Education Transformed

The K-12 Experience in Texas During the Coronavirus Pandemic

Texas APPLESEED

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TEXAS APPLESEED
1609 Shoal Creek, Suite 201
Austin, TX 78701
512-473-2800
www.texasappleseed.org

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Authors & Editors

Andrew R. Hairston, J.D., *Director, Education Justice Project,* Texas Appleseed

Vicky Luna Sullivan, Ed.D., J.D., *Senior Staff Attorney, Education Justice Project*, Texas Appleseed

Ellen Stone, Ph.D., *Director of Research,* Texas Appleseed

Acknowledgements

Additional contributors include Deborah Fowler (Executive Director, Texas Appleseed), Kelli Johnson (Communications Director, Texas Appleseed), and Lee Reed Zarnikau (Editor, Words Art Vision)

About Texas Appleseed

Texas Appleseed is a public interest justice center that works to change unjust laws and policies that prevent Texans from realizing their full potential. Our nonprofit conducts data-driven research that uncovers inequity in laws and policies and identifies solutions for lasting, concrete change. For more information, visit www.TexasAppleseed.org.

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INTRODUCTION AND BACKGROUND

K-12 Education at a Crossroads

As Americans, we are enduring a time of unprecedented struggle in the midst of an extraordinary crisis that has ignited a fire to fight for change. One of the challenges this crisis has exposed is the deep inequity in K-12 education. This moment thus requires a transformation in K-12 education: the legislature must acknowledge how the pandemic exacerbated so many social ills within our society, prioritize action, and activate a response that is rooted in racial and social justice. This will produce numerous positive benefits for schoolchildren across Texas, who will eventually return to their campuses. The Texas Legislature should move forward bills that create a robust system of multi-tiered supports that increase funding for the hiring of mental health professionals, ban the use of exclusionary discipline (overly punitive measures to address age-appropriate and routine school behaviors), encourage the use of restorative practices, and reimagine school safety outside of policing. Further, the Legislature should exclude school policing from the approved uses for any state funding for schools. During this moment in American history, it is important to consider the whole child and the impact that the events of 2020 have had on the lives of our schoolchildren.

Among the many aspects of American life transformed by the coronavirus pandemic, K-12 education has evoked passionate, divisive, and complex debates. All stakeholders, including young people, parents, teachers, and community advocates, have weighed the various compelling arguments offered about whether or not to reopen schools. Many people identify schools as the last true public good in America: schools are places where young people not only receive their education, but also access meals, social services, and other invaluable wraparound services. Proponents of keeping schools open right now argue that decades of inadequate investment in Black and Brown communities means so many children and families have little access to critical services when schools are closed.

On the other side of that argument, many stakeholders simply point to the fact that over 500,000 people have died within the United States since the coronavirus pandemic began upending daily life in March 2020. They plead with district officials to take heed of these numbers and the suffering people have endured over the past 12 months. They point to the fact that some of the largest school districts in the country recently decided to return to exclusive virtual learning, albeit with plans to reopen schools as soon as possible. They recognize that more suffering is inevitable, but to the extent that physical distancing and remote learning can be maintained, perhaps mitigation efforts could spare thousands of lives and we can return to a school environment with some degree of normalcy.

Texas school districts continue to grapple with how best to effectively repurpose funds from the Coronavirus Aid, Relief, and Economic Security (CARES) Act to provide needed physical, mental, social, and medical services to young people. Meanwhile, the most vulnerable students are further marginalized, lacking access to academic and other resources necessary to receive a quality education. The fissures continue to be exacerbated as the coronavirus pandemic endures; Black and Brown children suffer most when investments from federal, state, and local governments

are inadequately administered. Policymakers have largely tied the availability of funds, both state allocations and federal money under the CARES Act, to whether or not school districts sufficiently deliver in-person instruction. Our nation's long history of tying property tax revenue to school funding demonstrates just one way communities have been set up to fail during this global health crisis. Even as districts have ramped up their remote learning capabilities, the history of inequity governed how millions of people experienced 2020. Poorly funded schools, sparse jobs, insufficient federal relief, and a pervasive legacy of racist policies left a myriad of Black and Brown families struggling and scared for their futures as 2020 drew to a close.

With both this history and the present context in mind, Texas Appleseed presents data on the detrimental impact of the coronavirus pandemic on the whole child — through economic uncertainty, housing instability, remote learning access, and discipline — as well as provides policy recommendations to support students and schools during this crisis and beyond. 2021 offers an unparalleled moment to take significant steps toward the quality K-12 education that young Texans have long been denied, yet fully deserve.

Key Terms

Exclusionary discipline - actions from school administrators and teachers against students - including suspensions, expulsions, disciplinary alternative education program referrals, and juvenile justice alternative education programs - that routinely push young people out of their classrooms

Shadow discipline - informal actions from school administrators or teachers against students that operate in the same way as exclusionary discipline - the primary difference is that these referrals aren't formally recorded

Student engagement - a reference to any method of how young people accessed their K-12 education programs since the coronavirus pandemic began - student engagement can be measured through attendance in virtual classrooms, logins to district-sponsored online platforms, and records of distribution of district technology to young people, among other tools

EXECUTIVE SUMMARY

Through our data analysis in this report, we more fully understand the ways in which the coronavirus pandemic has detrimentally impacted young Texans on multiple levels. These data paint a picture of economic deprivation, housing insecurity, work responsibilities, and the demands of school pulling young Texans in every direction, with no adequate relief in sight.

- Concerning access to food, data from the U.S. Census Bureau estimates that over 1.3 million Texas households suffered from food insecurity over the course of January 2021.
- In a study conducted by the University of Texas at San Antonio, 67% of employed students struggled to keep up with distance learning during the first 12 months of the coronavirus pandemic.
- According to data from the Texas Education Agency, 97 districts across the state had student engagement of 75% or less during the spring of 2020.
- Although the administration of Class C misdemeanors for truancy ostensibly halted during the spring of 2020, anecdotal evidence and records from school districts and county courts indicate that these referrals have resumed during the 2020-21 academic year.
    - Duncanville ISD and Mesquite ISD in the Dallas-Ft. Worth area confirmed they began filing truancy cases during the first semester of the 2020-21 school year. Specifically, through December 2020, Duncanville ISD filed 65 cases against parents and 143 cases against students, and Mesquite ISD filed 86 cases against parents and 19 cases against students.
- School discipline numbers dropped in the spring of 2020, but the racial disproportionality persists in the punishments given over the past 12 months.
- Using data from the past year and previous analyses by Texas Appleseed, we observe that school districts across the state have an inadequate number of mental health professionals available for young people.

Considering the dual impact of the coronavirus pandemic and the nationwide reckoning with police violence, young Texans deserve an extraordinary response: state and local policymakers should end exclusionary discipline, place a moratorium on standardized testing, and divert funds within school policing budgets toward mental health support services, among other policy recommendations outlined later in the report.

CHAPTER 1

THE CALL FOR JUSTICE: THE IMPACT OF DUAL CRISES ON THE CHILD

American schoolchildren are facing an unprecedented moment of dual crises. First, the loss of life caused by the global coronavirus pandemic and the subsequent life-changing events are negatively impacting the lives of schoolchildren. Second, the tragic murder of George Floyd at the hands of police resulted in a nation saturated with unparalleled social and political unrest. The call for justice compels us to address systemic inequity as schoolchildren struggle to grapple with the injustices of stark inequities and structural racism exposed by the worldwide coronavirus pandemic and George Floyd's death.[1] Schools often serve as safe spaces where students can seek counsel from mental health professionals and support beyond academia.[2] However, with school closures to stop the spread of the coronavirus, those supports are minimized, delayed, or altogether absent. The fight to navigate these uncharted waters consumes young minds everywhere. Feeling desolate, many labor to find a safe place to land.

Traditionally, educators are trained to recognize the whole child and, in a holistic sense, assess barriers to student learning. A student's basic need for food, safety, and security must be addressed or resolved before growth and learning in the advanced stage of self-actualization can be realized.[3] Termed Maslow's hierarchy of needs, the typical visual used to instruct on this theory is a pyramid with the basic human necessities, like food and shelter, laying the foundation or base upon which other tiers are built and peaking with growth and learning at the self-actualization tier.[4] During this global health crisis, the advanced tier where formal education is positioned must be secondary to fundamental factors that command the center of attention: the safety, health, and well-being of students.[5] The understanding and application of Maslow's hierarchy of needs have never been more essential than when teaching in today's pandemic world.

The coronavirus pandemic has detrimentally impacted young people in every aspect of their lives. It has transformed more than their education; it upended their lives as a whole. The academic routine and supports young people and their families have come to rely on have either been significantly transformed or no longer exist. This is particularly true for students in high-need areas whose livelihood was dependent on the wraparound services provided by their school and which are now absent, delayed, or minimized. Moreover, the realities of unemployment, evictions, economic hardships, food scarcity, and having to work to support their families weigh on the minds of young people, further exacerbating their struggle and adding to their unyielding mental health strain.

1 Deborah Fowler, *Recognizing the Essential Nature of Justice,* Texas Appleseed (Jun. 5, 2020), https://www.texasappleseed.org/blog/recognizing-essential-nature-justice.

2 *E.g.*, Erin Richards, *Kids Need to Talk about George Floyd, Protests, and Racism: With Coronavirus School Closures, It's Hard To Do,* USA Today (Jun. 4, 2020, 6:12 AM; Jun. 4, 2020, updated 10:50 AM), https://www.usatoday.com/story/news/education/2020/06/04/george-floyd-protests-kids-coronavirus-school-closures/3128780001/.

3 *E.g.*, Antonio L. Ellis, *America's School Districts at the Decision-Making Crossroad,* Diverse Education (Oct. 1, 2020), https://diverseeducation.com/article/191661/.

4 *Id.*

5 *Id.*

The coronavirus pandemic propelled the Texas economy into a recession the likes of which has seldom been felt.[6] The result: extraordinarily high unemployment rates topping 8% with parents struggling to keep food on the table or shelter over their children's heads.[7] The financial hardships experienced by many were particularly felt by low-income families whose struggle to make ends meet was present even before the pandemic. The economic strain increased housing instability and insecurity. Challenged with the inability to pay rent or mortgages, many families faced housing foreclosures or evictions during the pandemic, with Black and Brown families disproportionately affected.[8] In a survey conducted by the U.S. Census Bureau, more than 1.7 million Texas households report little to no confidence in the ability to pay next month's rent. While 55% of white Texans say they are highly confident in being able to pay rent, only 21% of Black Texans and 14% of Hispanic or Latinx Texans say the same.[10] With no evictions moratorium in place at the time of polling, results from the U.S. Census Bureau Household Pulse Survey estimated a dire situation: During Jan. 6-18, 2021, 869,691 Texas households were very likely or somewhat likely to be evicted in the next two months; an estimated three-quarters of these households have children under 18 years old.[11] Additionally, it is estimated that most households with a likelihood of eviction are Black households (49%), followed by Hispanic or Latinx households (42%). Together, Black and Brown households accounted for 91% of the estimated population most concerned about an impending eviction.[12]

Estimates of Likelihood of Eviction in the Next Two Months by Race/Ethnicity in Texas (Jan. 6-18, 2021)

Race/Ethnicity	Very likely or somewhat likely
Hispanic or Latino	361,467 (42%)
White	56,016 (6%)
Black	427,443 (49%)

6 Anna Novak and Mitchell Ferman, *10 Months into Pandemic, Texas' Unemployment Rate Stays near Great Recession-Level Highs,* The Texas Tribune (Updated Feb. 1, 2021), https://www.texastribune.org/series/texas-unemployment-coronavirus-recession/.

7 E.g., Cassandra Pollock, *Texas Unemployment Rate Rises to 8.1% in November,* The Texas Tribune (Dec. 18, 2020, 9 AM), https://www.texastribune.org/2020/12/18/texas-unemployment-rate-coronavirus/.

8 E.g., Juan Pablo Garnham, *An Eviction Moratorium Expires at the End of the Month, but Thousands of Texans are Still Not Able to Afford Rent,* The Texas Tribune (Dec. 15, 2020, 5:00 AM), https://www.texastribune.org/2020/12/15/eviction-moratorium-texas-ends/.

9 *Id.*

10 *Id.*

11 United States Census Bureau, Measuring Household Experiences during the Coronavirus Pandemic, Household Pulse Survey—Phase 3 (Oct. 28, 2020 - Mar. 1, 2021), https://www.census.gov/data/experimental-data-products/household-pulse-survey.html.

12 *Id.*

The moratoriums halted evictions temporarily[13] for many, but the reality of evictions and foreclosures still looms, and these fears seep into the minds of schoolchildren who are living this sad truth. For single parent Jonnay Mckinely and her three elementary-age children living in Dallas County, the eviction process became a reality in spite of the Centers for Disease Control and Prevention (CDC) nationwide declaration to halt evictions in order to help stop the spread of COVID-19.[14] The demands of remote work, coupled with the responsibility of caregiving and supporting distance learning (with poor internet access) for her three daughters, simply proved too much for Jonnay.[15] Jonnay lost her job as a mortgage processing assistant for AmeriSave Mortgage, one of millions affected by the pandemic.[16] Using all of her savings, stimulus money, and earnings from working temporary jobs allowed Jonnay to pay rent until November 2020.[17] Behind in her rent for just a month and a half, Jonnay was unlawfully evicted from her apartment in January 2021 and forced to live in a hotel room with her three young daughters.[18] Unaware of her rights under the CDC eviction declaration, and having no knowledge of her eviction trial date, Jonnay still sent an email seeking assistance and guidance from the Dallas County Constable's office in Precinct 3 the day after receiving the 'notice to vacate' taped to her apartment door.[19] When Jonnay failed to appear for her Dec. 18 court date, the Justice of the Peace Judge entered a default judgment for the property management company and against Jonnay, which prompted a deputy constable to execute the eviction by monitoring the move out of the apartment.[20] Only after the *Dallas Morning News* published Jonnay's story highlighting the injustice of her unlawful eviction did the property management company reinstate her lease, but the eviction judgment will remain on her record.[21]

Unquestionably, something went terribly wrong for Jonnay at the hands of three entities that all failed to adhere to the CDC declaration regarding the eviction moratorium: 1. the landlord and property asset management company that filed the eviction paperwork; 2. the Judge who ruled in favor of the eviction; and 3. the deputy constable who carried out the eviction. Finger-pointing among these three entities does nothing to minimize the error of this traumatic event with lasting effect for Jonnay and her three daughters.[22] Each entity had a duty and obligation to be well-informed and properly apply the CDC eviction declaration, yet each failed. Although concerned about contracting COVID-19 and infecting her young children, Jonnay continues to work various temporary jobs, including waiting restaurant tables, so that she may provide for her daughters who have lost valuable instruction time and have fallen behind in school during this calamitous occurrence.[23] Despite the CDC eviction moratorium, the unfortunate reality surrounding evictions in 2020 and 2021 is that, although decreased, evictions are still being carried out and negatively affecting many families and school-age children.[24]

The Urban Education Institute at the University of Texas at San Antonio (UTSA) conducted a community-wide survey involving eight Texas school districts or systems. San Antonio-area students, parents, and teachers were asked about their experience of living through the pandemic while trying to make education a priority.[25] The findings revealed the harsh realities many of these

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13 E.g., Juan Pablo Garnham, *An Eviction Moratorium Expires at the End of the Month, but Thousands of Texans are Still Not Able to Afford Rent*. The Texas Tribune (Dec. 15, 2020, 5:00 AM), https://www.texastribune.org/2020/12/15/eviction-moratorium-texas-ends/.

14 Dom DiFurio, *Evictions Are Suspended During the COVID-19 Pandemic. A Dallas Mother of Three Was Evicted Anyway,* The Dallas Morning News (Feb. 2, 2021, 5:24 PM), https://www.dallasnews.com/business/economy/2021/02/02/evictions-are-suspended-during-the-covid-19-pandemic-a-dallas-mother-of-three-was-evicted-anyway/.

15 *Id.*

16 *Id.*

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.*

23 *Id.*

24 *Id.*

25 *Teaching and Learning in the Time of COVID-19. Research Brief: Food Insecurity, Digital Divide, Work, & Caregiving.* Urban Education Institute at UTSA (Oct. 1, 2020), 2020.https://uei.utsa.edu/_files/pdfs/DistanceLearningBrief3-9-25-20.pdf.

families faced that caused schooling to take a back seat to other more primary needs.[26] Moreover, the results showed that families look to public school systems as the community hub to help bridge the divide of availability of resources such as food, safety, and security.[27]

Of the parents and students surveyed, over a quarter revealed they have experienced food insecurity during the pandemic.[28] Not surprisingly, those living in low-socioeconomic neighborhoods experienced a higher percentage of food insecurity. For example, in Edgewood ISD, a school district with the lowest property values in Bexar County, almost half of those surveyed indicated they experienced food insecurity.[29] With many qualifying for free breakfast and lunch while at school, parents were left to stretch their already modest incomes in order to make up for the missed school meals and feed their families. While school districts moved quickly to distribute meals curbside at schools, not all students received their needed meals.[30] Parents expressed concerns about transportation issues in getting to the school and inflexible school distribution schedules.[31] Over a quarter of surveyed students and parents reported that the food purchased for the household did not last, and no money existed to purchase more food.[32] Those challenges left families with no other option but to seek assistance from food banks across the state. Many recall the media images showing unprecedented numbers of vehicles with families lined up to receive food from food banks across our great state.

Going hungry is a reality for many families, particularly those experiencing a loss of income due to job loss or reduced work hours. The Texas-specific results from the U.S. Census Bureau Household Pulse Survey estimate that during Jan. 6-18, 2021, nearly 1.4 million households with children experienced food insufficiency within the last seven days, with 370,979 (27%) often not having enough to eat.[33] An estimated 814,334 households with children (9%) have received free groceries or free meals at schools or other programs aimed at children.[34] Additionally, it is estimated that over 1.5 million households have children who were sometimes or often not eating enough because food was unaffordable.[35] Hispanic or Latinx households were overwhelmingly affected by food insufficiency, accounting for an estimate of nearly two-thirds of households who do not have enough food to eat.[36]

Estimates of Food Sufficiency in Households with Children by Race/Ethnicity in Texas (Jan. 6-18, 2021)

Race/Ethnicity	Sometimes or Often Not Enough Food to Eat
Hispanic or Latino	876,727 (63%)
White	230,850 (17%)
Black	245,733 (18%)

26 *Id.*
27 *Id.*
28 *Id.*
29 *Id.*
30 *Id.*
31 *Id.*
32 *Id.*
33 United States Census Bureau—Phase 3, Measuring Household Experiences during the Coronavirus Pandemic, Household Pulse Survey (Oct. 28, 2020 - Mar. 1, 2021), https://www.census.gov/data/experimental-data-products/household-pulse-survey.html.
34 *Id.*
35 *Id.*
36 *Id.*

For the same time period of Jan. 6-18, 2021, the U.S. Census Bureau Household Pulse Survey estimates that over 10.3 million Texas households experienced a loss of income since the beginning of the pandemic, and an estimate of nearly 6.2 million additional households were expecting a loss of income in the next four weeks.[37] Since the beginning of the pandemic, an estimated 2 million Texas households applied for and received unemployment benefits, while almost 1 million Texas households applied for unemployment but have not yet received those benefits.[38] It is estimated that nearly half of those receiving unemployment benefits have children under 18 years old, and 59% of households that have not yet received benefits have children.[39] Furthermore, of the estimated 8.1 million Texas households that have difficulty in paying for household expenses during the pandemic, at least half are estimated to have children under 18 years old. Additionally, nearly half of the households with difficulty paying for households expenses are estimated to be Hispanic or Latinx households.[40]

Estimates of Difficulty Paying for Household Expenses by Race/Ethnicity in Texas (Jan. 6-18, 2021)

Race/Ethnicity	Somewhat or very difficult
Hispanic or Latino	3,887,559 (47%)
White	2,460,009 (30%)
Black	1,330,528 (16%)
Asian	247,710 (3%)
Two or more races + other races	261,150 (3%)

Of the students and parents surveyed in UTSA's study, nearly half reported that they lost a job or experienced reduced work hours resulting in loss of income during the pandemic.[41] For students of working age, many felt compelled to try to get a job or work longer hours in an existing job, further risking their health and safety, in order to contribute to the family household.[42] Balancing school responsibilities with work demands made it more difficult for high school students to keep up with their schoolwork during the pandemic.[43] In fact, UTSA's study revealed that over two-thirds of employed students surveyed across all districts reported increased struggles to keep up with their distance learning.[44]

In six of the eight surveyed school systems, 20% or more of parents or guardians reported caring for four or more children in the home during distance learning.[45] Older teens in the survey described taking on additional caregiving responsibilities, some while juggling job obligations and trying to keep up with their own schooling.[46] Of those students surveyed who had caregiving responsibilities, 59% said those responsibilities reduced their engagement in school and their

37 *Id.*
38 *Id.*
39 *Id.*
40 *Id.*
41 *Teaching and Learning in the time of COVID-19. Research Brief: Food Insecurity, Digital Divide, Work, & Caregiving.* Urban Education Institute at UTSA (Oct. 1, 2020), 2020.https://uei.utsa.edu/_files/pdfs/DistanceLearningBrief3-9-25-20.pdf.
42 *Id.*
43 *Id.*
44 *Id.*
45 *Id.*
46 *Id.*

ability to keep up with their schooling during the pandemic.[47]

Further, the UTSA study brings to light other important issues negatively impacting student engagement and academic success, including the inability to concentrate on schoolwork in an overcrowded household and not having a quiet environment in the home conducive to learning.[48] Other reports reveal concerns related to students' ability to complete school assignments due to the need for clarification on how to use new learning models or the need for additional tutoring on the school subject.[49] A common thread of inequity runs through the many and varied factors impacting these children, unmasking the imbalances in our diverse communities. And, nowhere is that imbalance more apparent than with the digital divide.

47 *Id.*

48 *Id.*

49 *E.g.,* Isobella Harkrider, *Texas Students Are Failing Classes, Can They Catch Up? - Reform Austin,* RA News Independent Reporting for a Better Texas (Nov. 21, 2020), https://www.reformaustin.org/education/texas-students-are-failing-classes-can-they-catch-up/.

CHAPTER 2

THE DIGITAL DIVIDE AFFECTS STUDENT ENGAGEMENT

The results of the Texas-specific U.S. Census Bureau Household Pulse Survey estimate that during Jan. 6-18, 2021, over 100,000 households reported that a computer was rarely or never available for educational purposes.[50] Additionally, an estimated 60,000 households have internet access that is rarely or never available.

News reports in the spring of 2020 conveyed the initial struggle many school districts faced during their transition to virtual learning. While some districts received deserved media coverage on their innovation, others struggled to connect with young people and ensure that they remain connected to their school throughout the remainder of the 2019-20 school year and into the subsequent school year. The Texas Education Agency (TEA) provided 2019-20 school year data illustrating that 97 districts across the state had 75% or fewer of their students fully engaged with remote learning resources from March to June 2020. Some of the largest districts in the state were included in this number, such as Houston Independent School District, as well as a number of charter school networks.

Fully Engaged Students: Statewide
(March-June 2020)

Engagement Percentage	Count of Districts	Total Enrollment*
95% or Higher	485 (42%)	1,728,123 (32%)
75%-94%	577 (50%)	3,119,772 (57%)
Less than 75%	97 (8%)	597,830 (11%)

*Based on 2019-20 snapshot enrollment data.

The top 10 largest school districts with less than 75% of their students fully engaged included Houston ISD at the top of the list, followed by Aldine ISD, and San Antonio's Edgewood ISD rounding out the top 10 list.[51] All 10 of the largest school districts with less than 75% student engagement reported double-digit percentages (ranging from 16% to 48%) of students with no or lost engagement during March-June 2020. Conversely, these districts all reported single-digit percentages for student engagement recovery. It is worth noting that one of the largest charter school networks in the state is included in these low student engagement numbers.

50 United States Census Bureau, Measuring Household Experiences during the Coronavirus Pandemic, Household Pulse Survey—Phase 3 (Oct. 28, 2020 - Mar. 1, 2021), https://www.census.gov/data/experimental-data-products/household-pulse-survey.html.

51 Data obtained through Open Records Requests to the Texas Education Agency.

Top 10 Largest School Districts with 75% or Less of Students Fully Engaged
(March-June 2020)

District	Fully Engaged	Engagement Recovered	No or Lost Contact	No or Lost Engagement
Houston ISD	72%	4%	5%	19%
Aldine ISD	60%	7%	7%	25%
Ector County ISD	71%	7%	7%	16%
KIPP Texas Public Schools	69%	4%	3%	25%
Carrollton-Farmers Branch ISD	71%	6%	3%	21%
Uplift Education	39%	5%	9%	48%
Beaumont ISD	71%	7%	4%	18%
New Caney ISD	65%	5%	2%	28%
Donna ISD	65%	6%	6%	24%
Edgewood ISD	74%	6%	4%	16%

Unquestionably, student engagement looks different since the pandemic, particularly with the use of various online platforms. According to TEA, by the end of the first semester of the 2020-21 school year, at least 2.8 million students (54%) were being taught in person, over 370,000 students (7%) were being taught through the remote synchronous method, and over 2 million students (39%) were being taught through the remote asynchronous method.[52] Among the top 10 largest Texas school districts, the percentage of students being taught in these different methods varies considerably among districts.

52 Data obtained through Open Records Requests to the Texas Education Agency. TEA masks small counts of students to protect student privacy, therefore for any data that were masked, a conservative estimate of at least 1 student was used.

Top 10 Largest School Districts: Learning Methods in 2020-21 SY*

District	Count of students receiving in-person learning (%)	Count of students receiving remote synchronous learning (%)	Count of students receiving remote asynchronous learning (%)
Houston ISD**	79,303 (40%)	1 (0%)	117,849 (60%)
Dallas ISD	70,004 (48%)	0 (0%)	75,512 (52%)
Cypress-Fairbanks ISD	65,150 (57%)	0 (0%)	49,749 (43%)
Northside ISD	46,081 (45%)	0 (0%)	57,107 (55%)
Katy ISD	49,815 (59%)	23,538 (28%)	10,852 (13%)
Fort Worth ISD	33,320 (43%)	0 (0%)	43,956 (57%)
Fort Bend ISD	28,525 (37%)	39,526 (52%)	8,625 (11%)
Austin ISD	17,872 (24%)	0 (0%)	57,156 (76%)
Conroe ISD	49,137 (76%)	0 (0%)	15,438 (24%)
Frisco ISD	33,645 (53%)	64 (0%)	29,796 (47%)

* On a single day (Oct. 30, 2020)
**The number of students receiving remote synchronous learning was masked for Houston ISD, therefore a conservative estimate of at least one student was used.

With remote synchronous learning, students can receive immediate feedback because there is real-time interaction between the students and their teacher, as compared to remote asynchronous learning where students learn at their own pace with content available online for students to access at their convenience. Where the synchronous approach is most akin to in-person teaching, the asynchronous method is most analogous to a teacher lecture with no opportunity for interaction. It is doubtful that any effective educator would recommend using the asynchronous method alone for virtual teaching, yet TEA data shows that five of the 10 largest school districts had over 50% of student learning occurring through exclusively remote asynchronous learning methods while only Fort Bend ISD had over 50% of students receiving synchronous learning through real-time interaction with a teacher. And, even though there were not enough classrooms to socially distance teachers and students, and no money to increase staff, seven of the 10 school districts provided in-person instruction to nearly half or over half of their students.

Research suggests that asynchronous and synchronous environments each have advantages and drawbacks. And, educators need to find a blend of both types that works best for the students' needs.[53] Educators consider a variety of important factors when deciding on instructional

53 *E.g.*, Julie Mason, *Synchronous vs. Asynchronous Learning: There is no perfect answer, We Are Teachers* (Sept. 24, 2020), https://www.weareteachers.com/synchronous-vs-asynchronous-learning/.

environments, including the students' ages, how skilled they are with technology, complexity level of the task, amount of support they have at home, and specific student needs.[54] Regrettably, it appears as if high-level officials at local school districts, deemed as the experts in teaching and learning, failed to take measure of these critical questions when deciding on their approach to an inclusive virtual learning environment. With what can be aptly described as an approach of sink or swim, most Texas schools returned to traditional in-person teaching practices risking the safety of staff, students, and their families, or reverted to exclusively asynchronous learning environments in spite of their ineffectiveness. The results were more students failing courses and increased student nonattendance.

Even after having time to prepare for the 2020-21 school year and knowing it would be a year like no other, the state and educator leaders engaged in politics about who had the authority to keep schools open instead of focusing on retooling education for online platforms.[55] Though some are placing blame with state leaders for delaying key decisions or sending conflicting messages,[56] the bottom line is simple: students are now paying the price for a squandered summer with failing grades, no grade promotion, lost instruction, and, in some cases, parents facing criminal charges for student non-attendance or truancy.

More low-income students and students of color are learning remotely, further exacerbating the existing disparities in education.[57] A *Texas Tribune* analysis reveals that, according to September 2020 data collected by TEA and the Texas Department of State Health Services, 67% of students in most low-income districts are learning from home.[58] For school districts where Hispanic students are the majority, the rate increases to 77%, and for school districts where Black students are the majority, the rate is 81%.[59] In stark contrast, only 25% of students in school districts where white students are the majority are learning from home.[60] These data leave little doubt that those most impacted by the digital divide are low-income students and families.

In the previously cited community-wide survey conducted by the Urban Education Institute at UTSA of students, parents, and teachers from the San Antonio area, 79% of students reported always being able to use a computer for school when they needed it, and 89% said they were able to use the internet for school when needed.[61] That translates to 21% of students not being able to access a computer for school when needed and 11% not being able to access the internet.[62] While this report does not show a breakdown by ethnicity/race or household income, it does show that school systems with higher percentages of economically disadvantaged students had greater percentages of students with limited to no digital access.[63] Additionally, 64% of families reported providing the digital technology for the student to be able to learn from home, while 34% indicated that they received their computer from their school.[64] Among the findings revealed by the study is the undeniable fact that digital access is strongly correlated to issues of equity.

Because of the unequal distribution of resources, families have faced a number of challenges, like the pressing concern that their students wouldn't be promoted to the next grade this past spring. In UTSA's study, 65% of teachers reported that students were significantly less engaged

54 *Id.*

55 *E.g.*, Aliyya Swaby, *Many Texas families say remote learning isn't working and they want it fixed,* The Texas Tribune (Nov. 20, 2020, 5 AM), https://www.texastribune.org/2020/11/20/texas-schools-remote-learning/.

56 *Id.*

57 *E.g.,* Aliyya Swaby, *Many Texas families say remote learning isn't working and they want it fixed,* The Texas Tribune (Nov. 20, 2020, 5 AM), https://www.texastribune.org/2020/11/20/texas-schools-remote-learning/.

58 *Id.*

59 *Id.*

60 *Id.*

61 *Teaching and Learning in the time of COVID-19. Research Brief: Food Insecurity, Digital Divide, Work, & Caregiving*, Urban Education Institute at UTSA (Oct. 1, 2020), 2020.https://uei.utsa.edu/_files/pdfs/DistanceLearningBrief3-9-25-20.pdf.

62 *Id.*

63 *Id.*

64 *Id.*

during virtual learning as compared to in-person learning.[65] Educators noted that, from their perspectives, students appeared less intrigued by their lessons. Nearly half of teachers reported that preparing instructional materials for virtual learning and translating from traditional methods to virtual learning was problematic, especially with little to no preparation time.[66] Remarkably, only 5% of teachers reported having prior experience teaching virtually or through an online platform.[67] Additionally, 60% of teachers indicated that students turned in assignments less frequently as compared to pre-virtual schooling.[68]

Many Texas families are expressing frustration that remote learning is not working and they demand it be fixed.[69] Parents argue that students are failing through no fault of their own.[70] They claim the teaching process is so broken that it's difficult for their children to succeed.[71] Teachers concede to scrambling and struggling with the new demands of revising lessons for virtual instruction and learning, all with limited time.[72] They contend they had only weeks to learn a completely different job with no training on how to use online platforms.[73] Additionally, teachers report students turning in assignments late, and some not at all. Further, teachers say many students skip days to weeks of virtual school and lag behind on reading assignments.[74]

The lack of teacher preparation and their increased stress levels had a rippling effect on parents and students.[75] Parents report being exhausted from playing the role of at-home teacher,[76] while trying to balance their work and other demands, to say nothing of their lack of expertise in the subject matter content. Students describe struggling to keep up with their course workload without support at home and with little to no outside help.[77] Frustrated by confusing teacher instructions on assignments and concerned for their child's mental state, some parents told their children not to worry about completing and turning in assignments.[78] Not surprisingly, report cards from the first weeks of the 2020-21 school year show more students failing at least one class than in the previous year.[79] For example, schools in the Houston area experienced unprecedented numbers of students failing classes after the grading period with percentages doubled, tripled, and even quadrupled when compared to pre-pandemic grades.[80] Some districts reported that approximately half of their secondary (middle and high school) students received at least one failing grade to start the 2020-21 school year, during a time when some districts held only virtual classes.[81] The largest Texas school district, Houston ISD, reported 42% of students failed one or more classes during the first grading period, compared to a typical year where only about 11% of students failed one or more classes.[82] Houston ISD held only online classes during the first six-

65 *Teaching and Learning in the Time of COVID-19. Research Brief: Early Challenges and Solutions from Teachers,* Urban Education Institute at UTSA (July 20, 2020), https://uei.utsa.edu/_files/pdfs/DistanceLearningBrief1-7-20-20.pdf.
66 *Id.*
67 *Id.*
68 *Id.*
69 *E.g.,* Aliyya Swaby, *Many Texas families say remote learning isn't working and they want it fixed,* The Texas Tribune (Nov. 20, 2020, 5 AM), https://www.texastribune.org/2020/11/20/texas-schools-remote-learning/.
70 *Id.*
71 *Id.*
72 *Id.*
73 *Id.*
74 *E.g.,* Aliyya Swaby, *Alarming Failure Rates Among Texas Students Fuel Calls to Get Them Back into the Classrooms,* The Texas Tribune (Oct. 23, 2020, 6 AM), https://www.texastribune.org/2020/10/23/texas-students-remote-learning-failing-schools/.
75 *Id.*
76 *Id.*
77 *Id.*
78 *E.g.,* Aliyya Swaby, *Many Texas families say remote learning isn't working and they want it fixed,* The Texas Tribune (Nov. 20, 2020, 5 AM), https://www.texastribune.org/2020/11/20/texas-schools-remote-learning/.
79 *E.g.,* Aliyya Swaby, *Alarming Failure Rates Among Texas Students Fuel Calls to Get Them Back into the Classrooms,* The Texas Tribune (Oct. 23, 2020, 6 AM), https://www.texastribune.org/2020/10/23/texas-students-remote-learning-failing-schools/.
80 Jacob Carpenter, *Houston-Area Schools See Surge in Failing Students as COVID Wreaks Havoc on Grades,* Houston Chronicle (Nov. 20, 2020, updated Dec. 1, 2020, 7:25 pm), https://www.houstonchronicle.com/news/houston-texas/education/article/houston-schools-fail-grades-surge-class-15743142.php.
81 *Id.*
82 *Id.*

week grading period.[83] Cy-Fair ISD, Texas' second largest district, reported that 41% of secondary students learning virtually failed at least one class. Aldine ISD, one of Texas' largest and highest-poverty districts, reported that nearly half of all high school students, seniors excluded, failed at least two classes, tripling the rate from the pre-pandemic school year.[84] And, for its middle school students, 25% received at least two failing grades, which is approximately five times higher than the prior pre-pandemic year.[85] After the alarming rates of student failures were revealed, some district administrators pressed on, citing academic rigor, while others retreated and reevaluated grading formulations to lower standards and increase passing rates.[86]

Behind the data are real stories of parents and children and their struggles that go beyond digital access. One such story involves Myra, a community health worker and Austin ISD parent and her two children: Brianna who is 10 and Julian who is eight.[87] In sharing her story with Texas Appleseed, Myra described both her efforts to help connect her children digitally with their school and her recent internal battle when weighing all the factors for deciding whether or not to return her children to in-person school.[88] While Myra did not lose her job due to the pandemic, she has encountered financial hardship with unexpected expenses related to the purchasing of laptops and feeding her kids for three meals daily where previously they had received two meals at school.[89] She explained that after the pandemic hit in March, Brianna and Julian did not attend school for the remainder of the school year because they did not have devices to participate in virtual school.[90] She panicked since she did not have the means to purchase laptops.[91] There was no offer of assistance at that time and no report cards were shared detailing whether or not Brianna and Julian were promoted to the next grade level.[92]

Myra was finally able to purchase used laptops for Brianna and Julian; however, Julian's laptop was not working properly.[93] An additional hurdle involved internet connectivity since her children had no access to a hotspot. Although Austin ISD deployed school buses with Wi-Fi, many children were still not able to digitally connect with their school. When classes were resuming for the 2020-21 school year, Myra was finally contacted by school officials asking whether she planned on sending Brianna and Julian back to in-person school. Myra explained that it was scary to think about sending them off with the distinct possibility that they could catch the coronavirus. If that happened, she would feel immense guilt. Having to choose between her children receiving a quality education versus keeping them safe at home is not a choice any parent should have to make. Myra's story is illustrative of how many have struggled during the pandemic and have not been given the resources they need and deserve from local and state agencies.

Medical and education experts say remote learning should continue to be an option for families that don't feel safe sending their children to classrooms.[94] In spite of this, rather than trying to resolve the many and varied issues with virtual learning, many districts are bringing back all students to in-person learning.[95] Some districts are concentrating efforts on low-income students, often Black and Hispanic or Latinx, pressuring them to return to campus. When given the choice

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83 *Id.*
84 *Id.*
85 *Id.*
86 *E.g.,* Aliyya Swaby, *Alarming Failure Rates Among Texas Students Fuel Calls to Get Them Back into the Classrooms,* The Texas Tribune (Oct. 23, 2020, 6 AM), https://www.texastribune.org/2020/10/23/texas-students-remote-learning-failing-schools/.
87 Interview with Myra, parent of three elementary-age children in Austin ISD (Nov. 12, 2020), available at https://give.texasappleseed.org/campaign/texas-appleseed-2020-end-of-year/c314522.
88 *Id.*
89 *Id.*
90 *Id.*
91 *Id.*
92 *Id.*
93 *Id.*
94 *E.g.,* Aliyya Swaby, *Many Texas families say remote learning isn't working and they want it fixed,* The Texas Tribune (Nov. 20, 2020, 5 AM), https://www.texastribune.org/2020/11/20/texas-schools-remote-learning/.
95 *E.g.,* Aliyya Swaby, *Alarming Failure Rates Among Texas Students Fuel Calls to Get Them Back into the Classrooms,* The Texas Tribune (Oct. 23, 2020, 6 AM), https://www.texastribune.org/2020/10/23/texas-students-remote-learning-failing-schools/.

of in-person or virtual learning, these families chose virtual learning for their children because of health and safety concerns surrounding the pandemic. These health concerns have not vanished. Frankly, in many ways, the health concerns have gotten worse in light of the newly-identified variants of the coronavirus, delayed distribution of the vaccines, the premature decision to fully reopen the state, and increased new cases and deaths in many parts of the state.

Tragically, the increased number of reported new cases and deaths includes educators and school staff who were exposed to the virus while on the job and children and family members who contracted the virus in the school environment. Asking children and educators to return to the school building without knowing of possible medical conditions and without having all the proper safety and health precautions is the equivalent of asking them to roll the dice, take their chances, and hope for the best. This simply is not good enough — it is unethical, prejudiced, and inhumane.

Under the guise of supporting the student, simply providing one avenue of resolution for academic success (i.e., return to the classroom) is shortsighted and fails to consider the various causes of students' failing grades. To say that returning to the classroom is the solution for all student failures assumes there is the same root cause for each student's situation, presumably after individualized student assessments were conducted to examine the cause(s) for school failure or non-attendance and that all assessments pointed to only one resolution: return to in-person instruction. This outcome is not only highly unlikely, but also disingenuous. Pressuring students to return to the classroom discounts their health concerns and any personal trauma the child may have endured during this time of crisis — trauma that could soon include witnessing the deaths of their teachers. In fact, strong-arming students to return to the classroom, particularly low-income students and students of color, with no offer of meaningful intervention for the school's virtual learning failure is nothing less than discriminatory. One can't help but wonder if this intimidation tactic directed primarily to low-income students and students of color used by some districts is driven by concerns over school funding and accountability ratings and not what is best for the students and their families during these very difficult times.

Alternatively, school leaders, in view of current conditions and need for the virtual platform, should evaluate internal school structures, policies, and procedures and heed Texas' Commissioner of Education Mike Morath's advice offered at a recent legislative hearing: "reengineer the school experience so students reach high academic outcomes."[96] The variables in the formula would include changing how instruction works, addressing disparities among students, and investing in teachers.[97] Moreover, it would consider, evaluate, and address the numerous hurdles for successful virtual learning described by low-income families.

Few would dispute that having students back in the instructional classroom under normal conditions is best for our students. However, the conditions are anything but normal these days. Still, Texas mandated that school districts return to normal operations during the fall and prepare students for the upcoming state standardized test (i.e., STAAR assessment) this spring.[98] In a year of unprecedented crisis negatively impacting families and students, startling rates of student failures, loss of instruction, ineffective instruction, and the like, it would be unjust to require students to sit for and pass a state standardized test.

The destructive impact of the pandemic, the digital divide, and other personal family issues prompted many students to disengage from school or not connect regularly. Student engagement or attendance is directly related to student learning and achievement. Attendance is also directly

96 *Id.*

97 *Id.*

98 *E.g.,* Aliyya Swaby, *Alarming Failure Rates Among Texas Students Fuel Calls to Get Them Back into the Classrooms,* The Texas Tribune (Oct. 23, 2020, 6 AM), https://www.texastribune.org/2020/10/23/texas-students-remote-learning-failing-schools/.

tied to the funding school districts receive from the state: the more students in attendance, the more funding the school district receives. For this reason, student attendance rates are a high priority for school districts, and they will undertake significant efforts to produce the highest possible student attendance rate.

There is a growing concern that students who do not log on a sufficient amount of days during the 2020-21 academic year will be referred to truancy court. An additional concern is that a complaint will be filed against their parents with local prosecutors for Class C misdemeanors for criminal negligence in contributing to their child's nonattendance. Rather than investigating and resolving the causal factors in the student's nonattendance or truancy as required by law, some may be quick to refer students and parents to truancy court.[99] We investigated this issue in the Dallas-Ft. Worth area alongside the National Center for Youth Law and Disability Rights Texas several years ago, and our organizations continue to vigilantly track how these referrals will proceed over the duration of the coronavirus pandemic — and after it concludes.

Data for school districts' truancy case filings is limited for March - June 2020 as many instituted a good judgement moratorium at the start of the pandemic and put efforts in place to re-engage lost students. With the health crisis still in full force, however, some districts have moved forward with business as usual in referring student truancy court cases and filing criminal complaints against parents for the 2020-21 school year. In a quest to determine the extent school districts were referring parents and students to truancy court during the coronavirus pandemic, Texas Appleseed sent public information requests to six school districts (Cedar Hill ISD, Dallas ISD, Duncanville ISD, Garland ISD, Mesquite ISD, and Richardson ISD) in the Dallas area for data through the end of December 2020.[100] The Dallas area was selected because of its extensive truancy caseload, history of aggressively punishing students for chronic absenteeism, and needed reform to its districts' truancy systems.[101] The data revealed that all school districts who responded reported they did not file any truancy cases at the start of the coronavirus pandemic (March-June of the 2019-20 school year). However, Duncanville ISD and Mesquite ISD confirmed they began filing truancy cases during the first semester of the 2020-21 school year. Specifically, through December 2020, Duncanville ISD filed 65 cases against parents and 143 cases against students, and Mesquite ISD filed 86 cases against parents and 19 cases against students.

Truancy case referrals for either students or parents should be the option of last resort, particularly during a once-in-a-century global health crisis. In 2015, the Texas Legislature passed legislation to remove student truancy from a criminal offense and charged districts with the responsibility to identify and take action on the factors causing the student's nonattendance.[102]

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99 Tex. Educ. Code § 25.0915, 25.0951, 25.095. The Texas Education Code § 25 defines truancy conduct as 10 or more unexcused absences within a six month period. The Code requires school districts to adopt minimum standards for truancy prevention measures, establish a set of best practices, and apply truancy prevention measures in good faith to address the causal factors of the student's non-attendance or truancy. The measures can take on a variety of prevention and intervention methods, including a student behavior improvement plan detailing the specific student behavior that is required or prohibited by the student; impose school-based community service; and referral to counseling, mediation, mentoring, a teen court program, community-based services, or other in-school or out-of-school services aimed at addressing the student's truancy. If, after the school has issued the required warning to the parent and the school has implemented truancy prevention and intervention measures, and the measures fail to meaningfully address the student's nonattendance, then, and only then, may the school refer the student to truancy court and/or file a criminal complaint against the parent in criminal court. Notably, the Code does not permit school districts to refer a case to court if the school determines the student's truancy is the result of pregnancy, being in the state foster care system, homelessness, or being the principal income earner for the family. Instead, the school shall offer additional counseling services for the student.

100 Data obtained through an Open Records Request to Dallas ISD, Duncanville ISD, Richardson ISD, Mesquite ISD, Cedar Hill ISD, and Garland ISD; as of Jan. 27, 2021, Richardson ISD had not yet replied.

101 Haley Holik and Deborah Fowler, *Kids No Longer Get Arrested for Truancy and Guess What? They Still Go to Class,* The Dallas Morning News (Mar. 23, 2017, 8:31AM), 2017https://www.dallasnews.com/opinion/commentary/2017/03/23/kids-no-longer-get-arrested-for-truancy-and-guess-what-they-still-go-to-class/; Eric Nicholson, *Big Changes are Coming to Dallas County's Godawful Truancy Courts,* Dallas Observer (Aug. 17, 2015, 4:00 AM), https://www.dallasobserver.com/news/big-changes-are-coming-to-dallas-countys-godawful-truancy-courts-7490001.

102 *Compulsory Attendance and Truancy,* Texas Association of School Boards - TASB (April 2020), https://www.tasb.org/services/legal-services/tasb-school-law-esource/students/documents/compulsory_attendance_and_truancy.aspx.

TEA has created minimum standards for the implementation of truancy prevention measures, as described by the Code.[103] At minimum, as they begin their outreach, schools must identify the root cause of the student's unexcused absences and identify actions to address each cause.[104] This intervention is to be conducted in conjunction and in communication with parents and students[105] since their input and feedback as to the reason(s) for the student's nonattendance is essential in the process. This preventative intervention action by the school districts has never been more important than during this time of great crisis. A rush to referring a case to truancy court is not in keeping with the intent of the law. What is more, it is unprincipled, oppressive conduct inconsistent with education justice.

These data and personal anecdotes illustrate that a number of families across the state never received the technology or internet connections they needed when schools went virtual, and in the past nine months, they have been trying to catch up at every turn. Children rightfully remained concerned about how they'll be evaluated during the 2020-21 academic year, what the STAAR assessment will look like in the spring, and, for teenagers, how to potentially balance work responsibilities with maintaining their engagement at school. Maybe most importantly, young people, parents, and school officials are all struggling with the mental health challenges presented by this year. Young people deserve significant investments in mental health support services. If properly implemented, these services grant access to a school-based space where they can talk through the trauma they've experienced and chart a path to recovery, without the fear of punitive measures awaiting them.

103 *Id.*
104 *Id.*
105 *Id.*

CHAPTER 3

BANNING EXCLUSIONARY DISCIPLINE

Viewed as the community hub, schools are often seen as the center for resources of support and stability for students and their families. In academia, educators are trained to apply differentiated instruction so as to appreciate the diversity among students and individually meet their instructional needs, enhance student engagement, and ultimately attain student success. Similarly, they are charged with effectively applying differentiated systems when addressing student conduct. Yet, the current harsh reality of addressing student conduct is the practice of a punitive, zero tolerance, one-size-fits-all approach that does little or nothing to recognize the differences in students. The unforgiving routine of merely evicting a student from the classroom, physical or virtual, to an exclusionary environment — which includes out-of-school suspension, in-school suspension, removal to a disciplinary alternative education program (DAEP), or removal to a juvenile justice alternative education program (JJAEP) — is antiquated and ineffective. These uncompromising techniques eject the student from the instructional setting and do nothing to address the causative issues underlying the student conduct. What is more, it is often the first point of entry into the school-to-prison pipeline.[106]

At Texas Appleseed, an area of particular interest includes how students received virtual learning resources and how districts handled discipline during this unparalleled moment. We received data from several districts across the state, ranging from Amarillo to Cypress-Fairbanks, and from the Texas Education Agency.[107] These data illustrated how many students accessed the remote learning resources of districts and how many students were suspended or referred to law enforcement once schools turned to virtual learning. In an unsurprising development for many, we found that racial disparities persisted in the discipline that was administered during the spring of 2020. The aggregate number of DAEP placements, JJAEP placements, suspensions, and expulsions certainly fell considerably after schools switched to virtual learning, but Black and Brown children felt the brunt of the disciplinary referrals that were doled out. For example, in Amarillo ISD, Hispanic children received 100% of the disciplinary referrals that the district issued this spring. In Cypress-Fairbanks ISD, close to Houston, Black students accounted for 75% of the DAEP referrals that occurred from March to May of 2020, although Black students only represent 18.9% of district enrollment.[108]

Disciplinary Actions in Three School Districts during Virtual Learning
(March-June 2020)

District	Type of Disciplinary Action	Count of Actions
Amarillo ISD	Alternative Education Placement	6
Cypress-Fairbanks ISD	DAEP and JJAEP	5
Houston ISD	In- and out-of-school suspension and DAEP	19

*Note: Houston ISD masked the number of in-school suspensions, therefore we used a conservative estimate of at least 1 in-school suspension.

106 *See generally* https://texasappleseed.org/education-justice
107 District Data & Texas Education Agency Data, *infra*
108 Texas Education Agency Data, https://txschools.gov/districts/101907/profile.

These data reveal that exclusionary discipline and the resulting school-to-prison pipeline are not limited to brick-and-mortar school buildings. School districts embrace a culture of punitive discipline and its accompanying prejudices are ingrained in public schools. Their effects therefore transcend the school building into the virtual classroom affecting primarily students of color and the most marginalized students. A teacher's ability to simply disconnect a student from the virtual classroom is the equivalent of a teacher unceremoniously evicting a student from the physical classroom and school building without due process and with no opportunity to re-engage in the instruction.[109] Not only would this never be an approved protocol for addressing student conduct during in-person instruction, it runs counter to the most fundamental standard in any school district's student code of conduct wherein due process is foundational. Texas Education Code Chapter 37 does permit a teacher to send a student exhibiting conduct of concern to the campus behavior coordinator, usually a campus administrator.[110] In addressing the student's conduct, the campus behavior coordinator employs due process and, if necessary, applies appropriate discipline management techniques consistent with the school district's student code of conduct. The Texas Education Code does not, however, authorize a teacher to make a unilateral, unexamined decision to remove a student from the virtual classroom, rejecting due process and any opportunity for the student to rejoin instruction that school day, and possibly longer. Challenged by virtual platforms, educators struggle to find effective student discipline protocols that respect student due process and allow students the possibility to timely re-engage in the instructional environment.

As the pandemic endures, loneliness, depression, and thoughts of suicide are among the emotions felt by our schoolchildren.[111] Students are feeling alone and scared and need mental health intervention now more than ever before. Higher levels of stress and trauma can cause students to act out and misbehave.[112] Other students turn inward with feelings of isolation and anxiety, like was the case with an African American student named Jordan.[113] As outlined in a Texas Tribune article, Jordan, an 11-year-old middle school Texas student at Frisco ISD, experienced mental health issues partly due to the months of social isolation caused by the pandemic.[114] In October 2020, while using a school-issued computer, Jordan typed into the search engine: "give me 10 GOOD reasons why I shuldnt kill myself … Share here."[115] The school district's technology department was signaled because of the nature of the search.[116] They alerted the school counselors, who then notified Jordan's mother, Candice.[117] Candice had been on high alert, worried about her son, an A and B student whose grades dropped to failing during virtual learning. Additionally, she had observed Jordan engaged in self-harming behaviors.[118] The trauma experienced by Jordan had devastating effects for Candice, who admittedly was doing everything she could to just try to keep it together for Jordan.[119] His well-being and mental health became the priority, above his academics.[120] Fortunately, Jordan received the needed psychiatric care and is working through his issues. However, not all stories end like this. Research shows that Black

109 *See, e.g.,* https://texasappleseed.org/sites/default/files/ShadowDisciplineReport-Y-FINAL.pdf.
110 Tex. Educ. Code § 37.002
111 *E.g.,* Melissa B. Taboada, *As Pandemic Grinds On, Texas Students Increasingly Feel Alone and Scared, and Some are Thinking About Suicide,* The Texas Tribune (Dec. 22, 2020, 5 AM), https://www.texastribune.org/2020/12/22/texas-students-mental-health-coronavirus/.
112 *E.g.,* Kalyn Belsha, *Virtual Suspensions. Mask Rules. More Trauma. Why Some Worry a Student Discipline Crisis Is on the Horizon,* Chalkbeat (Aug. 21, 2020, 7:14 PM), https://www.chalkbeat.org/2020/8/21/21396481/virtual-suspensions-masks-school-discipline-crisis-coronavirus.
113 Aliyya Swaby, *Jordan's Story: Isolated, Anxious and Failing Online Classes, an 11-Year-Old Texas Boy Considered Suicide,* The Texas Tribune (Jan. 13, 2021, 5 AM), https://www.texastribune.org/2021/01/13/texas-schools-mental-health/?utm_campaign=trib-social-buttons&utm_source=email&utm_medium=social.
114 *Id.*
115 *Id.*
116 *Id.*
117 *Id.*
118 *Id.*
119 *Id.*
120 *Id.*

and Hispanic families have less access to mental health services.[121] This is especially concerning because Black, Hispanic, and Native students' families have experienced greater levels of illness and death during the pandemic.[122] These family groups have also experienced higher rates of job or economic loss and food insecurity.[123]

While Texas districts typically have school guidance counselors who are licensed and trained in trauma-informed practices, they spend the majority of their time on academics, producing standardized testing procedures, evaluating students' schedules, and keeping students on track for graduation.[124] Shockingly, and contrary to their professional title, school counselors do not often counsel students. Instead, students with mental health needs are often referred to therapists off campus.[125] Few schools have campus-based licensed medical professionals who are equipped to provide long-term mental health care.[126]

Good discipline management is a skill set possessed by all successful educators. There is no denying that some strategies effective in a physical classroom are not well-suited to a virtual classroom, including a teacher's close presence to a disruptive student (a smile, a look, a touch on the shoulder, to name a few). However, added to a teacher's toolkit in the virtual platform is the "mute" button.[127] It has become the button of choice for teachers who desire to mute students' disruptive noise or comments so as to minimize interference with their instruction.[128] Undoubtedly, control of the microphone and camera lessens the number of disruptions.[129] Of course, student misconduct varies across the spectrum from minor to serious, where greater action might be necessary. And, evaluating the conduct and assessing where it falls in the spectrum for applying discipline falls to the educator. Advocates for equitable disciplinary practices and restorative practices have expressed concern regarding students of color being disproportionately disciplined and labeled as troublemakers within the virtual platform.[130] Further, students of color are less likely to be identified as children in need of mild discipline and/or restorative intervention.[131]

The progressive movement of restorative practices flips the script on the archaic exclusionary practice that simply evicts the student from the instructional setting. Instead, restorative practices focus on developing relationships, restoring relationships, and making connections before instructional content. More frequently, terms like "restorative justice" or "restorative practices" are used in educational circles as a means of encouraging educators to find more innovative and inclusive methods to addressing student misconduct. While there may be a myriad of restorative programs, they all essentially have two common themes: (1) educators developing and maintaining relationships with students through restorative practices and (2) students repairing any harm caused by their conduct and learning from the experience. This multidimensional approach to addressing student misconduct serves to educate, support, and guide the student into making better decisions and critically distinguishes the misconduct from the value of the student. In stark

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121 *Id.*

122 *E.g.*, Kalyn Belsha, *Virtual Suspensions. Mask Rules. More Trauma. Why Some Worry a Student Discipline Crisis Is on the Horizon,* Chalkbeat (Aug. 21, 2020, 7:14 PM), https://www.chalkbeat.org/2020/8/21/21396481/virtual-suspensions-masks-school-discipline-crisis-coronavirus.

123 *Id.*

124 *E.g.,* Melissa B. Taboada, *As Pandemic Grinds On, Texas Students Increasingly Feel Alone and Scared, and Some are Thinking About Suicide,* The Texas Tribune (Dec. 22, 2020, 5 AM), https://www.texastribune.org/2020/12/22/texas-students-mental-health-coronavirus/.

125 *Id.*

126 *Id.*

127 *E.g.,* Joe Heim and Valerie Strauss, *School Discipline Enters New Realm with Online Learning,* The Washington Post (Sept. 15, 2020, 5:00 AM), https://www.washingtonpost.com/education/school-discipline-enters-new-realm-with-online-learning/2020/09/14/e19a395e-f393-11ea-999c-67ff7bf6a9d2_story.html.

128 *Id.*

129 *Id.*

130 *Id.*

131 *Id.*

contrast to the restorative approach is exclusionary discipline, which may superficially resolve the situation by removing the misconduct from the school environment, but does so at the expense of the student. It not only lacks dimension and compassion, but it indelibly entwines the student with the misconduct, ejecting the student and providing them with no opportunity for ascension.

Many have hypothesized that the voluminous numbers of students engaging in virtual learning will remain even after the pandemic is under control. A different, more restorative, approach is desperately needed to provide even some sense of education justice to young people and their families post-COVID-19. The existence of any discipline at all during this crisis speaks volumes. These data reinforce the stories of teachers simply removing students from their virtual classrooms as a disciplinary response and paint the picture of how deeply the philosophy of zero tolerance is embedded in the way that K-12 education is delivered in America. Even as many rightfully discuss the need for exceptional grace and compassion in response to the coronavirus pandemic, protests against police violence, and other sources of despair, young Texans are not afforded those necessities in the ways children deserve.

Texas Appleseed sent public information requests to 21 school districts in the Houston area in collaboration with the Safe and Supportive Schools Collaborative, a coalition to reform school discipline policy in the Greater Houston region. Data was collected in order to determine what disciplinary practices were taking place since the pandemic hit. From these requests, eight school districts responded with information we could analyze — only five of these school districts provided disciplinary actions by reason for disciplinary action and by race.

We analyzed data from the 2020-21 academic year concerning discipline practices, demonstrating that exclusionary discipline detrimentally impacted thousands of students. In our appendix, we highlight how these disciplinary referrals burdened young people. Of note, during the 2020-21 academic year, Pasadena ISD disproportionately disciplined Black students, and they disciplined students for being truant.

Top 5 Most Common Reasons for Disciplinary Action by District
(2020-21 SY)[132]

District	Reason	Count of Actions (Percent of Total Disciplinary Actions for Each District)
Pasadena ISD	Student code of conduct	83 (12%)
	Truant	75 (11%)
	Insubordination	73 (11%)
	Tardy	58 (8%)
	Fighting/Mutual combat	56 (8%)

132 Houston ISD had so few disciplinary actions that all the reasons for disciplinary action were masked. Clear Creek ISD and Goose Creek CISD provided a reason for disciplinary action, however it was unclear what disciplinary action the reason referred to, therefore they are not included in the breakdown.

Spring Branch ISD	Violation of student code of conduct	817 (86%)
	Fighting/Mutual combat	59 (6%)
	Possessed, sold, used, or was under the influence of marijuana	49 (5%)
	Possessed, sold, used, or was under the influence of alcohol	8 (1%)
	Terroristic threat	5 (1%)
Deer Park ISD*	Violation of code of conduct	210 (86%)
	Controlled substance	22 (9%)
	Off campus Title 5 felony	6 (3%)
Crosby ISD	Inappropriate behavior	8 (30%)
	Truancy	5 (19%)
	Controlled substance	4 (15%)
	Student code of conduct violation	3 (11%)
	Tobacco	2 (7%)
Huffman ISD**	Violation of student code of conduct	134 (83%)
	Fighting/Mutual Combat	18 (11%)
	Non-felony marijuana or controlled substance	7 (4%)
	Harassment against an employee of the school district	3 (2%)

*Deer Park ISD had six other reasons for disciplinary action that all had one instance.
**Huffman ISD only had four reasons for disciplinary action.

When assessed by race/ethnicity, Black students at Pasadena ISD, Spring Branch ISD, and Deer Park ISD experienced a greater rate of disciplinary actions than their white counterparts. At Spring Branch ISD and Huffman ISD, Hispanic students experienced a greater rate of disciplinary actions than their white counterparts.

Disciplinary Actions by Race/Ethnicity and District

(2020-21 SY)

District	Race/Ethnicity	Count of disciplinary actions (Percent of total disciplinary actions by district)	2019-20 Student body population (Percent of total student body by district)*
Pasadena ISD	Asian	4 (1%)	1,572 (3%)
	Black	103 (15%)	3,914 (7%)
	Hispanic	542 (79%)	44,037 (83%)
	American Indian or Alaskan Native	1 (0%)	63 (0%)
	Two or more races	7 (1%)	344 (1%)
	White	30 (4%)	2,899 (6%)
Spring Branch ISD	Asian	30 (3%)	2,294 (7%)
	Black	81 (9%)	1,692 (5%)
	Hispanic	647 (68%)	20,856 (59%)
	American Indian or Alaskan Native	2 (0%)	114 (0%)
	Two or more races	14 (1%)	836 (2%)
	White	178 (19%)	9,381 (27%)
Deer Park ISD	Black	12 (5%)	314 (2%)
	Hispanic	137 (56%)	7,478 (59%)
	Two or more races	7 (3%)	279 (2%)
	White	88 (36%)	4,532 (36%)

District	Race/Ethnicity	Count of Disciplinary Actions (%)	2019-20 Student Body Population (%)*
Crosby ISD	Black	2 (7%)	896 (14%)
	Hispanic	15 (56%)	2,754 (43%)
	Two or more races	1 (4%)	151 (2%)
	White	9 (33%)	2,612 (40%)
Huffman ISD	Hispanic	51 (31%)	879 (24%)
	American Indian or Alaskan Native	1 (1%)	<20
	Black	1 (1%)	80 (2%)
	Two or more races	6 (4%)	61 (2%)
	White	103 (64%)	2,550 (71%)

*Note: TEA has not released the 2020-21 school year enrollment numbers as of the time of this report, therefore the 2019-20 student enrollment numbers are used. Race/ethnicities that are not indicated were not included in the district's response.

When assessed by special education status, students receiving special education services make up nearly a fifth or more of disciplinary actions at every school district.

Disciplinary Actions by Special Education Services and District
(2020-21 SY)

District	Count of disciplinary actions for SPED students (Percent of total disciplinary actions by district)	2018-19 Percentage of students receiving SPED services*
Pasadena ISD	122 (18%)	10%
Spring Branch ISD	191 (20%)	8%
Deer Park ISD	59 (23%)	12%
Crosby ISD	6 (22%)	9%
Huffman ISD	38 (23%)	10%

*Note: Based on the 2018-19 TEA Snapshot data.

Our full analysis of student engagement and discipline data appears in the appendix of the report.

CHAPTER 4

REIMAGINING SCHOOL SAFETY OUTSIDE OF POLICING

In only eight minutes and 46 seconds, George Floyd was killed in police custody at the hands of police officers who responded with violence to a report of a nonviolent crime.[133] After the Minneapolis police department received a call from a convenience store that Mr. Floyd had purchased cigarettes with a counterfeit $20 bill, they responded with excessive, violent, fatal acts, pinning Mr. Floyd, while handcuffed, beneath the three officers.[134] In his last moments, with a knee on his neck, Mr. Floyd begged for his life and repeatedly uttered his now infamous last words: "I can't breathe."[135] Tragically, his calls for help went unanswered. The devastating murders of George Floyd and countless others are a culmination of a long history of police officers' excessive use of force that has gone largely ignored and unaddressed.

The sad truth is police violence does not only occur in our communities and neighborhoods; it also materializes within the walls of our public schools when directed at our youth at the hands of the school's police force. With the intention of providing a safe learning environment, most, if not all, Texas public school districts contract with local law enforcement departments or elect to hire their own police force with licensed peace officers or student resource officers (SROs). Unfortunately, however, most police officers have little to no training on how to effectively work with young people or appreciate the considerable distinction between working with adults out in the community versus addressing a child's misconduct within the school building. Consequently, what so often results is a police officer's adult response to a juvenile event, mixed with excessive force, resulting in unreasonably criminalizing conventional student misconduct.

School police officers are often charged with responsibilities of dispensing student discipline in criminal form in place of school administrators who are often overwhelmed or not properly trained in resolving the student misconduct. In their arsenal, campus administrators have available exclusionary, and often ineffectual, discipline tools, including in-school suspension, out-of-school suspension, referral to a disciplinary alternative education program (DAEP), or referral to juvenile justice academic education program (JJAEP). Regrettably, their toolkit seldom involves innovative or progressive techniques that are restorative in nature or methods that assess the causal nature of the student behavior, which frequently is symptomatic of a larger problem. And, as for police officers, customarily their routine consists of only one approach: criminalizing the conduct either by citation or arrest and shuffling the student into the criminal justice system, which has momentous and long-lasting consequences for the student. Simply stated, school police officers ought not be a substitute for effective behavior management techniques by well-trained teachers and school administrators.

133 *E.g.*, Evan Hill, Ainara Tiefenthäler, Christiaan Triebert, Drew Jordan, Haley Willis, and Robin Stein, *How George Floyd Was Killed in Police Custody,* The New York Times (May 31, 2020, updated Feb. 23, 2021), https://www.nytimes.com/2020/05/31/us/george-floyd-investigation.html.

134 *Id.*

135 *Id.*

Texas Education Code (TEC) 37.144 provides school districts with the option to apply graduated sanctions for certain school offenses, rather than quickly reverting to criminalizing nonviolent student behavior. TEC does not require, but does permit, school districts that commission peace officers to develop a system of graduated sanctions that the district may require to be imposed before a complaint is filed in criminal court against that student for disruption of classes, disruption of transportation, or disorderly conduct. Specifically, the graduated system may require a warning letter to be issued to a student and the student's parent; a behavior contract be signed by students and parents; the performance of school-based community service by the student; and referral to counseling.[136] The graduated sanctions option, however, is not a requirement for school districts, who may reject this opportunity and instead unnecessarily involve school police officers.[137] A universal requirement for all districts to apply these graduated sanctions will not only discourage police officers from criminalizing mundane student misbehavior, it will support a multitiered restorative approach to more effectively address student behavior.

Increasingly, state and federal cases are being filed where school police officers act with excessive force toward students. Armed with qualified immunity, school police officers are shielded from their negligent conduct and excessive force toward students. School police officers monitor the school halls as if patrolling within the walls of an unruly prison, often escalating problems at the first sign of noncompliance with complete disregard for preserving the educational setting and being mindful of students' cognitive acuity. Unfortunately, school administrators and teachers will often request and endorse the officer's intervention on ordinary student behavior infractions that are more suitably handled by trained school personnel.

As examined in the Counselors Not Cops report issued by the Safe and Supportive Schools Collaborative of Harris County,[138] police misconduct spans the range from verbal abuse, as in Alief Independent School District v. Perry,[139] to physical abuse, as in Cooper v. Killeen Independent School District,[140] to Moreno v. Northside I.S.D.,[141] where the school police officer's violent use of a firearm resulted in the tragic death of a student.

In Alief ISD v. Perry, a school police officer was fired from the Alief Independent School District for "referring to students as 'ghetto kids,' escalating situations with students, acting inappropriately with students, and violating all sorts of [departmental] procedures."[142] In Cooper v. Killeen ISD, a school police officer working the ticket gate at a basketball game engaged in a verbal and then physical altercation with Cooper, an African American high school student, after refusing her admission into a high school basketball game.[143] Cooper was attempting to enter a basketball game accompanied by her younger sister. Cooper's ticket was with a friend who had already entered the game, but her sister did not yet have a ticket to the sold-out event. After little success in attempting to bargain with the officer for a ticket for her sister, and in response to the officer's direction of "Are you in or out?" Cooper walked through the gate. Upset by Cooper's verbal response, the officer followed Cooper and said "No, you are out." As Cooper attempted to continue to walk, passing the officer, he "grabbed her right arm and tried to restrain her to take her into custody." With her arms behind her back, Cooper was thrown head first into a glass door before being wrestled, or as described by a witness, "body slammed," to the ground. According to the facts set forth in the case, Cooper weighed about 125 pounds and the officer was about twice as heavy. While Cooper was on the ground, the officer kneeled on top of her with his knee against her back, and while she and her sister cried and screamed, the officer handcuffed her. The charges filed against Cooper of trespassing and interfering with the public were later dismissed.

136 Tex. Educ. Code § 37.144
137 *Id.*
138 Safe and Supportive Schools Collaborative of Harris County, *Counselors Not Cops* (Summer 2020), https://counselorsnotcops.org/report/.
139 440 S.W.3d 228 (Tex.App.—Houston [14th Dist.] 2013, no pet.).
140 2008 WL 194358 (W.D. Tex. 2008).
141 2012 WL 13028692 (W.D. Tex. 2012).
142 440 S.W.3d 228 (Tex.App.—Houston [14th Dist.] 2013, no pet.).
143 2008 WL 194358 (W.D. Tex. 2008).

Disastrously, in Moreno v. Northside ISD, a school police officer shot and killed a 14-year-old Latinx high school student.[144] The school police officer intervened in a fight between Moreno and another male student occurring at the bus stop after the students exited the school bus. The officer ordered Moreno to "freeze," a term often associated with officer apprehension of a criminal, not the redirection of student misbehavior. Instead of complying, Moreno ran into the neighborhood and took shelter in a shed behind a nearby home. Ignoring directives from school police leadership to stay with the other student and "not do any big search," the officer placed the other student in his patrol car and drove to search for Moreno. The officer was flagged down by the homeowner, who had witnessed the student go into the shed and had called 911. In further violation of district police procedures, the officer immediately drew his weapon as he entered the backyard. When Moreno exited the shed, the officer shot and killed him. It was later discovered that the officer had been reprimanded 16 times for insubordination and failure to follow supervisors' directives. Still, the officer was protected by qualified immunity, and the district supported the officer's actions and continued his employment. No criminal charges were brought against the officer. Eventually, the district settled with Moreno's parents, paying an undisclosed sum of money.

By virtue of their ultimate disposition, these cases attempt to paint school police misconduct as the exception to the rule. However, the stories of the young people in these cases and the facts of similarly filed lawsuits confirm that it is the norm. Racist actions and implicit biases that can pervade our policing institutions funnel down into school policing, and that fact manifests itself in the emotional, psychological, and physical abuse that young people have to endure within American schools each day.

The U.S. Fifth Circuit Court of Appeals recently released a slightly encouraging decision in Wilson v. Southlake concerning school policing in Southlake, Texas.[145] The case involved a school police officer who taunted an 8-year-old child with "significant emotional and behavioral disabilities" and ultimately handcuffed him. The officer hurled insults such as "punk" and "brat" at the child, admitting that he did so because of previous incidents involving the child. The action that ultimately led to the arrest involved the child twirling a jump rope, which the officer described as "home-built nunchucks," implying the jump rope was a weapon.

The family filed suit under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The family sought to distinguish the child's case from a previous Fifth Circuit decision, Hainze v. Richards.[146] In Hainze, the court determined that an exigent circumstance, such as waving a knife at an arresting officer, can prevent a plaintiff from seeking relief under these two federal statutes.[147] Thankfully, the Fifth Circuit acknowledged that an 8-year-old child twirling a jump rope is completely different from an adult wielding a weapon.[148] The court clarified that Hainze only applies when there is a potentially life-threatening situation or a real danger of physical harm.[149]

It is encouraging that the Fifth Circuit has recognized some limitations on school police officers' interactions with students. However, to meaningfully hold school police officers accountable for their abuses, a significant amount of work remains to be done through litigation and public policy advocacy efforts in order to encourage the elimination of school policing. The precedent of Wilson may lead to more favorable decisions from the courts to address abuses by school police officers who remain on school campuses.

144 2012 WL 13028692 (W.D. Tex. 2012).
145 *Wilson v. Southlake*, 936 F.3d 326 (5th Circ. 2019).
146 *Hainze v. Richards,* 207 F.3d 795 (5th Cir. 2000).
147 *Id.*
148 *Id.*
149 *Id.*

In the wake of the nationwide protests against police brutality, there is a call to defund or cut law enforcement budgets.[150] Texas is no exception, with Texas leaders in Dallas and Austin heeding the plea by cutting funding to their police departments.[151] Although not detailing the specific amounts of money to be cut, Dallas City Council members sent a letter to the city manager stating, in part, "We understand that this call is a demand to address the deep root of our nation's unjust practices and institutions and the need for us, as a city, to repair the harm of structural oppression."[152] They add, "It is time to reimagine public safety."[153] The Austin City Council voted in August to immediately shift $21 million away from the Austin Police Department budget, and then used the money to move forward with homelessness assistance and family and mental health services, among other community programs.[154] The calls for the diversion of police funds to social services resonate from the streets in our neighborhoods into the halls in our school buildings.

After Mr. Floyd's death, the Minneapolis School Board ended its security contract with the Minneapolis police department.[155] Within the school context, "defunding the police" means to divert funds from law enforcement to trained mental and behavioral specialists, including counselors and social workers.[156] The primary issue with schools' law enforcement programs is the lack of proven effectiveness in decreasing violence in schools.[157] Given the already strained school budgets, lack of proven effectiveness, and increase in police brutality in public schools, the solution is to not run schools like prisons.[158] Instead, schools are encouraged to apply restorative and positive behavior intervention strategies as resolutions.[159] Decreasing money spent on school police and reallocating those funds to mental health programs is an investment in our students and in our communities.

Underscoring that school safety is about good school climate, Texas Appleseed studied school policing and other hardening discipline measures. We contend that safe, supportive schools require a consideration of more than physical security and monitoring.[160] It requires prioritizing supportive resources to students to include counseling and mental health services.[161] In an analysis of 2017-18 statewide data, Texas Appleseed compared the ratio of counselors and mental health professionals to police in Texas schools and found the majority of Texas schools fall below the recommended ratios for counselors and other mental health professionals.[162] The study concluded four major findings: 1. Texas schools need more counseling and mental health resources; 2. Texas schools have heavily invested in policing and security; 3. Black and Brown students are more heavily policed; 4. Some Texas districts have more police officers than counselors.[163]

With a goal to create safe schools, state and school budgets should prioritize prevention and intervention using counselors and mental health professionals in order to effectively meet the academic and behavioral needs of students, particularly during this very difficult time.[164]

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150 Clare Proctor and Juan Pablo Garnham, *Houston officials Increase Police Budget as Dallas and Austin Officials Consider Decreases in Wake of Police Brutality Protests,* The Texas Tribune (June 10, 2020, 6PM), https://www.texastribune.org/2020/06/10/texas-defund-police-dallas/.

151 *Id.*

152 *Id.*

153 *Id.*

154 Meg O'Connor, *Austin Will Use Money Cut From Police Budget To Establish Supportive Housing,* The Appeal (January 27, 2021), https://theappeal.org/austin-cut-police-budget-supportive-housing-homelessness/.

155 Courtney Shannon, *Ending School Contracts with Law Enforcement,* American Bar Association (Jan. 21, 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/ending-school-contracts-with-law-enforcement/.

156 *Id.*

157 *Id.*

158 *Id.*

159 *Id.*

160 Morgan Craven, Dr. Ellen Stone, & Deborah Fowler, *Guarding Our Most Precious Resources: Comparing the Staffing of Counselors and Mental Health Professionals to Police in Texas Schools,* Texas Appleseed, https://www.texasappleseed.org/sites/default/files/Guarding%20our%20most%20precious%20resources.pdf.

161 *Id.*

162 *Id.*

163 *Id.*

164 *Id.*

Evaluating all counseling and mental health professionals against the recommended 250:1 ratio, only 261 Texas school districts, or 22%, meet this ratio.[165] Additionally, the investigation revealed that districts are unevenly resourced, leaving students in some districts at a disadvantage.[166]

The data also showed that some districts employ more police officers than counselors.[167] Accordingly, school districts' budgets reveal where priorities lie: spending more per student on security and monitoring as compared to guidance and counseling.[168] Moreover, students of color are more heavily policed than their white peers.[169] Forty-three percent of majority Black and Brown districts have a law enforcement or security presence, as compared to only 12% of majority white districts.[170] It follows that this can lead to further perpetuating the disproportionate influx of students of color in the criminal justice system.[171]

There will be critics who will argue that more police presence is needed to keep a campus safe and secure, especially against the backdrop of the many school shootings. Investigations, however, expose that many of the white male students who most often commit school shootings experienced mental health issues that went unnoticed or unaddressed. By strengthening mental health initiatives in Texas schools, lessening the "hardening" of schools, and providing an overall more inclusive, supportive school culture, schools will provide needed prevention and intervention programs before incidents become violent. The gained mental health services and oppression-free environments are especially critical in today's climate.

165 *Id.*
166 *Id.*
167 *Id.*
168 *Id.*
169 *Id.*
170 *Id.*
171 *Id.*

CONCLUSION AND RECOMMENDATIONS

2021 represents a watershed moment in the fight against so many forms of oppression. The toll of the coronavirus pandemic highlighted the deprivation that preceded it and created a path to a public consciousness shift unparalleled in U.S. history. The largest American social movement flowed from a once-in-a-century global health crisis converging with the continuous murder of Black Americans at the hand of the state. Despite the incalculable losses that billions of people have faced, there are incredible opportunities to advance the causes of racial and social justice. And, in seeking justice, it will take more than reallocating budgets or hiring people. It will require a cultural change where we, as a society, identify what went wrong, evaluate systems, embrace responsibility, and activate the needed reform.

Inspired by Mr. Floyd's death, one advance includes the reform to require implicit bias training for Texas Judges.[172] Judges across Texas should exercise any discretion they have to end the criminal and collateral consequences of Class C misdemeanor ticketing on young people and their families. Likewise, public education is very much part of the discussion for needed training involving implicit bias.[173] In the wake of the police-led killings of Mr. Floyd and others, and the disproportionate effects of COVID-19 on the communities of people of color, there has been a harsh look at the reality that schools perpetuate systemic racism.[174] Educators are just as likely to show racial biases as any other American adult.[175] Unfortunately, the research is unclear as to how best to train staff to avoid racial and other biases that affect their relationships with students,[176] but one thing is certain: without acceptance and understanding that systemic racism exists within schools, there is little promise in achieving education justice.

Moreover, to achieve true education justice, there must be a call to examine core systemic barriers that oppress and a heroic attempt to dismantle deficit thinking in public schools. Deficit thinking is the dominant paradigm that largely shapes U.S. educators' perspectives for the widespread and persistent failure among historically underserved students. It cites internal deficits in students that manifest in limited intellectual abilities and other shortcomings resulting in lack of motivation and immoral behavior.[177] Schools produce failures among economically disadvantaged students and students of color and then use these failures as evidence that the problem lies with the student, their families, their genetics, their culture, and their neighborhoods, rather than the educational system and its deficit assumptions.[178] This self-perpetuating cycle is commonplace in today's public schools.[179] It is pervasive and implicit and is nothing short of dehumanizing.

Deficit thinkers treat people as the problem and, rather than focusing on remedying oppressive and disabling systems, they focus on fixing people.[180] The responses of school districts have exacerbated injustices suffered by students of color. Under the guise of better understanding poverty, school leaders offer damaging professional development riddled with deficit thinking, as evidenced in the works of Ruby K. Payne and others, further perpetuating the cycle of deficit thinking and promoting a culture of oppression by "blaming the victim."[181] For instance,

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172 Angela Morris, *Confronting Implicit Bias: Texas Judges Would Get Annual Training Under New Resolution,* Texas Lawyer (Sept. 24, 2020, 4:22 PM), https://www.law.com/texaslawyer/2020/09/24/confronting-implicit-bias-texas-judges-would-get-annual-training-under-new-resolution/.

173 *E.g.,* Sarah D. Sparks, *Training Bias Out of Teachers: Research Shows Little Promise So Far,* Education Week (Nov. 17, 2020, corrected Nov. 20, 2020), https://www.edweek.org/leadership/training-bias-out-of-teachers-research-shows-little-promise-so-far/2020/11.

174 *Id.*

175 *Id.*

176 *Id.*

177 Richard R. Valencia, The Evolution of Deficit Thinking: Educational Thought and Practice 2 (1997).

178 *See, e.g., Id.*

179 *See, e.g., Id.*

180 *E.g.,* Lori Patton Davis and Samuel D. Museus, *Identifying and Disrupting Deficit Thinking,* National Center for Institutional Diversity (July 29, 2019), https://medium.com/national-center-for-institutional-diversity/identifying-and-disrupting-deficit-thinking-cbc6da326995.

181 Richard R. Valencia, Dismantling Contemporary Deficit Thinking: Educational Thought and Practice 68-100 (2010).

language of deficiency often used by educators includes the popular educational term of "at-risk." Even everyday words like "resilience" and "grit" blame the student for their failure rather than examining policies and practices that perpetuate oppressive and inequitable systems.[182] The reality is that the internal culture and social constructs of most schools promote a system of deficit thinking and cultivate an alliance of deficit thinking educators. There is evidence that suggests meaningful staff training is only effective when part of a comprehensive plan which includes identifying specific problems and strategies to address structures that perpetuate bias in schools.[183] In order to transform education to an institution free from oppression and achieve education justice, school leaders must examine, identify, and dismantle systemic practices and policies ingrained with deficit thinking.[184]

The events of 2020 necessitate a great deal of healing for young people and their communities. And because what happens in our schools is a reflection of what happens in society, schools need to be transformed to aid in this healing. Within the context of education justice, schools and school districts can take bold and long overdue steps to alleviate the suffering that so many people are facing. These actions include:

- Issuing district-wide exclusionary discipline bans for the 2020-21 and 2021-22 academic years, with no exceptions carved out. These bans would prevent school officials from suspending or expelling young people, as well as stop referrals to disciplinary alternative education programs and juvenile justice alternative education programs.
- Placing a moratorium on prosecuting truancy through the court system, opting instead to work with families to address the root causes of chronic absenteeism and issuing district-wide bans for referrals to truancy court for both students and parents for the 2020-21 and 2021-22 academic years.
- Ensuring that teachers and administrators don't engage in the practice of shadow discipline (unreported exclusions, but exclusions nonetheless) within the context of virtual learning. For example, this policy would prevent educators from simply removing students from their virtual classrooms without due process.
- Adopting a pass/fail grading system for all K-12 courses for the 2020-21 academic year, with the possibility of an extension for the 2021-22 academic year.
- Tailoring school reopening plans to elevate the voices of low-income people and their families and dedicating discretionary funding from the Texas Education Agency to alleviating the financial stress on these communities.
- Cutting school policing budgets by at least 50% by the end of the 2021 fiscal year and reinvesting that money in full-time staff positions for school psychologists and counselors, as well as additional mental health support services.

182 *E.g.,* Lori Patton Davis and Samuel D. Museus, *Identifying and Disrupting Deficit Thinking,* National Center for Institutional Diversity (July 29, 2019), https://medium.com/national-center-for-institutional-diversity/identifying-and-disrupting-deficit-thinking-cbc6da326995.

183 *E.g.,* Sarah D. Sparks, *Training Bias Out of Teachers: Research Shows Little Promise So Far,* Education Week (Nov. 17, 2020, corrected Nov. 20, 2020), https://www.edweek.org/leadership/training-bias-out-of-teachers-research-shows-little-promise-so-far/2020/11.

184 Richard R. Valencia, Dismantling Contemporary Deficit Thinking: Educational Thought and Practice 68-100 (2010).

State government officials in the Texas Legislature and at the Texas Education Agency can also act to ensure that young people have a path to complete healing after the coronavirus pandemic. These actions include:

- Suspending the 2021 STAAR Assessment and establishing a statewide commission to evaluate the future of standardized testing in Texas.
- Working with the Federal Communications Commission to expand broadband access to every corner of the state.
- Ensuring that future COVID-19 relief from the federal government flows to districts who serve high populations of Black and Brown children and children experiencing homelessness.
- Requiring that, if a school intends to maintain its internal police force, four dedicated mental health professionals — such as social workers, school psychologists, and counselors — be hired for every one school police officer.

An extraordinary crisis requires an extraordinary response. 2020 reinforced that young Texans deserve a radical shift in how K-12 education is delivered to them. They deserve drastic action from state and local policymakers to meet the needs of this unparalleled moment.

APPENDIX/METHODOLOGY

Discipline during COVID-19 (March 2020-June 2020)

Texas Appleseed sent open records requests to Amarillo ISD, Beaumont ISD, Cypress-Fairbanks ISD, Galveston ISD, Fort Worth ISD, Lubbock ISD, and San Antonio ISD to determine whether these districts had continued to discipline students while in the pandemic. Lubbock ISD and Galveston ISD did not issue any disciplinary actions during the pandemic, with Lubbock ISD opting to instead have parent/student conferences. It was unclear whether Fort Worth ISD disciplinary actions occurred previously to the pandemic, therefore it is not included in the analyses. San Antonio ISD requested an Attorney General opinion and is therefore not included in the analyses.

Amarillo ISD, Houston ISD, and Cypress-Fairbanks ISD issued a combined 30 disciplinary actions when schools went virtual.

Reason for disciplinary action

Amarillo ISD reported the reason for alternative education placements were for: rude/discourteous behavior, off campus felony, racial slur, and computer misuse. For Cypress-Fairbanks ISD, the reasons for disciplinary action included: firearm (on campus), off-campus Title V felony, and possessed, sold, used or was under the influence of marijuana or other controlled substance. At Houston ISD, the reasons for disciplinary action were mostly for criminal mischief or possessed, sold, used, or was under the influence of marijuana or other controlled substance.

By Race

Amarillo ISD issued all six alternative education placements to Hispanic students. Cypress-Fairbanks ISD issued all disciplinary actions to students of color (4 to Black students, and 1 to a Hispanic student).

By Special Education Status

Amarillo ISD issued one alternative education placement to a student receiving special education services. Three of the five students receiving DAEP/JJAEP in Cypress-Fairbanks ISD were receiving special education services.

Discipline during COVID (2020-21 School Year)

Texas Appleseed, in collaboration with the Safe and Supportive Schools Collaborative, sent public information requests to 21 school districts in the Houston area in order to determine what disciplinary practices were taking place since the pandemic hit.[185] From these requests, eight school districts responded with information we could analyze.[186] From these districts, it is clear that while some schools have limited or reduced their use of discipline during the pandemic, many districts are still disciplining students. The districts varied with learning methods during the 2020-21 school year, with a combined 184,793 students that were being taught on-campus and 182,407 that were taught remotely. Of these eight school districts, Huffman ISD had the highest rate of disciplinary actions, with nearly 6 disciplinary actions for every 100 students being taught on-campus in the 2020-21 school year.

Learning Methods in Eight School Districts
(2020-21 SY)*

District	Count of students receiving in-person learning (%)	Count of students receiving remote synchronous learning (%)	Count of students receiving remote asynchronous learning (%)
Houston ISD	79,303 (40%)	1 (0%)	117,849 (60%)
Pasadena ISD	21,572 (43%)	0 (0%)	29,046 (57%)
Clear Creek ISD	30,427 (75%)	0 (0%)	10,297 (25%)
Spring Branch ISD	22,929 (69%)	0 (0%)	10,388 (31%)
Goose Creek CISD	14,818 (64%)	6,509 (28%)	1,960 (8%)
Deer Park ISD	9,415 (76%)	0 (0%)	2,914 (24%)
Crosby ISD	3,568 (56%)	0 (0%)	2,767 (44%)
Huffman ISD	2,761 (80%)	0 (0%)	676 (20%)

*As of November 6th, 2020 reporting.

185 Additionally, in these requests, we asked for data regarding school policing and engagement for students in disciplinary alternative education placements (DAEPs). Discipline data was requested for the beginning of the school year to the date the request was sent (October 30th, 2020). Some districts provided information up until the date the information was sent (e.g., November).

186 As of the end of February, nine districts had not yet provided information. Some districts (Tomball ISD, Galena Park ISD, Conroe ISD, and Fort Bend ISD) provided information but it was unclear the timeframe of the provided data. Humble ISD provided redacted pdfs that were not analyzed for this report.

Disciplinary Actions in Eight School Districts

(2020-21 SY)*

District	In-School Suspension Actions*	Out-of-School Suspension Actions*	DAEP Actions	JJAEP Actions	Total Disciplinary Actions
Houston ISD	2 (18%)	9 (82%)	1 (9%)	0 (0%)	11
Pasadena ISD	429 (62%)	155 (23%)	103 (15%)	0 (0%)	687
Clear Creek ISD	696 (73%)	189 (20%)	1 (0%)	61 (6%)	947
Spring Branch ISD	660 (69%)	257 (27%)	34 (4%)	1 (0%)	952
Goose Creek CISD	295 (70%)	95 (23%)	29 (7%)	0 (0%)	419
Deer Park ISD	194 (75%)	25 (10%)	41 (16%)	0 (0%)	260
Crosby ISD	9 (33%)	17 (63%)	1 (4%)	0 (0%)	27
Huffman ISD	134 (83%)	18 (11%)	10 (6%)	0 (0%)	162

*Note: this includes both partial day and full day suspensions.

Rate of Disciplinary Actions in Eight School Districts
(2020-21 SY)

District	Total Disciplinary Actions	Count of students on-campus	Rate per 100 students*
Houston ISD	11	79,303	0.01
Pasadena ISD	687	21,572	3.18
Clear Creek ISD	947	30,427	3.11
Spring Branch ISD	952	22,929	4.15
Goose Creek CISD	419	14,818	2.83
Deer Park ISD	260	9,415	2.76
Crosby ISD	27	3,568	0.76
Huffman ISD	162	2,761	5.87

*Note: The rate of discipline is calculated out of the total number of students receiving in-person learning in the 2020-21 school year.

Student Engagement during COVID-19

Engagement at the beginning of the pandemic (March-June 2020)

At the end of the 2019-2020 school year, school districts were required to submit to TEA the level of virtual student engagement.

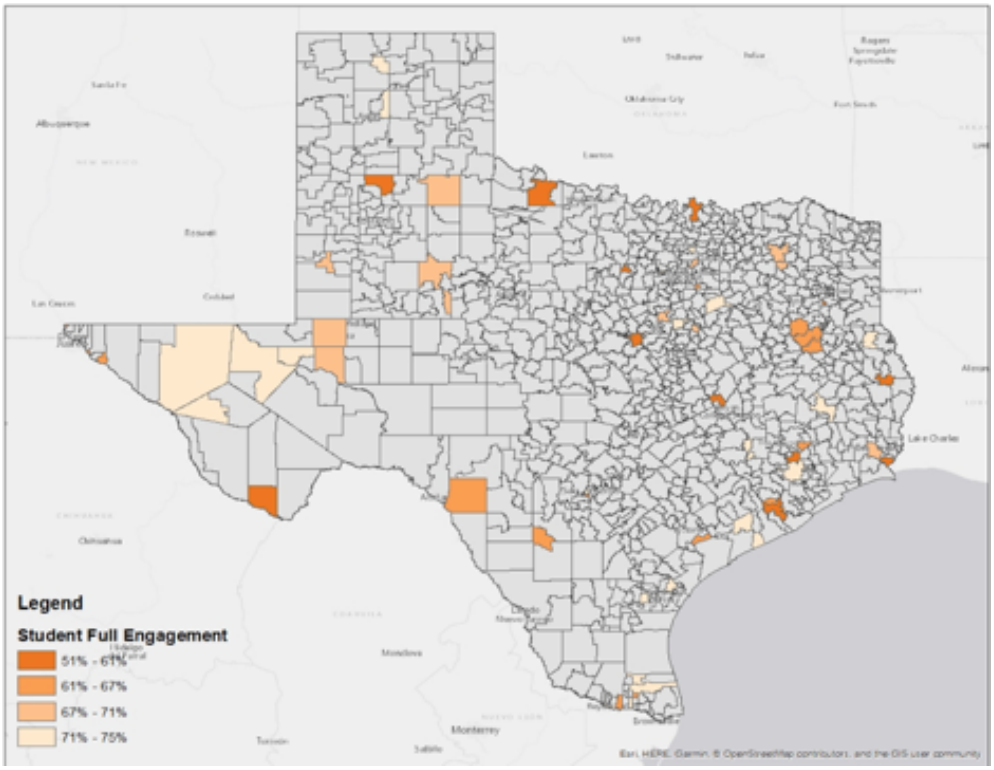
When analyzed by race, there were 125 districts that had fewer than 75% of their Black students fully engaged, 120 districts that had fewer than 75% of their Hispanic students fully engaged, and 47 districts that had fewer than 75% of their white students fully engaged. Among the top 10 largest school districts that had 75% or less student engagement, student engagement rates varied by student race, with Black students appearing to have had less engagement than students overall.

Top 10 Largest School Districts with 75% or Less of Students Full Engagement by Race (March-June 2020)

District	Total Engagement	Black student engagement	Hispanic student engagement	White student engagement
Houston ISD	72%	66%	71%	90%
Aldine ISD	60%	56%	62%	57%
Ector County ISD	71%	61%	71%	75%
KIPP Texas Public Schools	69%	58%	72%	78%
Carrollton-Farmers Branch ISD	71%	67%	66%	82%
Uplift Education	39%	40%	36%	47%
Beaumont ISD	71%	66%	75%	83%
New Caney ISD	65%	70%	63%	67%
Donna ISD	65%	<70%	65%	72%
Edgewood ISD	74%	66%	74%	80%

*Note: Donna ISD provided masked estimate of the percentage of Black students fully engaged.

The map reflects the school districts that had 75% or less student engagement. School districts that had higher than 75% full engagement are not included on the map. The school district shapefile was taken from the Texas Education Agency; charter schools are not reflected in the map.



Student engagement estimates also vary by other student characteristics, particularly for vulnerable student populations. For instance, students experiencing homelessness had the lowest overall rates of full engagement when compared to students overall. Additionally, there were at least 13,884 students receiving special education services, 395 students experiencing homelessness, 402 students in foster care, and 24,960 English learner students who had no or lost contact with their school districts when the pandemic hit.[187]

Student Engagement by Special Populations
(March-June 2020)

Engagement Pattern	Total Students*	English Learner Students**	Students in Foster Care**	Students Experiencing Homelessness**	Students Receiving Special Education**
Fully engaged	89%	84%	86%	77%	86%
Engagement recovered	2%	3%	3%	4%	3%
No or lost engagement	7%	10%	9%	15%	9%
No or lost contact	2%	2%	3%	4%	2%

*Total student engagement pulled from TEA's preliminary findings on June 30, available at: https://tea.texas.gov/sites/default/files/covid/covid19-Student-Engagement.pdf

**Percentages were calculated out of the total number of students in each category. In any instance of masking a conservative estimate of at least 1 student was used.

187 Students could be double-counted in these numbers (i.e., a student could be receiving special education services and experiencing homelessness), therefore the total number of students across these categories cannot be summed.

Among the largest districts with 75% or less student engagement, there are similar varying rates of student engagement depending on student characteristics. Overall, students in these populations tended to be less engaged than the overall student body population. However, some districts, such as KIPP Texas Public Schools, Edgewood ISD, Ector County ISD, and Beaumont ISD all appeared to have better engagement with English learner students than non-English learner students.

Top 10 Largest School Districts with 75% or Less Student Full Engagement Student Characteristics[188] (March-June 2020)

District	Total Engagement	English Learner Students	Students Experiencing Homelessness	Students Receiving Special Education Services
Houston ISD	72%	69%	61%	70%
Aldine ISD	60%	59%	45%	53%
Ector County ISD	71%	74%	54%	70%
KIPP Texas Public Schools	69%	72%	61%	67%
Carrollton-Farmers Branch ISD	71%	64%	49%	65%
Uplift Education	39%	35%	32%	39%
Beaumont ISD	71%	73%	57%	73%
New Caney ISD	65%	61%	54%	60%
Donna ISD	65%	60%	51%	63%
Edgewood ISD	74%	78%	63%	71%

Percentages were calculated out of the total number of students in each category. In any instance of masking a conservative estimate of at least 1 student was used.

188 Note: breakdowns for students in foster care is not included in the table due to high amounts of masking

When broken out by school districts, rates of engagement for students in foster care are frequently heavily masked. However, among large school districts that did not have to mask their populations, students in foster care tended to be less engaged than students overall (and students not in foster care).

Students in Foster Care Full Engagement in 3 Large Districts
(March-June 2020)

District	Total Engagement	Engagement of Students in Foster Care	Engagement of Students Not in Foster Care
Northside ISD	90%	406 (81%)	95,534 (90%)
Aldine ISD	60%	157 (42%)	40,124 (60%)
Conroe ISD	82%	109 (66%)	51,922 (82%)

Truancy

At the end of December 2020, Texas Appleseed sent public information requests to six school districts in the Dallas area[189] in order to determine whether school districts were referring parents and students to truancy court during the pandemic. While all school districts that responded (Cedar Hill ISD, Dallas ISD, Duncanville ISD, Garland ISD, and Mesquite ISD) said that they did not file any truancy cases at the start of the pandemic (from March-June of the 2019-20 school year), Duncanville ISD and Mesquite ISD began filing truancy cases during the first semester of the 2020-21 school year. Duncanville ISD filed 65 cases against parents and 143 cases against students, and Mesquite ISD filed 86 cases against parents and 19 cases against students.

189 Dallas ISD, Duncanville ISD, Richardson ISD, Mesquite ISD, Cedar Hill ISD, and Garland ISD were contacted.

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