

NAACP LEGAL DEFENSE FUND

Position on Reopening and Operating Schools During the COVID-19 Pandemic





“ There will be no
**one-size-
FITS-ALL**
approach. ”



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The NAACP Legal Defense and Educational Fund, Inc. (LDF) believes an equitable and quality public education system is essential to the success of our multi-racial democracy and must be strengthened and expanded, especially during the COVID-19 pandemic which has exacerbated inequities across many facets of American life. Since the historic Supreme Court decision in *Brown v. Board of Education* (1954), LDF has worked to advance the struggle for educational equity in the United States, especially for students of color and other historically marginalized students. Providing a quality public education is one of the most essential functions of government. The Supreme Court described education as “the very foundation of good citizenship,”¹ and “a principal instrument in awakening children to cultural

values, in preparing them for later professional training, and in helping them to adjust normally to the environment.”² Beyond education, public schools serve as a cornerstone of support for communities and families, providing students with meals, safety, health screenings, and other social supports, as well as serving as community hubs for neighborhood activities and civic engagement.

The shuttering of schools across the United States in 2020 due to the COVID-19 pandemic made clear how indispensable public schools are to American life. Communities faced grave social and economic consequences, including a rise in child hunger, employment instability and what some experts are referring to as a mental health crisis among children as they have been

deprived of learning and socialization.³

Therefore, calls to return the nation’s students to in-person instruction this fall reflect an understandable desire to ensure that all students receive the full academic and social benefits of attending school in-person. However, without requiring critical mitigation measures like masks and social distancing, these calls fail to fully protect children, teachers, administrators, other school staff, and their families from the continuing dangers of the COVID-19 pandemic.

These dangers are exacerbated for Black, Latinx, and Native American communities, which have been disproportionately impacted by COVID-19, as well as people who are unvaccinated and those with—or living in households with—underlying medical conditions that substantially increase the risk of more severe COVID illness.

Currently, many states are reporting record high rates of community spread of the novel coronavirus and expect second waves of infection to continue throughout the winter. As of August 4, 2021, the national average of new COVID cases was over 67,000 per day, a 33% increase from the prior week’s seven-day average and the highest

1 *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954).

2 *Id.*

(above) School children are spaced apart in one of the rooms used for lunch at Woodland Elementary School in Milford, MA on Sept. 11, 2020. Milford is one of the first school districts to re-open in the state, with a hybrid model, during the COVID-19 pandemic. Photo by Suzanne Kreiter/The Boston Globe via Getty Images

(below) Amna Asghar (right) and her daughters Ava, 7 (left) and Anjali, 4 (center) pick up a computer from Velisa Woods (left) at Sankofa Academy on the first day of school on Monday, Aug. 10, 2020 in Oakland, California. Students in the Oakland school district began their 2020 academic year distance learning from home by computer. Gabrielle Lurie/The San Francisco Chronicle via Getty Images

3 See Adverse consequences of school closures, UNESCO, <https://en.unesco.org/covid19/educationresponse/consequences>; Jen Christensen, *The pandemic has pushed children’s mental health and access to care to a ‘crisis point’*, CNN (July 22, 2021), <https://www.cnn.com/2021/07/22/health/covid-19-pandemic-mental-health-children/index.html>.

since the deadly winter surge when, on January 9, 2021, a seven-day average of 250,000 cases was reported.⁴ Tragically, the entire country is now grappling with new, more infectious variants of the virus, including the highly contagious Delta variant.⁵ Given the pervasiveness of the Delta variant, many states across the country have significantly more COVID-19 cases.⁶ Indeed, the United States has had a 135.3% increase in the two-week average of cases as of August 5, 2021. This trend is even more pronounced in many southern states, where there have been dramatic increases in the two-week average of COVID-19 cases as of August 5, 2021⁷ —for example, a 275% increase in South Carolina, an 80% increase in Arkansas, a 143% increase in Florida, and a 161% increase in Mississippi.⁸ This demonstrates how quickly public health risks can change with the emergence of new variants and how critical it is to be vigilant and proactive in implementing systems to prevent and control the transmission of the COVID-19 virus.

We have already seen the devastating consequences of unsafe school reopenings. Across the country, the lifting of mask mandates and unprepared, premature reopenings have led to massive coronavirus outbreaks, resulting in the infection and death of teachers and

students,⁹ as well as the quarantining of thousands of students who may have also put their family members at risk.¹⁰ Consequently, schools must develop the capacity to safely transition individual students, classes, or the entire student body between in-person and online schooling without significant disruption to their education or their access to meals and other critical school-based services.

Schools, therefore, must comply with the most current and updated public health guidance, including physical distancing, face coverings, screening, and disinfecting guidelines. Even when the local conditions permit the safe operation of in-person instruction, districts should continue to use infection prevention and control (IPC) measures to limit the transmission of COVID-19. When schools cannot provide safe spaces for in-person schooling, including appropriate ventilation, cleaning, and safety protocols, schools should employ high-quality distance learning and

4 Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory, CDC, https://covid.cdc.gov/covid-data-tracker/#trends_dailytrendscases (last visited Aug. 4, 2021).

5 Apoorva Mandavilli, *What to Know About Breakthrough Infections and the Delta Variant*, N.Y. TIMES (Aug. 12, 2021), <https://www.nytimes.com/article/covid-breakthrough-delta-variant.html>.

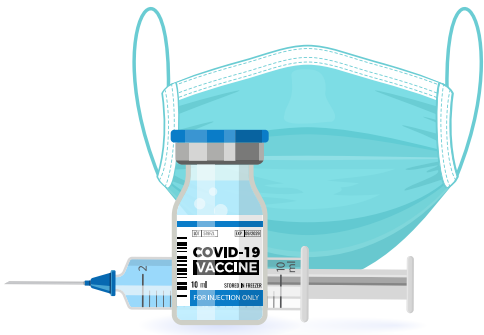
6 Nate Rattner, *Should you be wearing a mask again? Here's a map of the Covid hot spots subject to the CDC's new guidance*, CNBC (July 28, 2021, 12:44 PM), <https://www.cnbc.com/2021/07/28/heres-a-map-of-the-covid-hot-spots-under-the-cdcs-new-mask-guidance.html>.

7 KFF, *Daily COVID-19 Cases and Deaths*, <https://www.kff.org/other/state-indicator/daily-covid-19-cases-and-deaths/?currentTime-frame=0&sortModel=%7B%22colId%22:%22Percent%20Change%20in%20Cases%20Over%2014%20Days%22,%22sort%22:%22desc%22%7D> (last visited Aug. 5, 2021).

8 *Id.*

9 Noah Feit, *Fourth grader with COVID dies, SC school district says*, THE STATE (Sept. 5, 2021 4:01 PM), <https://www.thestate.com/news/coronavirus/article254023618.html>; Valerie Honeycutt Spears, *15-year-old Kentucky student has died from COVID, superintendent confirmed*, LEX. HERALD LEADER (Sept. 7, 2021 8:15 AM), <https://www.kentucky.com/news/local/education/article254046048.html>; Joe McLean, *Columbia County teen dies with COVID-19 days before start of senior year, family says*, NEWS 4 JAX (Aug. 13, 2021), <https://www.news4jax.com/news/local/2021/08/13/columbia-county-teen-dies-with-covid-19-days-before-start-of-senior-year-family-says/>.

10 Lauren Camera, *Arkansas Mass Quarantine Offers Grim Warning to School Systems Without Mask Mandate*, U.S. NEWS (Aug. 5, 2021 1:14 PM), <https://www.usnews.com/news/education-news/articles/2021-08-05/arkansas-mass-quarantine-offers-grim-warning-to-school-systems-without-mask-mandates>; Susan Hogan & Kristal Dixon, *Metro Atlanta schools report more than 1,000 COVID cases in first days*, ATL. J. CONST. (last updated Aug. 9, 2021), <https://www.ajc.com/education/metro-atlanta-schools-report-more-than-700-covid-cases-in-first-days/CZSKH2AIEZDMXMRJA6MJDIA4U/>; Shaquille Lord, *COVID-19 outbreak prompts southern Indiana school district to rethink measures*, WLKY (Aug. 9, 2021), <https://www.wlky.com/article/covid-19-outbreak-prompts-southern-indiana-school-districts-to-rethink-measures/37262777>; See generally, Ashton Pittman, *As Outbreaks Force Schools to go All-Virtual, Districts Reinstate Mask Mandates*, MISSISSIPPI FREE PRESS (July 31, 2021), <https://www.mississippifreepress.org/14272/as-outbreaks-force-schools-to-go-all-virtual-districts-reinstate-mask-mandates/>. Charles Lussier, *COVID in Louisiana schools: As students return to campuses, infection rates are worse than ever*, THE ADVOCATE (Aug. 16, 2021), https://www.theadvocate.com/baton_rouge/news/coronavirus/article_88df9674-fb80-11eb-b4fb-93a296642845.html; Alex Finnie, *Three Broward educators with COVID die within 2 days as school year nears*, WPLG (last updated Aug. 14, 2021), <https://www.local10.com/news/local/2021/08/13/4-broward-educators-with-covid-die-within-2-days-as-school-year-nears/>.



In order to ensure safety during in-person school, all school faculty and staff **should be vaccinated**, and all students and staff should **wear masks at school**.

ensure that vulnerable students, including students with disabilities, continue to receive essential services.

Schools must also be equipped to meet the needs of students who have lost learning time and experienced traumatic disruption of learning due to the pandemic. Moreover, there must be substantial investment of human and financial resources in schools to implement racially equitable school reopening and operating plans that comply with federal civil rights laws, as well as guidance released by the Department of Education and public health agencies. Such an approach will require thoughtful, collaborative planning, the provision of sufficient, additional resources to school districts, and input from families and community partners.

States must establish minimum safeguards for every school, including mandatory vaccination, universal masking, testing, close contact tracing, clear quarantine procedures and regular cleaning and disinfecting practices. School plans must also consider and address the particular dangers to children and school personnel in their specific region and communities. Not all schools are the same due to vast inequities that plague our educational system. Therefore, school reopening and operating plans must also give due regard to existing racial and socioeconomic disparities within school districts across the country. All under-resourced school districts must be provided with the resources they need to safely educate students in school buildings and remotely.

For these reasons, LDF recommends that states and school districts adopt the following principles for racially equitable, safe school reopening and operation:

1 Protect Public Health: Before resuming in-person instruction, schools must ensure the physical safety of all students, staff, and communities. Safe in-person schooling must also include prioritizing educators and school staff in local vaccination efforts. In order to ensure safety during in-person school, all school faculty and staff should be vaccinated, and all students and staff should wear masks at school.

The COVID-19 global pandemic is ongoing, and the United States has yet to achieve “herd immunity.”¹¹ Although vaccination efforts have increased the number of Americans vaccinated, as of August 2, 2021, 50% of Americans are not fully vaccinated and thus remain vulnerable to hospitalization and death from COVID-19.¹² More than 20% of the total population of Black Americans live in the southern states that boast some of the lowest vaccination rates in the country — especially in Alabama, Arkansas,

¹¹ *Coronavirus disease (COVID-19): Herd immunity, lockdowns and COVID-19*, WHO (Dec. 31, 2020), <https://www.who.int/news-room/q-a-detail/herd-immunity-lockdowns-and-covid-19>.

¹² *US Coronavirus vaccine tracker*, USAFacts, <https://usafacts.org/visualizations/covid-vaccine-tracker-states/> (last visited Aug. 2, 2021).

Georgia, Louisiana, Mississippi, and Tennessee.¹³ As of August 9, 2021, Louisiana, Alabama, Arkansas, and Mississippi had a full vaccination rate of less than 40% and constitute four of the top five states with the highest seven-day average of COVID-19 cases.¹⁴ Florida is the only state in the top five highest COVID-19 cases that has a vaccination rate comparable to the national average.¹⁵ These same states have substantial Black populations, ranging from 16% to 39% of the total state populations.¹⁶ This pattern demonstrates the strong relationship between vaccinations and the control of the COVID-19 pandemic.

Additionally, due to the well-documented racial disparity in access to COVID vaccines, Black and Latinx communities are at disproportionate risk of harm from the pandemic.¹⁷ And vaccines are currently only available for individuals who are 12 years and older, leaving millions of school-age children unvaccinated and, thus, at risk of COVID-19 infection.

Since the beginning of the pandemic, nearly 4.2 million children have contracted COVID-19, which accounts for 14% of all documented COVID-19 cases.¹⁸ Research shows that children can transmit COVID-19 to other children and adults, and that many children infected with the virus are

asymptomatic.¹⁹ Outbreaks of COVID-19 among students can quickly spread to school staff and the larger neighboring community. **The low vaccination rates in this country, coupled with the potential for spread of COVID-19 by school age children, underscore the urgent need for schools to continue to prioritize public health in decisions about school operations.**

Research shows that a layered strategy to prevent infection and control transmission is essential to safely operating in-person schooling during a pandemic.²⁰ The key IPC measures include universal and correct use of face coverings, adequate ventilation and filtration, handwashing and respiratory etiquette, testing and contact tracing, physical distancing, regular cleaning and disinfection, and vaccinations of all eligible individuals. During a pandemic, vaccines should be used in conjunction with, not in lieu of, the other IPC measures. In fact, research suggests that the fidelity with which schools implement these IPC measures is more significant in determining schools' ability to successfully operate in-person than the levels of virus transmission within the community.²¹

The IPC measures that are the most well-researched and have the most documented body of evidence to support their effectiveness are face coverings and handwashing. A study of K-12 schools in North Carolina revealed that proper masking was the most effective COVID-19 mitigation strategy when the school and community had yet to reach herd immunity.²² Furthermore, because it will take time and resources for all public schools to have adequate

13 KFF, *State COVID-19 Data and Policy Actions* (Aug. 2, 2021), <https://www.kff.org/coronavirus-covid-19/issue-brief/state-covid-19-data-and-policy-actions/>; The percentage of Black residents in the combined states referenced was calculated based on 2019 data from the U.S. Census Bureau, which can be accessed at <https://www.census.gov/quickfacts/table/US/PST045219>.

14 *State COVID-19 Data and Policy Actions*, *supra* note 18.

15 *Id.*

16 *Black Population By State 2021*, WORLD POP. REV. (last visited Sept. 9, 2021), <https://worldpopulationreview.com/state-rankings/black-population-by-state>.

17 Kesha Moore, *Racial Disparities In New York State's Vaccine Distribution*, NAACP LEGAL DEF. & EDUC. FUND (Mar. 11, 2021), <https://www.naacpldf.org/naacp-publications/ldf-blog/racial-disparities-in-new-york-states-vaccine-distribution/>.

18 American Academy of Pediatrics, *Children and COVID-19: State-Level Data Report* (Aug. 5, 2021), <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/>.

19 Christine M. Szablewski et al., *SARS-CoV-2 Transmission and Infection Among Attendees of an Overnight Camp — Georgia, June 2020*, CDC (Aug. 7, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6931e1.htm?cid=mm6931e1_w; Caitlin Rivers et al., *Risk Assessment and Testing Protocols for Reducing SARS-CoV-2 Transmission in K-12 Schools* (Oct. 14, 2020), https://www.rockefellerfoundation.org/wp-content/uploads/2020/10/Risk-Assessment-and-Testing-Protocols-for-Reducing-SARS-CoV-2-Transmission-in-K-12-Schools_Final-10-14-2020.pdf.

20 COVID COLLABORATIVE, ROADMAP TO HEALTHY SCHOOLS: BUILDING ORGANIZATIONAL CAPACITY FOR INFECTION PREVENTION AND CONTROL (2021), https://static1.squarespace.com/static/5f85f5a156091e113f96e4d3/t/60885fa500e63d4a1980ec2f/1619550124862/FI-NAL+ROADMAP_4.27.pdf.

21 *Id.*

22 ABC Science Collaborative, *The ABC's of North Carolina's Plan A*, <https://abcsciencecollaborative.org/the-abcs-of-north-carolinas-plan-a/> (last visited Aug. 13, 2021).

Thus, a universal mask mandate is imperative, for any safe return to in-person schooling.

ventilation and filtration and for all children to become eligible for vaccinations, it is imperative to take full advantage of every intervention available right now, like face coverings and handwashing, to protect school children and their communities. Thus, a universal mask mandate is imperative for any safe return to in-person schooling.

The enforcement of IPC measures must also apply during the transport of students to and from school, including social distancing guidelines on school-operated transportation, as well as addressing the specific needs of students that take public transportation to school. Given that the racial disparities in COVID-19 cases of Black and Native populations seem to be significantly connected to the use of public transit,²³ it is essential that school districts work with transit authorities to ensure that students using public transportation are safe in the route to and from school.

Additionally, schools can play a critical role in helping the nation control the spread of COVID-19 and the outbreak of new variants. They can serve as vaccination sites and provide accessible and trusted information about COVID-19 vaccines to their community. Schools have a responsibility to actively protect the health and well-being of all members of the school community, especially those who are most vulnerable.

Schools should protect the physical safety of all its students, staff, and communities. **Safe in-person schooling must include the following:**

- + All students and staff should wear masks at school, regardless of their vaccination status.
- + All adults who are in the school buildings, involved in school transportation or otherwise interact with students should be vaccinated.
- + Schools must collect real time data on the impact of IPC measures and levels of transmission within schools and make that information publicly available. Before a school can responsibly consider relaxing any of the IPC measures, the school should demonstrate high vaccination rates among staff and students, low rates of transmission in schools, and low rates of community spread.
- + Schools must engage parents, school staff, and community public health officials in continuous data-driven discussion about public health and safety in schools. Districts must make specific efforts to ensure that non-English speaking parents are informed and engaged.

²³ John McLaren, *Racial Disparity in COVID-19 Deaths: Seeking Economic Roots with Census Data* (2020), <https://www.nber.org/papers/w27407>.



Eleven year old twins Tyreke and Tyrelle Satchbell participate in remote learning at the Roxbury YMCA in Boston on Sept. 21, 2020. Boston Public School students learn remotely on their first day of school at the Roxbury YMCA on Monday. The Roxbury Y is among nearly 100 programs across Boston providing school-day space while public schools are closed for more than 6,000 students so their parents can work and the students can receive help, be supervised, and have fun playing with other kids. Photo by Suzanne Kreiter/The Boston Globe via Getty Images

2 Ensure Equitable Access to School Resources During COVID-19 School Closures: When in-person instruction is not safe, all students must have access to: 1) essential school-based services, such as meals, and 2) high quality distance learning, including high-speed broadband internet, adequate electronic devices, and technology support.

More than 55 million students transitioned to distance learning during the pandemic; yet, at the beginning of 2021, 12 million children remained

disconnected or under-connected.²⁴ While all students have experienced diminished opportunities to learn resulting from the pandemic, schools serving mostly Black or Latinx students have experienced learning

24 Common Sense et al., *LOOKING BACK, LOOKING FORWARD: What it will take to permanently close the K-12 digital divide*, (2021), https://www.common Sense media.org/sites/default/files/uploads/kids_action/final_-_what_it_will_take_to_permanently_close_the_k-12_digital_divide_vjan26_1.pdf.

loss disproportionately, especially for grades K-3.²⁵ Black students are more likely than all other racial groups to lack the resources needed for online instruction. At the beginning of the pandemic, 21% of parents surveyed reported that their children were unable to complete their schoolwork remotely because they lacked access to a computer at home and 22% reported that they did not have internet access.²⁶ According to national survey data collected by the Census Bureau, 10% of Black families surveyed reported that, as of July 5, 2021, their student did not regularly have access to a learning device for school.²⁷ This lack of access to digital learning devices is 2% greater than surveyed Latinx households and 8% greater than surveyed white households.²⁸ Racial disparities were even greater in large urban areas. For instance, in Detroit, almost 20% of Black households did not have resources for online learning, as compared to about 8% of white households in the city.²⁹ The failure to bridge this digital divide has been and remains consequential for tens of thousands of Black and Latinx students during pandemic-induced school closures.³⁰

Similar disparities were observed when reviewing school nutrition data. Released in May 2020, a survey of school nutrition directors representing nearly 2,000 districts found that 80% were serving fewer meals during the pandemic than when school was in session,

25 Curriculum Associates, *Academic Achievement at the End of the 2020-2021 School Year: Insights after More Than a year of Disrupted Teaching and Learning* (June 2021), <https://www.curriculumassociates.com/-/media/mainsite/files/i-ready/iready-understanding-student-needs-paper-spring-results-2021.pdf>.

26 Emily A. Vogels et al., *53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak*, PEW RSCH. CTR. (Apr. 30, 2020), <https://www.pewresearch.org/internet/2020/04/30/53-of-americans-say-the-internet-has-been-essential-during-the-covid-19-outbreak/>.

27 U.S. Census Bureau, *Week 33 Household Pulse Survey: June 23 – July 5* (July 14, 2021), <https://www.census.gov/data/tables/2021/demo/hhp/hhp33.html>.

28 *Id.*

29 Cassie Kinsora & Stephanie Quesnelle, *Household Experiences During the Coronavirus Pandemic: Impact on Education*, DATA DRIVEN DETROIT (June 18, 2021), <https://datadrivendetroit.org/blog/2020/06/18/household-experiences-during-the-coronavirus-pandemic-impact-on-education/>.

30 Sara Atske & Andrew Perrin, *Home broadband adoption, computer ownership vary by race, ethnicity in the U.S.*, PEW RSCH. CTR. (July 16, 2021), <https://www.pewresearch.org/fact-tank/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/>.

12 MILLION

children are **DISCONNECTED**
or **UNDER-CONNECTED**



21%

OF PARENTS

reported that their children were unable to complete their schoolwork remotely because they **LACKED ACCESS** to a **COMPUTER AT HOME**



10%

OF BLACK FAMILIES

surveyed reported that, as of July 5, 2021, their student **DID NOT** regularly have **ACCESS TO A LEARNING DEVICE** for school



Students pick up a free meal during their lunch period at Rippowam Middle School on September 14, 2020 in Stamford, Connecticut. Photo by John Moore/Getty Images

and a majority of those surveyed indicated a decrease of 50% or more in the number of meals served.³¹ The loss of school-based meals had a disproportionate impact on students of color, with Black and Latinx students struggling to access needed school meals.³² For example, in December 2020, the Urban Institute reported that 40% of Black families with school-age children were food insecure in September 2020, compared to 15% of white families.³³

Whether schools are operating in-person, hybrid, or fully virtual, school districts must ensure that students have continued and equitable access to broadband, meals and other essential school-based services.

31 *Impact of COVID-19 on School Nutrition Programs Part 2*, SCHOOL NUTRITION ASSOC., https://schoolnutrition.org/uploadedFiles/11COVID-19/3_Webinar_Series_and_Other_Resources/COVID-19-Impact-on-School-Nutrition-Programs-Part2.pdf

32 Poonan Gupta, et al. *Forty Percent of Black and Hispanic Parents of School-Age Children are Food Insecure*, URBAN INST. (Dec. 8, 2020), <https://www.urban.org/research/publication/forty-percent-black-and-hispanic-parents-school-age-children-are-food-insecure>.

33 *Id* at 2.

- + Universal access to instruction should be maintained for all students.
- + States should regularly track and publicly report on student access to high-speed broadband internet and appropriate devices necessary for distance learning, disaggregated by race, gender, household income and disability status.
- + Students and families must not be charged additional fees for access to devices or required to pay costs associated with the use of devices, as this would disproportionately impact low-income students and students of color.
- + Schools must accurately track student participation to distance learning, which includes documentation of absenteeism. Additionally, to account for the pervasive broadband gap, districts must adopt flexible criteria to determine attendance/enrollment (e.g. completing assignments).
- + Schools should actively communicate with students to address absenteeism non-punitively and reconnect students to school by identifying barriers and providing necessary supports to students and their families during and beyond the pandemic. Specifically, states should issue guidance that limits the use of punitive responses to absenteeism and truancy, including the banning of referrals to the criminal justice system.
- + Teachers should receive sufficient professional development and continued support necessary to increase their capacity to deliver high-quality remote instruction, including providing financial support for high-speed internet access .
- + All districts should prioritize in person instruction for high-needs students, such as students with disabilities whose services cannot be delivered virtually, and students who need the safety and supervision of in-person school, including the children of essential workers and students experiencing housing instability.

- + Districts should ensure equitable access to coursework, including access to International Baccalaureate, Gifted and Talented, and Advanced Placement programs. Students with disabilities and English Language Learners should continue to receive their supports and services virtually.
- + Students should be taught by certified, high-quality educators who can sustain relationships with students and their families. Instruction should not be outsourced to private companies who are not invested in the students or school communities.
- + In light of the increasing spread of dangerous and highly contagious COVID variants, the federal government must ensure USDA waivers remain in place through Summer 2022.
- + States must opt in to needed child nutrition waivers and equip districts with the necessary resources to distribute school meals to all students, with a particular focus on accessibility for students of color, low-income students, students experiencing housing instability, and students in rural communities.
- + Meals must be distributed in an equitable manner that allows for social distancing. Districts should collect and report data on school meal distribution to identify gaps and better target resources.
- + Schools and districts must communicate with families to identify barriers, including easily accessible and user-friendly student and parent surveys. Subsequently, schools and districts must modify pickup and distribution methods and timelines tailored to the challenges identified by students and parents. For example, when students or parents/guardians are unable to pick up school meals pursuant to established schoolwide method and timing, schools should secure workable alternatives for meal delivery to the full extent possible.

When in-person instruction is not safe, all students must have access to:

1) **essential school-based services,** such as meals, and

2) **high-quality distance learning,** including high-speed broadband internet, adequate electronic devices, and technology support.



40%

OF BLACK FAMILIES

with SCHOOL-AGE CHILDREN
were FOOD INSECURE in
September 2020

3 Establish Equitable, Pedagogically-Sound, and Culturally Inclusive Instruction and Assessment: Every district should endeavor to ensure equal educational opportunities to all students so they may each receive a quality and inclusive education grounded upon pedagogically sound methods of instruction.

A quality education must necessarily include an accurate, honest, and inclusive accounting of history and provide students with the skills and tools to become critical thinkers who can evaluate the veracity of information received. Schools and districts should also identify innovative ways to deliver high-quality instruction during school closures and implement evidence-based solutions to address the loss of instructional time, which has disproportionately impacted students of color. Furthermore, the suspension of statewide and other standardized exams during the pandemic has demonstrated that assessments and learning are not dependent on them. We must learn from this new critical information about the efficacy of assessment tools and take this opportunity to abandon reliance on biased and harmful high-stakes testing regimes and instead design more equitable and culturally relevant assessments that more accurately measure students' learning.

- + As schools reopen, districts should continue to encourage students and teachers to engage in honest dialogue about the history of our country, learn from diverse perspectives, and build connections across different backgrounds.
- + Remote instruction must involve some real-time or synchronous instruction, so that students can interact with teachers, as well as small groups and/or group projects that foster intergroup interaction

- + Schools and districts must leverage earmarked federal funding and strategically use its own resources to develop school-wide and/or district-wide programs that will address learning loss with a racial equity lens.
- + Schools should not rely on practices that are known to have a disproportionately negative impact on educational attainment for Black students—such as grade retention or holding students back and inflexible tracking.³⁴ Across all grade levels, Latinx and Black students are 1.5 times more likely to be retained than white students.³⁵ Students who repeat a grade usually have lower long-term academic performance as compared to low-achieving peers who were not retained.³⁶ They are also more likely to experience behavioral problems, lower self-esteem, and lower rates of school attendance.³⁷ Students experiencing low academic performance are better served by early and intensive targeted interventions, including early warning systems, special needs testing early intervention, intensified learning, and performance assessments instead of high-stakes standardized testing.³⁸
- + School districts should take advantage of the flexibility provided by the U.S. Department of Education with respect to the administration and use of statewide assessments.

34 Todd McCardle, *A Critical Examination of Tracking as a Method for Maintaining Racial Segregation*, EDUC. CONSIDERATIONS (2020); CARALEE J. ADAMS, *Civil Rights Data Show Retention Disparities*, Educ. Week (Mar. 16, 2012), <https://www.edweek.org/leadership/civil-rights-data-show-retention-disparities/2012/03>.

35 Paula N. Johnson, *In-grade Retention National Trends and Civil Rights Concerns*, IDRA NEWSL. (Apr. 2018), <https://www.idra.org/resource-center/in-grade-retention-national-trends-and-civil-rights-concerns/>

36 Shane R. Jimerson & Tyler L. Renshaw, *Retention and Social Promotion*, PRINCIPAL LEADERSHIP (Sept. 2012).

37 *Id.*

38 Lisa M. Kenneady, *Good for Nothing In-grade Retention*, IDRA Newsletter (June-July 2004), <https://www.idra.org/resource-center/good-for-nothing-in-grade-retention/>; Shane R. Jimerson and Tyler L. Renshaw, *Retention and Social Promotion, Principal Leadership*, Sept. 2012.



Students deserve the right to return to schools that are physically and psychologically safe.

4 Social and Emotional Learning Must Be Prioritized: Schools must be equipped with the necessary resources to mitigate the stress and trauma stemming from the COVID-19 pandemic school closures.

Students deserve the right to return to schools that are physically and psychologically safe. COVID-19, like many natural disasters, can cause serious psychological harm to students resulting from loss of home and possessions, grief from death of loved ones, seeing parents/caregivers under stress, neglect or abuse associated with increased parental stress, as well as disruptions in social networks and local economies.³⁹ Given that COVID-19 disproportionately impacts racial minority and low-income communities,⁴⁰

students from these communities are more likely to be severely impacted by the trauma of the event. A survey of adolescent teens revealed that 60% of teens in the U.S. are worried about the impact of COVID on their families, but this fear was most stark for Black and Latinx teens.⁴¹ Seventy-four percent of Black students and 87% of Latinx teens reported worrying about the impact of COVID on their families compared to 56% of white students.⁴² Thus, schools should prioritize culturally-relevant, social and emotional well-being within instruction and school operation policies.

Although all students experiencing suffering are vulnerable to increased interaction with school discipline policies because of their trauma-related behaviors, group factors such as race, gender, socio-economic status, and disability status make some

³⁹ Carolyn Kousky, *Impacts of Natural Disasters on Children*, 26 *The Future of Children* 73-92 (2016).

⁴⁰ Maria Godoy and Dael Wood, *What Do Coronavirus Racial Disparities Look Like State by State?*, NAT'L PUBLIC RADIO, (May 30, 2020). <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state>

⁴¹ Arianna Prothero, *Survey: Teens Are Worried About Coronavirus, Especially Teens of Color*, EDUC. WEEK (April 10, 2020). http://blogs.edweek.org/edweek/rulesforengagement/2020/04/teens_are_worried_about_the_coronavirus_especially_black_and_latino_teens_survey_finds.html

⁴² *Id.*

3
MILLION

students attend schools with
POLICE, but **NO SCHOOL NURSE**



14
MILLION

students attend schools with
school police, but **NO COUNSELOR**,
NURSE, **PSYCHOLOGIST**, or
SOCIAL WORKER



74%
OF BLACK
STUDENTS

reported worrying about
the impact of **COVID**
on their families

students even more likely to be harshly punished as a result of their trauma.⁴³ Given that trauma-induced behaviors in students frequently place them in contact with school discipline policies, such policies need to be restructured using trauma-informed guidelines. When school discipline policies and practices are not trauma-informed, students run the risk of being retraumatized, denied opportunities to learn, and subjected to increased referrals to the juvenile justice system.⁴⁴

Additionally, schools and districts must evaluate whether their personnel decisions are in alignment with best practices for facilitating safe learning environments, and support the social, emotional, physical and mental health needs of students. Ninety percent of students attend public schools where the number of counselors, social workers, nurses, and psychologists do not meet recommended professional standards.⁴⁵ Three million students attend schools with police but no school nurse.⁴⁶ Fourteen million students attend schools with school police but no counselor, nurse, psychologist, or social worker.⁴⁷

At the same time, Black students are more likely to attend a school with school-based law enforcement, to be referred to law enforcement, and to be arrested at school.⁴⁸ Throughout the pandemic,

43 Xian-Liang Tian and Xian Guan, *The Impact of Hurricane Katrina on Students' Behavioral Disorder: A Difference-in-Difference Analysis*, INT'L J. OF ENV'T RSCH. & PUB. HEALTH 5540 (2015); Malika Saada Saar et al., *The Sexual Abuse to Prison Pipeline: The Girls' Story*, Georgetown L. Ctr. on Poverty & Ineq. (2015), <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2019/02/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls%E2%80%99-Story.pdf>;

44 Xian-Liang Tian and Xian Guan, *The Impact of Hurricane Katrina on Students' Behavioral Disorder: A Difference-in-Difference Analysis*, 12 INT. J. ENVIRON. RES. PUBLIC HEALTH 5540-5560 (2015); MALIKA SAADA SAAR ET AL., *The Sexual Abuse to Prison Pipeline: The Girls' Story*, Georgetown L. Ctr. on Poverty & Ineq., available at www.lawgeorgetown.edu/go/poverty; American Psychological Association Zero Tolerance Task Force, *Are Zero Tolerance Policies Effective: An Evidentiary Review and Recommendations*, American Psychologist 852-862 (2008)

45 COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS, ACLU 5 (2019).

46 *Id.* at 4.

47 *Id.*

48 Evie Blad and Alex Harwin, *Black Students More Likely to Be Arrested at School*, EDUC. WEEK (Jan. 24, 2017) <https://www.edweek.org/leadership/black-students-more-likely-to-be-arrested-at-school/2017/01>



Black students have continued to be subjected to over-policing and undue criminalization of age-appropriate behaviors. In the above tweet, the police were called on a 7-year-old child with autism and sensory processing challenges for removing his mask.⁴⁹ Police were also dispatched to the home of a 12-year-old child for briefly displaying a green and black Nerf gun during class.⁵⁰

As schools reopen, teachers should be properly trained to address minor infractions using restorative practices, and school-based law enforcement must be eliminated from the physical and remote school environments, and called upon only as a last resort when there is an immediate and substantial risk to the safety of students or school staff.

49 Shomari Stone, *Parents Protest After Police Called on 7-Year-Old With Autism Who Took Off His Mask*, NBC4 Washington (Apr. 8, 2021, 8:53 AM), <https://www.nbcwashington.com/news/local/parents-protest-after-police-called-on-7-year-old-with-autism-who-kept-taking-off-his-mask/2633461/>.

50 Debbie Lord, *Colorado school calls police on 12-year-old who showed toy gun in virtual class*, KIRO-TV (Sept. 8, 2020, 4:34 PM), <https://www.kiro7.com/news/trending/colorado-school-calls-police-12-year-old-who-showed-toy-gun-virtual-class/AJGU24CDPBC4DH2E5QZ2BU2HZI/>.

- + Trauma-informed care should be integrated into both online and in-person schooling to meet the mental health needs of students and to create a positive and healthy school culture.
- + School reopening plans must also include strategies to address the overall mental health and well-being of Black students, who have been disproportionately impacted by the economic and health consequences of the pandemic.
- + Distance and in-person learning must promote positive school climates where students' social and emotional needs are met with student supports, not exclusionary discipline practices. **To best serve students at this critical time, school districts should institute a moratorium on all suspensions and modify school discipline policies to be trauma-informed and supportive.**
- + Schools must not punitively discipline students in distance learning for not turning on their cameras, the condition of their surroundings, or minor uniform/attire infractions. Districts should require schools to report any disciplinary action taken against students in distance learning, including the specific school policy violation and the type of disciplinary action administered, maintain the data in an accessible format and remedy issues identified and racial disparities.
- + Districts must abolish school-based law enforcement programs or partnerships and divert funds to support evidence-based practices that support safe learning environments.
- + Staff resources should be shifted from school-based law enforcement to increase the hiring of nurses, counselors, social workers, and school psychologists.

5 An Equitable Education Requires Equitable School Funding: Federal funding must be equitably distributed to support schools and districts so they can safely educate all students, with sustained funding to address the long-term effects of school closures.

American Rescue Plan: Historical Federal Investment in our Nation's Students

In March 2021, President Biden signed the American Rescue Plan into law, which included an unprecedented \$122 billion investment in our nation's public schools through the Elementary and Secondary School Emergency Relief Fund (ARP ESSER).⁵¹ State education agencies (SEA) receive their full allocation of ARP ESSER funding upon approval of a state plan submitted to the U.S. Department of Education.⁵² LDF recommends that the U.S. Department of Education reject state plans that lack a comprehensive proposal to identify, measure, and remedy racial disparities in education. This funding must be used by SEAs and local education agencies (LEAs) to support the safe reopening of schools and to implement evidence-based activities to address the disparate impact of the pandemic.⁵³

Potential uses of ARP ESSER funds include but are not limited to: purchasing education technology, providing mental health services and supports, implementing school facility repairs and improvements, preventing teacher layoffs, and supporting individuals who graduated from high school during the pandemic but have not transitioned to college or career (e.g. job training, assistance with college applications, and financial literacy).

51 ARP ESSER Fact Sheet, U.S. Dep't of Educ., (Mar. 17, 2021), https://oese.ed.gov/files/2021/03/FINAL_ARP-ESSER-FACT-SHEET.pdf.

52 U.S. Dep't of Educ. Approves First Seven State Plans for Use of American Rescue Plan Funds to Support K-12 Schools and Students, Distributes an Additional \$6 Billion in Funds to Approved States, U.S. DEP'T OF EDUC. (July 7, 2021), <https://www.ed.gov/news/press-releases/us-department-education-approves-first-seven-state-plans-use-american-rescue-plan-funds-support-k-12-schools-and-students-distributes-additional-6-billion-funds-approved-states>

53 See U.S. Dep't of Educ., Frequently Asked Questions, Elementary and Secondary School Emergency Relief Programs and Governor's Emergency Relief Programs (May 26, 2021), https://oese.ed.gov/files/2021/05/ESSER_GEER_FAQs_5.26.21_745AM_FINALb0cd6833f6f46e-03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf

- + SEA and LEA⁵⁴ plans for ARP ESSER spending should include measures to address the historical and persistent inequities faced by Black students and educators, specifically tailored to their community and schools.
- + SEA and LEA plans must be crafted following significant engagement with Black students and parents, educators, civil rights organizations, and other community advocates with a clear articulation of how their input has been incorporated.
- + The timeline and process for input should be transparent and structured in a manner to maximize participation.
- + While it is mandatory for plans to be posted publicly, LEAs should take a more proactive approach and disseminate their plan to stakeholders and provide ample opportunity for feedback.
- + State governors, state and local school superintendents, and school districts must prioritize funding for students with the highest needs and institute robust oversight measures to encourage transparency and accountability.
- + In allocating funds, states and districts must comply with federal regulations on maintaining the same share of K-12 education spending and protecting "high-need" and "high-poverty" districts from disproportionate cuts to funding or staffing; this is merely a baseline for state and local decisionmakers focused on closing equity gaps through targeting students with the greatest need.

- + State and local decisionmakers must ensure school budgets and expenditures reflect a commitment to systemic reform and racial equity, and are responsive to the needs of students, educators, and communities of color. For instance, federal funding designated for the safe reopening of schools should not be used to hire, retain, or train school-based law enforcement officers or to obtain intrusive, and potentially discriminatory, surveillance tools like facial recognition technology.
- + Additionally, **lawmakers must not condition the availability of school funds on in-person learning, especially when such proposals would have a disparate impact on schools and districts that primarily serve Black students and other students of color.**

State and local decisionmakers must ensure school budgets and expenditures **reflect a commitment to systemic reform and racial equity**, and are responsive to the needs of students, educators, and communities of color.



AMERICAN RESCUE PLAN

Historic Federal Investment in Our Nation's Students

Overall, LDF calls on SEAs and LEAs to:

- 1 Provide equitable funding to chronically under-resourced schools serving Black students and other students of color, whose communities have been most harmed by the pandemic.
- 2 Prioritize addressing the decrease in opportunities to learn through investment in broadband and expanding overall access to high-quality instruction.
- 3 Nurture the emotional and physical health of students by (a) investing in resources that build a positive and supportive school climate, such as school counselors, school psychologists and other mental health supports and (b) rehabilitate and update all public school physical plants to ensure access to safe drinking water, proper ventilation, and access to clean air.
- 4 Recruit and retain high-quality Black educators.



A deteriorating wall outside a classroom at the Pickering Middle School in Lynn, MA is pictured on Feb. 14, 2017. Photo by John Blanding/The Boston Globe via Getty Images

Racial Disparities in School Infrastructure

Federal and state governments have long failed to address racial disparities in school infrastructure funding.⁵⁵ The decaying infrastructure of public schools is a national problem, the costs of which are disproportionately borne by students of color.⁵⁶ Many Black students attend schools with unsafe water conditions, hazardous air quality, and insufficient ventilation and classroom space — all of which pose an increased health risk for students during

the COVID-19 pandemic.⁵⁷ Research has found that the poor condition of school buildings is linked to absenteeism and school drop-out, lower test scores, lower student achievement, less retention of teachers as well as asthma attacks and other health outcomes.⁵⁸ Additional investment is crucial to cover critical infrastructure expenditures, such as broadband, safe drinking water, and modernized physical school buildings.

55 Joshua Sharfstein et al., *School conditions and educational equity in Baltimore City*, (Jan. 29, 2020), <https://gisanddata.maps.arcgis.com/apps/Cascade/index.html?appid=3ddf7ded140d4dc38bedc27d6c0e44f7>.

56 Hamida Labi & Megan Haberle, *Students Deserve Better than to be Left Out of the Infrastructure Spending* THE HILL, (Aug. 5, 2021), <https://thehill.com/opinion/education/566220-students-deserve-better-than-to-be-left-out-of-the-infrastructure-spending?rl=1>

57 Joshua Sharfstein et al., *School conditions and educational equity in Baltimore City*, (Jan. 29, 2020), <https://gisanddata.maps.arcgis.com/apps/Cascade/index.html?appid=3ddf7ded140d4dc38bedc27d6c0e44f7>.

58 *Id.*

- + Schools serving low-income students and students of color should be prioritized to receive funds available through federal infrastructure spending, leaving funds from the American Rescue Plan to be devoted to non-infrastructure expenses arising from the COVID-19 pandemic.
- + States should reexamine school funding formulas and other budgeting practices to ensure that schools enrolling a higher percentage of Black students or low-income students are not mandated to return to school buildings that will expose them to greater COVID-19 risk.
- + Where disparities in school facilities are identified, the state must immediately identify an equitable funding mechanism and reform its funding formula to ensure a student's race or wealth are not determinant of their access to a high-quality education in a healthy school environment.

Conclusion

We recognize the unique challenges faced by school districts as they make plans to re-open. But the challenges faced by parents — especially low-income and parents of color — are also uniquely challenging. Districts should not force Black families to choose between their health and the education of their children. Safe, effective, and equitable school operations must include equitably distributing school funding, implementing public health practices during in-person schooling, providing students with equitable access to school resources during remote learning, adopting flexibility in measures of student engagement and assessment, expanding school resources to address the trauma experienced by students and their families, and ensuring that educators have the necessary resources and training. Such an approach will provide all students with the high-quality education they deserve.

LDF recommends that states and school districts adopt the following principles for racially equitable, safe school reopening and operation:

- 1 Protect Public Health:** Before resuming in-person instruction, schools must ensure the physical safety of all students, staff, and communities. Safe in-person schooling must also include prioritizing educators and school staff in local vaccination efforts.

- 2 Ensure Equitable Access to School Resources During COVID-19 School Closures:** When in-person instruction is not safe, all students must have access to: 1) essential school-based services, such as meals, and 2) high quality distance learning, including high-speed broadband internet, adequate electronic devices, and technology support.

- 3 Establish Equitable, Pedagogically-Sound, and Culturally Inclusive Instruction and Assessment:** Every district should endeavor to ensure equal educational opportunities to all students so they may each receive a quality and inclusive education grounded upon pedagogically sound methods of instruction.

- 4 Social and Emotional Learning Must Be Prioritized:** Schools must be equipped with the necessary resources to mitigate the stress and trauma stemming from the COVID-19 pandemic school closures.

- 5 An Equitable Education Requires Equitable School Funding:** Federal funding must be equitably distributed to support schools and districts so they can safely educate all students, with sustained funding to address the long-term effects of school closures.

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