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# SCHOOL–BASED LEGAL SERVICES AS A TOOL IN DISMANTLING THE SCHOOL–TO–PRISON PIPELINE AND ACHIEVING EDUCATIONAL EQUITY

Barbara Fedders\* and Jason Langberg\*\*

## I. INTRODUCTION

Advocates fighting against the “school–to–prison pipeline”<sup>1</sup> pipeline have focused on resource starvation,<sup>2</sup> zero tolerance disciplinary policies,<sup>3</sup> excessive suspensions and expulsions,<sup>4</sup> school

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<sup>1</sup> *What Is The School-To-Prison Pipeline?*, AM. CIVIL LIBERTIES UNION, <http://www.aclu.org/racial-justice/what-school-prison-pipeline> (last visited Sept. 13, 2013) (“The ‘school-to-prison pipeline’ refers to the policies and practices that push our nation’s schoolchildren, especially our most at-risk children, out of classrooms and into the juvenile and criminal justice systems.”).

<sup>2</sup> NAACP LEGAL DEF. AND EDUC. FUND, DISMANTLING THE SCHOOL-TO-PRISON PIPELINE 4 (Oct. 10, 2005), *available at* [http://www.naacpldf.org/files/publications/Dismantling\\_the\\_School\\_to\\_Prison\\_Pipeline.pdf](http://www.naacpldf.org/files/publications/Dismantling_the_School_to_Prison_Pipeline.pdf).

<sup>3</sup> THE CIVIL RIGHTS PROJECT, ADVANCEMENT PROJECT & HARVARD UNIV., OPPORTUNITIES SUSPENDED: THE DEVASTATING CONSEQUENCES OF ZERO TOLERANCE AND SCHOOL DISCIPLINE 1 (2000), *available at* <http://civilrightsproject.ucla.edu/research/k-12-education/school-discipline/opportunities-suspended-the-devastating-consequences-of-zero-tolerance-and-school-discipline-policies/crp-opportunities-suspended-zero-tolerance-2000.pdf>; RUSSELL J. SKIBA, ZERO TOLERANCE, ZERO EVIDENCE: AN ANALYSIS OF SCHOOL DISCIPLINARY PRACTICE 2 (2000), *available at* <http://www.indiana.edu/~safeschl/ztze.pdf>; Am. Psychological Ass’n Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective in the Schools? An Evidentiary Review and Recommendations*, 63 AM. PSYCHOLOGIST 852, 852 (2008); NAT’L ASS’N OF SCHOOL PSYCHOLOGISTS, *Zero Tolerance and Alternative Strategies: A Fact Sheet for Educators and Policymakers* (2008), *available at* [http://www.nasponline.org/educators/zero\\_alternative.pdf](http://www.nasponline.org/educators/zero_alternative.pdf).

<sup>4</sup> DANIEL J. LOSEN & TIA ELENA MARTINEZ, OUT OF SCHOOL & OFF TRACK: THE OVERUSE OF SUSPENSIONS IN AM. MIDDLE AND HIGH SCHOOLS, THE CENTER FOR CIVIL RIGHTS REMEDIES 1 (2013), *available at* [http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack\\_UCLA\\_4-8.pdf](http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/out-of-school-and-off-track-the-overuse-of-suspensions-in-american-middle-and-high-schools/OutOfSchool-OffTrack_UCLA_4-8.pdf); TONY FABELO ET AL., BREAKING SCHOOLS’ RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS SUCCESS AND JUVENILE JUSTICE INVOLVEMENT, JUST. CENTER & PUB. POL’Y RES. INST. 1 (2011), *available at*

policing,<sup>5</sup> and high-stakes testing<sup>6</sup>—factors that affect youth of color once they begin attending school. Youth of color are disproportionately likely to be from low-income families, and they face particular challenges as a result of the interaction between poverty and racism.<sup>7</sup> This Article has three aims: to analyze the way in which poverty makes youth of color particularly vulnerable to involvement in the pipeline; to argue that advocates should include poverty and its ill effects in the discourse around ending the pipeline; and to propose the establishment of more school-based legal clinics as one step toward ameliorating poverty's negative effects, and ultimately the pipeline.

A child whose family is in poverty faces substantial hurdles in succeeding academically, particularly given that academic success is consistently measured by performance on standardized tests.<sup>8</sup> Poverty makes it more difficult for children to learn and comply with behavioral expectations, especially rigid, punitive school discipline regimes.<sup>9</sup> Schools in high-poverty districts—which are often districts populated disproportionately by students of color<sup>10</sup>—consistently have

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[http://knowledgecenter.csg.org/drupal/system/files/Breaking\\_School\\_Rules.pdf](http://knowledgecenter.csg.org/drupal/system/files/Breaking_School_Rules.pdf) (last visited Sept. 19, 2013).

<sup>5</sup> JUSTICE POL'Y INST., EDUCATION UNDER ARREST: THE CASE AGAINST POLICE IN SCHOOLS 1 (2011), available at

[http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest\\_fullreport.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf); Annette Fuentes, *Arresting Development: Zero Tolerance and the Criminalization of Children*, 26 RETHINKING SCHOOLS 18, 18 (2011-2012).

<sup>6</sup> ADVANCEMENT PROJECT, TEST, PUNISH, AND PUSH OUT: HOW “ZERO TOLERANCE” AND HIGH-STAKES TESTING FUNNEL YOUTH INTO THE SCHOOL-TO-PRISON PIPELINE 8 (2010), available at

[http://b3cdn.net/advancement/d05cb2181a4545db07\\_r2im6caqe.pdf](http://b3cdn.net/advancement/d05cb2181a4545db07_r2im6caqe.pdf); *How Testing Feeds the School-to-Prison Pipeline*, FAIRTEST (Mar. 31, 2010, 3:58 PM), <http://www.fairtest.org/how-testing-feeds-schooltoprison-pipeline>.

<sup>7</sup> Michael A. Rebell, *Poverty, “Meaningful” Educational Opportunity, and the Necessary Role of the Courts*, 85 N.C. L. REV. 1467, 1473-74 (2007) (“Latino and Black students comprise 80% of the student population in extreme poverty schools (90% to 100% poor).”) (quoting GARY ORFIELD & CHUNGMEI LEE, CIVIL RIGHTS PROJECT, HARVARD UNIV., WHY SEGREGATION MATTERS: POVERTY AND EDUCATIONAL INEQUALITY, 21 (2005), available at

<http://civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/why-segregation-matters-poverty-and-educational-inequality/orfield-why-segregation-matters-2005.pdf> (last visited August 1, 2013)).

<sup>8</sup> Timothy P. Glenn & Sarah E. Waldeck, *Penalizing Diversity: How School Rankings Mislead the Market*, 42 J.L. & EDUC. 417, 418 (2013).

<sup>9</sup> Sarah Jane Forman, *Ghetto Education*, 40 J.L. & POL'Y 67, 100 (2012).

<sup>10</sup> Rebell, *supra* note 9, at 1473.

lower graduation rates<sup>11</sup> and higher rates of school suspension and expulsion<sup>12</sup> than other schools.

Given the enormous political pressure—including financial penalties and incentives<sup>13</sup>—placed on schools to ensure that their students succeed on standardized tests, schools have had to struggle to respond to poverty in ways that help all students reach their potential. Governmental programs targeted at low-wealth students, such as free and reduced-price lunch,<sup>14</sup> early childhood education,<sup>15</sup> and supplemental educational services,<sup>16</sup> do help some youths, yet more can be done within schools themselves.

Grassroots organizations,<sup>17</sup> law and policy organizations,<sup>18</sup> other advocacy organizations,<sup>19</sup> the philanthropic community,<sup>20</sup> and

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<sup>11</sup> Greg J. Duncan & Richard J. Murnane, *Introduction: The American Dream, Then and Now*, in *WHITHER OPPORTUNITY? RISING INEQUALITY, SCHOOLS, AND CHILDREN'S LIFE CHANCES*, 3, 13–14 (Greg J. Duncan & Richard J. Murnane, eds., 2011).

<sup>12</sup> FABELO ET AL., *supra* note 6, at 6–7, 75 n.109.

<sup>13</sup> James E. Ryan, *Standards, Testing, and School Finance Litigation*, 86 *TEX. L. REV.* 1223, 1247–48 (2008) (analyzing “perverse incentives” created by No Child Left Behind federal legislation).

<sup>14</sup> Food & Nutrition Serv., *National School Lunch Program*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/nslp/national-school-lunch-program> (last visited Sept. 19, 2013); Food & Nutrition Serv., *Income Eligibility Guidelines*, U.S. DEP'T OF AGRIC., <http://www.fns.usda.gov/cnd/Governance/notices/iegs/IEGs.htm> (last visited Sept. 19, 2013) (showing that children in a family of four making an annual income of \$30,615 can receive free meals, and children in a family of four making \$43,568 can receive reduced meals).

<sup>15</sup> *Early Childhood Education*, NAT'L EDUC. ASS'N, <http://www.nea.org/home/18163.htm> (last visited Sept. 19, 2013) (documenting the importance of early childhood education to academic success).

<sup>16</sup> U.S. Dep't of Educ., *Description of Supplemental Educational Services*, ED.GOV, <http://www2.ed.gov/nclb/choice/help/ses/description.html> (last visited Sept. 19, 2013) (describing tutoring and other remedial help available to students of low-wealth families).

<sup>17</sup> *See, e.g., End the School to Jail Track*, PADRES UNIDOS, <http://www.padresunidos.org/end-school-jail-track> (last visited Sept. 15, 2013) (discussing grassroots, youth-led campaigns to end severe penalties in schools for minor behavioral problems); *Program Areas*, POWER U CENTER, <http://www.poweru.org/index.php?page=program-areas> (last visited Oct. 3, 2013) (denoting the “End the School to Prison Pipeline” as one of the grassroots membership organization’s main focuses); *Campaigns*, PHILADELPHIA STUDENT UNION, <http://www.phillystudentunion.org/index.php/campaigns> (last visited Sept. 15, 2013) (bringing students together from the ground up to change school policies and promote nonviolence); *School to Prison Pipeline*, FRIENDS AND FAMILIES OF LOUISIANA’S INCARCERATED CHILDREN, INC., <http://www.fflic.org/school-to-prison->

policymakers<sup>21</sup> are diligently working to replace punitive disciplinary practices with more positive, productive alternatives, as well as

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pipeline (last visited Sept. 15, 2013) (describing the membership based organization fighting the school to prison pipeline and implementing ways to prevent it in Louisiana).

<sup>18</sup> See, e.g., *Children at Risk*, SOUTHERN POVERTY LAW CENTER, <http://www.splcenter.org/what-we-do/children-at-risk> (last visited Sept. 15, 2013) (describing the non-profit civil rights organization's goal of ending the school to prison process that disproportionately affects minorities); *School-to-Prison Pipeline*, AMERICAN CIVIL LIBERTIES UNION, <https://www.aclu.org/racial-justice/school-prison-pipeline> (last visited Sept. 15, 2013) (describing how the organization is "our nation's guardian of liberty" and the ways they challenge "the school to prison pipeline" and "Zero-tolerance" policies); *Texas' School to Prison Pipeline*, TEXAS APPLESEED, <http://www.texasappleseed.net/index.php> (follow "school to prison pipeline" hyperlink under current projects) (last visited Sept. 15, 2013) (promoting economic justice through volunteer professionals and conducting research on the "school to prison pipeline"); *School to Prison Pipeline*, NAACP LEGAL DEFENSE FUND, <http://www.naacpldf.org/case/school-prison-pipeline> (last visited Sept. 15, 2013) (describing this legal organization's fight to prevent stricter penalties for behavioral issues in schools).

<sup>19</sup> See, e.g., *Ending the Schoolhouse to Jailhouse Track*, ADVANCEMENT PROJECT, <http://safequalityschools.org/> (last visited Sept. 15, 2013) (advocating an end to the school to prison process by Advancement Project, a civil rights law "action tank"); *Cradle to Prison Pipeline Campaign*, CHILDREN'S DEFENSE FUND, <http://www.childrensdefense.org/programs-campaigns/cradle-to-prison-pipeline/> (last visited Sept. 15, 2013) (describing the non-profit child advocacy organization's efforts to dismantle the school to prison pipeline phenomenon).

<sup>20</sup> See, e.g., *Programs: Children & Youth*, THE ATLANTIC PHILANTHROPIES, <http://www.atlanticphilanthropies.org/cy-united-states> (last visited Sept. 15, 2013) (assisting country's poorest children through reforming school policies, grants and health care as a limited life organization); *Education & Youth in the United States*, OPEN SOCIETY FOUNDATION, <http://www.opensocietyfoundations.org/topics/education-youth-united-states> (last visited Sept. 15, 2013) (supporting an end to the school to prison pipeline through a foundation created by philanthropist George Soros).

<sup>21</sup> See, e.g., *Ending the School-to-Prison Pipeline: Before the Subcomm. on Constitution, Civil Rights, & Human Rights of the S. Comm. on the Judiciary*, 112th Cong. (2012) (Congressional hearing on the school-to-prison pipeline displaying policymakers interest in this problem); Donna St. George, *School to Prison Pipeline Hearing Puts Spotlight on Student Discipline*, THE WASH. POST, Dec. 13, 2012, [http://articles.washingtonpost.com/2012-12-13/local/35812364\\_1\\_honor-student-school-to-prison-pipeline-civil-rights](http://articles.washingtonpost.com/2012-12-13/local/35812364_1_honor-student-school-to-prison-pipeline-civil-rights) (describing the first ever Congressional hearing on the school-to-prison pipeline); Deborah J. Vagins & Kimberly Humphrey, *Groundbreaking Senate Hearing Shines a Light on the School-to-Prison Pipeline*, AMERICAN CIVIL LIBERTIES UNION (Dec. 13, 2012), <https://www.aclu.org/blog/criminal-law-reform-human-rights-racial-justice/groundbreaking-senate-hearing-shines-light> (describing Congressional

ameliorate the effects of school policing, push back against efforts to arm personnel and civilians in schools,<sup>22</sup> and reverse the negative impacts of market-based changes to public education.<sup>23</sup>

Some authors and organizations have acknowledged and explored the connection between poverty and the pipeline.<sup>24</sup> For the most part, however, advocates have not emphasized poverty as much as other school-specific factors.<sup>25</sup> One reason for minimizing the impact of poverty is strategic. Advocates may worry that

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hearing on school-to-prison pipeline); *see also*, Attorney General Holder, Secretary Duncan Announce Effort to Respond to School-to-Prison Pipeline by Supporting Good Discipline Practices, THE UNITED STATES DEPARTMENT OF JUSTICE (July 21, 2011), <http://www.justice.gov/opa/pr/2011/July/11-ag-951.html> (describing Supportive School Discipline Initiative by Attorney General Eric Holder and Secretary of Education Arne Duncan).

<sup>22</sup> *See, e.g.*, ADVANCEMENT PROJECT ET AL, POLICE IN SCHOOLS ARE NOT THE ANSWER TO THE NEWTOWN SHOOTING 1, 1–2 (Jan. 2013), *available at* <http://www.advancementproject.org/resources/entry/police-in-schools-are-not-the-answer-to-the-newtown-shooting> (click on download this source) (discussing the failure of policies advocating for more guns in schools).

<sup>23</sup> *See, e.g.*, ADVANCEMENT PROJECT ET AL, FEDERAL POLICY, ESEA REAUTHORIZATION, AND THE SCHOOL-TO-PRISON PIPELINE (Mar. 2011), *available at* <http://www.advancementproject.org/resources/entry/federal-policy-esea-reauthorization-and-the-school-to-prison-pipeline> (click on download this source) (promoting more discussion of the school to prison pipeline problem in adopting policy).

<sup>24</sup> *See, e.g.*, Editors of Rethinking Schools, *Stop the School-to-Prison Pipeline*, 26 RETHINKING SCHOOLS 4, 4 (2011-2012) (“The school-to-prison pipeline begins in deep social and economic inequalities...”); Robert Balfanz et al, *High Poverty Secondary Schools and the Juvenile Justice System: How Neither Helps the Other and how that Could Change*, in NEW DIRECTIONS FOR YOUTH DEVELOPMENT: DECONSTRUCTING THE SCHOOL-TO-PRISON PIPELINE 71, 77 (Johanna Wald & Daniel J. Losen eds., Jossey-Bass 2003) (showing the link between demographics, socioeconomic status and incarcerated students).

<sup>25</sup> One powerful counterexample to this trend is the Children’s Defense Fund, which has favored the term “cradle-to-prison pipeline” as a way to explore the role that external structural forces play in depriving students of the means to succeed. *See generally* *Cradle to Prison Pipeline Campaign*, CHILD. DEFENSE FUND, <http://www.childrensdefense.org/programs-campaigns/cradle-to-prison-pipeline/> (last visited Sept. 19, 2013) (describing the school to prison pipeline phenomenon and the Children’s Defense Fund’s efforts to dismantle it); *See also* AM. LEADERSHIP FORUM CLASS XXV, DISMANTLING THE CRADLE TO PRISON PIPELINE IN HOUSTON AND TEXAS: A STUDY OF SOLUTIONS 8, *available at* <http://rehak.com/alf/90084%20ALF%20Report%202014.pdf> (last visited Sept. 19, 2013) (“The overriding characteristic of those caught in the Cradle to Prison Pipeline crisis is poverty.”).

acknowledging that students from low-wealth families have built-in disadvantages that make them more vulnerable to the pipeline could relieve schools of their responsibility to ensure that all students can succeed. Second, proponents of market-based “solutions” for failing schools—school closings, merit pay, competition from charters and vouchers, etc.—have argued that focusing on poverty as a reason for student difficulty defends the status quo.<sup>26</sup> School-to-prison pipeline opponents may have, however inadvertently, allowed themselves to be swayed by this argument. A third reason why the impact of poverty is minimized may be that a child’s socioeconomic status, unlike race and disability, is not a category protected by civil rights laws.<sup>27</sup> Finally, advocates rely heavily on data from the U.S. Department of Education’s Office for Civil Rights, which focus on race, ethnicity, sex, disability, and limited English proficiency.<sup>28</sup>

Unfortunately, overlooking the impact of poverty on the school-to-prison pipeline has negative consequences. Targeting only school policies and practices can have the unfortunate effect of pitting advocates against teachers and school administrators. In fact, advocates and school personnel could and should be allies in the struggle to demand increased funding for public education and in pushing to end high-stakes testing regimes, both of which would go a long way toward dismantling the school-to-prison pipeline.<sup>29</sup> A focus on poverty—its ill effects and efforts to ameliorate it—can create a

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<sup>26</sup> Roger Bybee, *It’s the Poverty, Stupid*, IN THESE TIMES, Aug. 25, 2010, available at [http://inthesetimes.com/article/6326/its\\_the\\_poverty\\_stupid](http://inthesetimes.com/article/6326/its_the_poverty_stupid) (noting trend and arguing that “until society redistributes resources fairly, many schools will continue to fail, and with them, the nation’s schoolchildren.”).

<sup>27</sup> See, e.g., Camille Walsh, *Erasing Race, Dismissing Class: San Antonio Independent School District v. Rodriguez*, 21 BERKELEY LA RAZA L.J. 133, 133 (2011) (describing how the Supreme Court case dismissed class as a constitutionally protected category).

<sup>28</sup> Office of Civil Rights, *Civil Rights Data Collection*, ED.GOV, <http://www2.ed.gov/about/offices/list/ocr/data.html?src=rt> (last visited Sept. 17, 2013).

<sup>29</sup> See, e.g., *In the Wake of the Testing Boycott: A 10-Point Proposal for Teacher Self-Organization*, CREATIVITY NOT CONTROL (Feb. 28, 2013), <http://creativitynotcontrol.wordpress.com/2013/02/28/in-the-wake-of-the-testing-boycott-a-10-point-proposal-for-teacher-self-organization/> (noting that organizing for teacher pay will attract more people of color); Fair Test, *National Testing Resolution Reflects Growing Resistance to High-Stakes Testing*, FAIRTEST EXAMINER (May 2012), <http://www.fairtest.org/national-testing-resolution-reflects-growing-resis> (noting movement against testing).

common ground for families, staff, and advocates alike. Further, focusing on poverty is necessary to create the comprehensive approach needed to fully dismantle the pipeline.<sup>30</sup>

At present, some education advocates have begun to push back against proponents of market-based “reforms,” arguing that educators and administrators must address poverty if they are to fulfill their educational mission.<sup>31</sup> We seek to specifically address poverty’s role in the school-to-prison pipeline and to analyze one possible solution: school-based legal services.

School-based legal services (SBLS)<sup>32</sup> is a rarely utilized tool that schools can use to alleviate poverty and its impacts on education, and, consequently, to improve academic achievement and equity. SBLS involves providing a school’s low-income families with legal services in civil matters such as housing, employment, consumer, domestic violence, immigration, public benefits, and family law.

Part II of this article provides data on child poverty in the United States. Part III explores the role played by poverty in fueling the school-to-prison pipeline. Part IV discusses the rationales for providing SBLS and how SBLS is consistent with similar school-based efforts to address student poverty and with statutes requiring interventions for “at-risk” students. In this part, we also situate our proposal within the universe of “best practice” responses to the school-to-prison pipeline. Part V provides an overview of possible models for delivering SBLS and explores potential obstacles to the widespread implementation of SBLS. This article concludes with a call to expand the use of SBLS.

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<sup>30</sup> See Sabrina Tavernise, *Education Gap Grows Between Rich and Poor*, *Studies Say*, N.Y. TIMES, Feb. 9, 2012 (finding that early life conditions, such as poverty, drastically impact an individual’s future prospects).

<sup>31</sup> Greg Kaufmann & Elaine Weiss, *This Week in Poverty: Time to Take On Concentrated Poverty and Education*, THE NATION BLOG (Feb. 1, 2013), <http://www.thenation.com/blog/172589/week-poverty-time-take-concentrated-poverty-and-education#axzz2b2LnBX6j>.

<sup>32</sup> See generally MOREEN MURPHY, HOW TO START YOUR OWN SCHOOL-BASED LEGAL CLINIC (2002) (discussing how establishing school-based legal programs can provide significant community services).

## II. CHILD POVERTY

In 2011, according to the Children's Defense Fund, more than one in five children in the United States lived in poverty<sup>33</sup> Forty-five percent of children—or 32.4 million<sup>34</sup>—lived in low-income families.<sup>35</sup> In the United States, every thirty-two seconds a child is born into poverty.<sup>36</sup> That means that 2,712 children are born into poverty each day.<sup>37</sup> Children are the poorest age group in the U.S.<sup>38</sup> Child poverty in the United States has increased steadily over the last decade, increasing by thirty-five percent between 2000 and 2011.<sup>39</sup>

American Indian, Black, and Hispanic children are disproportionately affected by poverty.<sup>40</sup> In 2011, thirty-seven percent of American Indian children, thirty-nine percent of Black children, and thirty-four percent of Hispanic children lived in poverty, compared with fourteen percent of Asian or Pacific Islander and White children.<sup>41</sup> Sixty-five percent of American Indian children, Black children, and Hispanic children lived below 200 percent of the federal

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<sup>33</sup> Children's Defense Fund, *Child Poverty in America: 2011*, Sept. 2012, at 1, available at <http://www.childrensdefense.org/child-research-data-publications/data/2011-child-poverty-in-america.pdf> (defining poverty as \$23,021 for a family of four)

<sup>34</sup> Annie E. Casey Foundation, Kids Count Data Center, *Children Below 200% Poverty* (Sep. 2013), <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?loct=2&by=v&order=a&ind=47&dtm=330&tf=867>, (defining "low income" as below 200 percent of the federal poverty level)

<sup>35</sup> Sophia Addy et al, *Basic Facts About Low-income Children, Children Under 18 Years, 2011*, at 4 (Jan. 2013), available at [http://www.nccp.org/publications/pdf/text\\_1074.pdf](http://www.nccp.org/publications/pdf/text_1074.pdf).

<sup>36</sup> Children's Defense Fund, *Moments in America for Children* (Sept. 2013), <http://www.childrensdefense.org/child-research-data-publications/moments-in-america-for-children.html>.

<sup>37</sup> Children's Defense Fund, *Each Day in America*, (Mar. 2013), <http://www.childrensdefense.org/child-research-data-publications/each-day-in-america.html>.

<sup>38</sup> Children's Defense Fund, *The State of America's Children Handbook*, at 10, 12, available at <http://www.childrensdefense.org/child-research-data-publications/data/soac-2012-handbook.pdf>.

<sup>39</sup> Children's Defense Fund, *supra* note 35, at 4.

<sup>40</sup> *Id.* at 3; Annie E. Casey Foundation, Kids Count Data Center, *Children in Poverty by Race and Ethnicity*, <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?by=a&order=a&ind=43&dtm=322&tf=867>.

<sup>41</sup> Annie E. Casey Foundation, *supra* note 42.

poverty level, compared to thirty-two percent of Asian or Pacific Islander and White children.<sup>42</sup>

The United States consistently ranks among the worst industrialized countries in terms of the numbers of children living in poverty. A report by the United Nations Children's Fund (UNICEF) ranked the United States twenty-eighth out of twenty-nine of "the world's most advanced economies" in relative child poverty rates.<sup>43</sup> The rates in the United States were more than twice as high as those in the sixteen countries with the lowest poverty rates.<sup>44</sup>

### III. POVERTY AND THE SCHOOL-TO-PRISON PIPELINE

Data indicate inextricable connections between the poverty of a student's family and her likelihood of involvement in the school-to-prison pipeline.<sup>45</sup> Students of low socioeconomic status are suspended and expelled at higher rates,<sup>46</sup> and schools with more students who

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<sup>42</sup> Annie E. Casey Foundation, Kids Count Data Center, *Child Population by Race* (May. 2012), <http://datacenter.kidscount.org/data/tables/103-child-population-by-race?loc=1&loct=2#detailed/1/any/false/867,133,38,35,18/66,67,68,69,70,71,12,72/423,424>; Addy et al, *supra* note 36, at 4

<sup>43</sup> Adamson, Peter, UNICEF, *Child Well Being in Rich Countries*, at 3, 7 (April 2013), available at [http://www.unicef-irc.org/publications/pdf/rc11\\_eng.pdf](http://www.unicef-irc.org/publications/pdf/rc11_eng.pdf); see also Max Fisher, *Map: How 35 Countries Compare on Child Poverty the U.S. is ranked 34<sup>th</sup>*, WASH POST (April 15, 2013) (ranking the United States 34<sup>th</sup> out of 35 countries in child poverty).

<sup>44</sup> Adamson, *supra* note 45, at 7.

<sup>45</sup> Linda Pagani, et. al., *Effects of Poverty on Academic Failure and Delinquency in Boys: A Change and Process Model Approach*, 40 J. OF CHILD PSYCHOL. & PSYCHIATRY 1209, 1210 (1999); HB Ferguson, S. Bovaird, & MP Mueller, *The Impact of Poverty on Educational Outcomes for Children*, 12 PEDIATRIC CHILD HEALTH 701 (2007); Helen F. Ladd, *Education and Poverty: Confronting the Evidence*, DUKE SANFORD SCHOOL OF PUBLIC POLICY, WORKING PAPER SERIES SAN11-01, 1, 18-19 (2011).

<sup>46</sup> Fabelo, et. al., *supra* note 6, at 7, 75 (n.109); The American Academy of Pediatrics, *Out of School Suspension and Expulsion*, 112 PEDIATRICS 1206, 1207 (2003); Russell Skiba, et. al., *Where Should we Intervene? Contributions of Behavior, Student, and School Characteristics*, at 5 (2013), available at [http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy\\_of\\_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline](http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/copy_of_dignity-disparity-and-desistance-effective-restorative-justice-strategies-to-plug-the-201cschool-to-prison-pipeline); Linda M. Raffaele Mendez, *Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation*, 99 NEW DIRECTIONS FOR YOUTH DEV. 17, 26 (2003); Robert Balfanz, et. al., *Sent Home and Put Off-Track: The Antecedents, Disproportionalities, and Consequences of Being Suspended in the Ninth Grade*, at 7

qualify for free or reduced-price lunch generally have higher rates of suspension.<sup>47</sup> Multiple factors explain the connection between poverty and the pipeline.

For one, conditions of poverty can affect a child's behavior in school, which can then lead to the child's suspension, expulsion, and involvement in the juvenile and criminal systems.<sup>48</sup> Furthermore, growing up in poverty makes it harder for a student to achieve academic success,<sup>49</sup> which leads to disciplinary problems that can then lead to juvenile and criminal involvement. On average, children from disadvantaged households perform worse in school than those from more advantaged households.<sup>50</sup> Disparities in academic success between children from wealthy families and those from poor ones are growing rapidly,<sup>51</sup> in part because wealth disparities are increasing.<sup>52</sup> Gaps in academic proficiency and graduation rates exist among races,

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(2012), available at <http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/state-reports/sent-home-and-put-off-track-the-antecedents-disproportionalities-and-consequences-of-being-suspended-in-the-ninth-grade/balfanz-sent-home-ccrr-conf-2013.pdf>.

<sup>47</sup> Anne Gregory, et. al., *The Relationship of School Structure and Support to Suspension Rates for Black and White High School Students*, 20 AM. ED. RES. J. 1, 7 (2011).

<sup>48</sup> Russell Skiba, et. al., *Parsing Disciplinary Disproportionality: Contributions of Behavior, Student, and School Characteristics to Suspension and Expulsion*, at 6 (2012), available at

<http://www.indiana.edu/~equity/docs/SkibaAERAParsingDisciplinaryDisproportionality.pdf>; see also Anne Gregory, et. al., *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 EDUC. RES. 59, 60 (2010) ("Low-income students with histories of low achievement, who reside in high-crime/high-poverty neighborhoods, may be at greater risk for engaging in behavior resulting in office disciplinary referrals and school suspension.").

<sup>49</sup> Ross Wiener, *Opportunity Gaps: The Injustice Underneath Achievement Gaps in Our Public Schools*, 85 N.C. L. REV. 1315, 1316 (2007); Osamudia R. James, *Business as Usual: The Roberts' Court's Continued Neglect of Adequacy and Equity Concerns in American Education*, 59 S.C. L. REV. 793, 797-98 (2008).

<sup>50</sup> MARTHA S. MCCALL ET. AL., *ACHIEVEMENT GAPS: AN EXAMINATION OF DIFFERENCES IN STUDENT EVALUATION AND GROWTH*, at 1-3 (2006); Misty Lacour and Laura D. Tissington, *The Effects of Poverty on Academic Achievement*, 6 EDUC. RES. AND REV. 522, 527 (2011).

<sup>51</sup> Tavernise, *supra* note 32; Reardon, *supra* note 13, at 100.

<sup>52</sup> Sean F. Reardon, *No Rich Child Left Behind*, N.Y. TIMES (April 27, 2013), <http://opinionator.blogs.nytimes.com/2013/04/27/no-rich-child-left-behind>; See also Sean Weissman, *Occupy Kindergarten: The Rich-Poor Divide Starts With Education*, THE ATLANTIC, at (Feb. 11, 2012) (noting that "Economic class is increasingly becoming the great dividing line of American education.").

with White and Asian students typically scoring higher than students who are Black or Hispanic.<sup>53</sup> Yet differences in socioeconomic status appear to predict academic success even more prominently.<sup>54</sup> In 2011, eighty-two percent of fourth grade students who were eligible for free or reduced-price lunch scored below levels considered “proficient” in reading on the National Assessment of Educational Progress; however, only fifty-two percent of students who were ineligible scored below “proficient.”<sup>55</sup> This academic failure contributes to a variety of negative emotions and behaviors that then lead to involvement in the school-to-prison pipeline. Students experience frustration, lessened motivation, peer rejection, poor interactions with teachers, a desire to escape, and aggressive behavior.<sup>56</sup> Suspension, expulsion, and school-based arrest can result.<sup>57</sup>

It is not difficult to understand how poverty increases the odds of academic failure, leading to emotional deregulation. Poverty makes it more likely that a young person will experience a variety of problems and challenges both physical and psychological. These include homelessness and other forms of housing instability; inadequate nutrition and hunger; exposure to environmental pollutants; lack of access to healthcare and physical health problems; abuse and neglect at the hands of family members; exposure to violence; developmental delays; and behavioral and emotional problems, including chronic stress and depression.<sup>58</sup> Scientific studies suggest

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<sup>53</sup> Doris Nhan, *State Education Data Reveal Large Achievement Gaps*, THE NEXT AMERICA (Nov. 30, 2012), <http://www.nationaljournal.com/thenextamerica/education/state-education-data-reveal-large-racial-achievement-gaps-20121129>.

<sup>54</sup> Reardon, *supra* note 13, at 110.

<sup>55</sup> Annie E. Casey Foundation, Kids Count Data Center, *4<sup>th</sup> Graders Who Scored Below Proficient Reading Level by Family Income* (Nov. 2011), <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?ind=5125>.

<sup>56</sup> Temi Bedjerano, *Self Conscious Emotions in Response to Perceived Failure: A Structural Equation Model*, 78 J. OF EXPERIMENTAL EDUC. 318, 319, 322-323 (2010); Jodi Swanson, et al., *Predicting Academic Achievement from Cumulative Home Risk: The Medicating Roles of Effortful Control, Academic Relationships, and School Avoidance*, 58 MERRILL-PALMER QUARTERLY 375, 380 (2012).

<sup>57</sup> KATHLEEN COTTON, SCHOOLWIDE AND CLASSROOM DISCIPLINE 178 (1990) available at [http://educationnorthwest.org/webfm\\_send/530](http://educationnorthwest.org/webfm_send/530); Terrance M. Scott,

<sup>58</sup> AMERICAN PSYCHOLOGICAL ASSOCIATION, EFFECTS OF POVERTY, HOMELESSNESS AND HUNGER ON CHILDREN AND YOUTH, available at <http://www.apa.org/pi/families/poverty.aspx>; Jeanne Brooks-Gunn & Greg J. Duncan, *The Effects of Poverty on Children*, 7 THE FUTURE OF CHILDREN 55 (1997), available at

that poverty, and the stress induced by living in poverty, may even stunt brain growth;<sup>59</sup> it is described by one physician as a “national problem . . . and a childhood disease.”<sup>60</sup>

Children living in poverty are, furthermore, less likely to be adequately prepared for school.<sup>61</sup> The phrase “school readiness” is generally defined as a broad set of skills that affect children’s ability to learn in school: physical health, motor skills, self-care, emotional and behavioral self-regulation, social skills, communication skills, pre-academic skills, attention, curiosity, and motivation to learn.<sup>62</sup> School readiness is less likely to be present in children in poverty for a variety of reasons, including, for example, that they have minimal or no access to the opportunities available to children from higher-income families.<sup>63</sup>

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[http://www.princeton.edu/futureofchildren/publications/docs/07\\_02\\_03.pdf](http://www.princeton.edu/futureofchildren/publications/docs/07_02_03.pdf); David Wood, *Effect of Child and Family Poverty on Child Health in the United States*, PEDIATRICS, available at

[http://pediatrics.aappublications.org/content/112/Supplement\\_3/707.full](http://pediatrics.aappublications.org/content/112/Supplement_3/707.full); National Center for Children in Poverty, *Poverty and Brain Development in Early Childhood* (1999) available at

[http://www.nccp.org/publications/pdf/text\\_398.pdf](http://www.nccp.org/publications/pdf/text_398.pdf); David C. Berliner, *Poverty and Potential: Out of School Factors and School Success*, BOULDER AND TEMPE: EDUCATION AND THE PUBLIC INTEREST CENTER & EDUCATION POLICY RESEARCH UNIT (2009) available at <http://nepc.colorado.edu/files/PB-Berliner-NON-SCHOOL.pdf>; Rebell, *supra* note 9, at 1471-73.

<sup>59</sup> Ashlee Loughan & Robert Perna, *Neurocognitive Impacts for Children of Poverty and Neglect*, CYF NEWS, available at

<http://www.apa.org/pi/families/resources/newsletter/2012/07/neurocognitive-impacts.aspx>; Elizabeth Landau, *How Poverty Might Change the Brain*, CNN.COM, June 13, 2013, available at <http://www.cnn.com/2013/06/13/health/martha-farah-brain>; Greg Toppo, *Study: Poverty Dramatically Affects Children’s Brains*, USA TODAY, December 10, 2008, available at

[http://usatoday30.usatoday.com/news/health/2008-12-07-childrens-brains\\_N.htm](http://usatoday30.usatoday.com/news/health/2008-12-07-childrens-brains_N.htm).

<sup>60</sup> Perri Klass, *Poverty as a Childhood Disease*, THE NEW YORK TIMES, May 13, 2013, available at <http://well.blogs.nytimes.com/2013/05/13/poverty-as-a-childhood-disease/>.

<sup>61</sup> Richard J. Coley, *An Uneven Start: Indicators of Inequality in School Readiness* 61 (2002), available at

<http://www.ets.org/Media/Research/pdf/PICUNEVENSTART.pdf>.

<sup>62</sup> Patrice L. Engle and Maureen M. Black, *The Effect of Poverty on Child Development and Educational Outcomes*, 1136 ANNALS OF THE NEW YORK ACADEMY OF SCIENCES 243, 244 (2008), available at

[http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1002&context=psyched\\_fac](http://digitalcommons.calpoly.edu/cgi/viewcontent.cgi?article=1002&context=psyched_fac).

<sup>63</sup> PRUDENCE L. CARTER & KEVIN G. WELNER ET AL., *CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST DO TO GIVE EVERY CHILD AN EVEN CHANCE* (2013).

Parents may have to work such long hours to make ends meet that they do not have time to read to their children—an experience crucial to a child’s school readiness.<sup>64</sup> Children in poverty are less likely than other children to have home environments with books, lighting, and quiet places to do homework, and they are less likely to have access to quality childcare, pre-kindergarten services, and out-of-school activities, such as tutoring and summer and afterschool activities.<sup>65</sup> They are also more likely to have to undertake significant duties outside of school, such as caring for siblings and working outside the home. Due to issues such as a lack of regular access to quality healthcare and housing, they also experience higher rates of absenteeism, and more frequent changes in schools.<sup>66</sup>

The effects of poverty are exacerbated because children living in poverty are more likely to live in districts with fewer resources and to attend high-poverty schools—defined by the National Center for Education Statistics as schools in which more than seventy-five percent of students qualify for a free or reduced-price lunch.<sup>67</sup> High-poverty schools consistently lack sufficient resources, parental involvement, and peer group support for educational achievement; they also often have deteriorating physical plants, less qualified teachers,<sup>68</sup> and higher student and teacher turnover.<sup>69</sup> Thus, it is

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<sup>64</sup> Coley, *supra* note 63, at 4.

<sup>65</sup> Ladd, *supra* note 50, at 3;

Julia B. Isaacs, *Starting School at a Disadvantage: The School Readiness of Poor Children*, CENTER ON CHILDREN AND FAMILIES AT BROOKINGS 5 (March 2012), [http://www.brookings.edu/~media/research/files/papers/2012/3/19%20school%20disadvantage%20isaacs/0319\\_school\\_disadvantage\\_isaacs.pdf](http://www.brookings.edu/~media/research/files/papers/2012/3/19%20school%20disadvantage%20isaacs/0319_school_disadvantage_isaacs.pdf); Servaas van der Berg, *Poverty and Education*, THE INTERNATIONAL INSTITUTE FOR EDUCATIONAL PLANNING, 11-12 (2008), available at

[http://www.iiep.unesco.org/fileadmin/user\\_upload/Info\\_Services\\_Publications/pdf/2009/EdPol10.pdf](http://www.iiep.unesco.org/fileadmin/user_upload/Info_Services_Publications/pdf/2009/EdPol10.pdf); Karl L. Alexander, et. al., *Lasting Consequences of the Summer Learning Gap*, 72 AMERICAN SOCIOLOGICAL REVIEW 167, 175 (2007), available at <http://www.nayre.org/Summer%20Learning%20Gap.pdf>.

<sup>66</sup> Richard Rothstein, *Whose Problem is Poverty?*, 65 EDUCATIONAL LEADERSHIP 8, 8-9 (2008), available at <http://www.ascd.org/publications/educational-leadership/apr08/vol65/num07/Whose-Problem-Is-Poverty.aspx>.

<sup>67</sup> Inst. of Educ. Sci., *The Condition of Education 2013*, U.S. DEP’T OF EDUC. 78 (2013), available at <http://nces.ed.gov/pubs2013/2013037.pdf>; Wiener, *supra* note 51, at 1319-25.

<sup>68</sup> Charles Clotfelter, et al., *High Poverty Schools and the Distribution of Teachers and Principals*, 85 N.C. L. REV. 1345, 1356 (2007); Cynthia Hudley, *Education and Urban Schools*, AM. PSYCHOL. ASS’N (May 2013), <http://www.apa.org/pi/ses/resources/indicator/2013/05/urban-schools.aspx>.

unsurprising that high-poverty schools generally have lower achievement than non-high-poverty schools.<sup>70</sup> High-poverty schools presently constitute twenty percent of all schools and are on the rise.<sup>71</sup>

In some instances, students in high-poverty schools overcome the obstacles discussed above and achieve academic success. Public schools with especially charismatic principals, devoted teachers, and extra funding can “beat the odds.”<sup>72</sup> However, studies indicate that high-poverty public schools that cannot pick and choose students, like charter and private schools, or that do not have unusually high levels of funding, are unable to sustain this level of success over time or at multiple grade levels.<sup>73</sup>

#### IV. SCHOOL-BASED ANTI-POVERTY EFFORTS

Across the country, schools and school districts are working to respond to the large-scale failure of politicians to address poverty and its deleterious impacts on the growth, development, and academic success of young people.<sup>74</sup> Specifically, educators and their community partners are advocating for and creating school-based programs and services to meet students’ physical, psychological, and learning needs.<sup>75</sup>

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<sup>69</sup> Henry M. Levin, *On the Relationship Between Poverty and Curriculum*, 85 N.C. L. REV. 1381, 1389-95 (2007); Gary Orfield et al., *Deepening Segregation in American Public Schools: A Special Report from the Harvard Project on School Desegregation*, 30 EQUITY AND EXCELLENCE IN EDUCATION 11 (1997).

<sup>70</sup> Gregory J. Palardy, *High School Socioeconomic Segregation and Student Attainment*, 50 AMERICAN EDUCATIONAL RESEARCH JOURNAL 714, 715 (2013); Russell W. Rumberger, *Parsing the Data on Student Achievement in High-Poverty Schools*,

85 N.C. L. REV. 1293, 1306 (2007).

<sup>71</sup> Aud, et. al., *supra* note 69, at 78-80.

<sup>72</sup> Richard D. Kahlenberg, *Socioeconomic School Integration*, 85 N.C. L. REV. 1545, 1547-48 (2007).

<sup>73</sup> *Id.* at 1548.

<sup>74</sup> Rebell, *supra* note 9, at 1476.

<sup>75</sup> *Comprehensive Strategies*, BOLDER, BOLDER APPROACH TO EDUCATION, <http://www.boldapproach.org/comprehensive-strategies> (last visited Sep. 20, 2013); *What is a Community School?*, COALITION FOR COMMUNITY SCHOOLS, [http://www.communityschools.org/aboutschools/what\\_is\\_a\\_community\\_school.aspx](http://www.communityschools.org/aboutschools/what_is_a_community_school.aspx) (last visited Sep. 20, 2013); *About School-Based Health Centers*, SCHOOL-BASED HEALTH ALLIANCE, [http://www.sbh4all.org/site/c.ckLQKbOVLkK6E/b.7528935/k.84EA/About\\_SBHCs.htm](http://www.sbh4all.org/site/c.ckLQKbOVLkK6E/b.7528935/k.84EA/About_SBHCs.htm) (last visited Sep. 20, 2013).

Seeking to meet the various needs of students living in poverty in the schools they attend has a number of advantages. School-based services can help schools build positive relationships with families and communities, thereby increasing a student's connectedness to the school, which in turn can have positive effects on attendance and academic performance.<sup>76</sup> Further, providing services in schools, which frequently are gathering places for communities,<sup>77</sup> can be a less stigmatizing way of assisting a child in poverty than having the family rely on, for example, welfare offices, soup kitchens, and homeless shelters.<sup>78</sup> Moreover, school-based services can decrease, if not eliminate, the fragmentation that often characterizes services for poor people.<sup>79</sup> In other words, school-based services allow families to have their needs met in one location rather than have to find, coordinate with, and travel to multiple locations and agencies. Indeed, providing non-educational services to children in a school setting is a practice with a long and rich history in the United States.<sup>80</sup> Examples include school breakfast and lunch programs;<sup>81</sup> Title I programs;<sup>82</sup> programs to

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<sup>76</sup> Atelia Melaville, Reuben Jacobson & Martin J. Blank, *Scaling up School and Community Partnerships: The Community Schools Strategy 6-7* (2011), available at <http://www.communityschools.org/assets/1/AssetManager/Scaling%20Up%20Community%20Schools%20Final%20092011.pdf>.

<sup>77</sup> Leigh Goodmark, *Can Poverty Lawyers Play Well With Others? Including Legal Services in Integrated, School-Based Service Delivery Programs*, 4 GEO. J. ON FIGHTING POVERTY 243, 251 (1997).

<sup>78</sup> Carol S. Larson, et al., *Analysis*, 2 THE FUTURE OF CHILDREN: SCHOOL-LINKED SERVICES 6, 7-8 (1992), available at [http://futureofchildren.org/futureofchildren/publications/docs/02\\_01\\_FullJournal.pdf](http://futureofchildren.org/futureofchildren/publications/docs/02_01_FullJournal.pdf); The Children's Aid Society, *Schools: The Perfect Place to Address the Needs of the Whole Child 2-4*, available at [http://www.childrensaidsociety.org/files/upload-docs/Schools\\_0.pdf](http://www.childrensaidsociety.org/files/upload-docs/Schools_0.pdf); *But see* Robert J. Chaskin & Harold A. Richman, *Concerns About School-linked Services: Institution-based Versus Community-based Models*, 2 THE FUTURE OF CHILDREN: SCHOOL-LINKED SERVICES 107, 110-12 (1992) (arguing that "[f]or the disenfranchised, school may be the last place they would turn for help.").

<sup>79</sup> Goodmark, *supra* note 79, at 251.

<sup>80</sup> David Tyack, *Health and Social Services in Public Schools: Historical Perspectives*, 2 THE FUTURE OF CHILDREN: SCHOOL-LINKED SERVICES 19, 19-31 (1992).

<sup>81</sup> *See, e.g.*, United States Dep't of Agriculture, *supra* note 16 (stating that the National School Lunch Program provides low-cost or free lunches to children each school day); United States Dep't of Agriculture, *Child Nutrition Programs*, <http://www.fns.usda.gov/child-nutrition-programs> (last visited Sep. 16, 2013) (stating that the Food and Nutrition Service administers several programs that

refer students to community-based services such as mentoring, sports, and counseling;<sup>83</sup> targeted early childhood education programs;<sup>84</sup> school-based health clinics;<sup>85</sup> and school-based mental health services.<sup>86</sup> What follows is a brief summary of some of the most promising school-based interventions, which sets the stage for a more in-depth analysis of school-based legal services.

One particularly successful school-based, anti-poverty effort is the “full service” community school. The U.S. Department of Education defines these institutions as those that “provide comprehensive academic, social, and health services for students, students’ family members, and community members that will result in improved educational outcomes for children.”<sup>87</sup> Community schools combine traditional academics with integrated services that focus, broadly, on youth development, including mentoring, tutoring, and service-learning opportunities; family support, including early childhood development programs, nutrition services, and English as a Second Language classes; and community development, such as job training programs, adult education classes, and career counseling.<sup>88</sup>

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provide healthy food to children including the National School Lunch Program and the School Breakfast Program).

<sup>82</sup> U.S. Dep’t of Education, *Improving Basic Programs Operated By Local Educational Agencies (Title I, Part A)*, available at

<http://www2.ed.gov/programs/titleiparta/index.html> (last modified Aug. 31, 2011).

<sup>83</sup> See, e.g., Boston College Center for Optimized Student Support, *The Impact of City Connects: Progress Report 2012*, 11 (2012), available at [http://www.bc.edu/content/dam/files/schools/lsoe/cityconnects/pdf/CityConnects\\_ProgressReport\\_2012.pdf](http://www.bc.edu/content/dam/files/schools/lsoe/cityconnects/pdf/CityConnects_ProgressReport_2012.pdf) (showing chart of all CCNX services delivered to students).

<sup>84</sup> Janet Currie, *Early Childhood Education Programs*, 15 JOURNAL OF ECONOMIC PERSPECTIVES 213, 213 (2001).

<sup>85</sup> Mina Silberberg & Joel C. Cantor, *Making the Case for School-Based Health: Where do we Stand?*, 33 J. HEALTH POL. POL’Y & L. 3 (2008).

<sup>86</sup> Julia C. Dimoff, *The Inadequacy of the IDEA in Assessing Mental Health for Adolescents: A Call for School-Based Mental Health*, 6 DEPAUL J. HEALTH CARE L. 319, 321 (2003); Michelle Rones & Kimberly Hoagwood, *School-Based Mental Health Services: A Research Review*, 3 CLINICAL CHILD AND FAMILY PSYCHOLOGY REVIEW 223, 223 (2000).

<sup>87</sup> U.S. Dep’t of Educ., *Full Service Community Schools program*, <http://www2.ed.gov/programs/communityschools/index.html> (last visited Sep. 28, 2013); see also Joy Dryfoos, *Full Service Schools* (1994), <http://www.pearweb.org/teaching/pdfs/Schools/Epiphany%20School/Articles/Dryfoos%20-%20Full-service%20community%20schools.PDF>.

<sup>88</sup> U.S. Dep’t of Educ., *supra* note 89 at p. 2; Coal. for Cmty. Schs., *Making the Difference: Research and Practice in Community Schools* 6 (2003), <http://www.communityschools.org/assets/1/Page/CCSFullReport.pdf>.

These schools effectively reduce the demand on teachers by working to address the myriad challenges that students face when they arrive at school.<sup>89</sup> These schools are frequently jointly operated by the school system and at least one community agency, and students can often attend the schools year round, seven days a week. Thousands of community schools operate nationwide,<sup>90</sup> and many have been successful in increasing academic achievement.<sup>91</sup>

In April 2010, the U.S. Department of Education launched an initiative to support full-service community schools—the Promise Neighborhood program.<sup>92</sup> This program was inspired by the Harlem Children’s Zone, a nonprofit organization that serves children and adults in a one hundred block area of Harlem with holistic services, including in-school, after-school, social service, health, and community-building programs.<sup>93</sup> The Promise Neighborhood program provides funding for nonprofits and institutions of higher education to provide comprehensive (“cradle-to-career”) and coordinated health, social, community, and educational support services for students in high-poverty neighborhoods in order to increase academic achievement.<sup>94</sup> In fiscal year 2012, the federal government pledged

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<sup>89</sup> Coal. for Cmty. Schs., *Frequently Asked Questions About Community Schools*, [http://www.communityschools.org/aboutschools/faqs.aspx#\\_13](http://www.communityschools.org/aboutschools/faqs.aspx#_13); Theodora Chang & Calyssa Lawyer, *Lightening the Load: A Look at Four Ways that Community Schools Can Support Effective Teaching*, CENTER FOR AMERICAN PROGRESS, January 18, 2012, available at <http://www.americanprogress.org/issues/education/report/2012/01/18/10922/lightening-the-load/>.

<sup>90</sup> Coal. for Cmty. Schs., *supra* note 90, at preface; Coal. for Cmty. Schs., *Partnership for Excellence* 5-10, <http://www.communityschools.org/assets/1/Page/partnershipsforexcellence.pdf> (Last visited Sep. 26, 2013).

<sup>91</sup> Sebastian Castrechini & Rebecca A. London, Center for American Progress, *Positive Student Outcomes in Community Schools: Providing Services that Meet the Many Needs of Students and Parents* 18-21, (Feb. 2012), available at <http://www.americanprogress.org/issues/education/report/2012/02/22/11098/positive-student-outcomes-in-community-schools/>.

<sup>92</sup> Press Release, U.S. Dep’t of Educ., *U.S. Dep’t of Educ. Opens Competition for Promise Neighborhoods* (Apr. 30, 2010), available at <http://www2.ed.gov/news/pressreleases/2010/04/04302010b.html>.

<sup>93</sup> Harlem Children’s Zone, *History*, <http://www.hcz.org/about-us/history> (last visited Sep. 28, 2013); Harlem Children’s Zone, *The HCZ Zone*, <http://www.hcz.org/index.php/about-us/the-hcz-project> (last visited Sep. 28, 2013).

<sup>94</sup> Promise Neighborhoods Institute, *What is A Promise Neighborhood*, <http://www.promiseneighborhoodsinstitute.org/What-is-a-Promise-Neighborhood>

\$60 million in grant funding for Promise Neighborhoods in seventeen cities.<sup>95</sup>

## V. SCHOOL-BASED LEGAL SERVICES

School-based legal services are rarely utilized. However, they constitute a relatively inexpensive model of school-based anti-poverty efforts that deserves further attention and implementation as educators and policymakers seek to alleviate the negative effects of poverty on students. Typically, SBLs programs provide free civil legal advice and representation to low-income families in areas such as housing, domestic violence, access to special education, custody and child support, public benefits, immigration, and consumer protection. In some cases, SBLs programs also incorporate a legal education component, in which SBLs staff and volunteers offer trainings and “know your rights” workshops and materials to parents and their children.<sup>96</sup>

SBLs are a needed addition to other school-linked services. In many instances, disadvantaged students clearly need attorneys, who are uniquely well situated to address problems such as housing code violations, denials of public benefits, and domestic violence. Such problems can have negative impacts on students’ health and ability to

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(last visited Sep. 28, 2013); Center for the Study of Social Policy, *Promise Neighborhoods*, <http://www.cssp.org/community/neighborhood-investment/place-based-initiatives/promise-neighborhoods> (last visited Sep. 28, 2013).

<sup>95</sup> Promise Neighborhoods Inst., *2012 Department of Education Grants Initiative*, <http://www.promiseneighborhoodsinstitute.org/What-is-a-Promise-Neighborhood/2012-Department-of-Education-Grants-Initiative> (last visited Sep. 28, 2013); Press Release, U.S. Dep’t of Educ., *Secretary Duncan Announces Seventeen 2012 Promise Neighborhoods Winners in School Safety Address at Neval Thomas Elementary School* (Dec. 21, 2012), available at <http://www.ed.gov/news/press-releases/secretary-duncan-announces-seventeen-2012-promise-neighborhoods-winners-school-s-> Some researchers studying the results of students who attend Harlem Children’s Zone schools have concluded that the schools do not do better than other charter schools that do not have a community component; in other words, the vast expenditures of money on the community services do not add to the value that would be produced by any excellent school. See generally, Michelle Croft & Grover J. “Russ” Whitehurst, *The Harlem Children’s Zone, and the Broader, Bolder Approach to Education*, BROOKINGS (July 20, 2010), <http://www.brookings.edu/research/reports/2010/07/20-hcz-whitehurst> Nevertheless, governmental enthusiasm for the notion of holistic services delivered in conjunction with schools continues. *Id.*

<sup>96</sup> Murphy, *supra* note 34, at 4.

learn.<sup>97</sup> Moreover, including legal services in programs based in schools—where families must come daily, at least during the school year—can eliminate the difficulty poor people might otherwise have in navigating complicated legal bureaucracies.<sup>98</sup> By providing families with legal assistance they need, schools can help ensure that students are healthier, safer, and more ready to learn and behave appropriately. Legal assistance, however, is rarely mentioned in the discourse surrounding school reform.<sup>99</sup>

SBLS function in the same vein as medical–legal partnerships (MLPs), in which legal and health providers collaborate to address unmet legal needs and remove legal barriers that impede health.<sup>100</sup> In these partnerships, lawyers provide a broad range of legal assistance on issues like income, housing and utilities, education, employment, immigration, and domestic violence. These issues negatively impact individual and public health.<sup>101</sup> There are approximately 100 MLPs in 275 healthcare institutions nationwide.<sup>102</sup> Schools would be well served to “prescribe” legal remedies for their students and have school–legal partnerships as well.<sup>103</sup>

#### A. *Models for School–Based Legal Services*

SBLS sites must consider where they will be located; whether they will represent the student or student’s parent or guardian; how they will obtain funding; the types of cases they will handle; and the types of staffing they will use.

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<sup>97</sup> Goodmark, *supra* note 79, at 257-58 and 251.

<sup>98</sup> *Id.* at 258-59

<sup>99</sup> *Id.* at 253.

<sup>100</sup> Nat’l Ctr. for Med. Legal P’ship, *The Model*, <http://www.medical-legalpartnership.org/model> (last visited Sep. 28, 2013).

<sup>101</sup> Nat’l Ctr. for Med. Legal P’ship, *Core Components and Activities* (2013), <http://www.medical-legalpartnership.org/model/core-components>; Goodmark, *supra* note 79, at 265-66.

<sup>102</sup> Association of American Medical Colleges, *Medical-Legal Partnerships Bring Social Determinants of Health into Clearer Focus* (Feb. 2013), <https://www.aamc.org/newsroom/reporter/329000/medical-legal.html>.

<sup>103</sup> David I. Schulman et. al, *Public Health Legal Services: a New Vision*, 15 GEO. J. ON POVERTY L. & POL’Y 729, 759 (2008); Paul R. Tremblay et al., *Commentary: The Layer is In: Why Some Doctors Are Prescribing Legal Remedies for their Patients, and How the Legal Profession Can Support this Effort*, 12 B.U. PUB. INT. L.J. 505, 527 (2003).

At present, most SBLs sites are either in high schools or in elementary schools.<sup>104</sup> In high school settings, the lawyer typically represents the student. In elementary schools, the team typically represents the parent. Currently, it appears that few SBLs exist in middle schools, apparently because of lawyers' perceptions that youth of that age have difficulty articulating their legal needs.<sup>105</sup>

Funding for SBLs sites can be difficult to obtain. Many are funded through fellowships; other sources of funding include grants from foundations or governments. Some have sources other than "soft money," such as affiliation with law schools.<sup>106</sup>

SBLs sites must decide at the outset which types of cases they feel comfortable handling; one issue that can prove complicated is special education appeals and other education related cases in which the school itself or the school district is a defendant. A choice about whether to take on a case involving the school as a defendant depends largely on the school's or district's willingness to house or affiliate with an organization that could eventually turn into a legal adversary.<sup>107</sup>

In terms of staffing, there is no one set or even a well-established model of SBLs. Typically, staffing takes three forms: full-time, paid lawyers working as staff for the SBLs; clinics staffed by legal services attorneys or pro bono attorneys; or non-lawyer clinic staff or volunteers making external referrals to legal services agencies or pro bono attorneys.

### *1. Internal Staff*

A school or district with a sufficiently large population of economically disadvantaged students could hire one or more attorneys to provide legal services to families. Although this model would be the most expensive, it would also have the advantages of a stable source of funding, greater consistency and reliability in staffing, and minimizing complications caused by students' privacy rights. Students' education records are protected under the Family Educational Rights and Privacy Act (FERPA) and state laws.<sup>108</sup>

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<sup>104</sup> Murphy, *supra* note 34, at vii.

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

<sup>106</sup> *Id.* at 7.

<sup>107</sup> *Id.* at 5.

<sup>108</sup> U.S.C. § 1232g; 34 CFR Part 99.

Internal clinic staff who are school district employees could review a student's education records without violating FERPA, whereas external staff, such as legal services attorneys and pro bono attorneys, would need a parent's or eligible student's authorization before accessing the education records.

## 2. Clinics

The clinics could be run by the school system on its own or in partnership with a legal services organization or law firm pro bono project.

The Chicago Law and Education Foundation, for example, operates after-school, open-house legal clinics during report card pick-up time, in which staffers distribute materials on legal rights. High school students assist with intake, translation services, and the special initiatives, such as training teachers to recognize and deal with domestic violence and an initiative focused on the rights of undocumented students and families. The Foundation also launched a juvenile criminal record expungement project, after noting that of 27,000 juveniles arrested, only eighty had their records expunged. The Foundation partners with several legal services agencies and operates in nine high schools.<sup>109</sup>

On the west coast, the East Bay Community Law Center has operated "Elev8 Legal Services Project" in five Oakland middle schools. Elev8 is a national initiative dedicated to providing middle-school youth and their families with a coordinated array of services, including health and mental health services, extended day programs, tutoring, social services, and legal services. The Legal Services Project

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<sup>109</sup> Chicago Youth Justice Data Project, *Update: Confirmed Number of Juvenile Expungements in Cook County* (June 14, 2011), <http://chiyouthjustice.wordpress.com/category/juvenile-expungement/>; Sargent Shriver Nat'l Ctr. on Poverty Law, *Chicago Law and Education Foundation – A Model of School-Based Legal Services*, <http://povertylaw.org/communication/advocacy-stories/kass> (last visited Sep. 28, 2013); Chicago Law & Educ. Found., *About Us*, <http://www.lawclef.org/about.php> (last visited Sep. 28, 2013); Paul Engleman, *A Free Legal Clinic that Opens When When Class is Over*, N.Y. TIMES, Jan. 19, 2012, at 1, available at [http://www.nytimes.com/2012/01/20/us/free-legal-advice-from-chicago-law-and-education-foundation.html?\\_r=2&](http://www.nytimes.com/2012/01/20/us/free-legal-advice-from-chicago-law-and-education-foundation.html?_r=2&).

provides legal services and “Know Your Rights” presentations and trainings for families.<sup>110</sup>

Public Counsel, a pro bono law firm in Los Angeles, California, has run a “Teen Legal Clinic” at Roosevelt High School where staff or volunteer attorneys offer advice and referrals.<sup>111</sup> The firm also created a guide for teens about, and sponsors workshops on, topics such as kinship care and special education.<sup>112</sup>

In 1998, the Center for Children’s Advocacy, a nonprofit organization based at the University of Connecticut School of Law, established the “Teen Legal Advocacy Clinic” at Hartford Public High School. The goal of the program was to remove barriers to school attendance by providing legal representation for youth in such areas as abuse and neglect, child support, rights of pregnant and parenting teens, domestic violence, bullying, emancipation, benefits, immigration and naturalization, special education, and sexual assault. The Clinic director had a private office at the school. The project also conducted training seminars for students and staff and published “teen-friendly” brochures on substantive legal issues.<sup>113</sup>

Beginning in 2008, lawyers from the law firm DLA Piper, in conjunction with the University of Maryland School of Law clinical programs, provided Baltimore City School families with free legal services in areas ranging from family law and eviction issues to tax issues. Additionally, DLA Piper attorneys conduct presentations for families about various areas of law.<sup>114</sup>

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<sup>110</sup> East Bay Cmty. Law Ctr., *Health* (2012), <http://www.ebclc.org/health.php>; Elev8, *Local Initiatives: Elev8 Oakland*, <http://www.elev8kids.org/local-initiatives/content/oakland> (last visited Oct. 13, 2013).

<sup>111</sup> Public Counsel, *Teen Legal Clinic (Roosevelt High School)* (Sep. 19, 2010), [http://www.publiccounsel.org/seminars\\_clinics?id=0006](http://www.publiccounsel.org/seminars_clinics?id=0006).

<sup>112</sup> Goodmark, *supra* note 79, at 263.

<sup>113</sup> Martha Stone et al., *Center for Children’s Advocacy: Providing Holistic Legal Services to Children in Their Communities*, CLEARINGHOUSE REV. J.L. & POL’Y 244, 246-47 (July-August 2005), available at [www.kidscounsel.org/Clearinghouse%20Review.pdf](http://www.kidscounsel.org/Clearinghouse%20Review.pdf).

<sup>114</sup> DLA Piper, *School-Based Legal Services* (2013), <http://www.dlapiperprobono.com/what-we-do/work/pro-bono/school-based-legal-services.html>.

### 3. *External Referrals*

Finally, a school or district could refer families who have legal issues to a legal services organization or pro bono lawyer. This model would be least expensive, but also potentially the least effective because it would rely on school staff to spot legal issues, it would add work for school staff who make the referrals, the lawyers would not be as well integrated into the school community, and it more likely to face inconsistency in the availability of attorneys.

#### *B. Challenges in Implementation*

SBLS may be small in number in part because of the considerable challenges surrounding their implementation. These challenges include procuring and maintaining adequate funding to sustain the project; identifying and doing sufficient outreach to those students and families who would most benefit from civil legal services; and overcoming reluctance on the part of school administrations to open their doors to outside organizations that they might view as adversarial.

In these times of fiscal austerity, public school administrations may be unwilling to fund attorneys to assist families with their civil legal needs—despite the obvious benefits to those families. Nevertheless, administrators could find foundations willing to providing funding for the provision of legal services. School administrations could find personnel for a school-based legal clinic through pro bono paralegals and attorneys from law firms and legal clinics—options that would not likely be cost prohibitive.

SBLS staff may have difficulty finding and connecting with families in need for several reasons. Families may not know about the services because they may not interact with school officials regularly or review correspondence from the school, may not have access to the internet, or may experience literacy or language access issues. Additionally, families may not be aware that they have legal problems or defenses. For example, a family may not recognize that it has a viable defense to an eviction proceeding in housing court; or a mother may not understand that she is entitled to child support from a father from whom she is divorced. Low-income families may also not have time to connect with a lawyer. Further, families may feel disinclined to trust individuals and organizations affiliated with schools, even though

the school itself may not carry the stigma of a welfare office or homeless shelter. They may feel alienated from or antagonistic toward the school because of a child's failing grades and suspensions, or because of a parent's own difficult or negative school experiences.

SBLS staffers who wish to provide high quality services must respond creatively to these issues, but they are not insurmountable. Staffers must find ways, in addition to the internet, to communicate information about their programs, such as flyers and announcements at churches, synagogues and mosques, barber and beauty shops, local youth sports facilities, social services offices, health departments, and the like. SBLS can advertise at school events and in the school's newsletter and other materials sent home with students.<sup>115</sup> To address the problem of families not understanding their legal rights, SBLS staffers must conduct "know your rights" trainings in evening and daytime hours and provide refreshments, interpretation, and childcare, to accommodate as many families as possible.<sup>116</sup>

To gain support, SBLS staff will need to be able to make the case that their services will ultimately create a more academically successful student body and narrow achievement gaps. SBLS staff may also need to limit the school-related litigation, such as special education, suspension, discrimination, that they undertake.<sup>117</sup>

## VII. CONCLUSION

The school-to-prison pipeline is a crisis in public education. After three decades of rapid expansion, the pipeline may finally begin to shrink as a result of tireless efforts by advocates to eliminate zero tolerance, over-policing, and other policies and practices that criminalize the school environment, alienate families, and push out students. Eradicating the pipeline, however, will require focused attention to poverty, which has negative impacts on students' academic and behavioral outcomes. While many children from low-income families do succeed academically, poverty still creates a structural obstacle that advocates must address as they focus on school-specific problems such as policing and high-stakes testing.

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<sup>115</sup> Sargent Shriver Nat'l Ctr. on Poverty Law, *Chicago Law and Education Foundation— A Model of School-Based Legal Services* (2012), <http://povertylaw.org/communication/advocacy-stories/kass>.

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

<sup>117</sup> Goodmark, *supra* note 79, at 261-62.

SBLS is a valuable tool that can help students avoid becoming trapped in the pipeline.

Schools that implement SBLS will still need more support. SBLS will certainly improve school climate and student outcomes, but will not sufficiently diminish student poverty and its impacts. Nor should schools alone be expected to deal with poverty.<sup>118</sup> Children from disadvantaged backgrounds and public schools need an “it takes a village,” comprehensive approach to poverty. Working together, we can shrink the school-to-prison pipeline. However, eliminating it will require much more: a true war on poverty, a living wage, minimal unemployment, universal healthcare, paid sick and family leave, tax credits for low-income workers, and childcare, housing, and food assistance for all who are in need.<sup>119</sup> Those goals must, as well, be part of progressive education advocacy.

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<sup>118</sup> Paul L. Thomas, *Schools Can't do it Alone: Why 'Doubly Disadvantaged' Kids Continue to Struggle Academically*, Alternet (Jan. 30, 2013)

<http://www.alternet.org/education/schools-cant-do-it-alone-why-doubly-disadvantaged-kids-continue-struggle-academically?page=0%2C1&paging=off>.

<sup>119</sup> Greg Kaufmann, *Today in Poverty: An Education Wish List*, THE NATION (Dec. 19, 2012), available at <http://www.thenation.com/blog/171843/today-poverty-education-wish-list#axzz2YCVcxTHC>; Annie E. Casey Foundation, *Kids Count* (July 2009), available at

<http://www.aecf.org/~media/Pubs/Initiatives/KIDS%20COUNT/K/KIDSCOUNTIndicatorBriefReducingtheChildPovert/reducingchildpoverty.pdf>.