, and assisting communities in advocating for policy reform.¹⁵² Youth should be recognized and supported as experts on what they need and as leaders of policy change. “[S]hifting power to affected communities is a critical component to beginning to remedy the harms of long-standing disinvestment, discrimination, and disenfranchisement in frontline communities.”¹⁵³

We know the health toll of failure to complete high school, low educational attainment, lack of appropriate accommodations and supports for students with disabilities, trauma, and the disproportionate exclusionary discipline, school brutality, and arrest of minoritized students. Reforms in both the education and health spheres should be informed by critical perspectives and prioritize keeping *all* children in school, especially those whose disability or trauma manifests as alleged misbehavior, with a sense of safety, belonging, dignity, and the supports necessary for them to achieve academically and thrive. Such education invests greater resources in children living in low-income rather than high-income neighborhoods to address the significant unmet educational needs of children in low-income neighborhoods.¹⁵⁴ Such education avoids inflicting trauma, especially upon students of color, students with disabilities, and those with intersectional identities, through abolishing school exclusion, school brutality, and the school-to-prison pipeline.¹⁵⁵ Such education ensures that schools have “counselors not cops” to demonstrate culturally responsive support for student mental health, rather than suspicion often rooted in bias, that students will commit crimes.¹⁵⁶ Education as health justice also embraces the requirements and spirit of disability law and supports children who have been harmed by trauma. Strengthened by critical perspectives, education that advances health justice aims to ensure that

children living in poverty, children with disabilities, and children from racially minoritized backgrounds are achieving academically, staying in school, and receiving a just opportunity to live long, healthy lives.

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42. *Id.* at 2415; see also M. Locke et al., “Counternarratives as Disruptive Praxis: Disrupting Classroom Master Narratives Through Imagined Composite Stories,” *Teachers College Record* 124, no. 7 (2022): 150–173, at 154 (describing how counternarratives are also a “form of academic activism to explicitly talk back to deficit-oriented master-narratives”).
43. Jasmine’s story is based upon the experiences of a child whose parent was represented by co-author Yael Cannon. Her name and other key facts have been changed to protect her identity.
44. See Gupta, *supra* note 38, at 2062. The narrative and counter-narrative of Jasmine’s story apply an approach used by Vanita Gupta in *Critical Race Lawyering in Tulia, Texas* describing two alternate versions of a story of the unjust arrests and convictions of a group of Black residents of Tulia challenged by Gupta and her colleagues at the NAACP Legal Defense Fund.
45. Ending School Brutality, *supra* note 24, at 623.
46. C. Ford and C. Airhihenbuwa, *supra* note 35, at S31; see González and Joki, *supra* note 35, at 50 (arguing for an end to education laws, policies, and practices that reinforce oppressive narratives of students and families of color).
47. Delgado, *supra* note 39, at 2440.
48. Ford and Airhihenbuwa, *supra* note 35, at S31; see generally G. Peller, “Race Consciousness,” *Duke Law Journal* 1990, no. 4 (1990): 758–847; K.W. Crenshaw, “Foreword: Toward a Race-Conscious Pedagogy in Legal Education,” *National Black Law Journal* 11, no. 1 (1988): 1–14.
49. See generally Yearby, *supra* note 11.
50. Antiracist Health Equity Agenda, *supra* note 12, at 34.
51. Ford and Airhihenbuwa, *supra* note 35, at S31. Connected to ordinariness is the CRT approach of Racial Realism, which also helps to explain the connections between education and health justice. See R. Delgado and J. Stefancic, *Critical Race Theory: An Introduction* (New York: New York University Press, 2017): at 7–8, 21 (“For realists, racism is a means by which society allocates privilege and status. Racial hierarchies determine who gets tangible benefits, including the best jobs, the best schools, and invitations to parties in people’s homes. Members of this school of thought point out that antiblack prejudice sprang up with slavery and capitalists’ need for labor.”).
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59. S.A. Annamma, D.J. Connor, and B.A. Ferri, “Dis/ability critical race studies (DisCrit): Theorizing at the Intersections of Race and Dis/ability,” *Race Ethnicity, and Education* 16, no.1 (2013): 1–31, at 7.
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61. See Ending School Brutality, *supra* note 24, at 617, 622; N. Okilwa, M. Khalilifa, and F. Briscoe, eds., *The School to Prison Pipeline: The Role of Culture and Discipline in School* (Bingley: Emerald Publishing, 2017): at 2; Health Justice Response to School Discipline and Policing, *supra* note 1, at 1927 (“For students who have disabilities, especially those with intersectional identities, the impact of school discipline and policing is amplified, with disparities existing at some of the highest rates across multiple categories.”).
62. We use the term Latinx as opposed to the more gendered versions of Latino/a or the more Euro-Centric term “Hispanic,” although sometimes studies relied on in this article use the term “Hispanic.” E. Morales, “Why I Embrace the Term Latinx,” *The Guardian*, Jan. 8, 2018, available at <<https://www.theguardian.com/commentisfree/2018/jan/08/why-i-embrace-the-term-latinx>> (last visited Dec. 23, 2022). We also recognize valid concerns about the term Latinx, but chose to use that term because, according to Christina Mora, it is “largely understood as complementary to, not mutually exclusive of, other panethnic labels,” such as ‘Latino.’” See C. Mora, R. Perez, and N. Vargas, “Who Identifies as ‘Latinx’? The Generational Politics of Ethnoracial Labels,” *Social Forces* 100, no. 3 (2021): 1170–1194, at 1170; but see, e.g., M. Tizoc Gonzalez, S. Matambanadzo, and S.I. Vélez Martínez, “Latina and Latino Critical Legal Theory: LatCrit Theory, Praxis and Community,” *Revista Direito e Praxis* 12, no. 2 (2021): 1316–1341, at FN 1, (asserting that Latinx centers identity in the colonial relationship and oversimplifies an amalgam of groups that represent multiple diversities).
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66. See, e.g., Labor Market Experience, Education, Partner Status, and Health for Those Born 1980–1984 News Release (Mar. 29, 2022), U.S. Bureau of Labor Statistics, available at <<https://www.bls.gov/news.release/nlsyth.htm>> (13.9% of Black and 13.4% of Latinx students dropped out of high school, while only 7.0% of non-Hispanic Whites dropped out of high school) [hereinafter Labor Market Experience, Education, Partner Status, and Health]; D. Asante-Muhammad et al., Racial Wealth Snap-shot: Native Americans (February 14, 2022), National Community Reinvestment Coalition, available at <<https://ncrc.org/racial-wealth-snapshot-native-americans/>> (last visited Dec. 23, 2022); see National Center for Education Statistics, Table 1. Public high school 4-year adjusted cohort graduation rate (ACGR), by race/ethnicity and selected demographic characteristics for the United States, the 50 states, the District of Columbia, and Puerto Rico: School year 2018–2019 (last visited Dec. 23, 2022), available at <https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2018-19.asp> (stating that in 2018–2019, the average graduation rate for all students was 85.8%, 89.4% for White students, 79.6% for Black students, 81.7% for Latinx students, and 74.3% for Native-American students).
67. See National Center for Education Statistics, *supra* note 66 (stating that in 2018–2019, the average graduation rate for all students was 85.8%, but it was only 68.2% for students with disabilities).
68. National Center for Education Statistics, Students with Disabilities, available at <<https://nces.ed.gov/programs/coe/indicator/egg/students-with-disabilities>> (last visited Dec. 23, 2022).
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102. Fenning and Johnson, *supra* note 69, at 14–15, 21–22.
103. Trauma-Responsive Special Education, *supra* note 26.
104. See *id.*
105. See *id.*
106. See *id.*; Ending School Brutality, *supra* note 24, at 621–22; see T. Powell, "A Firsthand Account of School Suspension and Trauma," *The Reader*, February 5, 2021, available at <<https://thereader.com/voices/a-firsthand-account-of-school-suspension-and-trauma>> (last visited Dec. 23, 2022).
107. See Trauma-Responsive Special Education, *supra* note 26, at 790–92; see also School Discipline is a Public Health Crisis, *supra* note 13 ("[P]unitive discipline practices tear apart crucial protective factors ... that would otherwise buffer children against the negative effects of trauma and adversity, and instead exacerbates existing trauma. Research shows that children who are pushed out of classrooms exhibit trauma symptoms that look chillingly similar to adverse childhood experiences (or 'ACEs') and post-traumatic stress disorder.")
108. Health Justice Response to School Discipline and Policing, *supra* note 1, at 1961 (calling for comprehensive upstream multi-tiered systems of support in schools through evidence-based practices, such as "school-based restorative justice practices, social and emotional learning, trauma-informed approaches, and mental health supports and services."); T. González, A. Etow, and C. De La Vega, "Health Equity, School Discipline Reform, and Restorative Justice," *Journal of Law, Medicine & Ethics* 47, no. 2 (2019): 47–50, at 49.
109. See Trauma-Responsive Special Education, *supra* note 26, at 790–92.
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115. See M.M. Chingos and K. Blagg, *School Funding: Do Poor Kids Get Their Fair Share?* Urban Institute, May 2017, available at <https://www.urban.org/sites/default/files/publication/90586/school_funding_brief_1.pdf> [hereinafter cited as School Funding]; C.K. Jackson et al., "The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms," *The Quarterly Journal of Economics* 131, no. 1 (2016): 157–218, at 158.
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118. T. Garcia Mathewson, *New Data: Even within the Same District Some Wealthy Schools get Millions More than Poor Ones* (Oct. 31, 2020), Hechinger Report, available at <<https://hechingerreport.org/new-data-even-within-the-same-district-some-wealthy-schools-get-millions-more-than-poor-ones/>> (last visited Dec. 23, 2022).
119. See A. Semuels, "Where the White People Live: How Self-Segregation and Continued Affluence Became Normal in America," Apr. 10, 2015, *The Atlantic*, available at <<https://www.theatlantic.com/business/archive/2015/04/where-the-white-people-live/390153/>> (last visited Dec. 23, 2022).
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121. D. Farrie and D. Sciarra, *Making the Grade 2020: How Fair is Funding in Your State?* (2020): at 2, Education Law Center, available at <<https://edlawcenter.org/assets/MTG%202020/Making%20the%20Grade%202020.pdf>> (last visited Dec. 23, 2022).
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123. *Id.*; I. Morgan and A. Amerikaner, *Funding Gaps 2018: An Analysis of School Funding Equity Across the U.S. and Within Each State*, The Education Trust, available at <https://edtrust.org/wp-content/uploads/2014/09/FundingGapReport_2018_FINAL.pdf> (last visited Dec. 23, 2022), at 7 ("[W]e need funding that is equitable – funding that accounts for the fact that it simply costs more to educate students from low-income backgrounds, many of whom start school academically behind their more affluent peers.")
124. See K. Gadzekpo, "Scrutiny and Standards: Girls Face Higher Expectations while 'Boys will be Boys,'" *Hill News*, April 10, 2019; González and Joki, *supra* note 35, at 46 ("[C]ertain historic and contemporary tropes and stereotypes of 'angry' or 'aggressive' Black girls and women can further the use of these discriminatory and oppressive [school] policies and actions.")
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126. See B. Flavin, *What is Ableism? Teachers Share 8 Things They Wish the World Understood* (Aug. 7, 2017), Rasmussen University, available at <<https://www.rasmussen.edu/degrees/education/blog/what-is-ableism/>> (last visited Dec. 23, 2022).

127. See Trauma-Responsive Special Education, *supra* note 26, at 770 (asserting that trauma creates and exacerbates disability).
128. See Crenshaw, *supra* note 55; see also J. George, “A Lesson on Critical Race Theory,” *Human Rights Magazine* 46, no. 2 (2021), available at <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/> (last visited Dec. 23, 2022).
129. Closing the Health Justice Gap, *supra* note 9.
130. *Id.*
131. Ford and Airhienbuwa, *supra* note 35, at S32.
132. *Id.* at S31.
133. *Id.*; see School Police Reform, *supra* note 31, at 128 (asserting that if health law professionals assume leadership of the defund-school-police movement, it would “be reenacting the subordination that the antiracist health-equity agenda seeks to combat.”).
134. See E. Benfer, “Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice,” *American University Law Review* 65, no. 2 (2015): 275–351, at 341–42.
135. Gupta, *supra* note 38, at 2056.
136. Health Justice Response to School Discipline, *supra* note 17, at 1934–1935 (describing the “co-influential linkage between education and health”).
137. Health Justice Response to School Discipline and Policing, *supra* note 1, at 1964 (arguing that public health and medical communities are well-positioned to engage with education leaders to “identify the negative impacts of school-based racism and trauma on healthy development and reform laws, policies, and institutional norms that sustain health inequities.”).
138. See generally Antiracist Health Equity Agenda, *supra* note 12.
139. See, e.g., U.S. Department of Education, OSEP Fast Facts: Race and Ethnicity of Children Served under IDEA Part B (Aug. 9, 2021), available at <<https://sites.ed.gov/idea/osep-fast-facts-race-and-ethnicity-of-children-with-disabilities-served-under-idea-part-b/>> (last visited Dec. 23, 2022).
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141. See 20 U.S.C. §§ 1412(a)(3) (2016), 1414(a)(1)(B), (C), (b) (2016); 34 C.F.R. §§ 104.35, .32, .33 (2000); Trauma-Responsive Special Education, *supra* note 26, at 817–23; 20 U.S.C. § 1681(a) (1972); 42 U.S.C. § 2000d (1964).
142. 20 U.S.C. § 1412(a)(3); 34 C.F.R. § 104.32.
143. See U.S.C. § 1412(a)(3); 34 C.F.R. § 104.32.
144. See 20 U.S.C. §§ 1412(a)(3), 1414(a)(1)(B), (C), 1414(b); 34 C.F.R. §§ 104.35, .32, .33; Trauma-Responsive Special Education, *supra* note 26, at 766, 771, 778, 783–84, 817–23.
145. See *Goss v. Lopez*, 419 U.S. 565, 581–584 (1975) (holding that under the Fourteenth Amendment due process clause, requiring public schools to provide notice of the charges against a student and an opportunity to present the student’s side of the story through a hearing for suspensions of 10 days or less. Longer exclusions may require more formal processes).
146. 20 U.S.C. §§ 1414(d)(1)(A)(i)(IV), (2)(A), 1415(k)(1)(E), (F), (5).
147. See 20 U.S.C. §§ 1414(d)(1)(A)(i)(IV), (2)(A).
148. Trauma-Responsive Special Education, *supra* note 26, at 824, 831.
149. See 20 U.S.C. §§ 1414(d)(3)(B)(i), 1415(k)(1)(D)(ii); 34 C.F.R. § 300.324(a)(2)(i) (2017); Trauma-Responsive Special Education, *supra* note 26, at 819.
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151. See, e.g., The Black Swan Academy, Black Out for Black Power (2021): at 10, available at <<https://static1.squarespace.com/static/5e012150c8100342e4b5e367/t/615bb8aa2acf694f92c7c91d/1633401008783/BSA+2021+Black+Youth+Agenda+Report+%2810.02.2021+update%29-compressed.pdf>>; C. Bryan, *Police Don’t Make Most Black Students Feel Safer, Survey Shows* (June 8, 2020), Chalkbeat, available at <<https://www.chalkbeat.org/2020/6/8/21284538/police-security-guard-schools-black-white-students-racism>> (last visited Dec. 23, 2022); A. Kamenetz, “Why There’s a Push To Get Police Out of Schools, National Public Radio,” *NPR*, June 23, 2020, available at <<https://www.npr.org/2020/06/23/881608999/why-theres-a-push-to-get-police-out-of-schools>> (last visited Dec. 23, 2022); C. Gibson and C. McGrady, “The Prospect of More Police at Schools is No Comfort for Black Parents,” (June 3, 2022), *The Washington Post*, available at <<https://www.washingtonpost.com/lifestyle/2022/06/03/uvalde-shooting-black-parents/>> (last visited Jan. 24, 2023).
152. See R. Casper, *How to Be an Effective Antiracism Ally in the Legal Profession: Resources & BBA Program Notes* (July 31, 2020), Lawyers Concerned for Lawyers, available at <<https://www.lclma.org/2020/07/31/how-to-be-an-effective-antiracism-ally-in-the-legal-profession-resources-bba-program-notes/>> (last visited Dec. 23, 2022).
153. Health Justice Response to School Discipline and Policing, *supra* note 1, at 1971.
154. See C. Catchliffe, *Child Poverty and Adult Success* (Sept. 15, 2015): at 1, Urban Institute, available at <<https://www.urban.org/sites/default/files/publication/65766/2000369-Child-Poverty-and-Adult-Success.pdf>> (last visited Jan. 24, 2023).
155. Health Justice Response to School Discipline and Policing, *supra* note 1, at 1974–75 (“To achieve health justice, dismantle racism and discrimination, and disrupt the pathways that lead to health inequities, ending school discipline and policing policies is a concrete and fundamental next step.”).
156. See Race, Discipline, and Safety, *supra* note 86 (stating that more than 36 million students are enrolled in 55,000 schools that do not meet the American School Counselors Association’s recommended 250:1 student-to-counselor ratio; currently, there are at least 4,000 more sworn law enforcement officers than social workers in schools); *Counselors Not Cops: Ending the Regular Presence of Law Enforcement in Schools* (2016), Dignity in Schools, available at <<https://dignityin-schools.org/interactive/counselors-not-cops/#>> (last visited Dec. 23, 2022).