Education in a Pandemic:
The Disparate Impacts of COVID-19 on America's Students

OFFICE FOR CIVIL RIGHTS

Message from the Acting Assistant Secretary

In his *Executive Order on Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers*, President Biden expressed our nation's commitment to students across the country: "Every student in America deserves a high-quality education in a safe environment."[1] Over the course of the COVID-19 pandemic, so many students have found new ways to continue learning in this challenging time and countless teachers, staff, faculty, administrators, and institutional leaders, along with students' families, have gone above and beyond to support our students at all educational levels.

Yet, this promise of a safe, high-quality education was already out of reach for many students long before the COVID-19 pandemic and could slip further away if we do not act collectively and with attention to equal opportunity for all students. Against this backdrop, this Report responds to President Biden's Executive Order, and, specifically, to this call to the Assistant Secretary for Civil Rights in the Department of Education:

> **[T]o deliver a report as soon as practicable on the disparate impacts of COVID-19 on students in elementary, secondary, and higher education**, including those attending historically black colleges and universities, and Tribal colleges and universities, Hispanic-serving institutions, and other minority-serving institutions.[2]

The Department's Office for Civil Rights (OCR) has responsibility for enforcing laws enacted by Congress that guarantee all students access to educational opportunities free from discrimination based on race, color, national origin, sex, disability, and age.[3] OCR does this by providing information to students, families, and the national community about the right to equal educational opportunity; investigating allegations of discrimination and responding to violations of the laws OCR is charged with enforcing; providing guidance for schools on their civil rights responsibilities; and collecting and analyzing civil rights data about students' experiences in our nation's schools, including through the national Civil Rights Data Collection. At the heart of this work is our shared commitment to equity—meaning consistent and systematically fair, just, and impartial treatment—for all of our nation's students.[4]

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[1] Exec. Order No. 14000, 86 Fed. Reg. 7,215 (Jan. 26, 2021).

[2] *Id.* at 7,216 (emphasis added).

[3] These laws, enforced by OCR, prohibit discrimination in education by all recipients of Federal financial assistance: Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq.; 34 C.F.R. Part 100 (the Department's regulations implementing Title VI); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.; 34 C.F.R. Part 106 (the Department's regulations implementing Title IX); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; 34 C.F.R. Part 104 (the Department's regulations implementing Section 504); Age Discrimination Act, 42 U.S.C. § 6101 et seq.; 34.C.F.R. Part 110 (the regulations implementing the Age Discrimination Act). Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131-12134, and the Department of Justice's (DOJ) regulations implementing Title II, 28 C.F.R. Part 35, also prohibit discrimination in education by state and local governments regardless of whether they receive Federal funds. OCR is responsible for administrative enforcement of Title II of the ADA with regard to educational institutions. For more information about Title II of the ADA, see DOJ's ADA.gov website. DOJ also enforces laws prohibiting discrimination in educational opportunities. For more information, see Educational Opportunities Section, Civil Rights Division on the DOJ website.

[4] As the Biden-Harris Administration has explained,

> the term "equity" means the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+)

This Report bears witness to the many ways that COVID-19, with all of its tragic impacts on individuals, families, and communities, appears to be deepening divides in educational opportunity across our nation's classrooms and campuses. Although the pandemic's effects will be studied for many years to come, we know from early studies that for many students, the educational gaps that existed before the pandemic—in access, opportunities, achievement, and outcomes—are widening. And we can see already that many of these impacts are falling disproportionately on students who went into the pandemic with the greatest educational needs and fewest opportunities—many of them from historically marginalized and underserved groups.

These disparities can be a cause for great concern, especially when they interfere with a student's opportunity to learn, grow, and contribute to our nation's future.[5] Although this Report provides a data-driven account of COVID-19's disparate impacts on students, rather than a legal analysis, it is important to recognize that disparities can sometimes be evidence of legal injuries under Federal civil rights laws, even when policies and practices do not directly single out a group of people for harm. These laws include Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including in educational programs and activities that receive Federal financial assistance.[6]

It is also important to recognize that, even in these trying times, students, families, educators, staff, administrators and so many others in school districts, state educational agencies, institutions of higher education, and communities across the country are immersed in the hard work of building back better to ensure equal educational opportunity for all students. The Department of Education stands ready to do all we can do to help in this effort.

Suzanne B. Goldberg
Acting Assistant Secretary for Civil Rights
U.S. Department of Education
June 9, 2021

persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality.
Exec. Order No. 13985, 86 Fed. Reg. 7009, 7009 (Jan. 20, 2021).

[5] For more from OCR on disparities in resources, student experiences, and the governing law, *see, e.g.*, U.S. Dep't of Educ., Office for Civil Rights, *Dear Colleague Letter: Resource Comparability* (Oct. 1, 2014), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf; *cf.* 34 C.F.R. § 100.3(b)(2); U.S. Dep't of Educ, Office for Civil Rights, *Racial Incidents and Harassment Against Students at Educational Institutions*, 59 Fed. Reg. 11448, 11449 (Mar. 10, 1994), https://www2.ed.gov/about/offices/list/ocr/docs/race394.html; *cf.* 34 C.F.R. § 100.3(b)(1)(iv).

[6] 42 U.S.C. § 2000d et seq; 34 C.F.R. Part 100 (the Department's regulations implementing Title VI).

Executive Summary

On January 21, 2021, President Joseph R. Biden, Jr. issued Executive Order 14000, *Supporting the Reopening and Continuing Operation of Schools and Early Childhood Education Providers*, "to ensure that students receive a high-quality education during the COVID-19 pandemic, and to support the safe reopening and continued operation of schools, child care providers, Head Start programs, and institutions of higher education."[7] As a part of that order, the President directed the Assistant Secretary for Civil Rights in the Department of Education to "deliver a report … on the disparate impacts of COVID-19 on students in elementary, secondary, and higher education."[8] This Report answers that call.

As is well known, COVID-19 upended classrooms and campuses across the country at the same time as the pandemic's devastating effects were being felt in our nation's economy and loss of life. In response, educators, staff, and school leaders at all educational levels and in all parts of the country have made extraordinary commitments and dedicated their talents, energy, and resources to address the needs of students and families in their communities. Parents, family members, and caregivers have done the same, supporting their students while responding to profound challenges in their own lives. Still, COVID-19's impacts have fallen unevenly and preliminary data indicate that they appear to be deepening disparities in educational opportunity and achievement, many of them generations in the making. With the pandemic's spotlight on these longstanding challenges, **we have a rare moment as a country to take stock and to begin the hard work of building our schools back better and stronger—with the resolve necessary to ensure that our nation's schools are defined not by disparities but by equity and opportunity for all students.**

In preparing this Report, the Office for Civil Rights (OCR) reviewed an array of publicly available sources documenting the impacts of COVID-19 on America's students. Many of those sources reported findings from surveys or interviews of students, families, and educators from across the country. Additional sources supplied information about how the pandemic has disrupted educational practice in ways that are likely to limit students' learning and achievement. Unless specifically noted, the findings and information presented here are not based on research conducted by the U.S. Department of Education. Nor is the discussion here offered as a comprehensive survey of research in the field. To the contrary, there are countless works in progress and even more to come that will enhance our understanding over time of the pandemic's many effects on students. It is also important to note that none of the statements in this Report is intended to set forth a legal or policy judgment under any of the statutes OCR enforces or any other source of law.

Instead, this Report, like the sources it discusses, tells part of a developing story by offering a series of snapshots from mid-March 2020, when many schools shifted abruptly to remote learning, to mid-April 2021. This developing story prompts eleven observations about how widely—and inequitably—the pandemic appears to have impacted America's students during this time.

> **OBSERVATION 1 (K-12)**: Emerging evidence shows that the pandemic has negatively affected academic growth, widening pre-existing disparities. In core subjects like math and

[7] Exec. Order No. 14000, 86 Fed. Reg. 7,215 (Jan. 26, 2021).
[8] *Id.* at 7,216.

reading, there are worrisome signs that in some grades students might be falling even further behind pre-pandemic expectations.

OBSERVATION 2 (K-12) COVID-19 appears to have deepened the impact of disparities in access and opportunity facing many students of color in public schools, including technological and other barriers that make it harder to stay engaged in virtual classrooms.

OBSERVATION 3 (K-12): Even before the pandemic, many students learning English struggled to participate on equal terms in the classroom as they confronted the dual challenge of mastering grade-level content while continuing to learn English. For many English learners, the abrupt shift to learning from home amid the challenges of the pandemic has made that struggle even harder.

OBSERVATION 4 (K-12): For many elementary and secondary school students with disabilities, COVID-19 has significantly disrupted the education and related aids and services needed to support their academic progress and prevent regression. And there are signs that those disruptions may be exacerbating longstanding disability-based disparities in academic achievement.

OBSERVATION 5 (K-12): During the pandemic, lesbian, gay, bisexual, transgender and queer (LGBTQ+) students in elementary and secondary schools have faced particularly heightened risks for anxiety and stress and have lost regular access to affirming student organizations and supportive peers, teachers, and school staff. These students also are at an increased risk of isolation and abuse from unsupportive or actively hostile family members.

OBSERVATION 6 (K-12 and postsecondary): Nearly all students have experienced some challenges to their mental health and well-being during the pandemic and many have lost access to school-based services and supports, with early research showing disparities based on race, ethnicity, LGBTQ+ identity, and other factors.

OBSERVATION 7 (K-12 and postsecondary): Heightened risks of sexual harassment, abuse, and violence during the pandemic, including from household members as well as intimate-partners, and online harassment from peers and others, affect many students and may be having a continued disparate impact on K-12 and postsecondary girls and women and students who are transgender, non-binary, or gender non-conforming.

OBSERVATION 8 (K-12 and postsecondary): Identity-based harassment and violence have long had harmful effects on targeted students and their communities. Since the pandemic's start, Asian American and Pacific Islander students in particular have faced increased risk of harassment, discrimination, and other harms that may be affecting their access to educational opportunities.

OBSERVATION 9 (postsecondary): COVID-19 has raised new barriers for many postsecondary students, with heightened impacts emerging for students of color, students with disabilities, and students who are caregivers, both for entry into higher education and for continuing and completing their studies.

OBSERVATION 10 (postsecondary): Many institutions of higher education that disproportionately serve students of color and students from low-income backgrounds have

seen declines in enrollment since the pandemic began. During the 2020-21 academic year historically Black colleges and universities (HBCUs), Minority Serving Institutions (MSIs), and Tribal Colleges and Universities (TCUs) also had declines in enrollment that in some cases far outpaced enrollment declines in their predominantly white peer institutions. Higher-education institutions also reported a sharp drop-off in enrollment in 2020 of students graduating from high-poverty high schools compared to pre-pandemic numbers.

OBSERVATION 11 (postsecondary): Students with disabilities in higher education are facing significant hardships and other barriers due to COVID-19, threatening their access to education, including through remote learning, and basic necessities.

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COVID-19 AND K-12 STUDENTS: BARRIERS TO MEANINGFUL ACCESS, OPPORTUNITIES, AND OUTCOMES

Long before the pandemic first shuttered America's schools in spring 2020, students from historically marginalized communities already faced challenges in accessing basic educational resources—from well-trained, well-paid teachers and staff to adequate buildings and books. For these students, there was already a crisis of educational opportunity—a crisis that COVID-19 appears to have made worse.

For many students in America's public schools, the past year has been marked by the many challenges of a global pandemic—from facing illness or the illness or death of a loved one, experiencing abrupt school shutdowns, to feeling fear, grief, and anxiety as the virus spread. This discussion begins with a review of the pandemic's effects on instruction, student mental health, and student achievement for elementary and secondary school students. It then turns to COVID-19's disparate impacts on several groups of students: students of color, English learners, students with disabilities, and LGBTQ+ students. Each section includes background on disparities that predated the pandemic, followed by preliminary evidence of the disproportionate risks and harms experienced by these groups of students. It is important to keep in mind throughout the discussion here that data continues to be gathered and analyzed, and it will be some time before COVID-19's full impacts on students come clearly into view.

COVID-19's Widespread Effects on K-12 Students and Schools

COVID-19's Costs in Instructional Time, Access, and Content

For the past year many students have had to learn in front of screens at home and in other settings, affected by illness, loss, and economic hardship stemming from the global pandemic.[9] Even with heroic efforts by teachers, staff, and school leaders— many of whom quickly developed online lessons, remote-teaching plans, and concrete strategies for meeting students' basic needs—challenges were profound.

Rural and high-poverty school districts faced especially stark challenges early in the pandemic maintaining one-on-one contact and regular check-ins between teachers and students in a virtual setting.[10] More generally, learning time also dropped from pre-pandemic norms in many schools

[9] Kevin McElrath, *Nearly 93% of Households With School-Age Children Report Some Form of Distance Learning During COVID-19*, (U.S. Census Bureau Aug. 26, 2020), https://www.census.gov/library/stories/2020/08/schooling-during-the-covid-19-pandemic.html (reporting that more than nine in ten "households with school-age children reported their children engaged in some form of 'distance learning' from home").

[10] Sarah Hodgman et al., *Teacher Interactions with Students and Families*, AM. INSTS. FOR RESEARCH, at 2 (Feb. 2021), https://www.air.org/sites/default/files/Teacher-Interactions-with-Students-and-Families-COVID-19-Survey-Feb-2021rev.pdf; Betheny Gross and Alice Opalka, *Too Many Schools Leave Learning to Chance During the Pandemic*, CRPE (June 10, 2020), https://www.crpe.org/thelens/too-many-schools-leave-learning-chance-during-pandemic.

around the country. According to one nationally representative survey from May 2020, only 15% of districts expected their elementary students to be receiving instruction for more than four hours per day during remote learning, while 85% of districts expected instructional time to dip under four hours—more than an hour per day less than the pre-pandemic national average of five instructional hours per day.[11] Even further, according to the same report, in nearly a fifth of districts surveyed (17%), the instruction students did receive in spring 2020 was designed not to teach new skills and understanding, but to review what had already been taught—in a sort of pandemic holding pattern.[12]

That picture improved, however, through the 2020-21 school year. By January 2021, according to a nationally representative survey conducted by the National Center for Education Statistics, 31% of districts were reportedly offering more than five hours of live instruction for their fourth graders learning remotely, with 34% offering the same for eighth graders during remote learning.[13] Those figures remained roughly constant through the spring of 2021.[14] Meanwhile, the number of students receiving in-person instruction also rose steadily throughout the spring: from 38% of fourth graders and 28% of eighth graders learning in-person by January to 44% and 33%, respectively, by March.[15] And by the same time, 88% of schools nationwide were offering some form of in-person learning, whether fulltime or in hybrid settings, with 54% of schools with fourth or eighth grades providing the option of learning in-person fulltime to all students.[16] Yet, despite the improving picture overall, Black, Latinx, and Asian students were all substantially less likely to be enrolled in fulltime in-person instruction through the spring.[17]

COVID-19's Toll on Student Well-being and Mental Health

More than a year of "staggering" loss,[18] grief, isolation, and uncertainty has taken a toll on many students' mental health, compounding the challenges students face in the classroom, whether online or in person. Last May, nearly three in ten parents surveyed in a Gallup poll said their child was "experiencing harm to [their] emotional or mental health," with 45% citing the separation from teachers and classmates as a "major challenge."[19] Suicidal ideation was also on the rise among

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[11] Jordan Rickles et al., *Approaches to Remote instruction: How District Responses to the pandemic differed across contexts'*, AM. INSTS. FOR RESEARCH, at 2 (Oct. 2020), https://www.air.org/sites/default/files/COVID-Survey-Approaches-to-Remote-Instruction-FINAL-Oct-2020.pdf.

[12] *Id.* at 3.

[13] U.S. Dep't of Educ., National Ctr. for Educ. Statistics, *Monthly School Survey Dashboard*, https://ies.ed.gov/schoolsurvey/.

[14] *Id.* (reporting that by February 2021, 29% of schools said they were offering five or more hours of live instruction for fourth graders learning remotely and 35% offered the same for eighth graders also in remote learning; by March, those figures were 27% and 34%, respectively).

[15] *Id.*

[16] *Id.*

[17] *Id.* (reporting that, by March 2021, 58% of white students attending schools that serve fourth graders—often but not always elementary schools—were enrolled in fulltime in-person instruction, while only 36% of Black students, 35% of Latinx students, and 18% of Asian students in schools serving fourth graders were enrolled in fulltime in-person instruction.).

[18] Rachel Kidman et al., *Estimates and Projections of COVID-19 and Parental Death in the US*, JAMA PEDIATRICS (Apr. 5, 2021), https://jamanetwork.com/journals/jamapediatrics/fullarticle/2778229/ ("The number of children experiencing a parent dying of COVID-19 is staggering, with an estimated 37 300 to 43 000 already affected. For comparison, the attacks on September 11, 2001, left 3000 children without a parent.").

[19] Valerie J. Calderon, *U.S. Parents Say COVID-19 Harming Child's Mental Health*, GALLUP (June 16, 2020), https://news.gallup.com/poll/312605/parents-say-covid-harming-child-mental-health.aspx.

children and young adults, as shutdowns and social isolation undermined many students' mental and emotional well-being.[20] Even those with less severe responses still overwhelmingly reported an increase in negative feelings during the pandemic, as did many of their parents.[21] And throughout the 2020-21 school year, educators, parents, and administrators across the country continued to cite social and emotional wellbeing as major challenges facing their students,[22] especially those learning from home.[23]

Meanwhile many school districts, straining under logistical challenges and uncertain budgets,[24] have pointed to staffing shortages as an ongoing challenge in supporting students who are struggling. According to the National Association of Elementary School Principals, nearly 70% of school principals who participated in a survey conducted early in 2021 said they could not meet their

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[20] Ryan M. Hill et al., *Suicide Ideation and Attempts in a Pediatric Emergency Department Before and During COVID-19*, PEDIATRICS, at 3 (2020), https://pediatrics.aappublications.org/content/pediatrics/early/2020/12/15/peds.2020-029280.full.pdf.

[21] Rebecca T. Leeb et al., U.S. Ctrs. for Disease Control and Prevention, *Mental Health–Related Emergency Department Visits Among Children Aged <18 Years During the COVID-19 Pandemic—United States, January 1–October 17, 2020,* 69 MORBIDITY AND MORTALITY WEEKLY REP. 1675, 1675 (Nov. 13, 2020) https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm (reporting from January through October of last year, "the proportion of mental health–related visits for children aged 5–11 and 12–17 years increased approximately 24% and 31%, respectively"); *New ParentsTogether Survey Reveals Kids Face Mental Health Crisis as Pandemic Enters Sixth Month,* PARENTSTOGETHER FOUND. (Sept. 23, 2020), https://parentstogetheraction.org/2020/09/23/new-parentstogether-survey-reveals-kids-face-mental-health-crisis-as-pandemic-enters-sixth-month/ (as of September 2020, "nearly half of parents [surveyed] report[ed] that their kids [were] struggling with mental health and/or behavioral problems while 70% of kids report[ed] having more negative feelings including being overwhelmed, sad, or worried."); Stephen W. Patrick et al., *Well-being of Parents and Children During the COVID-19 Pandemic: A National Survey*, PEDIATRICS 1 (2020), ("Since March 2020, 27% of parents reported worsening mental health for themselves, and 14% reported worsening behavioral health for their children.").

[22] *See, e.g.*, WISCONSIN-MINNESOTA COMPREHENSIVE CENTER, MINNESOTA SAFE LEARNING SURVEY: WINTER 2021 SURVEY OF MINNESOTA EDUCATORS, FAMILIES, AND STUDENTS, at 4 (2021), https://www.cehd.umn.edu/research/safe-learning-survey/ (reporting based on a February 2021 survey of over 23,000 Minnesota respondents that educators, school administrators, and families agreed that "mental health" was among the major challenges facing students); Jenny Brundin, *'All Kinds Of Trauma': Students Are Returning To School, But Are We Ready To Help Them Cope?*, CPR NEWS, Apr. 5, 2021, https://www.cpr.org/2021/04/05/all-kinds-of-trauma-students-are-returning-to-school-but-are-we-ready-to-help-them-cope/ (reporting that "Children's Hospital Colorado [has been] seeing twice as many patients reporting increased anxiety, depression and feelings of isolation and social disconnectedness"); Erica L. Green, *Surge of Student Suicides Pushes Las Vegas Schools to Reopen*, THE NEW YORK TIMES, Jan. 24, 2021, https://www.nytimes.com/2021/01/24/us/politics/student-suicides-nevada-coronavirus.html (reporting that, in early 2021, a "spate of student suicides in and around Las Vegas has pushed the Clark County district, the nation's fifth largest, toward bringing students back as quickly as possible").

[23] Jorge V. Verlenden et al, U.S. Ctrs. for Disease Control and Prevention, *Association of Children's Mode of School Instruction with Child and Parent Experiences and Well-Being During the COVID-19 Pandemic — COVID Experiences Survey, United States, October 8–November 13, 2020* 70 MORBIDITY AND MORTALITY WEEKLY REP. 369, 371 (Mar. 19, 2021), https://www.cdc.gov/mmwr/volumes/70/wr/pdfs/mm7011a1-H.pdf ("Parents of children receiving virtual instruction were more likely than were parents of children receiving in-person instruction to report that their children experienced decreased physical activity (62.9% versus 30.3%), time spent outside (58.0% versus 27.4%), in-person time with friends (86.2% versus 69.5%), virtual time with friends (24.3% versus 12.6%), and worsened mental or emotional health (24.9% versus 15.9%).").

[24] *See* Matt Barnum, *Across U.S., Schools' Worst Budget Fears Have Been Avoided. No One's Celebrating Yet*, CHALKBEAT, (Dec. 4, 2020), https://www.chalkbeat.org/2020/12/4/22153539/schools-budget-covid-congress (observing that, despite seeing no "big, immediate financial hit" from COVID, for districts "[t]he longer-term picture remains concerning").

students' mental health needs with the staff they had.[25] Concern has also been reported about children facing heightened risks of abuse at home through the pandemic.[26]

COVID-19 and Academic Achievement

As students have suffered throughout the pandemic, so too has their learning. In the fall of 2020, according to some assessments, many students appeared to have made gains from the previous year, though in most cases, significantly smaller ones than in prior year-over-year comparisons—including a five to ten percentile point drop in math achievement on NWEA's MAP Growth assessments.[27] This and other early reports suggest that trends may vary by subject, with math skills generally slipping more than in reading, perhaps substantially so.[28] Data at the state and district level last fall also painted a mixed picture, with some reports finding that students had made academic gains by fall 2020 but in amounts that were less than in previous years and uneven across subjects.[29] Another study by McKinsey & Company, relying on other assessment data, came to more troubling conclusions, finding that by fall students in its sample "learned only 67 percent of the math and 87 percent of the reading that grade-level peers would typically have learned."[30] According to McKinsey's analysis, that would translate into a three-month loss in learning in math, and one-and-a-half months in reading.[31]

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[25] *NAESP Releases Results of Midyear National Principal Survey on COVID-19 in Schools,* NAT'L ASS'N OF ELEMENTARY SCH. PRINCIPALS (Jan. 13, 2021), https://www.naesp.org/content/naesp-releases-results-midyear-national-principal-survey-covid-19-schools.

[26] Kathryn L. Humphreys et al., *Increased Risk for Family Violence During the COVID-19 Pandemic*, 146 PEDIATRICS PERSPECTIVES (2020), https://pubmed.ncbi.nlm.nih.gov/32317306/; DANA WEINER ET AL., CHAPIN HALL AT THE U. OF CHI., COVID-19 AND CHILD WELFARE: USING DATA TO UNDERSTAND TRENDS IN MALTREATMENT AND RESPONSE, at 1 (2020), https://www.chapinhall.org/wp-content/uploads/Covid-and-Child-Welfare-brief.pdf.

[27] Megan Kuhfeld et al., *Learning During COVID-19: Initial Findings on Student's Reading and Math Achievement And Growth*, NWEA RESEARCH, at 3 (Nov. 2020), https://www.nwea.org/content/uploads/2020/11/Collaborative-brief-Learning-during-COVID-19.NOV2020.pdf.

[28] *Id.*; RENAISSANCE, HOW KIDS ARE PERFORMING: TRACKING THE IMPACT OF COVID-19 ON READING AND MATHEMATICS ACHIEVEMENT, at 5 (Fall 2020), https://renaissance.widen.net/s/wmjtlxkhbm; CURRICULUM ASSOCIATES, WHAT WE'VE LEARNED ABOUT UNFINISHED LEARNING, at v (Mar. 2021), https://www.curriculumassociates.com/-/media/mainsite/files/i-ready/iready-understanding-student-needs-paper-winter-results-2021.pdf (explaining that "[t]he resulting body of research" last fall on students' academic achievement "from academia and education testing companies largely agree[d] that while students [were] behind this year, they did not experience the anticipated precipitous drop in achievement that was initially predicted," and that pandemic-related impacts "in mathematics [was] greater than in reading.").

[29] *See, e.g.*, TEX. EDUC. AGENCY, STATE OF TEXAS ASSESSMENTS OF ACADEMIC READINESS END-OF-YEAR AND BEGINNING-OF-YEAR RESULTS (Dec. 2020), https://tea.texas.gov/sites/default/files/boy-summary-122120.pdf (surveying results from two optional administrations of state standardized assessment); EMPOWERK12, COVID-19'S IMPACT ON STUDENT ACHIEVEMENT AND ACADEMIC GROWTH IN D.C. (Dec. 2020), https://www.empowerk12.org/s/COVID-19s-Impact-on-DC-Student-Achievement-EmpowerK12-Initial-Findings-Dec-2020.pdf (analyzing assessment results for nearly 30,000 students in the District of Columbia).

[30] *See* Emma Dorn et al., *COVID-19 and Learning Loss—Disparities Grow and Students Need Help*, MCKINSEY & CO. (Dec. 8, 2020), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help.

[31] *Id.*

Updated winter data from the Renaissance Start Assessment indicated that students may have recovered some of the ground they lost in both math and reading.[32] Still, Renaissance found that "the average reading and math performance of students remain[ed] behind pre-pandemic expectations" by winter 2021, "with math achievement still more impacted than reading."[33] And students' gains were not spread evenly across groups. In Renaissance's estimation, late elementary and early middle school students were still "about 8–11 weeks behind midyear expectations" in math by last winter, with middle schoolers "about 6–10 weeks behind expectations" in reading.[34] Meanwhile, academic progress for students of color appears to "have been disproportionately impacted by the pandemic,"[35] as discussed more fully below.

[32] Renaissance, HOW KIDS ARE PERFORMING: TRACKING THE MIDYEAR IMPACT OF COVID-19 ON READING AND MATHEMATICS ACHIEVEMENT, at 5 (2021) (reporting, based on a comparison of "fall and winter performance results" on the Renaissance Star assessment, that "COVID-19 achievement impacts are beginning to shrink in many grades," for both math and reading).
[33] *Id.* at 14.
[34] *Id.* at 5. To help contextualize its estimates, Renaissance explained that it regarded "any weeks estimate that was plus or minus 3 weeks as being approximately 'close to expectations'." *Id.* at 18.
[35] *Id.* at 16.

Deepening Disparities for Students of Color

Even before the pandemic, many students of color faced significant barriers to educational opportunity—barriers that the pandemic appeared to be making even steeper.

Pre-Pandemic Disparities

As this section documents, pre-pandemic disparities in resources, opportunities, and outcomes experienced by many students of color set the foundation for additional race-based disparities in educational opportunities as a result of COVID-19.

Resource Disparities in Schools and at Home before COVID-19

State budgets for public education have been tight for more than a decade, affecting many schools and students.[36] But across the country, students of color are still far likelier than their white peers to attend schools that have fewer resources in settings that are less safe and more likely to include temporary trailers and poorly maintained exteriors and HVAC systems.[37] In 2018, for example, students of color, especially those from Black, Hispanic/Latinx,[38] and Native American families, typically attended schools in districts that received nearly 13% less in state and local funding per student than schools in districts serving the fewest students of color.[39]

Many of these students and their families also experience fewer resources at home, with parents or guardians earning lower pay[40] for work that is disproportionately likely to require nonstandard

[36] Michael Leachman et al., *A Punishing Decade for School Funding,* CTR. ON BUDGET AND POL'Y PRIORITIES, at 1 (Nov. 29, 2017), https://www.cbpp.org/research/state-budget-and-tax/a-punishing-decade-for-school-funding (documenting the "dramatic[]" decline across the states in public elementary and secondary schools).

[37] U.S. COMM'N ON CIVIL RIGHTS, PUBLIC EDUCATION FUNDING INEQUITY BRIEF, at 105 (2018), https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf; Alejandro Vazquez-Martinez et al., *Unsafe School Facilities Reinforce Educational Inequities Among Marginalized Students*, BROOKINGS INST. (Sept. 1, 2020), https://www.brookings.edu/blog/brown-center-chalkboard/2020/09/01/unsafe-school-facilities-reinforce-educational-inequities-among-marginalized-students/; U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-20-494, K-12 EDUCATION: SCHOOL DISTRICTS FREQUENTLY IDENTIFIED MULTIPLE BUILDING SYSTEMS NEEDING UPDATES OR REPLACEMENT (June 2020), https://www.gao.gov/products/gao-20-494. For earlier data, *see* U.S. Dep't of Educ, Office for Civil Rights, Dear Colleague Letter: Resource Comparability, https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf.

[38] When discussing research on the experiences of Latinx students, this report will track the terminology of those studies, some of which refer to "Latino" or "Hispanic" students.

[39] Ivy Morgan et al., *Funding Gaps 2018: An Analysis of School Funding Equity Across the U.S. and Within Each State*, THE EDUC. TRUST, at 10 (2018), https://s3-us-east-2.amazonaws.com/edtrustmain/wp-content/uploads/2014/09/20180601/Funding-Gaps-2018-Report-UPDATED.pdf.

[40] *See, e.g.*, ELISE GOULD, ECON. POL'Y INST., STATE OF WORKING WAGES, at 14 (2020), https://files.epi.org/pdf/183498.pdf (reporting that, by 2019, median wages for Black workers "were only 75.6% of white wages"—a decline from 79.2% in 2000—and that median Hispanic workers' wages had risen to 74.6% of white wages, up from 69.7% in 2000).

schedules and unpredictable hours,[41] resulting in higher-than-average levels of household poverty.[42] Even without a destabilizing and potentially catastrophic event like parental job loss—or a global pandemic—this resource disparity can affect household access to essential learning tools like broadband internet access.[43] Although we now live in a "connected world," many students have long gone without that connection at home and the wealth of knowledge and creativity that comes from it.

Before the Pandemic: Fewer Opportunities, Poorer Outcomes

Well before the pandemic, many students of color also experienced disparities in their academic opportunities: less experienced teachers, tracking into less rigorous courses and programs, and lower expectations for their educational achievement.[44] For example, although Black students were 14.2% of all public high school seniors in 2020, they accounted for only 8.3% of students nationwide who sat for an AP exam[45]—an increase of only 1.3% since 2006.[46] These disparities—including fewer opportunities to learn advanced, ambitious content from highly trained teachers—have also had

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[41] *See, e.g.*, Leila Morsy & Richard Rothstein, *Parents' Non-Standard Work Schedules Make Adequate Childrearing Difficult*, ECON. POL'Y INST., at 2 (Aug. 6, 2015), https://www.epi.org/publication/parents-non-standard-work-schedules-make-adequate-childrearing-difficult-reforming-labor-market-practices-can-improve-childrens-cognitive-and-behavioral-outcomes/ (reporting that "at age 29 blacks are about 60 percent more likely to work a non-daytime schedule than whites and Asians, and about 24 percent more likely to have non-standard schedules of all kinds, including non-daytime, rotating shift, or variable schedules"); Danielle Crosby & Julia Mendez, *How Common Are Nonstandard Work Schedules Among Low Income Hispanic Parents of Young Children?*, NAT'L RESEARCH CTR. ON HISPANIC CHILDREN & FAMILIES, at 2 (Nov. 2017), https://www.hispanicresearchcenter.org/wp-content/uploads/2017/11/Hispanics-Center-parental-work-hours-Brief-11.1-V21.pdf (estimating based on an analysis of the nationally representative 2012 National Survey of Early Care and Education (NSECE) that "[m]ore than 3 in 4 Hispanic children whose parents reported work activity in the past week have a parent who worked during nonstandard times," with "most … also report[ing] some work during standard weekday times").

[42] U.S. COMM'N ON CIVIL RIGHTS, PUBLIC EDUCATION FUNDING INEQUITY BRIEF, at 105 (2018), https://www.usccr.gov/pubs/2018/2018-01-10-Education-Inequity.pdf.

[43] Common Sense Media, *Looking Back, Looking Forward: What it will take to permanently close the k-12 digital divide*, at 9 (2020), https://www.commonsensemedia.org/sites/default/files/uploads/pdfs/final_-_what_it_will_take_to_permanently_close_the_k-12_digital_divide_vfeb3.pdf; Linda A. Jacobson, *Digital and Economic Divides Put U.S. Children at Greater Educational Risk During the COVID-19 Pandemic*, PRB (Aug. 18, 2020), https://www.prb.org/economic-and-digital-divide/; *see also* U.S. Dep't of Educ., Nat'l Center for Educ. Statistics, *Student Access to Digital Learning Sources Outside of the Classroom* (Apr. 2018), https://nces.ed.gov/pubsearch/pubsinfo.asp?pubid=2017098 (documenting disparities in access to virtual technology, including broadband internet).

[44] Kenneth Shores et al., *Categorical Inequality in Black and White: Linking Disproportionality across Multiple Educational Outcomes*, 57 AM. EDUC. RESEARCH J. 2089, 2097 (2020); Roderick L. Carey, *Am I Smart Enough? Will I Make Friends? And Can I Even Afford It? Exploring the College-Going Dilemmas of Black and Latino Adolescent Boys*, 125 AM. J. OF EDUC. 381, 382 (2019) (noting the "multitude of [] educational barriers [that] disrupt particularly boys and young men of color, as they aspire to graduate high school, access higher education, succeed in college, and even imagine postgraduate studies"); Patricia Gandara, *Lost Opportunities: The Difficult Journey to Higher Education for Underrepresented Minority Students*, NAT'L ACADS. PRESS (2001) https://www.nap.edu/read/10186/chapter/10.

[45] College Board, *AP Cohort Data Report: Graduating Class of 2020*, at 20 (2020), https://reports.collegeboard.org/pdf/2020-ap-cohort-data-report.pdf.

[46] Philip Handwerk et al., *Access to Success: Patterns of Advanced Placement Participation in U.S. High Schools* 7 (July 2008), www.ets.org/Media/Research/pdf/PIC-ACCESS.pdf (noting that data from 2006 showed that, while Black students comprised "almost 14 percent of all public high school seniors, they comprise only about 7 percent of the AP examinee population").

harsh consequences, including reduced academic achievement,[47] lower college attendance rates,[48] and less likelihood of having the specialized skills needed for success in higher education or on the job.[49]

Nor are these trends new. OCR's Civil Rights Data Collection (CRDC), which reports data on leading civil rights indicators related to educational opportunity in America's public schools from preschool through 12th grade, shows glaring differences in students' academic opportunities in high school courses, including classes that are building blocks for STEM careers. In 2015-16, for example, while 50% of all high schools offered a course in Calculus and 60% offered a course in Physics, those figures dropped to 38% and 51% respectively in schools serving a large number of Black and Latinx students.[50] These disparities are especially stark for Black students, who during that same time period accounted for 8% of Calculus enrollment nationwide while representing 16% of total high school enrollment.[51] Differences in earlier math enrollment are also vivid: Though accounting for 17% of total 8th grade enrollment, Black students were only 11% of the eighth graders enrolled in Algebra I, and just 9% of those who successfully completed the course.[52] Much the same gap appears for Black and Latinx student enrollment in gifted and talented programs.[53]

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[47] *See* William C. Symonds et al., *Pathways to Prosperity: Meeting the Challenge of Preparing Young Americans for the 21st Century*, PATHWAYS TO PROSPERITY PROJECT, HARVARD GRAD. SCH. OF EDUC., at 6-7 (2011); Wayne Camera, *College Persistence, Graduation, and Remediation*, COLLEGE BOARD 3, https://files.eric.ed.gov/fulltext/ED562658.pdf; David K. Cohen et al., *Resources, Instruction, and Research*, 25 EDUC. EVALUATION & POL'Y ANALYSIS 119 (2003).

[48] Kenneth Shores et al., *Categorical Inequality in Black and White: Linking Disproportionality across Multiple Educational Outcomes*, 57 AM. EDUC. RESEARCH J. 2089, 2097 (2020); *see also* Michael Chajewski et al., *Examining The Role Of Advanced Placement Exam Participation In 4-Year College Enrollment*, 30 EDUC. MEASUREMENT: ISSUES AND PRACTICE 16, 24 (2011) (finding that "AP participation was associated with an increase in the odds of enrolling in a 4-year institution, and this effect was substantial").

[49] *See* Roderick L. Carey, *Am I Smart Enough? Will I Make Friends? And Can I Even Afford It? Exploring the College-Going Dilemmas of Black and Latino Adolescent Boys*, 125 AM. J. OF EDUC. 381, 381 (2019) (noting the extensive literature documenting how "youth from racially and economically marginalized groups continually find their postsecondary educational pathways blocked for economic, societal, and institutional reasons").

[50] U.S. Dep't of Educ., Office for Civil Rights, *2015-16 Civil Rights Data Collection: Stem Course Taking*, at 5 fig.4 (2018) https://ocrdata.ed.gov/assets/downloads/stem-course-taking.pdf.

[51] *Id.* at 7 fig.7.

[52] *Id.* at 3 fig.2.

[53] The Education Trust, *Inequities in Advanced Coursework: What's Driving Them and What Leaders Can Do*, at 8 (2019) ("Our analysis [of the 2015-16 CRDC data] shows that although Black students make up 16% of elementary schoolers, they make up only 9% of students in gifted and talented programs. Similarly, 1 in 4 elementary school students are Latino, but Latino students make up just 18% of gifted and talented enrollment.").

Even when students of color have had access to advanced coursework, they often do not receive instruction from experienced teachers. As OCR has reported previously, schools serving the most Black and Latinx students are 1.5 times more likely to employ teachers who are newest to the profession, as compared to schools serving the fewest of those students.[54] Opportunities to learn from experienced and accomplished teachers, leaders, and support staff clearly matter to student achievement.[55] And yet, for many students of color, those opportunities have long been harder to come by.[56]

"Across each disciplinary action, Black students, boys, and students with disabilities experienced disproportionate levels of discipline [according to 2013 14 CRDC data]. Black students were particularly overrepresented among students who were suspended from school, received corporal punishment, or had a school related arrest … For example, Black students represented 15.5 percent of all public school students and accounted for 39 percent of students suspended from school, an overrepresentation of about 23 percentage points."

U.S. Government Accountability Office, GAO 18 258, DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES (Mar. 2018)

In addition to these opportunity gaps, students of color also experience startling discrepancies in how often they are excluded from the classroom for disciplinary reasons. Data released as a part of the 2017-18 CRDC once again confirm that racially disproportionate disciplinary exclusions persist and have insidious consequences for academic opportunity, with Black students four times more likely to be suspended from school than their white peers, and more than twice as likely to be referred to law enforcement or arrested.[57]

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[54] U.S. Dep't of Educ., Office for Civil Rights, *Dear Colleague Letter: Resource Comparability*, at 4 (Oct. 1, 2014), https://www2.ed.gov/about/offices/list/ocr/letters/colleague-resourcecomp-201410.pdf; *see also* U.S. Dep't of Educ., Office for Civil Rights, *2011-12 Civil Rights Data Collection, Data Snapshot: Teacher Equity* (2014), https://ocrdata.ed.gov/assets/downloads/CRDC-Teacher-Equity-Snapshot.pdf.

[55] Frank Adamson & Linda Darling-Hammond, *Funding Disparities and the Inequitable Distribution of Teachers: Evaluating Sources and Solutions*, 20 EDUC. POL'Y ANALYSIS ARCHIVES 1, 30-32 (2012) (documenting inequalities in the allocation of high-quality teachers and in teacher salaries, as well as finding that teacher qualifications are related to student achievement, even when controlling for demographic variables known to impact student achievement); Charles T. Clotfelter et al., *Teacher Credentials and Student Achievement: Longitudinal Analysis with Student Fixed Effects*, 26 ECON. EDU. REV. 673, 673 (2007) ("Taken together the various teacher credentials exhibit quite large effects on math achievement, whether compared to the effects of changes in class size or to the socio-economic characteristics of students.").

[56] *See, e.g.*, U.S. Dep't of Educ., NAT'L CTR. FOR EDUC. EVALUATION AND REG'L ASSISTANCE, *Access to Effective Teaching for Disadvantaged Students* (NCEE 2014-4001), at 27 (2013), https://ies.ed.gov/ncee/pubs/20144001/pdf/20144001.pdf (Study of 29 geographically diverse districts found significant disparities in access to effective teachers for students receiving free- and reduced-price lunch (FRL), and estimated that by providing all students with equal access to effective teachers, "[t]he difference in student achievement between FRL and non-FRL students would decrease from 28 percentile points to 26 percentile points in ELA and from 26 percentile points to 24 percentile points in math."); Donald Boyd et al., *The Narrowing Gap in New York City Teacher Qualification and Its Implications for Student Achievement in High Poverty Schools*, 27 J. POL'Y ANALYSIS & MGMT. 793, 794 (2008) ("A growing literature finds that teachers 'sort' very unequally across schools, with the least-experienced teachers and those with the poorest academic records often found in schools with the highest concentrations of low-income, low-performing, and minority students.").

[57] U.S. Dep't of Educ., Civil Rights Data Collection(for 2017-18) (Oct. 14, 2020), https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2017-18.html; *see also* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-18-258, DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES (Mar. 2018), https://www.gao.gov/assets/gao-18-258.pdf (similarly documenting disproportionality in discipline for students of color).

The Pre-pandemic Disparities in Academic Achievement

Not surprisingly, the longstanding gaps in access and resources, which fall hardest on students of color, carry over to measures of their academic achievement and outcomes.[58] According to the latest National Assessment of Educational Progress (NAEP), Black and Latinx students nationwide continued to trail their white peers on the eighth grade Math assessment—by 32 points (on a 500-point scale) in the case of Black students (260 to 292) and 24 points for Latinx students (268 to 292).[59] Fourth-grade reading scores tell a similar story, with Black students lagging their white peers by 26 points (204 to 230), and Latinx students scoring lower than white students by 21 points (209 to 230).[60]

These disparities are associated with devastating financial costs both for individuals and the American economy. One study, for example, estimated that, in 2009, disparities in achievement between students of color and white students shaved some $310 billion to $525 billion a year in productivity from the U.S. economy—from 2 to 4% of GDP.[61]

> *"[Being a student of color living in poverty is] the equivalent of a permanent economic recession. Unfortunately, the past decade has seen little progress in narrowing these disparities. The average black or Hispanic student remains roughly two years behind the average white one, and low-income students continue to be underrepresented among top performers."*[62]

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[58] *See generally,* Kenneth Shores et al., *Categorical Inequality in Black and White: Linking Disproportionality across Multiple Educational Outcomes*, 57 AM. EDUC. RESEARCH J. 2089, 2097 (2020) (documenting the relation between these gaps and disparities in achievement and outcome); *See* Roderick L. Carey, *Am I Smart Enough? Will I Make Friends? And Can I Even Afford It? Exploring the College-Going Dilemmas of Black and Latino Adolescent Boys*, 125 AM. J. OF EDUC. 381, 382 (2019) (noting the "multitude of [] educational barriers [that] disrupt particularly boys and young men of color, as they aspire to graduate high school, access higher education, succeed in college, and even imagine postgraduate studies").

[59] Southern Educ. Found., *2019 NAEP Report Card Analysis* (2019), https://www.southerneducation.org/resources/2019naep/.

[60] *Id.*

[61] Emma Dorn et al., *COVID-19 And Student Learning In The United States: The Hurt Could Last A Lifetime*, MCKINSEY & CO. (June 1, 2020), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime.

[62] *Id.*

COVID-19 has deepened widespread inequalities in access and opportunity facing many students of color in public schools.

Against this backdrop, the pandemic's effects on pre-existing race- and ethnicity-based inequities, as indicated by early evidence, have been harsh and predictable.

COVID-19's Disparate Impacts in Illness, Loss, and Economic Crisis

The pandemic hit disproportionately close to home for many families of color. The number of children who have lost a parent to COVID-19 has been staggering—with somewhere between 37,300 and 43,000 children already impacted as of February 2021, by one recent estimate.[63] Those losses appear to have hit families of color especially hard. According to the same estimate, Black children accounted for 20% of those who had lost a parent to COVID-19 through early 2021, despite making up only 14% of all children in the United States.[64] These losses only deepen their risk for "traumatic grief, depression, [and] poor educational outcomes."[65]

Throughout the pandemic Black and Latinx adults have also disproportionately faced higher risk of contracting COVID-19, along with a disproportionate likelihood of hospitalization and death, not least because they were more likely to be called to the pandemic's frontlines as essential workers.[66] Away from the front lines, Black and Latinx workers also were more likely than others to be employed in sectors where businesses have shut down, either temporarily or permanently, slashing income and other resources,[67] With this economic crisis also came a new surge in hunger and food insecurity—a problem again disproportionately plaguing students and families of color,[68] especially

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[63] Rachel Kidman et al., *Estimates and Projections of COVID-19 and Parental Death in the US*, JAMA PEDIATRICS (Apr. 5, 2021), https://jamanetwork.com/journals/jamapediatrics/fullarticle/2778229/.

[64] Notably, these estimates did not account for "bereavement of nonparental primary caregivers." *Id.*

[65] *Id.*; *see also* David A. Brent et al., *Longitudinal Effects of Parental Bereavement on Adolescent Developmental Competence*, 41 J. OF CLINICAL CHILD & ADOLESCENT PSYCH. 778, 779 (2012), https://www.tandfonline.com/doi/pdf/10.1080/15374416.2012.717871 (reviewing research finding diminished educational outcomes among youth who have lost a parent).

[66] *See* J. Corey Williams et al., *Reopening the United States: Black and Hispanic Workers Are Essential and Expendable Again,* 110 AM. J. PUB. HEALTH 1506 (2020).

[67] Laura Montenovo et al., *Determinants of Disparities in Covid-19 Job Losses*, Nat'l Bureau of Econ. Research Working Paper, at 6 (last rev. Dec. 2020) https://www.nber.org/system/files/working_papers/w27132/w27132.pdf (noting that "Hispanics workers fared worst during the COVID-19 pandemic when compared to older and non-Hispanic workers and to the previous recessions," and that "Blacks also fared worse, but by a smaller margin"); Jhacova Williams, *Laid Off More, Hired Less: Black Workers in the COVID-19 Recession*, THE RAND BLOG (Sept. 29, 2020) (reporting that "at every education level, Black workers have higher unemployment rates compared to their white counterparts"), (https://www.rand.org/blog/2020/09/laid-off-more-hired-less-black-workers-in-the-covid.html.

[68] Diane Schanzenbach & Abigail Pitts, *How Much Has Food Insecurity Risen? Evidence from the Census Household Pulse Survey*, INST. FOR POL'Y RESEARCH, NORTHWESTERN UNIV., at 1 (June 10, 2020) (finding that, as of last summer, "food insecurity ha[d] doubled overall, and tripled among households with children," with higher rates reported among Black and Latinx individuals and families), https://www.ipr.northwestern.edu/documents/reports/ipr-rapid-research-reports-pulse-hh-data-10-june-2020.pdf; Lauren Bauer, *Hungry at Thanksgiving: A Fall 2020 update on food insecurity in the U.S.*,

for students who went without meals during school closures.[69] And disproportionately many students and families of color also had to struggle with the further challenge of homelessness—yet another disparity that may be worsening with the pandemic.[70]

Disparities in Access to Mental Health Services During the Pandemic

Mental health services are an ongoing need for many students, as noted above. For students of color, who disproportionately rely on their schools for those services, the pandemic has only compounded that need.[71] Only months into the pandemic, school principals were already seeing this disparity, with those whose student body is mainly or exclusively students of color being more likely than principals leading majority-white schools to identify a major need for high-quality materials to support students' social-emotional learning.[72]

Participation Disparities in Full-Time In-Person Instruction

In-person instruction provides strong engagement between students and teachers, students and their peers, and direct access to the full-range of academic and wraparound services that a school provides. However, students of color have been less likely to be enrolled in full-time in-person instruction during the pandemic. As recently as March 2021, 58% of white students attending schools that serve fourth graders—often but not always elementary schools—were enrolled in fulltime in-person instruction, while only 36% of Black students, 35% of Latinx students, and 18% of Asian students in schools serving fourth graders were enrolled in fulltime in-person instruction.[73]

BROOKINGS INST. (Nov. 23, 2020), https://www.brookings.edu/blog/up-front/2020/11/23/hungry-at-thanksgiving-a-fall-2020-update-on-food-insecurity-in-the-u-s/ (noting that food insecurity, despite improving since last summer, remained elevated through the fall).

[69] *See, e.g.*, Eliza W. Kinsey et al., *School Closures During COVID-19: Opportunities for Innovation in Meal Service*, 110 AM. J. PUB. HEALTH 1635, 1636 (2020) (explaining that "missed meals [at school] may have a significant impact on children's health, nutrition, and food security," and that the consequences "are likely to be magnified among low-income, Black, and Hispanic children who are already at greater risk for poor physical and mental health and worse academic performance than their higher-income and White counterparts," and "are also more likely to be eligible for free or reduced-price meals and more likely to participate in school meals than their White and Asian peers).

[70] *See* U.S. DEP'T OF HOUS. AND URBAN DEV., OFFICE OF CMTY. PLANNING AND DEV., THE 2020 ANNUAL HOMELESS ASSESSMENT REPORT (AHAR) TO CONGRESS, at 1 (Jan. 2021), https://www.huduser.gov/portal/sites/default/files/pdf/2020-AHAR-Part-1.pdf (reporting that, as of January 2020, "[p]eople identifying as black or African American accounted for 39 percent of all people experiencing homelessness and 53 percent of people experiencing homelessness as members of families with children," while those "identifying as Hispanic or Latino (who can be of any race) are about 23 percent of the homeless population"); SCHOOLHOUSE CONNECTION AND POVERTY SOLUTIONS AT THE UNIVERSITY OF MICHIGAN, LOST IN THE MASKED SHUFFLE & VIRTUAL VOID: CHILDREN AND YOUTH EXPERIENCING HOMELESSNESS AMIDST THE PANDEMIC, at 11 (2020), https://schoolhouseconnection.org/wp-content/uploads/2020/11/Lost-in-the-Masked-Shuffle-and-Virtual-Void.pdf (reporting that, "despite overall homeless student identification and enrollment [being] down, the number of children and youth experiencing homelessness has likely increased due to the economic crisis").

[71] *See* Mir M. Ali et al., *Utilization of Mental Health Services in Educational Setting by Adolescents in the United States,* 89 J. SCH. HEALTH 393 (Mar. 18, 2019), https://doi.org/10.1111/josh.12753; *See also* Ezra Golberstein et al., *Coronavirus Disease 2019 (COVID-19) and Mental Health for Children and Adolescents*, 174 JAMA PEDIATRICS 819 (Apr. 14, 2020) https://doi.org/10.1001/jamapediatrics.2020.1456.

[72] Laura S. Hamilton et al., *Teaching and Leading Through a Pandemic Key Findings from the American Educator Panels Spring 2020 COVID-19 Surveys*, RAND CORP., at 5 (2020), https://www.rand.org/pubs/research_reports/RRA168-2.html.

[73] U.S. Dep't of Educ., National Ctr. for Educ. Statistics, *Monthly School Survey Dashboard*, https://ies.ed.gov/schoolsurvey/.

Struggling to Log on and Stay Connected During Distance Learning

Technology barriers. The pandemic's uneven effects on students began with the basics: logging into the virtual classroom. According to one survey, as of summer 2020, nearly a third of teachers in majority Black schools reported that their students lacked the technology necessary to take part in virtual instruction. Only one in five teachers said the same in schools where fewer than 10% of students were Black.[74] Similar challenges have been reported for Latinx students. In an online survey of more than 60,000 secondary and 22,000 upper elementary students, 30% of Latinx respondents cited a lack of reliable internet access as an obstacle to distance learning, compared to 23% of their surveyed classmates.[75]

That technology gap remained through fall 2020, though narrowing somewhat.[76] By October 2020, almost one of every ten Black and Latinx households still lacked consistent computer access, compared to only 6.7% of white households.[77] And while only 4.7% of white households reported inconsistent internet access, more than twice as many Black households and one-and-a-half times that many Latinx households said the same.[78] State and district efforts over the last year—boosted by Federal CARES Act funding—helped narrow these technology gaps, at least in the short term.[79] By early 2021—prior to the passage of the American Rescue Plan—some gaps persisted, and they

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[74] Matthew A. Kraft et al., *Teachers' Experiences Working from Home During the COVID-19 Pandemic*, UPBEAT, at 8 (Summer 2020) (reporting that "[i]n schools where the majority of students are Black, teachers report that only 66% of students have the necessary technology to engage in remote learning. In schools where less than 10% of the students are Black, 81% of teachers agree their students have the necessary technology for remote learning"); ANDREA PRADO TUMA ET AL., RAND CORP., AMERICAN INSTRUCTIONAL RESOURCES SURVEY (AIRS) REPORT, at 3-4 (2020), https://www.rand.org/pubs/research_reports/RR4402.html.

[75] YouthTruth, *Students Weigh In: Learning & Well-Being During COVID-19, Part II* (2020), http://youthtruthsurvey.org/wp-content/uploads/2021/02/YouthTruth-Students-Weigh-In-Part-II-Learning-and-Well-Being-During-COVID-19.pdf.

[76] Laura Meckler et al., *'A Lost Generation': Surge Of Research Reveals Students Sliding Backwards, Most Vulnerable Worst Affected*, WASH. POST (Dec, 6, 2020), https://www.washingtonpost.com/education/students-falling-behind/2020/12/06/88d7157a-3665-11eb-8d38-6aea1adb3839_story.html (noting that "[i]n the spring [of 2020], 79 percent of Black students had a device for school," while "89 percent of Black students had a device for school in the fall"—a figure still lower "than the 93 percent of White students who had devices in the fall"); U.S. Census Bureau, *Household Pulse Survey Data Table: 3 Computer and Internet Availability in Households with Children in Public or Private School, by Select Characteristics* (2020), https://www.census.gov/programs-surveys/household-pulse-survey/data.html.

[77] U.S. Census Bureau, *Household Pulse Survey Data Table: 3 Computer and Internet Availability in Households with Children in Public or Private School, by Select Characteristics* (2020), https://www.census.gov/programs-surveys/household-pulse-survey/data.html.

[78] *Id.*

[79] BOSTON CONSULTING GROUP ET AL., LOOKING BACK, LOOKING FORWARD: WHAT IT WILL TAKE TO PERMANENTLY CLOSE THE K-12 DIGITAL DIVIDE, at 12 (2021), https://www.commonsensemedia.org/sites/default/files/uploads/kids_action/final_-_what_it_will_take_to_permanently_close_the_k-12_digital_divide_vjan26_1.pdf (reporting that, according to the group's analysis of "state and district commitments and substantiated through U.S. Census HPS and AASA survey findings," that "state and district efforts closed, at least for the short term, an estimated 20% to 40% of the national K–12 digital divide for students who lacked adequate high-speed connection and 40% to 60% of the divide for students who lacked access to an e-learning device as of December 2020," though "up to 12 million students remain[ed] under-connected going into 2021").

continued to be more common among lower-income families, again, disproportionately affecting Black and Latinx students.[80]

Logging in to class. Even when they had access, many students did not log into online portals for virtual classes, especially during the early weeks of the pandemic. And those participation rates—though not necessarily reflecting engagement—were disproportionately lower for many students of color. In Chicago, for example, Black students last spring registered among the lowest rates of virtual participation, with nearly 30% not logging in at all at one point during distance learning—compared to 14% of white students not logging in during the same period.[81] And in Seattle, Black boys in high school (grades 9-12) had among the lowest virtual participation rates for their grades, with nearly a quarter not logging in at all between March and June, compared to the 12% of all high schoolers who also did not log in.[82]

Losing contact with school. In addition, more families of color reportedly fell out of contact with their children's schools during the pandemic, especially early on. In one nationally representative survey conducted in spring 2020, nearly 30% of principals from schools serving "large populations of students of color and students from lower-income households" said they had difficulty reaching some of their students and/or families—in contrast to the 14% of principals who said the same in wealthier, predominantly white schools.[83] Throughout the 2020-21 school year, similar concerns have been expressed in districts across the country about students that have gone "missing" from the classroom.[84]

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[80] *Id.* at 19 (estimating that "[u]p to 60% of disconnected K–12 students (9 million students), especially Black and urban students, are unable to afford digital access"); Univ. of Southern Cali., Ctr. for Econ. and Social Research, *Understanding Coronavirus in America: Coronavirus Tracking Survey Methodology and Select Crosstab Results* (Nov. 2, 2020), https://uasdata.usc.edu/index.php?r=eNpLtDKyqi62MrFSKkhMT1WyLrYyNAeyS5NyMpP1UhJLEvUSU1Ly80ASQDWJKZkpIKaxlZKpqaGSdS1cMG0LEuA (reporting that nearly 40% of households making less than $25,000 a year said their student had no internet access or internet access that frequently dropped; only 15% of households making $75,000 to $149,000 said the same); John Creamer, U.S. Census Bureau, *Inequalities Persist Despite Decline in Poverty For All Major Race and Hispanic Origin Groups* (Sept. 15, 2020), https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html (reporting that even with their poverty rates at historic lows, Blacks and Hispanics were twice as likely (18.8% and 15.7%) to live in poverty than their white peers (7.3%)).

[81] Chicago Public Schools, *Student Engagement Data* (May 27, 2020), https://www.cps.edu/globalassets/cps-pages/press-releases/pr-2020/05272020-student-engagement-data.pdf.

[82] Dahlia Bazzaz, *Under half of Seattle's elementary school kids logged in to online learning portal last spring, data shows*, SEATTLE TIMES (Aug. 14, 2020), https://www.seattletimes.com/education-lab/limited-data-show-less-than-half-of-seattles-elementary-school-kids-logged-in-to-districts-online-portal-last-spring/.

[83] Laura S. Hamilton et al., *COVID-19 and the State of K-12 Schools*, RAND CORP., at 2, 27 (2020), https://www.rand.org/pubs/research_reports/RRA168-1.html (defining "target schools" as "those that serve a student population that is at least 50 percent African American or Hispanic/Latino and schools in which at least 50 percent of students qualify for free or reduced-price lunch").

[84] *See, e.g.*, Arielle Mitropoulos, *Thousands of students reported 'missing' from school systems nationwide amid COVID-19 pandemic*, ABC NEWS, Mar. 2, 2021, https://abcnews.go.com/US/thousands-students-reported-missing-school-systems-nationwide-amid/ (reporting that a "notable number of students seem to have simply fallen off the grid, not showing up for online or in-person instruction, their whereabouts unknown by school officials").

Disparities in Academic Growth

Emerging evidence also shows that the COVID-19 pandemic has had a strikingly negative impact on academic growth for many students of color, widening the pre-existing disparities discussed above. In fall 2020, early reports were mixed, with some finding academic growth for many students while others reporting or projecting more substantial losses for all students on average, with the greatest losses concentrated among students of color. More recent evidence shows that the gap continued to widen sharply through winter 2021 for many Black and Latinx students.

At the national level, reports from two widely used formative assessments of core academic skills—the NWEA MAP and Renaissance Star Assessments of math and literacy—suggested that the preexisting gaps between students of color and white students grew slightly in the early months of the pandemic. In the Renaissance Star study,[85] analyses compared fall 2020 scores with fall 2019 scores for the same students, and found pandemic-related impacts on academic growth, though that those impacts were more substantial in math than in reading/early literacy.[86] The study noted that these impacts were not "felt equally across all types of students and schools."[87] According to Renaissance's analysis, "Hispanic and Black students experienced more negative impacts than White students," though "overall th[o]se impacts were small," and were apparently "not substantial enough yet to add to existing achievement gaps in a detectable manner."[88] The NWEA MAP study found similarly unclear patterns of performance—though based on a sample missing a significant number of students of color.[89]

A study last fall by McKinsey & Company drawing on results from Curriculum Associates' i-Ready Diagnostic assessment reported starker disparities across groups.[90] According to McKinsey's analysis of that data, students in the fall 2020 sample "learned only 67 percent of the math and 87 percent of the reading that grade-level peers would typically have learned."[91] That translated into a three-month loss in learning in math, and one-and-a-half months in reading.[92] Those losses were "especially acute," however, in schools predominantly serving students of color.[93] And extrapolating from that

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[85] RENAISSANCE, HOW KIDS ARE PERFORMING: TRACKING THE IMPACT OF COVID-19 ON READING AND MATHEMATICS ACHIEVEMENT (Fall 2020), https://renaissance.widen.net/s/wmjtlxkhbm.
[86] *Id.* at 8.
[87] *Id.* at 15.
[88] *Id.* at 20.
[89] Megan Kuhfeld et al., *Learning During COVID-19: Initial Findings On Students' Reading And Math Achievement And Growth*, NWEA RESEARCH, at 8, 9 (Nov. 2020), https://www.nwea.org/content/uploads/2020/11/Collaborative-brief-Learning-during-COVID-19.NOV2020.pdf (explaining that their "findings show[ed] that the impacts of COVID-19 disruptions on student achievement were not the blanket declines many expected, but were instead uneven across subjects and across grade levels," and that while "[s]ome differences by racial/ethnic groups [were] emerging in the fall 2020 data," it was still "too early to draw definitive conclusions," in part because "[s]tudent groups especially vulnerable to the impacts of the pandemic were more likely to be missing from [their] data," including "ethnic/ racial minority students").
[90] *See* Emma Dorn et al., *COVID-19 and Learning Loss—Disparities Grow and Students Need Help*, MCKINSEY & CO. (Dec. 8, 2020), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-learning-loss-disparities-grow-and-students-need-help.
[91] *Id.*
[92] *Id.*
[93] *Id.* (reporting that "in schools predominantly serv[ing] students of color, [] scores were 59 percent of the historical average in math and 77 percent in reading").

data, McKinsey estimated that "students of color may have lost three to five months of learning in mathematics" by the fall, "while white students lost just one to three months."[94]

Smaller-scale studies similarly suggested that by fall 2020, the pandemic had begun to widen gaps in academic growth. Researchers at Ohio State University, for example, reported that average achievement on Ohio's third-grade English Language Arts assessments had declined by approximately 0.23 standard deviations between fall 2019 and fall 2020—roughly a third of a year's worth of learning.[95] Black students, on the other hand, experienced test score declines that were nearly 50 percent larger than white students'—for a total decline of approximately one-half of a year's worth of learning.[96]

By winter 2021, updated assessment data suggested that these gaps in academic growth continued to widen through the fall—markedly in some cases.[97] According to the Renaissance Star winter update, in the first half of the 2020-21 school year, student growth in math and reading was approaching expected levels on the whole, and in many grades impacts of the pandemic had begun to shrink.[98] However, the report also spotlighted serious concerns. Renaissance found, for example, that by winter, late elementary and early middle school students were still "about 8–11 weeks behind midyear expectations" in math, while middle schoolers were "about 6–10 weeks behind expectations" in reading.[99]

This study reported even more concerning data for students of color. For Black, Latinx, and American Indian/Alaska Native students, growth in math and reading did not recover from fall to winter—unlike the growth seen by their white and Asian peers.[100] And by the middle of the 2020-21 school year, students of color were even further from meeting pre-pandemic growth expectations than they were in the beginning of the school year.[101] As a result, Renaissance warned that these "students with slower-than-typical within-year growth rates"—including students of color as well as

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[94] *Id.*

[95] Vladimir Kogan & Stéphane Lavertu, *The COVID-19 Pandemic and Student Achievement on Ohio's Third-Grade English Language Arts Assessment*, Ohio State University, at 1 (Jan. 2021) http://glenn.osu.edu/educational-governance/reports/reports-attributes/ODE_ThirdGradeELA_KL_1-27-2021.pdf.

[96] *Id.* at 2.

[97] RENAISSANCE, HOW KIDS ARE PERFORMING: TRACKING THE MIDYEAR IMPACT OF COVID-19 ON READING AND MATHEMATICS ACHIEVEMENT, at 20 (2021), https://www.renaissance.com/how-kids-are-performing.

[98] *Id.* at 10 (reporting that "[i]n both reading and math, student growth is approaching typical or expected levels, as measured by" student growth on Renaissance's Star Assessments).

[99] *Id.* at 5. As noted above, Renaissance regarded "any weeks estimate that was plus or minus 3 weeks as being approximately 'close to expectations'." *Id.* at 18.

[100] *Id.* at 11 (reporting that "growth among Black, Hispanic, and American Indian or Alaska Native students was below the overall median [student growth percentiles] for both reading and math").

[101] *Id.* at 20 (reporting that on the Renaissance Star assessments, "the average Black student entered the 2020-21 school year 3 [Percentile Ranks (PR)] behind their pre-pandemic fall expectations, and by midyear that impact had grown to 7 PR behind winter expectations … For Hispanic students, negative impacts on reading increased from -2 PR to -5 PR [fall to winter]. In math, the shortfall increased from -8 to -9 PR. For American Indian students, negative impacts on reading increased from -2 PR to -5 PR and on math from -8 to -11 PR."). Renaissance defined the associated "Student Growth Percentile" as the comparison of "a student's growth from one period to another with academic peers nationwide, defined as students in the same grade with a similar score history." *Id.* at 11.

English learners, students with disabilities, and those attending urban or Title I schools—were all disproportionately "at-risk for falling farther behind."[102]

For Asian American Students, A Growing Threat of Harassment

Identity-based harassment and violence have long had harmful effects on targeted students and their communities.[103] Reports showed that in the wake of COVID-19, these threats and harms increased disproportionately for Asian Americans throughout the country. In a Pew Research Center survey conducted in June 2020, 39% of Asian Americans surveyed reported that people acted as if they were uncomfortable around them; 31% reported having been subject to racial slurs, and more than one in four (26%) reported that they feared someone might threaten or physically attack them.[104] More recently, a nationally representative survey of 2,251 individuals conducted in January 2021 found that Asian American respondents had "experienced the largest single year-over-year rise in severe online harassment in comparison to other groups" surveyed, from 11% reporting incidents last year to 17% this year.[105] A national reporting forum that tracks hate incidents against Asian Americans and Pacific Islanders—such as verbal harassment, shunning, and physical attacks—also reported learning of nearly 3,800 such incidents from mid-March 2020 through February 2021.[106] And while we do not yet know the full impact that this rising abuse and harassment has had on Asian American students, there are already indications that some may be choosing not to return to in-person learning out of fear of harassment, even violence, in the classroom.[107]

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[102] *Id.* at 5. NWEA has also continued to track COVID-19's impact on academic growth at the state level, including data through winter 2021. *See* NWEA, *Exploring the educational impacts of COVID-19*, https://www.nwea.org/research-data-galleries/exploring-the-educational-impacts-of-covid-19/.

[103] *See, e.g.*, Aprile D. Benner et al., *Racial/Ethnic Discrimination And Well-Being During Adolescence: A Meta-Analytic Review*, 73 AM. PSYCHOLOGIST 855 (2018) (presenting meta-analysis of 214 peer-reviewed studies documenting the significant impacts of perceived racial/ethnic discrimination on adolescents); Lisa M. Williams & Anthony A. Peguero, *The Impact of School Bullying on Racial/Ethnic Achievement*, 5 RACE AND SOCIAL PROBLEMS 296, 297, 306 (2013) (reviewing literature finding that students of color faced heightened risk of "being victimized at school," and finding in a sample of students from the Educational Longitudinal Study of 2002 that bullying adversely impacted 12th grade academic performance).

[104] Pew Research Ctr., *Many Black and Asian Americans Say They Have Experienced Discrimination Amid the COVID-19 Outbreak* (2020), https://www.pewresearch.org/social-trends/2020/07/01/many-black-and-asian-americans-say-they-have-experienced-discrimination-amid-the-covid-19-outbreak/.

[105] ANTI-DEFAMATION LEAGUE, ONLINE HATE AND HARASSMENT: THE AMERICAN EXPERIENCE 2021, at 6 (Mar. 2021), https://www.adl.org/media/16033/download, (for purposes of the survey, "severe online harassment compris[ed] sexual harassment, stalking, physical threats, swatting, doxing and sustained harassment").

[106] STOP AAPI HATE, STOP AAPI HATE NATIONAL REPORT (2021), https://secureservercdn.net/104.238.69.231/a1w.90d.myftpupload.com/wp-content/uploads/2021/03/210312-Stop-AAPI-Hate-National-Report-.pdf.

[107] Moriah Balingit, *As Schools Reopen, Asian American Students are Missing from Classrooms*, WASH. POST (Mar. 4, 2021) https://www.washingtonpost.com/education/asian-american-students-home-school-in-person-pandemic/2021/03/02/eb7056bc-7786-11eb-8115-9ad5e9c02117_story.html; Kimmy Yam, *Amid attacks, school principals concerned over Asian Americans' return to class*, NBC NEWS, Feb. 18, 2021 (reporting that "[r]acist incidents and attacks on members of the Asian community in public have, in part, persuaded some families not to send their children back to in-person schooling," according to some school administrators), https://www.nbcnews.com/news/asian-america/amid-attacks-principals-concerned-over-asian-americans-returning-class-n1258302. Some news reports and early analyses suggest an increase in bullying of Asian American students as well. *See, e.g.*, Katherine Kam, *Asian American Students Face Bullying Over COVID*, WEBMD HEALTH NEWS (Aug. 20, 2020), https://www.webmd.com/lung/news/20200820/asian-

COVID-19's Impact on English Learners

Even before the pandemic, many students learning English struggled to participate on equal terms with their English-proficient peers—struggles that COVID-19 has only made worse.

Pre-Pandemic Disparities

English learners face the dual challenge of learning English *and* the same curricular content as their other classmates.[108] To succeed in the general curriculum, English learners usually need a range of supports and services, such as targeted English-language-development lessons within or outside of the general education classroom, instructional support from a qualified teacher who uses sheltering or bilingual strategies designed to help English Learners understand their core classes like reading, math, science, and social studies, or modified curricular materials that integrate instruction in language and content simultaneously.[109] For many multilingual learners, these supports and services are effective.[110] English learners who are reclassified as Fluent English Proficient, especially during elementary school, often have educational outcomes indistinguishable from, or even superior to, their peers who started school as fluent English speakers.[111]

Yet for many English learners, access to adequate supports can be frustratingly elusive.[112] Especially if they begin as English learners in early years and remain in English learner status into and beyond middle school, these students face daunting challenges to academic success, including:

- *Reduced access to grade-level content*. Because their academic progress often falls behind their peers who are fluent in English, English learners may encounter lowered expectations for their achievement in the general curriculum, oversimplified and impoverished materials, and

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ameerican-students-face-bullying-over-covid; Tomoko Wakabayashi et al., *Addressing Inequities in Education: Considerations for Asian American Children and Youth in the Era of COVID-19*, SRDC: STATEMENT OF THE EVIDENCE (Sept. 2020), https://www.srcd.org/research/addressing-inequities-education-considerations-asian-american-children-and-youth-era-covid.

[108] Heritage et al., *English Language Learners and The New Standards: Developing Language, Content Knowledge, And Analytical Practices In The Classroom,* HARVARD EDUC. PRESS (2015).

[109] Ani C. Moughamian et al., *Instructional models and strategies for teaching English language learners,* CTR. ON INSTRUCTION (2009), https://files.eric.ed.gov/fulltext/ED517794.pdf.

[110] Scott Baker et al., *Teaching Academic Content and Literacy to English Learners in Elementary and Middle School. IES Practice Guide. NCEE 2014-4012.* WHAT WORKS CLEARINGHOUSE (April 2014), http://eric.ed.gov/?id=ED544783; Nat'l Acads. of Scis., Eng'g, and Med., *Promoting the Educational Success of Children and Youth Learning English: Promising Futures* (2017), https://www.nap.edu/catalog/24677/promoting-the-educational-success-of-children-and-youth-learning-english.

[111] Angela Johnson, *The effects of English learner classification on high school graduation and college attendance*, 5 AERA OPEN 1, 10 (2019), https://journals.sagepub.com/doi/10.1177/2332858419850801; LAURA E. HILL ET AL., RECLASSIFICATION OF ENGLISH LEARNER STUDENTS IN CALIFORNIA, at 14 (Jan. 2014), https://www.ppic.org/content/pubs/report/R_114LHR.pdf.

[112] Edward Flores et al., *¿Qué Pasa? Are ELL Students Remaining in English Learning Classes Too Long?*, TOMAS RIVERA POLICY INST. (Nov. 2009), https://eric.ed.gov/?id=ED580901; Ilana Umansky et al., *Reclassification Patterns among Latino English Learner Students in Bilingual, Dual Immersion, and English Immersion Classrooms*, 51 AM. EDUC. RES. J. 879 (2014), https://cepa.stanford.edu/content/reclassification-patterns-among-latino-english-learner-students-bilingual-dual-immersion-and-english-immersion-classrooms.

problematic reductions of their time in the general education classroom learning standard curricular content.[113]

- *Social stigma*. Many English learners also experience social stigma and demoralization in their school community as a consequence of receiving services to support their learning.[114] As a result, English learners may struggle to access curricular content and keep up with their monolingual English-speaking peers on academic tasks.[115]

- *Limited use of home language*. Many instructional programs for English learners do little to support home language development, even though fluency and literacy in the home language have been linked to positive academic outcomes.[116] While parents and caregivers often help English learners maintain their home language, families may struggle to support their students' more advanced literacy in the home language due to other barriers, such as higher than average rates of poverty.[117]

With these and other barriers to success, it is hardly surprising that many English learners struggle in their classes and drop out in higher numbers than English-fluent students, even if they often do so to meet other immediate needs, such as working to support their family.[118]

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[113] *See* Audrey Figueroa Murphy & Bruce Torff, *Teachers' Beliefs About Rigor of Curriculum for English Language Learners*, 83 THE EDUCATIONAL FORUM 90, 91 (2018), (noting that English learners may "receive less rigorous curriculum, inhibiting their academic growth and driving down achievement results," and may also be "given content-area instruction that is simplified or impoverished"); Liana Loewus, *Quality Learning Materials Are Scarce for English-Language Learners*, EDUCATION WEEK, May 11, 2016, https://www.edweek.org/teaching-learning/quality-learning-materials-are-scarce-for-english-language-learners/2016/05 ("[A]mong ELL experts, there's at least some agreement: Materials for English-learners are often too simple and too disconnected from grade-level goals.").

[114] Illana M. Umansky, *To Be or Not to Be EL: An Examination of the Impact of Classifying Students as English Learners*, 38 EDUC. EVALUATION AND POL'Y ANALYSIS 714, 715 (2016) ("EL classification is not designed to impact individuals' social status, but there is wide acknowledgment that it often does. Both the classification itself and the services that accompany the classification are often stigmatized.").

[115] Diane August et al., *Developing Literacy in Second-language Learners: Report of the National Literacy Panel on Language-Minority Children and Youth,* Erlbaum, at 1 (2006), https://www.standardsinstitutes.org/sites/default/files/material/developing-literacy-in-second-language-learners-executive-summary_2.pdf.

[116] *See, e.g.*, Kathryn Lindholm-Leary, *Success and Challenges in Dual Language Education*, 51 THEORY INTO PRACTICE 256, 257-58 (2012) (reviewing the literature documenting dual language programs' successes in promoting academic achievement among ELs).

[117] Randy Capps et al., *The New Demography Of America's Schools: Immigration And The No Child Left Behind Act,* URBAN INST., (June 14, 2010), https://www.fcd-us.org/the-new-demography-of-americas-schools-immigration-and-the-no-child-left-behind-act/.

[118] J. F. Zaff et al., *English Learners and High School Graduation: A Pattern-Centered Approach to Understand Within-Group Variations,* J. OF EDUC. FOR STUDENTS PLACED AT RISK (JESPAR) (2020) (reporting that, "[a]lthough graduation rates for [English learners] have climbed over the past decade, they remain substantially lower" than for the overall student population—66.4% to 84.6%, respectively, in 2017); Diane Rodriguez et al., *Factors that challenge English learners and increase their dropout rates: recommendations from the field*, INT'L J. OF BILINGUAL EDUC. AND BILINGUALISM 1, 6 (2020) (documenting the heightened dropout rates among English learners and noting "jobs and family" among significant "pull-out" factors); Andrew O. Behnke et al., *Latino Students in New Arrival States: Factors and Services to Prevent Youth from Dropping Out*, 32 HISPANIC J. OF BEHAVIORAL SCI. 385, 387 (2010) (noting the need to "support[] one's family economically by working" among the reasons that newly arrived Latino students drop out at higher rates than their peers).

COVID-19's Amplification of Language Barriers

Many English learners saw their access to educational opportunities significantly impacted by COVID-19.

Evidence is already mounting that English learners have been among the students hardest hit by COVID-19's disruptions to in-person learning. In many cases, virtual learning effectively foreclosed opportunities for English learners to engage in English-language conversation with adults and with peers, receive intensive language instruction at frequent intervals, and encounter conversational and formal language in a range of social and academic contexts.[119] And new language barriers and strains on family resources have made it difficult for English learners' families to help their children thrive academically during the pandemic.

Remote learning challenged parents from all backgrounds to become de facto educators or educational facilitators for their children. But this burden fell especially hard on linguistically diverse families of English learners, many of whom depend on overwhelmed schools to make web-based learning accessible to them.[120]

"An official from one district said that even though they used translation services to help parents with the logistics of distance learning, it was difficult to explain how to navigate the technology needed to participate in distance learning via a remote translator. The official explained that some of the most traditionally effective means of communicating with families of English learners, such as interacting during school drop off and pick up, were no longer available to them."

U.S. Government Accountability Office, GAO 21 43, DISTANCE LEARNING: CHALLENGES PROVIDING SERVICES TO K 12 ENGLISH LEARNERS AND STUDENTS WITH DISABILITIES DURING COVID 19 (Nov. 2020)

Even further, during the pandemic many families of English learners—and the students themselves—had outsized financial and caregiving responsibilities that prevented their full participation in distance learning.[121] One survey of 589 families and 575 teachers from summer 2020, for example, found that only 39% of the Spanish-speaking families surveyed felt prepared to support a child learning from home—compared to fully half of all English-speaking families surveyed.[122]

[119] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-21-43, DISTANCE LEARNING: CHALLENGES PROVIDING SERVICES TO K-12 ENGLISH LEARNERS AND STUDENTS WITH DISABILITIES DURING COVID-19, at 9-11 (Nov. 2020), https://www.gao.gov/products/gao-21-43.
[120] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-21-43, DISTANCE LEARNING: CHALLENGES PROVIDING SERVICES TO K-12 ENGLISH LEARNERS AND STUDENTS WITH DISABILITIES DURING COVID-19, at 14-15 (Nov. 2020), https://www.gao.gov/products/gao-21-43.
[121] *Id.*
[122] TalkingPoints, *Family Engagement, COVID-19, and Distance Learning: Data & Insights from the Field*, at 3 (2020), https://talkingpts.org/wp-content/uploads/2020/08/TalkingPoints_Research-_Family_Engagement_and_Distance_Learning__Data__Insights_from_the_Field.pdf.

Some districts' and schools' efforts to serve English learners through virtual instruction were also hampered by insufficient numbers of appropriately equipped teachers and other staff[123]—exacerbating a problem that predated COVID-19.[124] For example, many schools may have only one or a few teachers with an English language development (ELD) or English as a Second Language (ESL) license or certification, who typically collaborate with content-area teachers while also delivering small-group or full-class ELD or ESL instruction to English learner students. These staff members may be in dozens of virtual classrooms in any given week, straining their already limited time and resources.[125] Many rural districts, districts with fewer resources, and more generally those with fewer English learners have reportedly had an even harder time offering the specialized instruction English learners need to continue learning both English and core content in the general curriculum.[126]

Preliminary data also suggested that the pandemic's effects have amplified disparities in learning outcomes for English learners. As of fall 2020, several districts across the country reported an uptick in the number of failing marks given to English learners. One California district reported that the rate of low and failing grades among English learners had jumped by 34%—to nearly half of all grades English learners earned.[127] And other districts in fall 2020 saw similarly sharp increases in failing grades among English learners.[128]

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[123] *See, e.g.*, Jacqueline Rabe Thomas, *Achievement gaps for English learners linger, troubling CT's first Hispanic education chief*, CT MIRROR (June 18, 2020), https://ctmirror.org/2020/06/18/achievement-gaps-for-english-learners-linger-troubling-cts-first-hispanic-education-chief/ (quoting co-chair of the state's budget committee that the state's "bilingual education is woefully undermanned and addressed").

[124] *See, e.g.*, Krista Johnson, *As State's Hispanic Population Increases, Schools Scramble To Educate English Learners*, MONTGOMERY ADVERTISER, July 28, 2019, https://www.montgomeryadvertiser.com/story/news/education/2019/07/26/states-hispanic-population-increases-schools-scramble-educate-english-learners/1527271001/ (quoting superintendent as saying his district was "underfunded, understaffed, underresourced and teachers don't have the professional development they need" to serve English learners); Diana Quintero et al., *English Learners And The Growing Need For Qualified Teachers*, BROOKINGS INST. (June 2, 2017), https://www.brookings.edu/blog/brown-center-chalkboard/2017/06/02/english-learners-and-the-growing-need-for-qualified-teachers/ (noting that, despite the "increasing demand for teachers prepared to serve English learners, … state and federal policies and teacher preparation programs have not sufficiently prioritized training teachers for this growing segment of the student population, and teachers are, therefore, left unprepared in the classroom").

[125] Peter Sayer et al., *The Disparate Impact Of COVID-19 Remote Learning on English Learners in The United States*, 11 TESOL J. 1, 5 (2020).

[126] Patricia Garcia-Arena & Stephanie D'Souza, *Spotlight on English Learners*, AM. INSTS. FOR RESEARCH (Oct. 2020), https://www.air.org/sites/default/files/COVID-Survey-Spotlight-on-English-Learners-FINAL-Oct-2020.pdf.

[127] SWEETWATER UNION (CA) HIGH SCH., DISTANCE LEARNING AND IN-PERSON INSTRUCTION, at 22 (Nov. 24, 2020), https://ca-times.brightspotcdn.com/e8/56/ea7c2fcb4e2da92db8bf436960f9/board-presentation-reopening.pdf.

[128] MONTGOMERY CTY. (MD) BD. OF EDUC., OPENING SCHOOLS IN RECOVERY OF EDUCATION—UPDATE (Dec. 3, 2020), https://go.boarddocs.com/mabe/mcpsmd/Board.nsf/files/BVYM7659CD8F/$file/Opening%20Schls%20Recovery%20Ed%20201203%20PPT.pdf (revealing a nearly fivefold increase in the number of ELs earning failing marks this school year); ARLINGTON (VA) PUB. SCHS., SECOND QUARTER 2020-21 GRADE REPORT (2021) https://www.apsva.us/wp-content/uploads/2021/03/Modified-Secondary-2nd-Quarter-Grades-Report.pdf (reporting increases in failing marks among ELs in both middle and high schools in the second quarter of the 2020-21 school year).

Disparities for Students with Disabilities

In the last half century, children with disabilities have gone from being "either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out,'"[129] to having the protection of Federal laws supporting equal access to educational opportunity. These include Section 504 of the Rehabilitation Act of 1973 and implementing regulations (Section 504),[130] Titles II[131] and III[132] of the Americans with Disabilities Act, and Part B of the Individuals with Disabilities Education Act (IDEA), [133] first enacted in 1975.[134]

Today, America's public schools serve millions of students with disabilities. More than 7.2 million students received services under the IDEA in 2018-19, a number that has grown by more than 400% since 1975.[135] Another 1.5 million students in K-12 receive services under Section 504 only.[136]

Pre-Pandemic Disparities

Access Gaps before COVID-19

Both Section 504 and the IDEA guarantee a free appropriate public education (FAPE) to every student with a disability,[137] requiring schools to meet students' unique educational needs through specialized instruction and/or appropriately tailored services.[138]

Yet there is a gap between this promise and the reality for many students and their families. In fiscal year 2019 alone, OCR resolved nearly 4,300 complaints alleging more than 7,000 violations of students' rights to equal access to their schools' educational programming and other activities under Federal disability-discrimination laws. Of those, more than 1,120 allegations were ultimately resolved with change.[139] The single most common claim—accounting for more than 3,300 of the disability-related allegations in K-12 the same year, including more than 600 resolved with change—was that a school had denied a student a FAPE. Included among these complaints were claims that:

- Schools had not implemented all of the services called for by students' Individualized Education Programs (IEPs) or plans developed under Section 504;

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[129] H. R. Rep. No. 94-332, p. 2 (1975).
[130] 29 U.S.C. § 794; 34 C.F.R. Part 104.
[131] 42 U.S.C. §§ 12131-12134; 28 C.F.R. Part 35.
[132] 42 U.S.C. §§ 12181-12189; 28 C.F.R. Part 36.
[133] The U.S. Department of Education's Office of Special Education Programs (OSEP) in the Office of Special Education and Rehabilitative Services (OSERS) administers the IDEA. 20 U.S.C. 1400 et seq. The implementing regulations for Part B of IDEA are at 34 CFR Part 300.
[134] Education for All Handicapped Children Act, Pub. L. No. 94-142.
[135] *A History of the Individuals with Disabilities Education Act (IDEA),* U.S. DEP'T OF EDUC. (Nov. 24, 2020), https://sites.ed.gov/idea/IDEA-History.
[136] *Id.* (reporting that 3% of the 50.9 million students in public school in 2017-18 were served only under Section 504).
[137] Although both the IDEA and the regulations implementing Section 504 require the provision of FAPE, their standards differ. *Compare* 20 U.S.C. § 1401(9) (defining FAPE under the IDEA); *id.* § 1412(a)(1) (laying out that requirement under the IDEA); 34 C.F.R. § 300.101 (same); *with* 34 C.F.R. § 104.33(a)-(b) (outlining the FAPE requirement under Section 504). For a discussion of their differences, *see* U.S. DEP'T OF EDUC., PARENT AND EDUCATOR RESOURCE GUIDE TO SECTION 504 IN PUBLIC ELEMENTARY AND SECONDARY SCHOOLS 10 (Dec. 2016), https://www2.ed.gov/about/offices/list/ocr/docs/504-resource-guide-201612.pdf.
[138] 34 C.F.R. § 300.17; 34 C.F.R. § 104.33(b)(1).
[139] A resolution with change refers to cases where OCR has required recipients to take corrective action or make substantive changes to address civil rights violations and compliance concerns.

- Students with disabilities had been placed in inappropriately restrictive educational environments, apart from students not identified as having disabilities; and
- Students were inappropriately restrained, secluded, or wrongly disciplined due to behavior related to their disability.

Years' worth of data from OCR's Civil Rights Data Collection show that these are not isolated experiences. Students with disabilities are more likely than their non-disabled peers to be subject to restraint, seclusion, and school discipline and other exclusions from class. Data analysis from the 2017-18 school year shows, for example, that students with disabilities were four times more likely to be physically restrained and secluded than their non-disabled peers and that they make up a quarter of all students subjected to out-of-school suspension—despite comprising only 13% of students enrolled.[140] Unsurprisingly, these disciplinary exclusions have been linked to their lower achievement in the classroom.[141] And students with disabilities are significantly more likely than their non-disabled peers to be bullied at school,[142] leaving many with physical, emotional, and psychological harms as a result.[143]

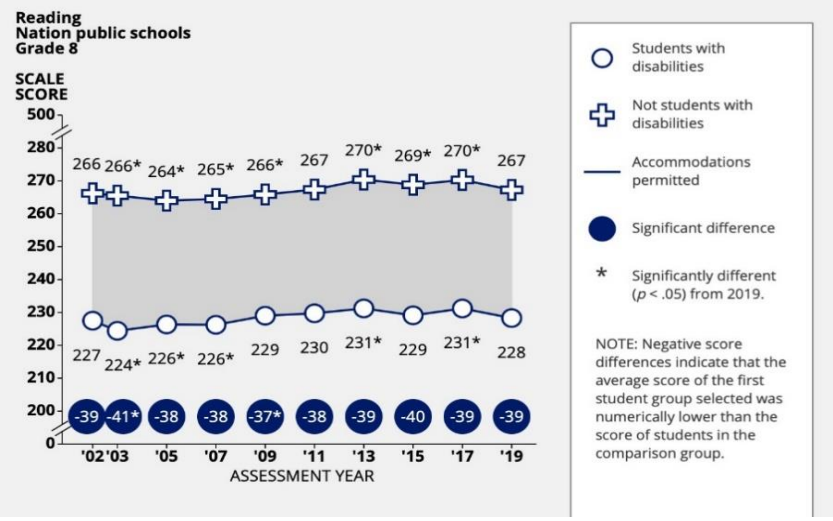

Figure 1 Persistent NAEP Reading Achievement Gap Between Students with Disabilities. Source: The Nation's Report Card, Achievement Gaps Dashboard, https://www.nationsreportcard.gov/dashboards/achievement_gaps.aspx.

Pre-pandemic Academic Disparities for Students with Disabilities

Disparities in academic achievement for students with disabilities also long predate the pandemic. Over the past decade, the scores for students with disabilities on assessments like the NAEP have lagged markedly behind their non-disabled classmates, as seen in Figure 1, echoing similarly

[140] U.S. Dep't of Educ., Civil Rights Data Collection (for 2017-18) (Oct. 14, 2020), https://www2.ed.gov/about/offices/list/ocr/docs/crdc-2017-18.html; *see also* U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-18-258, DISCIPLINE DISPARITIES FOR BLACK STUDENTS, BOYS, AND STUDENTS WITH DISABILITIES (Mar. 2018), https://www.gao.gov/assets/gao-18-258.pdf (documenting similar disproportionality in discipline for students with disabilities).

[141] *See, e.g.*, Kirsten L. Allman & John R. Slate, *Disciplinary Consequence Effects on the Achievement of Students with Disabilities: A Statewide Examination*, 6 J. OF EDUC. RESEARCH 369 (2012); WA. VA. BD. OF EDUC., THE ASSOCIATION BETWEEN SCHOOL DISCIPLINE AND ACADEMIC PERFORMANCE: A CASE FOR POSITIVE DISCIPLINE APPROACHES, at v (Sept. 2014) (finding in a study of 160,480 West Virginia students that those "with disabilities who had a single discipline referral were no more likely to score below proficiency [on a state standardized assessment] than students with disabilities without discipline referrals," but "when they received 2 to 4 referrals they were 3.7 more likely to score below proficiency," and "with 5 or more discipline referrals they were 12 times more likely").

[142] *See, e.g.*, Jamilia J. Blake et al., *Predictors of Bully Victimization in Students With Disabilities: A Longitudinal Examination Using a National Data Set*, 26 J. OF DISABILITY POL'Y STUDIES 199, 199 (2016) ("Children and adolescents with disabilities are three to four times more likely than peers without disabilities to be subject to bullying and thus have been identified as a population highly vulnerable to bullying.").

[143] *See* Michael T. Hartley et al, *Comparative Study of Bullying Victimization Among Students in General and Special Education*, 81 EXCEPTIONAL CHILDREN 176 (2015).

large disparities that have been reported on other math and reading assessments.[144] And while graduation rates have improved over the years, as Figure 2 shows, students with disabilities are still less likely than their peers to complete high school in four years with a regular diploma.

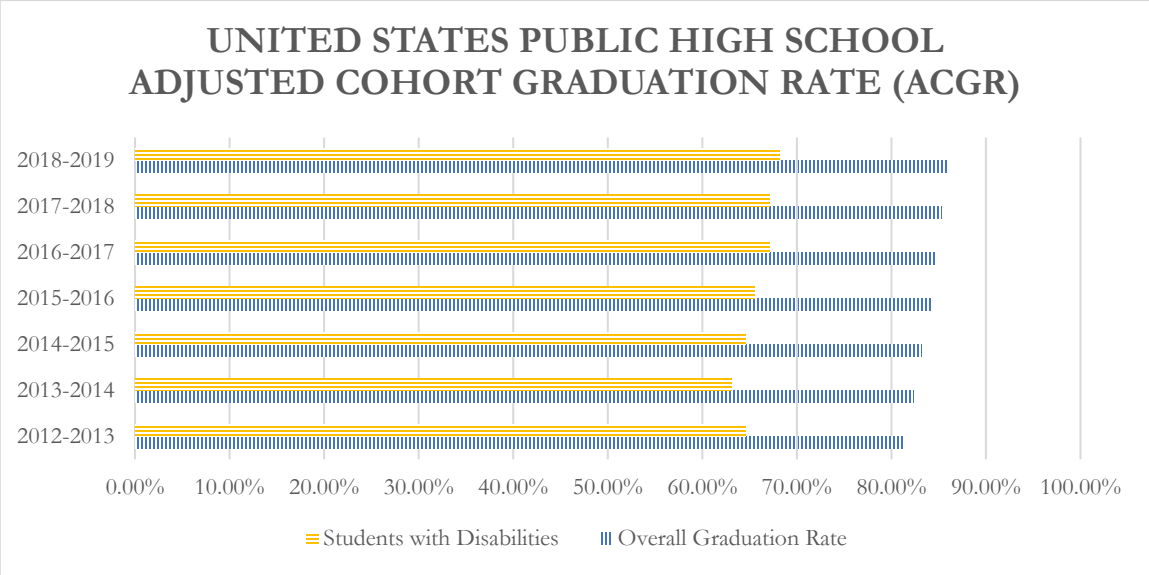

Figure 2 United States Public High School Adjusted Cohort Graduation Rate. Source: National Center for Education Statistics, Common Core of Data, https://nces.ed.gov/ccd/tables/ACGR_RE_and_characteristics_2018-19.asp

[144] *See, e.g.*, Allison F. Gilmour et al., *Are Students with Disabilities Accessing the Curriculum? A Meta-analysis of the Reading Achievement Gap between Students with and without Disabilities*, 85 EXCEPTIONAL CHILDREN 329 (2019); Xin Wei et al., *Math Growth Trajectories of Students With Disabilities: Disability Category, Gender, Racial, and Socioeconomic Status Differences From Ages 7 to 17*, 34 REMEDIAL AND SPECIAL EDUC. 154 (2012).

Disrupted Learning During the Pandemic

For many elementary and secondary school students with disabilities, COVID-19 significantly disrupted the education and related aids and services needed to support their academic progress and prevent regression—and may have exacerbated longstanding disparities in their academic achievement.

The public health restrictions that shuttered schools last spring also seriously disrupted individualized services for many students with disabilities—a difficulty school districts and teachers have acknowledged.[145] As the Government Accountability Office detailed in fall 2020, the school districts they surveyed reported encountering "a variety of logistical and instructional factors [that] made it more difficult to deliver special education services during distance learning."[146] And for students whose needs require hands-on, face-to-face interaction—like occupational or physical therapy—COVID-19, in some cases, brought services to a stand-still.[147]

"Many of the 15 [] school districts [surveyed] shortened their school day during distance learning for all students, sometimes to only a few hours, and often had limited live communication time with the teacher, according to our review of district plans. Officials in two of the four districts and representatives from advocacy groups noted that the shorter school days made it especially difficult to find time to provide the specialized instruction and related services detailed in students' IEPs on top of regular general education."

U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO 21 43, DISTANCE LEARNING: CHALLENGES PROVIDING SERVICES TO K 12 ENGLISH LEARNERS AND STUDENTS WITH DISABILITIES DURING COVID 19 (Nov. 2020)

Parents and families of students with disabilities also reported disruptions in their children's services. In a survey widely cited by major media outlets, conducted in May 2020 with 1,594 parents contacted through Facebook by the advocacy group ParentsTogether, only 20% of respondents said their children were

[145] Dia Jackson & Jill Bowdon, *Spotlight on Students with Disabilities,* AM. INSTS. OF RESEARCH, at 1 (Oct. 2020) ("Nearly three-quarters (73%) of districts" in a nationally representative survey conducted in summer 2020 "reported that it was more or substantially more difficult to provide appropriate instructional accommodations"), https://www.air.org/sites/default/files/COVID-Survey-Spotlight-on-Students-with-Disabilities-FINAL-Oct-2020.pdf; Laura Stelitano et al, *How Are Teachers Educating Students with Disabilities During the Pandemic?*, RAND CORP. (2021), https://www.rand.org/pubs/research_reports/RRA1121-1.html (Sixty-six percent of responding teachers in a nationally representative survey conducted in fall 2020 "reported feeling that they were either somewhat less, much less, or not at all able to meet the requirements of their students' IEPs when teaching remotely, compared with when teaching in person.").

[146] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-21-43, DISTANCE LEARNING: CHALLENGES PROVIDING SERVICES TO K-12 ENGLISH LEARNERS AND STUDENTS WITH DISABILITIES DURING COVID-19, at 9-11 (Nov. 2020), https://www.gao.gov/products/gao-21-43.

[147] *Id.* at 16 (reporting that "[s]chool officials told [GAO] that delivering related services—such as occupational therapy, physical therapy, or speech therapy—for students with complex needs was particularly difficult in a virtual setting," and that other officials "raised concerns about students not receiving services in the same manner as they did prior to distance learning, including occupational and physical therapy that involved hands-on instruction from therapists or required specialized equipment unavailable in students' homes").

receiving the services called for by their IEP and 39% reported receiving no services at all.[148] As a non-random sample, this survey cannot support definitive general conclusions. With that caveat, it bears noting that parents of children with IEPs in the same survey were also more than twice as likely than parents of children without IEPs to say that their child was doing little to no remote learning (35% to 17%) and that distance learning was not going well (40% to 19%).[149] By summer 2020, evidence emerged from not only this poll but also another larger-scale online survey of more than 80,000 secondary and upper elementary students that students with disabilities may have been facing more mental health challenges than their peers and more generally having less positive experiences with schoolwork than other students.[150] Those disruptions and related challenges have reportedly persisted through the 2020-21 school year.[151]

There are also some early indications that the pandemic has exacerbated academic-achievement disparities for students with disabilities. In fall 2020, for example, several school districts reported sharp spikes in the number of their students with disabilities failing their classes. Data from one Maryland district, for example, revealed that the number of sixth graders with disabilities earning failing marks in English had doubled from the previous year.[152] Meanwhile, a Virginia district saw a 111% increase in the number of students with disabilities receiving Fs in two or more subjects in the first quarter of the 2020-21 school year.[153] And a California district similarly reported an across-the-board jump in fall 2020 in the number of Ds and Fs given to students with disabilities in its middle and high schools.[154] More research will be needed to assess whether these reports are reflective of broader and enduring trends.

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[148] *ParentsTogether Survey Reveals Remote Learning is Failing Our Most Vulnerable Students*, PARENTSTOGETHER FOUNDATION (May 27, 2020), https://parentstogetheraction.org/2020/05/27/parentstogether-survey-reveals-remote-learning-is-failing-our-most-vulnerable-students-2/. *See also, e.g.*, Hallie Levine, *As School Returns, Kids with Special Needs are Left Behind*, NEW YORK TIMES, Sept. 16, 2020, https://www.nytimes.com/2020/09/16/parenting/school-reopening-special-needs.html (reporting this survey); Kris Maher, *In Remote Learning, Children With Disabilities Face Unique Challenges*, WALL STREET JOURNAL, Aug. 31, 2020, https://www.wsj.com/articles/in-remote-learning-children-with-disabilities-face-unique-challenges-11598866202 (same); Kirsten Weir, *What did distance learning accomplish?* American Psychological Association, Sept. 1, 2020, https://www.apa.org/monitor/2020/09/distance-learning-accomplish (same).

[149] *Id.*

[150] *Id.* (reporting that parents of students with disabilities were almost twice as likely to say they were concerned about their child's mental health (40% to 23%)); YouthTruth, *Students Weigh In, Part II: Learning & Well-Being During COVID-19*, http://youthtruthsurvey.org/wp-content/uploads/2021/02/YouthTruth-Students-Weigh-In-Part-II-Learning-and-Well-Being-During-COVID-19.pdf ("Students [...] receiving special education services had a less positive experience accessing their schoolwork compared to their peers.").

[151] *See, e.g.*, Hannah Natanson et al., *How America failed students with disabilities during the pandemic*, WASH. POST, May 21, 2021, https://www.washingtonpost.com/education/2021/05/20/students-disabilities-virtual-learning-failure/ ("More than a year after the pandemic began, officials in school districts across the country concede they failed during the crisis to deliver the quality of education that students with disabilities are legally entitled to receive.").

[152] *See* MONTGOMERY CTY. (MD) BD. OF EDUC., OPENING SCHOOLS IN RECOVERY OF EDUCATION—UPDATE (Dec. 3, 2020), https://go.boarddocs.com/mabe/mcpsmd/Board.nsf/files/BVYM7659CD8F/$file/Opening%20Schls%20Recovery%20Ed%20201203%20PPT.pdf.

[153] FAIRFAX COUNTY PUB. SCHS., STUDY OF TEACHING AND LEARNING DURING THE COVID-19 PANDEMIC: ANALYSES OF Q1 SECONDARY MARKS, at 2 (2020), https://go.boarddocs.com/vsba/fairfax/Board.nsf/files/BVJV847F7247/$file/Q1%20Marks%20Rpt%20-%20v6%20lzh.pdf.

[154] SWEETWATER UNION HIGH SCH. DIST., BOARD MEETING REPORT: DISTANCE LEARNING AND IN-PERSON INSTRUCTION, at 20 (Nov. 24, 2020), https://ca-times.brightspotcdn.com/e8/56/ea7c2fcb4e2da92db8bf436960f9/board-presentation-reopening.pdf.

COVID-19's Impact on LGBTQ+ Students

Pre-Pandemic Disparities

Well before COVID-19 upended life for students across the country, those who identified as LGBTQ+ already faced their own often overwhelming challenges to learning on equal terms with their peers, including disproportionately persistent bullying, harassment, and victimization. Because the scope of COVID-19's impact on LGBTQ+ students is currently preliminary and limited, it will be important for further research to investigate the extent to which the pandemic may have affected LGBTQ+ students. However, reports show that pre-pandemic conditions have had a direct, negative effect on LGBTQ+ students, including:

- *Reduced sense of safety.* Higher rates of bullying and harassment have reportedly made many LGBTQ+ students feel less safe and more likely to skip school.[155] Lesbian, gay, bisexual, and questioning students are more likely to report experiencing violence, including being threatened or injured with a weapon at school, not going to school because of safety concerns, electronic bullying, bullying at school, forced sex, physical dating violence, and sexual dating violence.[156] Transgender students are more likely to report feeling unsafe at or going to and from school, and being bullied at school.[157]
- *Poorer mental health and higher levels of suicide.* Lesbian, gay, bisexual, and questioning students are more likely to report experiences with poor mental health and suicide, including persistent feelings of sadness and hopelessness, seriously considering attempting suicide, making a suicide plan, attempting suicide, and being injured during a suicide attempt.[158]
- *Missed school.* Transgender students have been more likely to miss class and less likely to plan to graduate from high school. Before the pandemic, transgender students who experienced higher levels of victimization due to their gender identity were three times more likely to have missed school in a given month than other students.[159]
- *Harms from unequal access to restrooms.* Many transgender students who were excluded from school restrooms that align with their gender identity avoided using any restroom while at school, which has led some students to experience serious medical complications and other harms.[160]

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[155] PFLAG, CULTIVATING RESPECT: SAFE SCHOOLS FOR ALL (2019), https://pflag.org/sites/default/files/Cultivating%20Respect_2019.pdf.

[156] CENTERS FOR DISEASE CONTROL AND PREVENTION, YOUTH RISK BEHAVIOR SURVEY DATA SUMMARY AND TRENDS REPORT 2009-2019, at 6 (2020), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBSDataSummaryTrendsReport2019-508.pdf

[157] Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts, 2017* MORBIDITY MORTALITY WEEKLY REPORT, CDC (Jan. 25, 2019), http://dx.doi.org/10.15585/mmwr.mm6803a3.

[158] Centers for Disease Control and Prevention, *Youth Risk Behavior Survey Data Summary and Trends Report 2009-2019* at 4 (2020), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBSDataSummaryTrendsReport2019-508.pdf.

[159] GLSEN, SEPARATION AND STIGMA: TRANSGENDER YOUTH AND SCHOOL FACILITIES (2017), https://www.glsen.org/sites/default/files/2019-11/Separation_and_Stigma_2017.pdf.

[160] *See* Jody L. Herman, *Gendered Restrooms and Minority Stress: The Public Regulation of Gender and its Impact on Transgender People's Lives*, 19 J. PUB. MGMT. & SOC. POL'Y 65, 74–75 (2013). *See also* Grimm v. Gloucester Cty. Sch. Bd., 972 F.3d 586, 600 (4th Cir. 2020) (recounting that the transgender student in that case, due to his restroom avoidance, "suffer[ed] from recurring urinary tract infections, for which his mother kept medication always stocked at home") (internal quotation marks omitted). Transgender students also increasingly face exclusion from school athletic teams that

- *Lowered outcomes.* High levels of victimization and discrimination at school have put many transgender students, in particular, on track for lower educational outcomes than other students.[161]

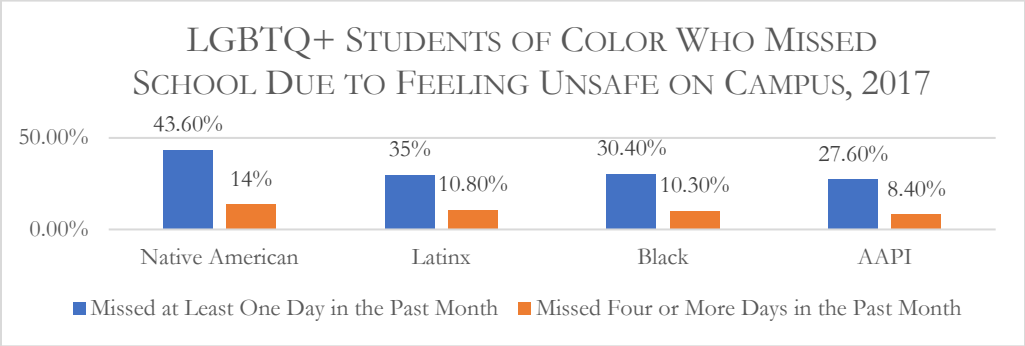

Figure 3: Percentage of Minority LGBTQ+ Students Who Missed School Due to Feeling Unsafe on Campus, Source: GLSEN – Erasure and Resilience: The Experiences of LGBTQ Students of Color, AAPI, Black, Latinx, Native and Indigenous Students. (2017 National School Climate Survey), https://www.glsen.org/sites/default/files/2020-03/Erasure-and-Resilience-Native-2020.pdf.

Homelessness, both brief and longer-term, is also a disproportionate risk and reality for LGTBQ+ youth. According to one estimate, each year 700,000—or one in 30—youths aged 13 to 17 run away from home or experience some form of homelessness.[162] About 20% of them identify as LGBTQ+.[163] Moreover, LGBTQ+ youth and young adults are more than twice as likely to experience homelessness than their straight and cisgender peers,[164] with Black and Native American LGBTQ+ youth disproportionately represented among the unhoused.[165] Many homeless youth are vulnerable to physical and emotional abuse, and reports suggest that those who identify as LGBTQ+ are particularly impacted. LGBTQ+ youth who are homeless also suffer from more chronic illnesses and have higher levels of stress than their LGBTQ+ peers who are not homeless. Unsurprisingly, these factors can lead to students struggling in school.[166]

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correspond with their gender, with more than half of the states, as of May 2021, considering more than 50 bills that would limit students' participation in athletics based on biological sex. *See* American Civil Liberties Union, *Legislation Affecting LGBT Rights Across the Country* (last updated May 21, 2021), https://www.aclu.org/legislation-affecting-lgbt-rights-across-country.

[161] GLSEN, SEPARATION AND STIGMA: TRANSGENDER YOUTH AND SCHOOL FACILITIES (2017), https://www.glsen.org/sites/default/files/2019-11/Separation_and_Stigma_2017.pdf.

[162] M.H. Morton et al., *Missed Opportunities: Youth Homelessness in America*, CHAPIN HALL AT THE UNIV. OF CHICAGO, at 6 (Nov. 2017), https://voicesofyouthcount.org/brief/national-estimates-of-youth-homelessness/.

[163] M.H. Morton et al., *Missed Opportunities: LGBTQ Youth Homelessness in America*, CHAPIN HALL AT THE UNIV. OF CHICAGO, at 7 (Apr. 2018), https://voicesofyouthcount.org/wp-content/uploads/2018/05/VoYC-LGBTQ-Brief-Chapin-Hall-2018.pdf.

[164] *Id.*

[165] *See Homelessness & Housing*, YOUTH.GOV, https://youth.gov/youth-topics/lgbtq-youth/homelessness.

[166] *See* True Colors United in Partnership with National LGBTQ Task Force, *At the Intersections: A Collaborative Resource on LGBTQ Youth Homelessness* (2019), https://truecolorsunited.org/wp-content/uploads/2019/04/2019-At-the-Intersections-True-Colors-United.pdf. *See also* Nicholas Ray, Nat'l Gay & Lesbian Task Force Pol'y Inst., *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* (2006), https://graphics8.nytimes.com/packages/pdf/national/20070307HomelessYouth.pdf. LGBTQ+ students experience homelessness at higher rates than non-LGBTQ+ students for a range of reasons.

Heightened Risks for LGBTQ+ Students During COVID-19

During the pandemic, LGBTQ+ students also faced heightened risks for abuse, anxiety, and stress, with fewer places to turn for support.

"Although [stay at home] orders are designed to keep individuals and communities safe, they present unique challenges for many LGBTQ youth. The closing of K 12 [schools] … may confine LGBTQ young persons to traumatic and possibly abusive environments. Many LGBTQ youth cannot be their authentic selves at home because they have not disclosed their sexual and gender identities or because they were not met with support or acceptance from their parents and families."

John P. Salerno, Natasha D. Williams, and Karina A. Gattamorta, LGBTQ Populations: Psychologically Vulnerable Communities in the COVID 19 Pandemic, American Psychological Association (2020).

There is relatively little early research on the experience of LGBTQ+ students during the pandemic, but what there is underscores these students' vulnerability. Schools are a critical source of mental health services for many LGBTQ+ students—and preliminary public health research indicated that loss of access to needed services may have heightened pre-existing risks, particularly for students who are struggling with their identity or enduring rejection from family or friends.[167] Some additional early research suggests that school closures and activity restrictions disparately impacted LGBTQ+ students. In one nationally representative survey of 2,000 high school students conducted in early 2021, 83% of LGBTQ students reported experiencing more problems that affect their schoolwork or well-being than the year before, compared to 69% of their heterosexual peers.[168] And in the same survey, 30% of LGBTQ students reported seeing "a decline in relationships with other kids," compared to only 19% of heterosexual students who said the same.[169] A recent study of nearly 35,000 LGBTQ youth ages 13-24 found that 48% of LGBTQ youth who wanted mental healthcare in 2020 were unable to access care.[170] That same survey found that 85% of transgender and nonbinary youth reported that COVID-19 negatively impacted their mental health, and 78% that their mental health was "poor" either most of the time or always during

[167] *See* John P. Salerno et al., *Sexual and Gender Minority Stress Amid the COVID-19 Pandemic: Implications for LGBTQ Young Persons' Mental Health and Well-Being*, 135 PUB. HEALTH REPORTS 721, 722-23 (2020).
[168] EdWeek Research Center, *Student Mental Health During the Pandemic: Educator and Teen Perspectives*, at 6 -7 (2021), https://fs24.formsite.com/edweek/images/Mental_Health_Survey_Report_SL_3.30.21_Sponsored.pdf. As a part of the survey, participants were "given a list of potential problems and asked to select all that apply." *Id.* at 5. Those included problems such as "[n]ot finishing schoolwork because of procrastination," "[f]eeling isolated from classmates," or being "[d]istracted by anxieties worries, fear, during class," among others. *Id.* at 7.
[169] *Id.* at 10.
[170] *National Survey on LGBTQ Youth Mental Health,* THE TREVOR PROJECT at 5 (2021), https://www.thetrevorproject.org/wp-content/uploads/2021/05/The-Trevor-Project-National-Survey-Results-2021.pdf.

COVID-19.[171] By comparison, 75% of cisgender youth reported that COVID-19 negatively impacted their mental health and 61% said their mental health was "poor" most or all of the time during COVID-19.[172]

Other early research suggests that these and similar disparities be linked to LGBTQ+ students' inability to access "gender and sexualities alliances; other affirming student organizations; and supportive teachers, professors, coaches, counselors, and peers, all of which serve as buffers that protect LGBTQ youth against mental health burden due to social isolation and psychological trauma."[173] Reports also suggest that the increased time at home may heighten risks of isolation and abuse from unsupportive or actively hostile family members.[174] According to one study, 50% of LGBTQ youth aged 13-17 and 65% of transgender and nonbinary youth (13-17 years old) reported that COVID-19 impacted their ability to express their sexual identity.[175] That same study found that 81% of LGBTQ youth aged 13-17 reported that COVID-19 made their living situation more stressful than before the pandemic.[176] And for some transgender students, online learning platforms may have added yet another distressing hurdle—identifying the student by a pre-populated name that may be based on an earlier school record but is inconsistent with their gender identity and is not the name they use and are known by at school.

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[171] *Id.* at 7.
[172] *Id.*
[173] John P. Salerno et al., *LGBTQ Populations: Psychologically Vulnerable Communities in the COVID-19 Pandemic*, AM. PSYCHOLOGICAL ASS'N (2020), https://doi.apa.org/fulltext/2020-41743-001.html.
[174] *Id.*
[175] *National Survey on LGBTQ Youth Mental Health,* THE TREVOR PROJECT at 8 (2021), https://www.thetrevorproject.org/wp-content/uploads/2021/05/The-Trevor-Project-National-Survey-Results-2021.pdf.
[176] *Id.*

COVID-19's Disparate Impacts on Students in Higher Education

For many students, COVID-19 has raised new barriers to getting a degree and made old barriers that much harder to overcome. For those already pursuing a degree, COVID-19 has also taken a heavy toll—financially, academically, and emotionally. Yet early evidence also shows disparities in these impacts for students who faced the greatest hurdles to entering and staying in school before the pandemic, especially those students from historically underserved, marginalized groups.

Today's postsecondary students and the institutions they attend have faced unprecedented challenges to their academic and living conditions since March 2020. In short order, many colleges and universities pivoted to remote learning for spring and summer terms, with residential campuses sending most of their students home. The 2020-21 academic year saw some students return to in-person instruction on campus; for others, instruction remained remote or hybrid.

560,000

The approximate drop in the number of undergraduates enrolled in the fall of 2020 a decline of 3.6% from 2019.

National Student Clearinghouse Research Center, Dec. 2020

But the images of closing residence halls and online commencements told only a part of the story. As discussed below, while we may not understand the full scope of the pandemic's effects for some time, early research shows that the disparities in student experience and by institutional sectors were stark. Undergraduate enrollment during the thirteen months we looked at was down throughout the country, especially among community colleges that disproportionately serve the students with the fewest resources. Additionally, the number of students experiencing financial insecurity and mental health challenges increased significantly. At the start of the 2020-21 academic year, many of America's students were leaving higher education (or not entering at all), losing jobs, taking fewer classes, juggling caregiving responsibilities, and concerned about their financial well-being and work opportunities.

COVID-19 and Student Enrollment: Widespread Effects and Disparate Impacts

COVID-19 has amplified challenges for many students looking to pursue postsecondary education, with students of color and students who are caregivers confronting significant and disproportionate new challenges to entry, staying in school, and finishing on time.

11.4%

The decrease in graduates from high poverty high schools going straight to college, compared to those who did so in 2019.

National Student Clearinghouse Research Center, March 2021

Beginning in mid-March 2020, many—if not most—colleges and universities shifted quickly to an online learning environment. By fall 2020, out of nearly 3,000 colleges surveyed, 44% were fully or primarily online, while 27% were fully or primarily in-person.[177] Plans for the spring 2021 term turned out to be similar: 43% of institutions indicated, as of January 31, 2021, that they planned to remain fully or primarily online, while only 18% planned to be fully or primarily in-person.[178]

Abrupt changes in plans for 2020 high school graduates took place, with heightened drop-offs in college enrollment from high-poverty high schools. For students who graduated from high school in 2020, college enrollment was down in 2020. The National Student Clearinghouse reported a nearly 7% drop in enrollment compared with 2019 graduates.[179] Meanwhile, another national study of about 60,000 households conducted by the Bureau of Labor Statistics found that by October 2020, 62.7% of 2020 high school graduates were enrolled in colleges or universities, down from 66.2% in 2019.[180] Of those keeping with their college plans, over one-fifth changed their first-choice school, with most citing cost and location as the most important factors for doing so.[181] For 2020 graduates of high-poverty high schools, the turn away from college has been even greater: an 11.4% falloff in college enrollment compared to a 1.6% decline in 2019.[182]

[177] *Here's Our List of Colleges' Reopening Models*, THE CHRON. OF HIGHER EDUC. https://www.chronicle.com/article/heres-a-list-of-colleges-plans-for-reopening-in-the-fall/ (Oct. 1, 2020).
[178] *Tracking Colleges' Spring-Reopening Plans*, THE CHRON. OF HIGHER EDUC., https://www.chronicle.com/article/tracking-college-spring-reopening-plans (Jan. 31, 2021).
[179] Nat's Student Clearinghouse Res. Ctr., *High School Benchmarks / COVID-19 Special Analysis Update & Correction*, at 2 (Mar. 2021), https://nscresearchcenter.org/wp-content/uploads/2mar021_HSBenchmarksCovidReport.pdf.
[180] *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *College Enrollment and Work Activity of Recent High School and College Graduates—2020*, at 2 (Apr. 27, 2021), https://www.bls.gov/news.release/pdf/hsgec.pdf.
[181] Hayoung Kim et al., *COVID-19 and US Higher Education Enrollment: Preparing Leaders for Fall*, MCKINSEY & CO. (May 21, 2020), https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-us-higher-education-enrollment-preparing-leaders-for-fall.
[182] Nat'l Student Clearinghouse Res. Ctr., *High School Benchmarks / COVID-19 Special Analysis Update & Correction*, at 3 (Mar. 2021), https://nscresearchcenter.org/wp-content/uploads/2021_HSBenchmarksCovidReport.pdf.

Steep drops in community-college enrollment. Community colleges were also hit hard, with enrollment among 2020 high school graduates down 13.2% in fall 2020.[183] And although overall enrollment in community colleges had been declining in recent years, the fall 2020 drop—by 10.1%—was almost 10 times steeper than the 1.4% decrease in overall enrollment reported in 2019.[184] Spring 2021 enrollment continued the downward trend: undergraduate enrollment slumped 5.9% from a year earlier and community colleges remained the hardest hit, with enrollment off 11.3% from spring 2020.[185] Enrollment by young college students (aged 18-20) who make up 40% of all undergraduates shrunk by 7.2%, the greatest of any age group, with the deepest declines occurring at community colleges, which were down 14.6%.[186]

Reduced enrollment and retention for students who are caregivers. The shift to online learning had a profound effect on students' lives, including their decisions to enroll or remain in school.[187] That shift took a particularly heavy toll on students who had to juggle their own education while caring for children, elderly or sick parents, or others. A survey of more than 30,000 undergraduates conducted in spring 2020 found that student caregivers faced a range of heightened risks and demands, including greater than average financial hardship, food insecurity, and generalized anxiety.[188] Those demands may also have "creat[ed] the potential for parents to sacrifice their own well-being to meet caregiving needs of their children," especially "among mothers who frequently assume the primary caregiving role."[189] And there is already evidence that some students—both women and men—had to drop out of classes, or not enroll at all, as they struggled to balance those responsibilities.[190]

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[183] *Id.* at 5.
[184] *Fall 2020 Current Term Enrollment Estimates*, NAT'L STUDENT CLEARINGHOUSE RES. CTR. (Dec. 17, 2020), https://nscresearchcenter.org/current-term-enrollment-estimates/.
[185] *Monthly Update on Higher Education Enrollment*, NAT'L STUDENT CLEARINGHOUSE RES. CTR., at Tab 3 (Mar. 11, 2021), https://nscresearchcenter.org/stay-informed/.
[186] *Stay Informed with the Latest Enrollment Information*, NAT'L STUDENT CLEARINGHOUSE RES. CTR., at Tab 1 (Apr. 29, 2021), https://nscresearchcenter.org/stay-informed/.
[187] *See* Nina Agrawal, *Cal State Students Keep GPAs up During Pandemic, But Troubling Equity Gaps Persist*, LOS ANGELES TIMES (Mar. 29, 2021), https://www.latimes.com/california/story/2021-03-29/csu-covid-19-challenges-grades ("Ten campuses reported year-over-year increases in withdrawals from classes, and 11 saw upticks in the percentage of students who received a grade of D, F or W, for withdrawal.")
[188] Krista Soria et al., *Undergraduate Student Caregivers' Experiences during the COVID-19 Pandemic: Financial Hardships, Food and Housing Insecurity, Mental Health, and Academic Obstacles*, SERU CONSORTIUM, at 2-6 (2020), https://escholarship.org/content/qt7h06q880/supp/Student_Caregivers_During_the_Pandemic.pdf.
[189] B.S. Russell et al., *Initial Challenges of Caregiving During COVID-19: Caregiver Burden, Mental Health, and the Parent-Child Relationship*, 51 CHILD PSYCHIATRY & HUMAN 671, 672 (2020), https://link.springer.com/content/pdf/10.1007/s10578-020-01037-x.pdf; *see also* Jenesse Miller, *COVID-19 has hit women hard, especially working mothers*, USC NEWS (June 18, 2020) (reporting that women have borne "significantly greater responsibility for child care during the COVID-19 pandemic" according to analysis of responses collected as a part of a survey of some 7,000 U.S. adults), https://news.usc.edu/171617/covid-19-women-job-losses-childcare-mental-health-usc-study/.
[190] Jon Marcus, *The Pandemic is Speeding up the Mass Disappearance of Men from College*, THE HECHINGER REPORT (Jan. 19, 2021), https://hechingerreport.org/the-pandemic-is-speeding-up-the-mass-disappearance-of-men-from-college/.

Sharp declines in enrollment, especially among men and male students of color. Institutions also reported sharp drops in enrollment among some students of color. According to recently released data from the National Student Clearinghouse Research Center, by fall 2020, enrollment by men had declined by 5.1%, while the enrollment by women was consistent in prior year-to-year declines (0.7%).[191] By spring 2021, male enrollment were continuing to show declines—by 8.9%— while female enrollment dropped by 4.0%.[192] Likewise, in spring 2021, public colleges reported sharp declines in enrollment among Native American men (18.4%), Black men (14.3%), Latinx men (12.6%), white men (11.7%); Native American women (11.2%), white women (7.0%), Black women (6.9%) and Latinx women (5.1%).[193] The sharp enrollment declines among students of color, especially among male students of color, are echoed by the HBCUs, tribal colleges and universities (TCUs), and MSIs as described in the next section.[194] And given that community colleges disproportionally serve low-income students and students of color,[195] those schools' steep declines in enrollments may be further evidence of the pandemic's disproportionate effects on access to postsecondary education.

> **"Tennessee community colleges saw a decline in White students of 17%. Hispanic students declined by 18% but Black females declined by 27% and Black male student enrollment declined by a staggering 35%."**
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> Bob Obrotha, National College Attainment Network, *COVID Is Worsening College Access Disparities; Here's What Needs to Happen to Reverse This Trend*, Dec. 4, 2020.

[191] Nat'l Student Clearinghouse Research Ctr., *Term Enrollment Estimates Fall 2020,* at 12 (updated March 2021), https://nscresearchcenter.org/wp-content/uploads/CTEE_Report_Fall_2020.pdf.
[192] Nat'l Student Clearinghouse Research Ctr., *Current Term Enrollment Estimates Spring 2021*, at Tab 4 (Apr. 29, 2021), https://nscresearchcenter.org/stay-informed/.
[193] *Id.*
[194] *Id.*
[195] Jennifer Ma et al., *Trends in Community Colleges: Enrollment, Prices, Student Debt, and Completion*, COLL. BD. RESEARCH BRIEF, at 5 (April 2020), https://research.collegeboard.org/pdf/trends-community-colleges-research-brief.pdf.

COVID-19's Impact on HBCUs, TCUs, and MSIs

Many HBCUs, TCUs, and MSIs saw declines in enrollment during the 2020-21 academic year, in some cases far outpacing enrollment declines in their predominantly white peer institutions.

HBCUs, TCUs, and MSIs such as Hispanic-serving institutions (HSIs) and Asian American and Native American Pacific Islander-serving institutions (AANAPISIs)—long major pathways to higher education for many students of color—also saw enrollments decline in 2020 and 2021, disproportionately so for some schools as compared to peer schools serving a predominantly white student body.[196]

HBCUs, MSIs and TCUs play a critical role in the education of many students of color and have long been regarded as an "important source of educational opportunity for the growing proportion of underrepresented students."[197] They are also "engines of upward mobility for millions of students."[198] HBCUs, MSIs and TCUs represent about 20% of all degree-granting, Title IV-eligible institutions of higher education, enrolling about 28% of all undergraduates in the country.[199] HBCUs, MSIs and TCUs enroll far larger percentages of students of color and students from low-income backgrounds than the national average and award a disproportionate share of degrees to students of color in professions such as engineering and education, putting many on a path to doctoral studies.[200]

The pandemic has hit MSIs and TCUs, and the students they serve, particularly hard. While overall enrollments at colleges and universities declined by 3.6% in fall 2020,[201] enrollment at MSIs and TCUs seems to have dropped more steeply. OCR reviewed the enrollment data publicly available as

[196] The term "MSI" refers to institutions of higher education that serve a significant percentage of minority students and are eligible to receive funds under Part F of Title III of the Higher Education Act, including Hispanic-Serving Institutions, Alaska Native-serving Institutions or Native Hawaiian Serving Institutions, Predominately Black Institution, Asian American and Native American Pacific Islander-serving Institutions, and a Native American-serving nontribal institution.

[197] Brian K. Bridges et al., *Student Engagement and Student Success at Historically Black and Hispanic-Serving Institutions*, UNDERSTANDING MINORITY INSTITUTIONS, at 217 (eds. Gasman et al. 2008).

[198] AM. COUNCIL ON EDUC., CTR. FOR POL'Y RESEARCH AND STRATEGY, MINORITY, MINORITY SERVING INSTITUTIONS AS ENGINES OF UPWARD MOBILITY (2018), https://www.acenet.edu/Documents/MSIs-as-Engines-of-Upward-Mobility.pdf.

[199] NAT'L ACAD. OF SCI., ENG'G, AND MED., MINORITY SERVING INSTITUTIONS: AMERICA'S UNDERUTILIZED RESOURCE FOR STRENGTHENING THE STEM WORKFORCE, at 40 (2019), https://doi.org/10.17226/25257 (relying on 2015 IPEDS data); AM. COUNCIL ON EDUC., CTR. FOR POL'Y RESEARCH AND STRATEGY, MINORITY, MINORITY SERVING INSTITUTIONS AS ENGINES OF UPWARD MOBILITY, at 4 (2018), https://www.acenet.edu/Documents/MSIs-as-Engines-of-Upward-Mobility.pdf (also relying on 2015 data).

[200] AM. COUNCIL ON EDUC., CTR. FOR POL'Y RESEARCH AND STRATEGY, MINORITY, MINORITY SERVING INSTITUTIONS AS ENGINES OF UPWARD MOBILITY, at 8 (2018), https://www.acenet.edu/Documents/MSIs-as-Engines-of-Upward-Mobility.pdf.

[201] Nat'l Student Clearinghouse Res. Ctr., *Current Term Enrollment Estimates Fall 2020*, at 6 (2020), https://nscresearchcenter.org/wp-content/uploads/CTEE_Report_Fall_2020.pdf.

of March 9, 2021, of the nearly 700 institutions eligible for MSI or TCU designation.[202] Of the 304 MSIs and TCUs with published data for 2019 and 2020, we found that 63% had seen enrollments decline in 2020, with nearly 32% of them experiencing at least a 10% drop. Although the hardest hit were HSIs, with 70% of those reviewed for this report showing a decline in enrollment, other MSIs faced sharp declines as well:

- 58% of Asian American, Native American, Pacific Islander-Serving Institutions reported a decrease;
- 56% of Tribal Colleges and Universities reported a decrease;
- 45% of Predominantly Black Institutions reported a decrease; and
- 35% of Native American-Serving Non-Tribal Institutions reported a decrease.

The American Indian Higher Education Consortium (AIHEC) recently released a first-of-its-kind study reporting the experiences of TCU students during the pandemic.[203] The survey, sent to nearly 500 returning TCU students, focused on persistence, online learning, and physical and psychological well-being. Although that study does not offer comparative data vis-à-vis other groups, its results warrant inclusion here for the insight they provide about the pandemic's effects on TCUs, Native students, and their communities.

One of the largest barriers reported for TCU students has been acclimating to an online curriculum. According to the AIHEC survey, 45% of respondents had never enrolled in an online or hybrid class prior to the pandemic.[204] The majority (54%) reported that they were less engaged online than in face-to-face classes; another 58% said they had greater difficulty understanding class material.[205] Even though nearly 40% of TCU students commute 50 or more miles to attend class, a clear majority (57%) said they still preferred traditional, in-person courses.[206]

45%

of responding TCU students had never enrolled in an online or hybrid class prior to 2020.

Tribal College Journal of American Indian Higher Education

HBCUs were also hit hard by the pandemic. HBCUs perform a critical function for African American undergraduates: Across the 21 states and territories where they are located, HBCUs comprise only 9% of four-year institutions but awarded 26% of all bachelor's degrees received by African American students in 2016.[207] Although HBCUs experienced lower

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[202] OCR reviewed institutions' individual websites and, to the extent they were publicly available, gathered the 2019 and 2020 enrollment data of every MSI and TCU listed in the MSI Directory maintained by the Center for MSIs at the Rutgers Graduate School of Education. Based on this review, OCR calculated the percentages presented here. *See* Center for MSIs, Rutgers Graduate School of Education, *MSI Directory*, https://cmsi.gse.rutgers.edu/content/msi-directory. Given the limitations of this preliminary survey, additional national research will be important to assess the pandemic's effects on MSIs and TCUs.

[203] *AIHEC Research Survey on the Impact of COVID-19 on TCU Student Experiences,* AM. INDIAN HIGHER EDUC. CONSORTIUM 1 (Feb. 2021), http://www.aihec.org/what-we-do/docs/PR/PR21/Report%20on%20Research%20Survey%20on%20the%20Impact%20of%20COVID-19%20on%20TCU%20Student%20Experiences%20Feb2021_final.pdf.

[204] *Id.* at 4.

[205] *Id.* at 13.

[206] *Id.* at 10.

[207] K.M. Saunders & B.T. Nagle, *HBCUs Punching Above Their Weight: A State-Level Analysis of Historically Black College and University Enrollment and Graduation,* UNCF FREDRICK D. PATTERSON RES. INST., at 6 (2018), https://cdn.uncf.org/wp-content/uploads/PATW_Report_FINAL0919.pdf.

enrollment numbers in 2019 (down by 2.1%), enrollment figures for 2020 dropped still further—by 5.5%. Two-year public HBCUs were hit hardest, experiencing a decline of 21% in enrollment by men, and 9.3% decline for women.[208]

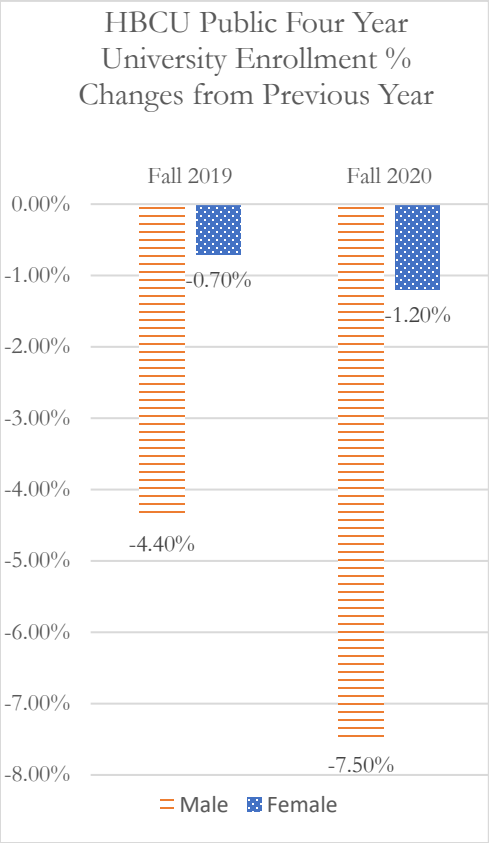

Figure 4 HBCU Public Four Year University Enrollment % Changes from Previous Year. Source: https://public.tableau.com/profile/researchcenter#!/vizhome/Fall20203asofOct_22/Fall2020EnrollmentNo_3, Tab 4.

HBCUs also faced significant funding disparities long before COVID-19 emerged in the United States. The American Council on Education in January 2019 found that HBCUs rely more heavily on tuition than non-HBCU institutions (45% to 37%); private gifts and grants make up a smaller percentage of HBCUs' revenue streams as compared to non-HBCU schools (17% versus 25%); HBCU endowments fall below non-HBCU endowments of non-HBCU schools by at least 70%; and "[b]oth public and private HBCUs experienced the steepest declines in federal funding per FTE student between 2003 and 2015, with private HBCUs seeing a 42 percent reduction— the most substantial of all sectors."[209] Given these inequitable financial constraints, the declining enrollment across HBCUs may pose real risks to these important institutions and to educational opportunities for students of color across the country.

[208] *Monthly Update on Higher Education Enrollment,* NAT'L STUDENT CLEARINGHOUSE RES. CTR., Tab 4 (Oct. 22, 2020), https://public.tableau.com/profile/researchcenter#!/vizhome/Fall20203asofOct_22/Fall2020EnrollmentNo_3.
[209] Krystal L. Williams et al., *Public and Private Investments and Divestments in Historically Black Colleges and Universities*, AMER. COUNCIL ON EDUC. ISSUE BRIEF 2 (Jan. 2019), https://www.acenet.edu/Documents/Public-and-Private-Investments-and-Divestments-in-HBCUs.pdf.

COVID-19's Impact on Students' Financial Insecurity

Widespread effects: While many students put college plans on hold for financial or other reasons—at least for now—others who enrolled or who continued with their studies experienced unprecedented financial challenges, deepening fears about whether they could continue their education at all.

Prior to the pandemic, 43% of fulltime and 81% of part-time undergraduate students were employed.[210] When the pandemic began to disrupt the American and world economy, many of these students lost their jobs and, with that, the means to support themselves through school. While it will take time to assess the pandemic's full economic impact on students in general, and its disparate impacts on the most vulnerable students, the initial reports are already alarming.

According to the Bureau of Labor Statistics, colleges and universities cut an estimated 650,000 jobs (including student on-campus jobs) from March to December 2020—more than 13% of the higher education workforce.[211] A smaller study conducted in spring 2020 showed that among 822 college students, of those with jobs, 38% had their positions canceled.[212]

These lost opportunities appear to have affected students' perspectives on paying for college. In a recent survey of nearly 1,600 high school seniors nationwide, more than half of respondents (52%) said that they were more concerned about paying for college since the outbreak, with only 5% of those responding saying they were better able to afford college.[213] That concern was highest among women, Latinx students, and students in low-income homes, many of whom were already unsure whether they could afford college before the pandemic.[214]

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[210] *The Condition of Education 2020: College Student Employment,* NAT'L CTR. FOR EDUC. STAT. 1 (2020)), https://nces.ed.gov/programs/coe/pdf/coe_ssa.pdf.
[211] Dan Bauman, *A Brutal Tally: Higher Ed Lost 650,000 Jobs Last Year*, THE CHRON. OF HIGHER EDUC. (Feb. 5, 2021), https://www.chronicle.com/article/a-brutal-tally-higher-ed-lost-650-000-jobs-last-year.
[212] *Most Student Jobs Have Been Canceled, Delayed or Digitized by Coronavirus*, THE GENERATION LAB (May 12, 2020), https://www.generationlab.org/post/most-student-jobs-have-been-canceled-delayed-or-digitized-by-coronavirus.
[213] *Rising Senior Report: A Study on COVID-19's Impact on the High School Class of 2021*, CARNEGIE DARTLET 12 (July 2020) https://www.carnegiedartlet.com/media/uploads/file/risingseniorreport.pdf.
[214] *Id.* at 13.

COVID-19 has also increased college students' concerns about their future job and career opportunities, with 90% reporting that they were concerned about the US economy and job market.[215] Another survey similarly found that 66% of college students said COVID-19 changed how they felt about their financial future, and nearly 70% of students thought the pandemic would make it harder to find a job.[216]

"As expected, the COVID 19 outbreak . . . had large negative effects on students' current labor market participation and expectations about post college labor outcomes. Working students suffered a 31% decrease in their wages and a 37% drop in weekly hours worked, on average. Moreover, around 40% of students lost a job, internship, or a job offer, and 61% reported to have a family member that experienced a reduction in income."

Esteban M. Aucejo, et al., *The Impact Of COVID 19 On Student Experiences And Expectations: Evidence From A Survey*, 191 J. OF PUB. ECON. 1 (2020)

Student financial concerns extended beyond employment to more basic necessities: food and housing.

Student financial concerns extend beyond employment and tuition. In April and May 2020, the Hope Center for College, Community, and Justice conducted a survey of more than 38,000 students attending 54 different universities and colleges across 26 states, and found that more than half of the responding college students reported that they were experiencing food insecurity, housing insecurity, or homelessness.[217] Although not nationally representative, the survey found that:

- 9% of the students surveyed at two-year colleges and 13% of those surveyed at four-year institutions reported temporarily staying with a relative, a friend, or couch surfing during the pandemic[218]
- 15% of students surveyed at two-year colleges and 18% of those surveyed at four-year institutions reported being unable to study and engage in classes where they were living[219]
- 44% of students surveyed at two-year community colleges and 38% at four-year universities were experiencing food insecurity—a problem that long predated the pandemic[220]
- The gap in basic-needs insecurity between Black students and white students who responded to the survey was 19%.[221]

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[215] *Most Student Jobs Have Been Canceled, Delayed or Digitized by Coronavirus*, GENERATION LAB (May 12, 2020), https://www.generationlab.org/post/most-student-jobs-have-been-canceled-delayed-or-digitized-by-coronavirus .
[216] *2020 College Student Financial Survey*, WALLETHUB (Aug. 19, 2020), https://wallethub.com/blog/college-banking-credit-cards/65596.
[217] Ass'n of Am. Coll. & Univ., *More than Half of College Students Facing Housing or Food Insecurity during the Pandemic*, AAC&U NEWS, (July 2020), https://www.aacu.org/aacu-news/newsletter/more-half-college-students-facing-housing-or-food-insecurity-during-pandemic.
[218] *#RealCollege During the Pandemic: New Evidence on Basic Needs Insecurity and Student Well-Being (Web Appendices)*, THE HOPE CENTER 13 (2020), https://hope4college.com/wp-content/uploads/2020/07/COVIDStdSurv-NationalAppendices_07142020_FINAL.pdf.
[219] *Id.* at 12.
[220] *Id.* at 11. *See also* Devon C. Payne-Sturges et al., *Student Hunger on Campus: Food Insecurity Among College Students and Implications for Academic Institutions*, 32 AM. J. HEALTH PROMOT. 349 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5552435/pdf/nihms886492.pdf (among students surveyed, 15% reported food insecurity, with an additional 16% at risk for food insecurity).
[221] Sara Goldrick-Rab et al., *New Evidence on Basic Needs Insecurity and Student Well-Being*, THE HOPE CTR. FOR COLL., CMTY., AND JUSTICE 2, https://hope4college.com/wp-content/uploads/2020/06/Hopecenter_RealCollegeDuringthePandemic.pdf.

Students of color report outsized difficulties in meeting basic needs like food, housing and access to the internet during the pandemic.

The pandemic's disparate impact on college students of color can be seen in self-reported concerns about basic needs, including food, shelter and internet access. One study of more than 38,600 students from 15 four-year institutions and 39 community colleges found that while all students report that they are struggling, students of color disproportionately reported experiencing insecurities in meeting basic needs like food and housing, as shown in Figure 5 below.

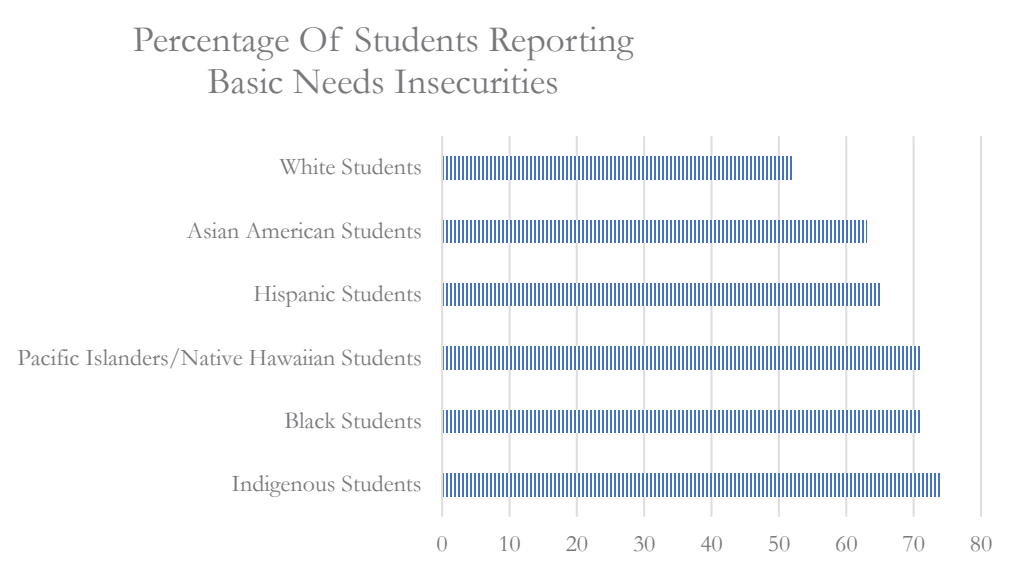

Figure 5 Percentage of Students Reporting Basic Needs Insecurities. Source: AAC&U, More than Half of College Students Facing Housing or Food Insecurity during the Pandemic, AAC&U NEWS, July 2020, https://www.aacu.org/aacu-news/newsletter/more-half-college-students-facing-housing-or-food-insecurity-during-pandemic.

Likewise, students of color struggled with the transition to remote learning with inadequate technology that made it difficult for them to get online. In May 2020, Digital Promise (a Congressionally-authorized non-profit organization) conducted a nationwide survey of around a thousand college and university students. The study found that while overall, 16% of undergraduates had internet connectivity issues which "often" or "very often" impeded their ability to participate in coursework, the rates were higher among Black and Hispanic students (17% and 23%, respectively) than among white students (12%).[222]

Students of color reported disproportionately more concerns and disruptions in their educational plans.

A variety of studies show that students of color also saw their academic plans upended disproportionately by the pandemic:

[222] B. Means and J. Neisler, *Suddenly Online: A National Survey of Undergraduates During the COVID-19 Pandemic*. DIGITAL PROMISE, at 13 (2020), https://digitalpromise.org/wp-content/uploads/2020/07/ELE_CoBrand_DP_FINAL_3.pdf.

- *Staying on track*. More than 77% of all students were concerned about being on track to graduate from their program. These concerns were particularly high among Black (84%) and Latinx (81%) students.[223]
- *Ability to continue*. 56% of Black and Latinx students reported that it was likely or very likely that COVID-19 would negatively impact their ability to stay in college, as compared to 44% of white students who said the same.[224]
- *Post-graduation concerns*. While 80% of all students also worried about what would happen after they graduate, 85% of students of color say they are "very concerned" about not being able to get the skills or work they need to find employment after they graduate.[225]
- *Educational disruption*. Nearly twice as many Latinx students (50%) and 42% of Black students reported having their education disrupted as compared to white students (26%).[226]
- *Fewer classes*. Only 3% of white students and only 5% of upper-middle-income students (from households earning between $75,000 and $149,000 annually) said they planned to take fewer classes because of COVID-19. In contrast, 29% of Asian students, 24% of Hispanic students, and 18% of students from households earning less than $25,000 annually said they planned to take fewer classes because of financial or other constraints.[227] And these decisions may well lengthen the time it takes for these students to finish their degrees.

While COVID-19 has left many students financially insecure, students of color entered the pandemic with a disproportionately greater educational debt burden, an economic disparity that may be amplified further into the future.

The American Rescue Plan offers substantial and valuable relief to many postsecondary students and their households,[228] including many who carried significant educational-loan debt into the pandemic and may be enduring further repayment challenge from lost employment in the past year, as discussed above. However, it is important to recognize that many students of color face disproportionate challenges as a result of having more pre-pandemic educational debt than their peers.[229] While COVID-19 imposed economic and other strains on nearly all in the United States,

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[223] *Higher Ed Survey Highlights the Academic, Financial, and Emotional Toll of Coronavirus on Students*, GLOB. STRATEGY GRP., at 1 (May 28, 2020), https://s3-us-east-2.amazonaws.com/edtrustmain/wp-content/uploads/sites/3/2017/11/27120859/Higher-Ed-Nationwide-CA-Memo-F05.27.20.pdf. (The Global Strategy Group partnered with The Education Trust to conduct an online survey among "1,010 two-year, four-year, and undergraduate certificate students" nationwide from May 14 to May 19, 2020.).

[224] *Gallup State of the Student Experience: Fall 2020 Report*, GALLUP, at 12 (2020), https://www.gallup.com/education/327485/state-of-the-student-experience-fall-2020.aspx

[225] *Id.*

[226] *Public Viewpoint: COVID-19 Work and Education Survey,* STRADA CTR. FOR CONSUMER INSIGHTS, at 1 (June 10, 2020), http://stradaeducation.org/wp-content/uploads/2020/06/Public-Viewpoint-Report-Week-9.pdf. (The Strada Center for Consumer Insights survey was based on more than 10,000 responses collected between March 25 and May 28, 2020.)

[227] Morgan Polikoff et al., *What's the Likely Impact of COVID-19 on Higher Ed?*, INSIDE HIGHER ED (Aug. 4, 2020), https://www.insidehighered.com/views/2020/08/04/analysis-data-national-survey-impact-pandemic-higher-ed-opinion (analyzing data from the Understanding America Survey, a nationally representative panel study of about 9,000 American parents to better understand the impacts of the COVID-19 on education. The survey was conducted in three batches between April 15 and July 21, 2020.)

[228] American Rescue Plan Act of 2021, H.R. 1319, 117th Cong. (2021) (enacted).

[229] *Student Loan Debt by Race*, EDUC. DATA. ORG. (Sept. 24, 2020), https://educationdata.org/student-loan-debt-by-race.

these student-debt differences by race reveal, again, the heightened vulnerability of many students of color in postsecondary education.

COVID-19 and Student Mental Health

The COVID-19 health crisis spawned what has been described by some as a mental health pandemic for America's college students—one that took a particularly harsh toll on students from historically marginalized, underserved communities.

The pandemic's negative effects on college students' mental health, while still emerging, are already well documented and deeply concerning. In a survey by Active Minds of nearly 2,100 college students about the impact of COVID-19 on their mental health, one in five of respondents reported that "their mental health has significantly worsened under COVID-19," with 80% reporting that "COVID-19 has negatively impacted their mental health."[230] Reports included heightened levels of stress and anxiety, feelings of disappointment, sadness, loneliness, and isolation. These results are echoed by faculty who, according to a survey conducted from 1,685 faculty members at 12 colleges and universities throughout the country, reported overwhelmingly (87%) that they believed student mental health had "worsened" or "significantly worsened" during the pandemic. The same survey found that 73% of faculty would embrace additional professional training on student mental health issues.[231]

80%

Percentage of college students who say that COVID has negatively impacted their mental health

Active Minds, *COVID 19 Impact on College Student Mental Health* (2020)

Respondents also reported having trouble maintaining a routine (76%), struggling to get enough exercise (73%), and staying connected with others (63%).[232] In another survey of more than 38,000 students, administered by The Hope Center for College, Community, and Justice, a majority of respondents reported that they could not concentrate at school.[233] Another survey of college undergraduates in one New Jersey public university found that 73.5% of respondents reported having difficulties focusing on

[230] *COVID-19 Impact on College Student Mental Health*, ACTIVE MINDS (2020), https://www.activeminds.org/wp-content/uploads/2020/04/Student-Survey-Infographic.pdf; *See also* Matthew H.E.M. Browning, et al., *Psychological Impacts From COVID-19 Among University Students: Risk Factors Across Seven States In The United States*, PLOS ONE, at 2 (Jan. 7, 2021), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0245327 (85% of students surveyed as a part of the study reported experiencing high to moderate levels of distress); Lindsay Till Hoyt, et al., *Constant Stress Has Become the New Normal: Stress and Anxiety Inequalities Among U.S. College Students in the Time of COVID-19*, 68 J. OF ADOLESCENT HEALTH 270 (2021), https://pubmed.ncbi.nlm.nih.gov/33288459/ (reporting that all students were experiencing stress and anxiety, with especially high levels in April 2020).

[231] *The Role of Faculty in Student Mental Health*, BOSTON UNI. SCH. OF PUB. HEALTH ET AL. 4, 7 (2021), https://marychristiefoundation.org/wp-content/uploads/2021/04/The-Role-of-Faculty-in-Student-Mental-Health.pdf.
[232] *COVID-19 Impact on College Student Mental Health*, ACTIVE MINDS (2020), https://www.activeminds.org/wp-content/uploads/2020/04/Student-Survey-Infographic.pdf.
[233] Sara Goldrick-Rab et al., *New Evidence on Basic Needs Insecurity and Student Well-Being*, THE HOPE CTR. FOR COLL., CMTY., AND JUSTICE 2, https://hope4college.com/wp-content/uploads/2020/06/Hopecenter_RealCollegeDuringthePandemic.pdf.

academic work since the start of the pandemic, with another 58.6% experiencing difficulties with online learning.[234]

COVID-19's Disparate Impact on Mental Health for Students of Color

While many students struggled, mental health data show that students' experience of feeling burdened by the emotional and mental weight of the pandemic varied by race and ethnicity. A large-scale study of college student mental health (see Figure 6), which included nearly 50,000 college students seeking treatment at 143 counseling centers during the fall 2020, showed, for example, that students who identified as American Indian, Alaskan Native, Native Hawaiian or Pacific Islander reported disproportionately high impacts on measures of grief and loss and mental health. Among students seeking mental health services who were surveyed, Latinx students reported greater struggles than other groups of students with motivation and focus, while white students reported higher levels of loneliness. Native Hawaiian and Pacific Islander students also indicated the greatest rate of negative impact on relationships with significant others, family, and friends.[235]

It is still too early to know the pandemic's long-term impact. It is already clear, though, that many students were hurt—and that, once again, hardship fell unevenly among students.

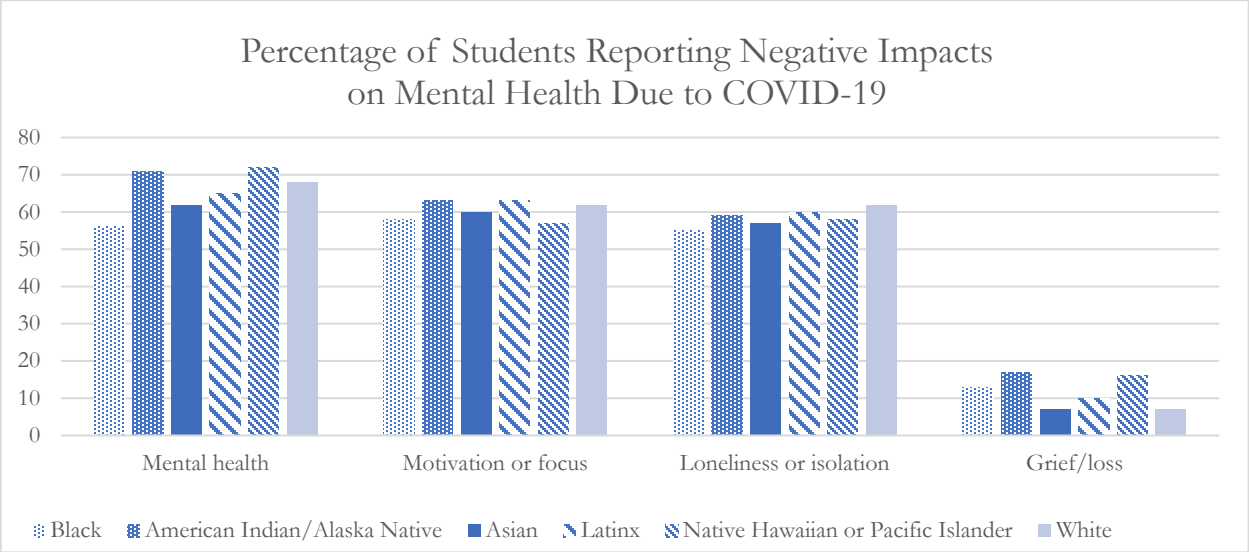

Figure 6 Percentage of Students Reporting Negative Impacts on Mental Health Due to COVID-19; Source: Center for Collegiate Mental Health, Pennsylvania State University, Mental Health Impact of COVID-19 on Various Demographic Groups (Feb. 16, 2020), https://ccmh.psu.edu/index.php

[234] Alexsandar Kecojevic et al., *The Impact of the COVID-19 Epidemic on Mental Health of Undergraduate Students in New Jersey, Cross-Sectional Study*, PLOS ONE (Sept. 30, 2020), https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0239696#:~:text=A%20majority%20of%20students%20reported,cited%20issues%20related%20to%20academics.

[235] *Mental Health Impacts of COVID-19 on Various Demographic Groups*, PENN. STATE U. CTR. FOR COLLEGIATE MENTAL HEALTH (Feb. 16, 2021), https://ccmh.psu.edu/index.php?option=com_dailyplanetblog&view=entry&year=2021&month=02&day=15&id=11:part-3-of-5-mental-health-impact-of-covid-19-on-various-demographic-groups.

COVID-19's Disparate Impact on LGBTQ+ Student Mental Health

For many LGBTQ+ students, college may be the first time they are living on their own and as themselves, free "to explore and express their gender identity and sexual orientation."[236] At the same time, for many LGBTQ+ students, that independence and freedom also has come with heightened levels of stress and anxiety, even before the pandemic. A recent California study, for example, found that LGBTQ+ students experienced psychological distress more frequently than did their heterosexual peers.[237] They were likelier to use mental health services, yet also reported avoiding on-campus services due to perceived stigma.[238] Some studies report that LGBTQ+ students also disproportionately experience intimate partner violence, with their well-being suffering that much more as a result.[239]

The pandemic appears to have added to the toll. According to a survey of more than 48,000 college students seeking treatment at 143 counseling centers during fall 2020, LGBTQ+ students disproportionately reported struggling with their mental health and well-being during the pandemic, including:

- 75% of respondents identifying as transgender men reported struggles with mental health, while 74% experienced increased loneliness or isolation because of COVID-19.[240]
- Respondents identifying as non-binary reported even higher rates, with 83% saying they were struggling with mental health issues and 77% reporting increased loneliness or isolation.[241]
- Similarly, respondents who identified as bisexual, questioning, pansexual, lesbian, and queer reported higher rates of negative impacts from COVID-19 than their non-LGBTQ+ peers in a range of areas, including mental health, motivation or focus, loneliness and isolation, academics, and missed experiences or opportunities.[242]

These challenges have an impact on academic opportunities as well. With LGBTQ+ students already more likely to see their academic performance suffer as they struggle with issues related to

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[236] John P. Salerno et al., *Sexual and Gender Minority Stress Amid the COVID-19 Pandemic: Implications for LGBTQ Young Persons' Mental Health and Well-Being*, 135 PUB. HEALTH REPORTS 721, 722 (2020), https://journals.sagepub.com/doi/full/10.1177/0033354920954511.

[237] Michael S. Dunbar et al., *Mental health service utilization among lesbian, gay, bisexual, and questioning or queer college students*, 61 J. OF ADOLESCENT HEALTH 294, 299 (2017), https://pubmed.ncbi.nlm.nih.gov/28549595/.

[238] *Id.*

[239] Cassandra A. Jones & Chitra Raghavan, *Sexual Orientation, Social Support Networks, And Dating Violence In An Ethnically Diverse Group Of College Students*, 24 J. OF GAY & LESBIAN SOC. SERV. 1 (2012), https://www.tandfonline.com/doi/abs/10.1080/10538720.2011.611107.

[240] *Mental Health Impacts of COVID-19 on Various Demographic Groups*, PENN. STATE U. CTR. FOR COLLEGIATE MENTAL HEALTH (Feb. 16, 2021), https://ccmh.psu.edu/index.php?option=com_dailyplanetblog&view=entry&year=2021&month=02&day=15&id=11:part-3-of-5-mental-health-impact-of-covid-19-on-various-demographic-groups. Transgender women, by contrast, "report[ed] significantly lower rates of negative impact in many areas compared to the overall and other minority identity groups." *Id.*

[241] *Id.*

[242] *Id. See also* Victoria Rideout et al., *Coping with COVID-19: How Young People Use Digital Media to Manage their Mental Health* 7 (2021), https://www.commonsensemedia.org/sites/default/files/uploads/research/2021-coping-with-covid19-full-report.pdf ("Among these young people, fully two out of three (65%) report moderate to severe symptoms of depression, twice the rate among non-LGBTQ+ youth (31%).")

their mental health and well-being,[243] COVID-19 may have further jeopardized their success in the classroom.

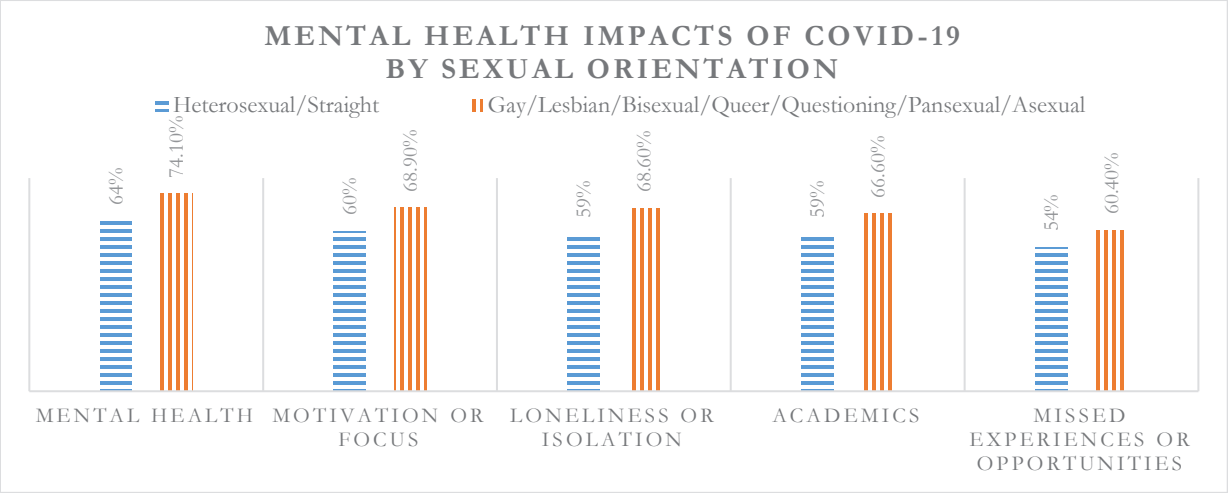

Figure 7: Mental Health Impact of COVID-19 By Sexual Orientation; Source: Center for Collegiate Mental Health, Pennsylvania State University, Mental Health Impact of COVID-19 on Various Demographic Groups (Feb. 16, 2020), https://ccmh.psu.edu/index.php?option=com.

[243] Michael S. Dunbar et al., *Mental health service utilization among lesbian, gay, bisexual, and questioning or queer college students*, 61 J. OF ADOLESCENT HEALTH 294, 299 (2017), https://pubmed.ncbi.nlm.nih.gov/28549595/.

Disparities in Experiences of Sexual Harassment and Sexual Violence

Sexual harassment and violence, including relationship violence, remained a serious threat to many college and university students, with a disparate impact on women and LGBTQ+ students, jeopardizing their ability to pursue their education on equal terms.

Pre-Pandemic Concerns

Even with substantial efforts to prevent sexual harassment and violence, and advance equal rights and opportunities for all students, a 2019 study by the Association of American Universities found that women and LGBTQ+ students at many of its member schools were at substantially higher risk of experiencing sexual harassment before the pandemic, including sexual violence.[244]

The serious problem of relationship violence experienced by students also warrants attention, especially given the rising rates of intimate partner violence that have been reported since the pandemic lockdown began.[245] In a large-scale pre-pandemic study of 181,752 students at 33 colleges and universities in the United States, undergraduates who identify as transgender, nonbinary/genderqueer or gender questioning reported particularly elevated rates of intimate partner violence at 21.5%, and undergraduate women reported experiencing intimate partner violence at 14.1%, the next highest rate of all students surveyed.[246] Young women, ages 18-29, also reported much higher rates of online sexual harassment pre-pandemic (21%) compared to men in the same age group (9%), according to a 2017 Pew Research poll.[247]

"Since college entry, 22% of students" surveyed at a large metropolitan university "reported experiencing at least one incident of sexual assault (defined as sexualized touching, attempted penetration, or complete penetration). Women and gender nonconforming students reported the highest rates (28% and 38% respectively), although men also reported sexual assault (12.5%)."

Claude A. Mellins et al., *Sexual Assault Incidents Among College Undergraduates: Prevalence And Factors Associated With Risk*, 13 PLOS ONE 1, 1 (2018) (reporting a random sample of undergraduates attending different schools on a shared campus).

[244] DAVID CANTOR et al., ASS'N OF AM. UNIVS. REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT 328-29 (2020), https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_(01-16-2020_FINAL).pdf

[245] Megan L. Evans et al., *A Pandemic within a Pandemic-Intimate Partner Violence During COVID-19*, 383 N. ENG. J. MED. 2302-04 (Dec. 10, 2020), https://www.nejm.org/doi/full/10.1056/NEJMp2024046; *Considerations of the impacts of COVID-19 on domestic violence in the United States*, U.S. NAT'L LIBRARY OF MED., (Oct. 7, 2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7539928/.

[246] DAVID CANTOR et al., ASS'N OF AM. UNIVS. REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT (2020) 8, https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/Revised%20Aggregate%20report%20%20and%20appendices%201-7_(01-16-2020_FINAL).pdf.

[247] Maeve Duggan, *Online Harassment 2017*, PEW RESEARCH CTR. (July 11, 2017), https://www.pewresearch.org/internet/2017/07/11/online-harassment-2017/. For Pew's updated discussion of these and other data, see Emily A. Vogels, *The State of Online Harassment*, Pew Research Center (Jan. 13, 2021), https://www.pewresearch.org/internet/2021/01/13/the-state-of-online-harassment/.

Impacts of COVID-19

The full scope and effect that COVID-19 will have on sexual harassment, including sexual violence, will not be understood for some time, and much of the reporting on students' experiences of online harassment, intimate partner violence, and sexual violence associated with remote learning environments has been anecdotal. For example, early in 2021, students on some campuses expressed concerns that the pandemic was making it more difficult to access supportive resources.[248] This reporting is still preliminary, however, and it will be important for future research to investigate the extent to which the pandemic may have made women and LGBTQ+ students more vulnerable to these and other forms of sexual abuse and violence.[249]

[248] Haley Ott, *Hundreds protest campus sexual assault at universities across the U.S.*, CBS NEWS, Feb. 10, 2021, https://www.cbsnews.com/news/college-sexual-assault-us-universities-protests/.
[249] *Id.*

Disparate Impacts on Postsecondary Students with Disabilities

Students with disabilities on college campuses faced significant hardships and other barriers due to COVID-19, which threatened their access to both education and basic necessities.

Nationwide, about 19% of students enrolled as undergraduates and about 12% enrolled in post-baccalaureate programs in higher-education institutions have some form of disability.[250] Early research suggests that many of these students struggled to cope with major barriers as they tried to learn during the pandemic's disruptions to life on campus.

Pre-Pandemic Disparities

Many of these barriers, however, are not new. In 2019, for example, the National Center on College Students with Disabilities (NCCSD) conducted a series of focus groups with students with disabilities who reported:[251]

- *Difficulties getting academic adjustments and other accommodations.* Many students reported being unaware of the services available to them and having difficulty navigating the procedures to get them. Students also reported receiving inadequate accommodations, and lacking support for self-advocacy and developing skills in disclosing their disabilities.
- *Classroom and instructional environment.* Students also reported that some instructors were uninformed about campus procedures, unresponsive to students, or challenged student requests for accommodations.
- *Campus access and supports.* Students also raised concerns about physical barriers on campus, as well as gaps in services and programs.
- *Campus climate.* Students pointed to negative interactions with peers, experiences of stigma related to disability, and the added work of addressing physical, curricular, and attitudinal barriers across campus.

COVID-19's Impact on Students with Disabilities

While some of those issues have improved during the pandemic, others remained, and new barriers emerged. An international survey of higher-education professionals conducted in spring 2020,[252] for example, found that students with disabilities experienced more difficulties transitioning to remote

[250] Digest of Education Statistics, (NCES 2020-009), *Table 311.10 Number and percentage distribution of students enrolled in postsecondary institutions by level, disability status, and selected student characteristics: 2015-16*, U.S. DEPT. OF EDUC., NAT'L CTR. FOR EDUC. STAT. (2018), https://nces.ed.gov/programs/digest/d18/tables/dt18_311.10.asp.
[251] Sally Scott, *NCCSD Research Brief-Access and Participation in Higher Education: Perspectives of College Students with Disabilities,* NAT'L CTR. FOR COLL. STUDENTS WITH DISABILITIES 1 (April 2019), https://files.eric.ed.gov/fulltext/ED602378.pdf.
[252] Sally Scott et al., *COVID-19 Transitions: Higher Education Professionals' Perspectives on Access Barriers, Services, and Solutions for Students with Disabilities,* ASS'N ON HIGHER ED. AND DISABILITIES, at 1 (2020), https://higherlogicdownload.s3.amazonaws.com/AHEAD/38b602f4-ec53-451c-9be0-5c0bf5d27c0a/UploadedImages/COVID-19_/AHEAD_COVID_Survey_Report_Barriers_and_Resource_Needs__2_.docx.

education than their nondisabled peers.[253] And during that transition, students with disabilities continued to report difficulties navigating the procedures for documenting their disabilities.[254]

Those difficulties may also have been translating into more hardships. One major survey of more than 30,000 students at nine large public research universities examined the impact of the COVID-19 pandemic on five areas of student well-being: the ease of transition to remote learning, the financial impact of COVID-19, students' health during the pandemic, students' feeling of belonging and engagement, and their future plans post-COVID-19. The survey's findings indicated that the challenges the responding students with disabilities already faced were serious, and in many ways had been exacerbated by the pandemic:[255]

- *Feeling isolated.* The students with disabilities surveyed were less likely (57%) to feel that they belong on campus than were students without disabilities (73%).
- *Feeling unsupported.* The students with disabilities surveyed were less likely (76%) to feel that the campus supported them during the pandemic than were students without disabilities (87%).
- *Financial hardships and food insecurity.* The students with disabilities surveyed were more likely than their peers to experience financial hardships and were three times more likely than their peers to experience food insecurity during the COVID-19 pandemic.
- *Increased depression.* A greater percentage of students with disabilities surveyed (from 53% to 70%, depending on the student's disability) screened positive for a major depressive disorder that appears to be linked to the pandemic, compared to 34% of students surveyed without disabilities.
- *Lost jobs.* Students with disabilities were far more likely to experience lost income from off-campus jobs (47%) compared to students without disabilities (26%).
- *Unexpected Increases in Spending for Technology.* 63% of students with disabilities surveyed said they had incurred unexpected expenses for technology as a result of the pandemic, compared to only 17% of students surveyed without disabilities.
- *Feeling unsafe.* Students with disabilities surveyed were significantly more likely to report living in places during the pandemic that were not free from physical or emotional abuse or violence (from 25% to 41%, depending on the student's disability), compared to students without disabilities surveyed (14%).

"Students with ADHD often express that their home environments are too distracting for them to effectively complete their homework, students with major depressive disorder are experiencing unprecedented levels of isolation and loneliness, and students with generalized anxiety disorder are encountering significantly higher levels of anxiety due to the ambiguity surrounding the pandemic and uncertainty about the future of their education."

Krista Soria, Assistant Director of Research and Strategic Partnerships for Student Experience in the Research University Consortium, https://onlinelibrary.wiley.com/doi/10.1002/dhe.30973.

[253] *Id.* at 2-6.
[254] *Id.*
[255] Krista Soria et al., *The Experience of Undergraduate Students with Physical, Learning, Neurodevelopmental, and Cognitive Disabilities During the Pandemic*, SERU CONSORTIUM (2020), https://docs.google.com/document/d/1JrPktBoLN2cJHxwGwLorgCKFnlR86klkMBe15yPbey0/edit

BUILDING BACK FOR EQUITY IN EDUCATIONAL OPPORTUNITY

As this Report has described, there are two headlines about COVID-19's impact on America's students: First, the pandemic posed profound challenges for nearly all students and schools in every part of our country; and second, the disparities in students' experiences are stark. Those who went into the pandemic with the fewest opportunities are at risk of leaving with even less.

Attention to these disparities—both pre-pandemic and now, as described throughout this Report—is an essential part of the national conversation about how best to ensure equal opportunity for all students in the wake of the pandemic. The unprecedented resources delivered by the American Rescue Plan that President Biden signed into law on March 11, 2021, enable this conversation—and related actions—to meet the urgency of this time. The Department of Education's guidance and policies relating to COVID-19 and elementary and secondary education, special education, and higher education are also important resources to help students, families, and educators address the many impacts the pandemic has had on students, especially those the pandemic has hit hardest. In keeping with the equity focus of this report, we also highlight a new Questions-and-Answers resource on Civil Rights and School Reopening in the COVID-19 Environment.

In addition to the other resources that the Department of Education continues to deliver to States, districts, schools, educators, and students and their families, OCR offers these closing observations about the civil-rights requirements and considerations that complement the resources just described and form another important cornerstone in the process of building back better:

- **Resource comparability.** *Ensuring resource comparability across schools in the same district, consistent with Federal civil rights laws.* School districts have an obligation under Title VI of the Civil Rights Act of 1964 to provide students with equal access to educational resources without regard to race, color, or national origin. These educational resources include, for example, access to safe school facilities, instructional materials and technology, and skilled educators. This protection remained in place through the pandemic. OCR's October 2014 Dear Colleague Letter on Resource Comparability provides additional information about school districts' obligations and describes how OCR evaluates complaints about unequal access to educational resources.

- **School discipline.** *Recognizing that 1) pandemic-related challenges to students' mental health and well-being may have long-term effects on behavior in school, 2) pre-pandemic Civil Rights Data Collection reports demonstrate that many schools are disproportionately likely to impose harsher and more frequent discipline on students of color and students with disabilities, and 3) Federal civil rights law prohibits discriminatory administration of school discipline, including the discriminatory impact based on race, color, national origin and disability of school policies and practices that exclude students from classroom instruction, such as suspension, expulsion, and referrals to law enforcement.* The use of trauma-informed practices, including within a framework of positive behavioral interventions and supports (PBIS), as set out in the Department of Education COVID-19 Handbook Volume 2: Strategies for Safely Reopening Elementary and Secondary Schools, may be particularly helpful for students who have experienced significant hardship, grief, and loss during the pandemic, as well as for those who may struggle to adjust to the new realities of learning at a social distance, whether online or in the brick-and-mortar classroom. In addition, school

psychologists, counselors, and behavioral specialists or local mental health or behavioral health agencies may be able to provide consultation for specific concerns and help avoid unnecessary use of exclusionary discipline.

- **Displaced and relocated students.** *Ensuring that students do not face discrimination when seeking to enroll in a new school after their previous housing situation changed as a result of the pandemic.* States and school districts may require proof of residency for students to enroll in school, but these kinds of proof-of-residency requirements do not apply to children and youth who are considered homeless under the Federal McKinney-Vento Homeless Assistance Act (42 U.S.C. §§ 11301 et seq.). Under this law, state and local educational agencies must provide students experiencing homelessness with access to schools and support for their attendance and success, even if their families cannot produce the documents that would otherwise be required to prove residency within their district.

  Public schools at the elementary and secondary levels also may not bar students from enrolling in schools based on the citizenship or immigration status of the students or their parents or guardians. For more information, please see this May 2014 Dear Colleague Letter on School Enrollment Procedures.

- **Language barriers.** *Providing students learning English appropriate language supports and services while ensuring that parents and caregivers have meaningful access to information about school programs, services, and activities.* To meet their obligations under Federal law, school districts must ensure that English learners have the language services and supports they need to promote their English language development and meaningfully access their content classes that are held remotely. And districts must ensure that parents, guardians, and caregivers have access to any information about district programs, services, or activities in a language they can understand. That includes information related to school health and safety measures, information about COVID-19 and actions the schools are taking in response to the pandemic, and information about remote learning and how to contact and communicate with teachers.

- **Addressing harassment.** *Protecting students who are at heightened risks of identity-based harassment, abuse, and violence during the pandemic.* All schools that receive Federal funding must respond appropriately to reports of harassment in education programs and activities based on race, color, national origin, sex, disability, or age, regardless of whether instruction is being delivered remotely or in-person. This includes providing appropriate supports to students who have experienced harassment and taking steps needed to stop the harassing behavior. As more and more students return to in-person instruction, schools should be vigilant for signs of discriminatory harassment against their students, especially against Asian American and Pacific Islander students who have been the targets of pandemic-related harassment. For more information, please see this Fact Sheet about Confronting COVID-19-Related Harassment in Schools and OCR's Letter to Educators re Discrimination Against Asian American and Pacific Islander Students.

- **Ensuring inclusion.** *Meeting the individual educational needs of elementary and secondary students with disabilities through appropriately designed instruction and related aids and services.* Whether offering instruction online or in person, school districts must continue to provide special education

and related services to eligible students with disabilities in accordance with the requirements of Section 504, which may include implementing an appropriately developed IEP. Districts should continue to provide these services in a way that protects the health and safety of students with disabilities and those who provide education, specialized instruction, and related services to these students.

Many disability-related accommodations, modifications, and services may be effectively provided in remote learning. These may include, for example, extensions of time for assignments, videos with accurate captioning or embedded sign language interpreting, accessible reading materials, and many speech or language services through video conferencing.

- **Academic adjustments and modifications**. *Ensuring postsecondary students with disabilities receive equal opportunity to access educational programs whether they are learning remotely or on campus.* Postsecondary institutions have an obligation to ensure students with disabilities receive needed academic adjustments and auxiliary aids and services, as appropriate, and make reasonable modifications to any policies, practices, and procedures to avoid discrimination based on disability. This legal obligation continues during and beyond the COVID-19 pandemic. While schools are not required to provide aids or services or make modifications that impose an undue burden or fundamentally alter their offerings, they must still take other steps to ensure, to the maximum extent appropriate, that students with disabilities can participate in and receive the benefits of the school's services, programs, and activities.

At all educational levels in schools throughout the country, we have tremendous strengths. And yet we also have deep cracks in the foundation, as shown by the disparities documented in this Report. As our nation's schools take steps to emerge from the pandemic, we have an extraordinary opportunity to move forward with full awareness of these cracks and recognition of the essential need to address and repair them.

The challenge is great. But it is one that can be met with energy, talent, expertise, and vision from across the country—including students, families, and all who teach, support, and lead in our nation's many federally funded educational settings. By taking close account of the disparities we face today as we plan for the future, we truly can ensure that all students—from our preschoolers to our most advanced graduate students, and all of the elementary, secondary, and postsecondary students in between—have equal opportunity to participate, learn, and thrive in schools and institutions of higher education across America.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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