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Reimagining Schools' Role Outside the Family Regulation System

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ARTICLE

REIMAGINING SCHOOLS' ROLE OUTSIDE THE FAMILY REGULATION SYSTEM

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& Christopher Church[©]

The United States' family regulation system often begins with well-intentioned professionals making child protection hotline calls, jeopardizing their own ability to work with families and subjecting the families to surveillance. By the system's own standards, most of this surveillance leads to no meaningful action. Nowhere is this reality more present than in schools. Educational personnel serve as the leading driver of child maltreatment allegations, yet decades worth of data reveal educator reports of maltreatment are the least likely to be screened-in and the least likely to be substantiated or confirmed. In other words, education personnel—whether motivated by genuine concern, which may nevertheless be informed by implicit biases towards low-income families and families of color; fear of liability; or the desire to access services they believe families cannot acquire elsewhere—overwhelm our child welfare system with unnecessary allegations of maltreatment.

This reality has fundamentally transformed the relationship between families and schools. Carrying the heavy burden of mandated reporting laws, public schools disproportionately

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refer Black and low-income families to the family regulation system, abdicating schools' opportunity to serve these same families in the communities in which they reside. Rather than serving as the great equalizer, public schools increasingly contribute to the carceral state's regulation of families.

This Article argues that schools must shift their role away from the reporting and surveillance of these families, and instead directly provide and arrange for services for families. This change begins with sharply limiting or repealing mandatory reporting obligations (permitting voluntary reports in severe cases)—but that is only the start. Schools are well-positioned to create new pathways to the supports and services from which most families reported to the family regulation system might actually benefit. Schools are already a primary source of food for impoverished children, and can help ensure low-income families access all the public benefits to which they are entitled. Schools can largely refer children and families to the same services that the family regulation system can—such as mental health services and substance abuse treatment—but without that system's coercive authority and its associated problems. Where some services are tied to the family regulation system's involvement, the law should permit schools to refer families directly. Schools know which families need legal services to defend their housing, access benefits, obtain orders of protection—or any of the myriad of other supports that poverty lawyers can provide. This shift would tie schools to the families and communities that they serve and benefit those families and communities far more than the surveillance and policing they experience under the current family regulation system.

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I. INTRODUCTION

America's public schools are an essential part of the present family regulation system,¹ the collection of public and private agencies and court systems which collectively intervene in and exercise coercive authority over largely low-income and disproportionately Black families in the name of protecting children. This system is triggered by allegations of abuse or neglect made to child protective services (CPS) agencies, and schools account for the largest single source of such allegations of child abuse and neglect. This Article focuses on schools' role in the present system, as they represent the worst of the problems in that system, yet hold great promise for a new approach to identifying and responding to family and community adversity.

The current system features an enormously large and largely ineffective legal and administrative apparatus. Pursuant to mandated reporting laws, millions of professionals report suspected abuse and neglect to CPS agencies. CPS agencies' primary response is to investigate those allegations to determine whether the child is a victim of maltreatment and what, if any, services the agency should offer. CPS agencies have authority to remove children from families, so any such intervention is inherently coercive and represents state regulation of families. The scope of that regulation has grown to the millions of children, and CPS agencies classify only a minority of those children as having been abused or neglected, and remove an even smaller

¹ The authors acknowledge the importance of language through the use of the "family regulation system," when referring to the multi-agency system of surveillance, policing, and control historically referred to as the "child welfare" or "child protection" system. We urge other scholars and professionals to interrogate the language used around this system and its actual functionality which has historically disproportionately harmed and oppressed BIPOC (Black, Indigenous, and people of color). For the purpose of this manuscript, we utilize the "family regulation system" in place of more frequently-used identifiers such as "child protective services" and "child welfare." We use "child protective services (CPS) agencies" to refer to the specific state and local agencies charged with protecting children from abuse and neglect—a role which, as argued throughout this Article, should be limited to severe cases. We credit Dorothy Roberts for the initial conceptualization of "family regulation," and recent scholarship from Emma Peyton Williams which further coined the phrase "family regulation system." Dorothy Roberts, *Feminism, Race, and Adoption Policy*, in *ADOPTION MATTERS: PHILOSOPHICAL AND FEMINIST ESSAYS* 234 (Sally Haslanger & Charlotte Witt eds., 2005); Emma Peyton Williams, *Dreaming of Abolitionist Futures, Reconceptualizing Child Welfare: Keeping Kids Safe in the Age of Abolition*, 14–16 (Apr. 27, 2020) (B.A. thesis, Oberlin College).

minority of them into foster care. To the extent CPS agencies could provide effective assistance to the majority of these families, research demonstrates that the agencies largely miss the opportunity to do so.²

In the 1960s, pediatrician Henry Kempe's article "The Battered Child Syndrome"³ galvanized states to pass laws requiring individuals working with children to report suspected incidents of physical abuse. Although Kempe's work focused on severe physical abuse that medical professionals could be trained to identify, mandated reporting statutes quickly suffered from scope creep, expanding to cover many more professionals, such as school personnel, and broad definitions of neglect. Mandated reporting's overbreadth problem is well-documented in decades' worth of child maltreatment administrative data, highlighting that CPS is overwhelmed with unsubstantiated allegations of maltreatment that, when investigated, harm children, families, and their communities. Schools stand out for contributing to this failure more than any other group of mandatory reporters: they report more allegations to CPS agencies than any other category of reporters, and schools' reports are less likely to be substantiated or lead to services for children. The flawed policy of mandatory reporting has not led to CPS agencies providing effective interventions to the vast majority of families subject to its investigations.⁴ Moreover, it has failed to identify most of the actual child maltreatment that exists in communities. Four iterations of the U.S. Congress's National Incidence Study demonstrate mandated reporting's underreporting problem: "although CPS investigates a substantial number of maltreated children in the nation, these children represent only the 'tip of the iceberg.'"⁵ This mandatory reporting and CPS investigation structure has for sixty years failed to achieve its core function and unnecessarily harmed families and communities, particularly families and communities of color disproportionately subject to the family regulation system. That failure has

² See *infra* notes 35–36, 47.

³ See C. Henry Kempe et al., *The Battered Child Syndrome*, 181 J. AM. MED. ASSOC. 17 (1962).

⁴ A full accounting of the harms of unnecessary CPS interventions is beyond the scope of this Article. We rely on prior work which has established those harms in details. See *e.g. infra* notes 35–36, 47 and accompanying text.

⁵ A.J. SEDLAK ET. AL, U.S. DEP'T OF HEALTH & HUM. SERV., ADMIN. FOR CHILD. & FAM., FOURTH NATIONAL INCIDENCE STUDY OF CHILD ABUSE & NEGLECT (NIS-4), at 2-2 (2010).

incentivized schools and others to abdicate their moral responsibility to help children and families in need and instead created an adversarial relationship between schools and families. As such, the present CPS system is yet another manifestation of our nation's systemic racism, and public schools are complicit in that system.

A more hopeful story is possible. Schools can identify needs among children and families, and those needs largely can be addressed without CPS involvement. Schools can expand their use of social workers and counselors, and refer families to a range of voluntary supports and services, including public benefits, housing assistance, legal services, mental health care, and substance abuse treatment. Schools already identify and respond to most of these needs, and dramatically expanding existing efforts can achieve what six decades of mandatory reporting and investigation have not—improving the welfare of children and families.

II. WHY FOCUS ON SCHOOLS?

Public schools are an inextricable part of the family regulation system, accounting for the largest single source of referrals to CPS agencies of allegations of child abuse and neglect.⁶ During 2018, school personnel were responsible for 20.5% of the 4.3 million child maltreatment reports received nationwide, nearly double the number of reports made by social services or medical personnel.⁷ Although Black children represent roughly 14% of the overall child population,⁸ 26% of allegations of child maltreatment from school personnel concerned Black children.⁹ The disproportionate reporting of

⁶ CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVICES, CHILD MALTREATMENT 2018, at 8–9 (2020), <https://www.acf.hhs.gov/sites/default/files/documents/cb/cm2018.pdf> [<https://perma.cc/569P-PWQ9>].

⁷ *Id.*

⁸ *Child Population by Race in the United States*, KIDS COUNT DATA CENTER (Sep. 2020), <https://datacenter.kidscount.org/data/tables/103-child-population-by-race> [<https://perma.cc/N3CA-S6YP>].

⁹ CHILD.'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVICES, NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS) CHILD FILE, FFY 2018 (2019) [hereinafter 2018 FFY NCANDS DATASET], <https://www.ndacan.acf.hhs.gov/datasets/dataset-details.cfm?ID=233> [<https://perma.cc/LE72-GSN9>]. Unless otherwise noted, data utilized in this Article were made available by the National Data Archive on Child Abuse and Neglect, Cornell University, Ithaca, New York. Data from the National Child Abuse and Neglect Data System (NCANDS) are originally collected by state

Black children also cumulates across childhood; 53% of Black children will be subject to a CPS investigation before turning eighteen, compared to 37.5% of all children.¹⁰

Of course, schools overreport and surveil Black families in many contexts outside of CPS. This section explores the intersection of schools and family regulation in those contexts, ultimately concluding that an expansive dissonance separates schools' core, philosophical underpinnings from the modern operationalization of our public schools.

A. Public Schools: The Great Equalizer or Part of the Carceral Web?

Public schools serve students from the most vulnerable and historically marginalized communities. Upon their inception, schools were poised to be the “great equalizer” where low-income families, people of color, immigrants, and those from other disenfranchised groups could gain access to opportunities and resources historically only available to individuals from non-minoritized groups.¹¹ However, today's schools, especially those in high needs and impoverished communities, are characterized by dismal student achievement rates, low graduation rates and standardized test scores, high rates of student truancy and drop-outs, large class sizes, and poorly

child welfare agencies pursuant to federal reporting requirements. Authors and collaborators at Fostering Court Improvement have analyzed the data and analyses are on file with them. Neither the collector of the original data, the Archive, Cornell University, or its agents or employees bear any responsibility for the analyses or interpretations presented here. Data are reported for the Federal Fiscal Year (FFY), which runs from October 1st in the preceding year through September 30th in the referenced year.

¹⁰ Hyunil Kim et al., *Lifetime Prevalence of Investigating Child Maltreatment Among US Children*, 107 AM. J. PUB. HEALTH 274, 277 (2017). Disproportionate reporting of Black children by school personnel is consistent with other classes of reporters, such as law enforcement and medical professionals. *Id.* However, unlike law enforcement and medical professionals, children interact with school personnel consistently and routinely, in a non-adversarial manner within their community. Moreover, educational personnel make more CPS referrals than law enforcement and medical professionals.

¹¹ HORACE MANN, TWELFTH ANNUAL REPORT TO THE MASSACHUSETTS BOARD OF EDUCATION (1848), *reprinted in* THE REPUBLIC AND THE SCHOOL: HORACE MANN AND THE EDUCATION OF FREE MEN 79–80, 84–97 (Lawrence A. Cremin ed., 1957); PEDRO NOGUERA, CITY SCHOOLS AND THE AMERICAN DREAM: RECLAIMING THE PROMISE OF PUBLIC EDUCATION, at xii (2003).

trained or inexperienced teachers.¹² Often, the same schools experiencing these challenges further marginalize the students they serve by disproportionately exerting punitive and exclusionary discipline practices against low-income students of color, particularly Black students.¹³

According to data available from the U.S. Department of Education's Office of Civil Rights, Black children represent 15.2% of student enrollment nationally.¹⁴ However, Black children missed a cumulative 4.6 million days of school due to suspensions, representing 41.9% of all suspension days.¹⁵ Black children account for 28.7% of school referrals to law enforcement and 31.9% of school related arrests.¹⁶ Even more, 32% of Black children eligible for special education services under IDEA were referred to law enforcement, and Black children with disabilities account for 35.3% of all school-related arrests of special education students.¹⁷ Black children represent only 8.2% of children enrolled in a Gifted and Talented program¹⁸ and only 9.3% of children enrolled in at least one Advanced Placement course.¹⁹ Such disparities begin young; one 2021 academic study found that, even after controlling for various predictors of behavior challenges, Black elementary school children were 3.5 times as

¹² See NOGUERA, *supra* note 11.

¹³ Erica R. Meiners, *Ending the School-to-Prison Pipeline/Building Abolition Futures*, 43 URB. REV. 547, 550 (2011).

¹⁴ OFFICE OF C.R., U.S. DEP'T OF EDUC., CIVIL RIGHTS DATA COLLECTION (CRDC) FOR THE 2017-18 SCHOOL YEAR (2020), <https://www.ed.gov/about/offices/list/ocr/docs/crdc-2017-18.html> [<https://perma.cc/PFK8-KDR8>]. Of the 96,533 schools listed in the CRDC Enrollment dataset, all but 11 schools provided student enrollment data by race.

¹⁵ *Id.* at CRDC Suspensions File Dataset. Of the 97,632 schools listed in the CRDC Suspensions dataset, all but 1,938 schools provided suspension data by race.

¹⁶ *Id.* at CRDC Referrals and Arrests Dataset. Of the 97,632 schools listed in the CRDC Referrals and Arrest dataset, as many as 4,776 (approx. 4.8%) schools did not provide complete Referrals and Arrest data.

¹⁷ *Id.*

¹⁸ *Id.* at CRDC Gifted and Talented Dataset. Of the 97,632 schools listed in the CRDC Gifted and Talented dataset, 41,794 (approx. 42%) schools did not provide Gifted and Talented data by race.

¹⁹ *Id.* at CRDC Advanced Placement Dataset. Of the 97,632 schools listed in the CRDC Advanced Placement dataset, only 14,752 (approx. 15%) schools provided advanced placement data by race.

likely as white children to receive a school detention or suspension.²⁰

These inequities compound for Black students in foster care.²¹ For example, within California, which has the largest population of youth in foster care in the nation,²² Black foster youth are suspended, expelled, and placed in special education at higher rates than both their foster youth and non-foster youth peers of other races.²³ The disproportionate suspension, expulsion, and special education placement of Black foster youth in schools directly entraps them in what Erica Meiners describes as “less a pipeline, more a persistent nexus.”²⁴ Unlike the “school to prison pipeline” which describes the ways that youth of color are linearly funneled into systems of incarceration from schools’ overuse of punitive disciplinary practices, the nexus is made up of a “web of punitive threads,” whereby youth are tethered to systems that perpetuate racialized surveillance and imprisonment within the carceral state.²⁵

²⁰ Matthew C. Fadus et al., *Racial Disparities in Elementary School Disciplinary Actions: Findings from the ABCD Study*, J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY (manuscript at 4) (forthcoming 2021) (on file with ScienceDirect and available at <https://doi.org/10.1016/j.jaac.2020.11.017> [<https://perma.cc/JN34-BCFE>]).

²¹ Anne Gregory et al., *The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?*, 39 EDUC. RESEARCHER 63 (2010); Susan Stone, *Child Maltreatment, Out-of-Home Placement & Academic Vulnerability: A Fifteen-year Review of Evidence & Future Directions*, 29 CHILD. & YOUTH SERVS. REV. 139, 146 (2007).

²² Mark E. Courtney et al., *Memo from CalYOUTH: Associations Between County-level Factors and Youths’ Extended Foster Care Participation*, CHAPIN HALL AT THE UNIV. OF CHI. (Mar. 2019), <https://co-invest.org/wp-content/uploads/Courtney-et-al.-2019-County-level-factors-and-youths-EFC-participation.pdf> [<https://perma.cc/J6YL-3PL9>].

²³ CAL. DEP’T OF EDUC., 2018–19 SUSPENSION RATE: STATE REPORT DISAGGREGATED BY ETHNICITY (2020), <https://dq.cde.ca.gov/dataquest/dqCensus/DisSuspRate.aspx?cds=00&agglevel=State&year=2018-19&initrow=Eth&ro=y> [<https://perma.cc/F3VS-PPWR>]; CAL. DEP’T OF EDUC., 2018–19 EXPULSION RATE: STATE REPORT DISAGGREGATED BY ETHNICITY (2020), <https://dq.cde.ca.gov/dataquest/dqCensus/DisExpRate.aspx?cds=00&agglevel=State&year=2018-19&initrow=Eth&ro=y&ro=y> [<https://perma.cc/EG24-ZMSR>]; CAL. DEP’T OF EDUC., COUNT OF MATCHED FOSTER STUDENTS BY RACE/ETHNICITY AND GRADE: LOS ANGELES COUNTY REPORT (2020), <https://dq.cde.ca.gov/dataquest/foster/fosterGrdRace.aspx?level=County&county=19&year=2018-19>.

²⁴ ERICA R. MEINERS, RIGHT TO BE HOSTILE: SCHOOLS, PRISONS, AND THE MAKING OF PUBLIC ENEMIES 31–32 (2007).

²⁵ *Id.*

For Black children, public schools fall short of being the great equalizer.

B. Schools Illustrate How This System Is Family Regulation Not Child Protection

When schools call CPS agencies, do schools help children, or work in tandem with the family regulation system to surveil and investigate disenfranchised families? What impact do CPS reports have on children, families, and their communities? School personnel's entanglement in the family regulation system is a particularly strong illustration of a broader reality: the family regulation system features tremendous over-reporting of families to CPS agencies, with significant interference imposed upon and little or no benefits offered to these families.

The family regulation system operates a massive apparatus to gather child abuse and neglect allegations, investigate those allegations, and determine how, if at all, to respond to substantiated allegations. CPS agencies only substantiate a minority of maltreatment allegations and agencies remove children in an even smaller minority—5.3% of all investigated allegations.²⁶ This reality raises significant questions about the wisdom and effectiveness of our existing system.²⁷

Decades of administrative child welfare data support this narrative. During the 2018 Federal Fiscal Year (FFY), CPS agencies received referrals of suspected child abuse or neglect regarding 7.8 million children, or 12.9% of the nation's child population.²⁸ Low-income and Black families are significantly overrepresented among those subject to these referrals.²⁹ CPS agencies screened out 36% of all referrals, meaning even if the allegations were true, they would not meet the state's statutory definition of abuse or neglect.³⁰ Of the remaining referrals, affecting about 4.3 million children, CPS agencies assigned about

²⁶ 2018 FFY NCANDS DATASET, *supra* note 9.

²⁷ See Josh Gupta-Kagan, *Towards a Public Health Legal Structure for Child Welfare*, 92 NEB. L. REV. 897 (2014).

²⁸ CHILD MALTREATMENT 2018, *supra* note 7, at 7–8. There were 4.3 million referrals, each involving an average of 1.8 children. *Id.* That figure is used throughout this section to calculate the number of children at each stage.

²⁹ See *supra* notes 8–10.

³⁰ CHILD MALTREATMENT 2018, *supra* note 7, at 6–7.

14% to a differential or alternative response track.³¹ The remainder were investigated to determine whether the child is a victim. Agencies substantiated only 23% of investigated reports, meaning CPS investigated nearly 2.4 million children in 2018 that they either concluded were not victims or were unable to gather sufficient evidence to make such a determination.³² Of these children deemed victims, about 39% (more than 270,000) receive no services after the CPS investigation.³³ The remaining receive some kind of service from CPS, and for about 22.9% of victims, that “service” included a removal from their families and placement in foster care.³⁴

CPS interferes in the lives of millions of children each year on the basis of a single person referring their suspicion to CPS, and the vast majority of hotline calls lead to no provision of services. By the system’s own logic, then, most reports do relatively little to protect children. And they do little to assist families; a longitudinal study of families reported to CPS agencies found that CPS intervention made no difference in families’ social support, family functioning, poverty, maternal education, or child behavior, leading researchers to describe it as a “missed opportunity” to help families.³⁵ Commentators, accordingly, have advocated that it is time “to rethink the role of mandatory reporting,” reducing the volume of reports and the unnecessary intervention most reports cause.³⁶

That conclusion is even *stronger* for CPS hotline calls from schools. At every stage of the process, allegations from schools are *less* likely to protect children. First, reports from

³¹ *Id.* at 19. Alternative response tracks are typically used for low or moderate risk reports; they emphasize assessment of and offers of services to address a family’s needs rather than making a formal determination of whether maltreatment occurred.

³² 2018 FFY NCANDS DATASET, *supra* note 9.

³³ CHILD MALTREATMENT 2018, *supra* note 7, at 78.

³⁴ *Id.* at 80.

³⁵ Kristine Campbell et al., *Household, Family and Child Risk Factors After an Investigation for Suspected Child Maltreatment: A Missed Opportunity for Prevention*, 164 ARCHIVES OF PEDIATRIC ADOLESCENT MED. 943, 948 (2010).

³⁶ Mical Raz, *Calling Child Protective Services Is a Form of Community Policing that Should Be Used Appropriately: Time to Engage Mandatory Reporters as to the Harmful Effects of Unnecessary Reports*, CHILD. & YOUTH SERVS. REV., Jan. 2020, at 4 [hereinafter Raz, *Calling CPS*]. See also Abraham B. Bergman, *Child Protective Services Has Outlived Its Usefulness*, 164 ARCHIVES PEDIATRIC ADOLESCENT MED. 978, 978–79 (2010) (arguing voluntary services should replace many CPS investigations).

schools are significantly less likely than both other professionals' reports and non-professionals' reports to allege abuse or neglect.³⁷ That describes 17% of all screened in reports from education sources, compared with 12% for reports from medical and social service staff, 9% for legal and law enforcement, 6.9% for family friends, and 5.6% for anonymous reports.³⁸

Second, CPS agencies are more likely to assign reports from schools to an alternative response track, indicating those reports contain less severe allegations—14% for reports from schools compared with 9.6% for medical and social service reports, and 9.4% for legal and law enforcement reports.³⁹ On this measure, reports from schools are on par with those from family or friends (14%) and anonymous sources (15%)⁴⁰—two classes of reporters presumably with no formal training in the identification of child maltreatment.

Third, when CPS agencies investigate child maltreatment reports from schools, agencies substantiate significantly fewer cases than reports from other sources. CPS agencies conclude that only 15% of children reported by schools *and* subject to an investigation are actually victims of abuse or neglect.⁴¹ That compares to 27% for medical and social service personnel reports and 39% for legal and law enforcement reports.⁴² Substantiation rates for reports from school are on par

³⁷ 2018 FFY NCANDS DATASET, *supra* note 9; Functionally, this conclusion operates like a decision by a CPS agency to screen out a referral. NCANDS does not report screened out cases, so we cannot compare those. We discuss data based on an analysis of referrals which CPS agencies have screened in but subsequently determine do not allege abuse or neglect, something which is equivalent to a screen out and which more frequently occurs for reports from schools than from other sources.

³⁸ *Id.* These results hold, albeit with tighter variance, when reports are limited to school-age children: 15% are screened out for failing to report any maltreatment, compared with 14% for medical and social service sources, 11% for legal and law enforcement sources, 7.4% for family friends, and 6.1% for anonymous sources.

³⁹ *Id.* The gap for school-age children is roughly similar: 15% of reports from schools are assigned to an alternative response track, compared with 11% from medical and social service sources and 9.9% of legal and law enforcement sources.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

with those from family friends (15%) and anonymous sources (13%).⁴³

School personnel's child maltreatment allegations concerning Black children are especially unlikely to be substantiated. Only 11% of education personnel's maltreatment allegations concerning Black children are substantiated, compared to 22% from medical reporters and 30% from law enforcement.⁴⁴ This substantiation rate is the same for reports from family and friends.⁴⁵

Fourth, when CPS agencies investigate and substantiate reports from schools, CPS is less likely to remove children from their families and place them in foster care than when the reports are from other sources. CPS agencies remove only 16% of victims reported by schools, compared with 24% for medical and social service reports and 18% for legal and law enforcement reports.

⁴³ *Id.* Multiple studies have similarly discussed low substantiation rates from school reports. As Chapin Hall concluded, "[e]ducation personnel report the most cases of suspected maltreatment, but detect the smallest percentage of cases that reach the threshold for substantiation." DANA WEINER ET AL., CHAPIN HALL AT THE UNIV. OF CHI., CHAPIN HALL ISSUE BRIEF: COVID-19 AND CHILD WELFARE: USING DATA TO UNDERSTAND TRENDS IN MALTREATMENT AND RESPONSE 2 (2020), <https://www.chapinhall.org/wp-content/uploads/Covid-and-Child-Welfare-brief.pdf> [<https://perma.cc/3LL8-YYVJ>]. Chapin Hall's reported substantiation rates are lower than those we report in the text because we have removed screened-in reports coded as not reporting any form of maltreatment from the denominator. *See also*, Bryn King et al., *Examining the Evidence: Reporter Identity, Allegation Type, and Sociodemographic Characteristics as Predictors of Maltreatment Substantiation*, 18 CHILD MALTREATMENT 232 (2013). 14% of education staff reports are substantiated compared to 41% from law enforcement, 38% from medical professionals, and 35% from public social service agencies. John Kesner, *Child Protection in the United States: An Examination of Mandated Reporting of Child Maltreatment*, 1 CHILD INDICATORS RSCH. 397 (2008); Diana J. English et al., *Causes and Consequences of the Substantiation Decision in Washington State Child Protective Services*, 24 CHILD. & YOUTH SERVS. REV. 817 (2002); John E. Kesner & Margaret Robinson, *Teachers as Mandated Reporters of Child Maltreatment: Comparison with Legal, Medical, and Social Services Reporters*, 42 CHILD. & SCHOOLS 222, 227 (2002).

⁴⁴ 2018 FFY NCANDS DATASET, *supra* note 9. For reports from medical personnel and social services, 75% of screened-in reports were investigated, and 73% of investigations were unsubstantiated. *Id.* For reports coming from legal sources and law enforcement, 79% of screened-in reports were investigated, and 61% of investigations were unsubstantiated. *Id.* For reports from family and friends, 77% were investigated, and 85% were unsubstantiated. *Id.*

⁴⁵ *Id.*

This figure is lower than reports from family and friends (21%) and anonymous (23%) reports.

Altogether, CPS referrals from schools are particularly unlikely to lead to protective action by CPS. Only 10% of all children reported to CPS agencies by schools are confirmed victims, and only 1.7% of all children reported to CPS by schools are removed from their homes. While schools account for more than 20% of all child abuse or neglect allegations, those allegations account for only 12% of total removals.⁴⁶

These data raise serious questions about schools' role in this reporting and investigation apparatus. That apparatus mostly harms the children and families the system is designed to protect through unnecessary coercive interventions that do little to actually protect children or improve their family situations. These coercive interventions are themselves harmful to children and families, including scaring children and parents through CPS agency investigation and missing opportunities to help families.⁴⁷ These harms result from our mandatory reporting and mandatory investigation legal structure which incentivizes professionals to, quite literally, phone it in when they have concerns about children's safety or families' needs for supportive services. In doing so, school staff usually forego opportunities to identify supports for a family directly, abdicating the responsibility to help the family to an adversarial, parental fault-based CPS agency that is unlikely to provide much assistance.⁴⁸ Such blithe reporting practices harm the family's trust in the school and thus the school's ability to help in the future.⁴⁹

The harm of CPS investigations also extends to the communities in which families live. Children and families most often subject to CPS investigations are tightly clustered in small,

⁴⁶ *Id.*

⁴⁷ Michael S. Wald, *Taking the Wrong Message: The Legacy of the Identification of the Battered Child Syndrome*, in C. HENRY KEMPE: A 50 YEAR LEGACY TO THE FIELD OF CHILD ABUSE AND NEGLECT 89, 95–96 (Richard D. Krugman & Jill E. Korbin eds., 2013).

⁴⁸ See Gary B. Melton, *Mandatory Reporting: A Policy Without Reason*, 29 CHILD ABUSE & NEGLECT 9, 14 (2005) (collecting research showing many mandatory reporters consider whether to call a CPS hotline but do not offer additional services to a family); Gupta-Kagan, *supra* note 27, at 934–35.

⁴⁹ Raz, *Calling CPS*, *supra* note 36; Natalie K. Worley & Gary Melton, *Mandated Reporting Laws and Child Maltreatment: The Evolution of a Flawed Policy Response*, in C. HENRY KEMPE, *supra* note 47, at 103, 104–105.

deeply impoverished and segregated neighborhoods, neighborhoods replete with environmental risk. Consider the Thomasville Heights neighborhood in Atlanta, Georgia. A single census block group in this neighborhood epitomizes the downstream effects of public policies that have deliberately concentrated minority families in adverse community environments. According to census estimates,⁵⁰ the 2,272 people who live in this block group are: 98% Black (compared to 32% statewide and 13% nationwide), 91% single mother families (compared to 28% statewide and 23% nationwide), 36% are unemployed (compared to 6% statewide and nationwide), 71% are living in poverty (compared to 17% statewide and 15% nationwide), and where the housing cost burden is 38% (compared to 28% statewide and nationwide).⁵¹ The impact of public policies such as redlining, the war on drugs, and welfare reform are compounded by the impact of mandated reporting and resulting surveillance by CPS that has resulted in the concentration of Black families residing in adverse community environments.⁵²

This tightly-clustered concentration of CPS activity, particularly unsubstantiated investigations, is a form of community disruption under color of state law. The current mandatory reporting system gives the disruption cover, shielding professionals from any responsibility for harming communities

⁵⁰ U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY 2014–2018 5-YEAR DATA (2019), <https://www.census.gov/newsroom/press-kits/2019/acs-5-year.html> [<https://perma.cc/HVD7-TV6W>].

⁵¹ *Community Opportunity Map*, CASEY FAM. PROGRAMS, <https://caseyfamily.caimaps.info/cailive> (last visited May 1, 2021). Authors used the “Search and Select” feature to navigate to Atlanta, GA and then used the “Custom Area Select” tool to explore the referenced neighborhood. Referenced data are on file with corresponding author.

⁵² Proof of this claim is beyond the scope of this paper. However, one author (Church) has street address level data for NCANDS from a number of state CPS agencies, pursuant to institutional data sharing agreements. Consider one such county (not otherwise discussed in this paper) with a population of approximately 140K. The U.S. Census Bureau has defined 11,415 block groups for that county. Using 2018 FFY NCANDS data, only 5.8% of block groups in the county contained a child or children that were the subject of a CPS investigation. Only 2.3% of block groups in the county contained a child or children that were the subject of a substantiated investigation. By contrast, 35.5% of block groups contained children living in poverty and 28.6% contained children living in households with no employed parent. CPS reports are relatively rare events, but rare events that appear to be spatially concentrated.

in which they overreport concerns about disenfranchised families.

III. CPS AGENCIES ARE USUALLY NOT AND SHOULD NEVER BE THE GATEWAY TO SERVICES

Mandated reporters, including educational personnel, overwhelm the system with marginal cases that should not require CPS investigation and intervention.⁵³ Presumably, these reports result from well-meaning professionals' assessment of a child in danger or family in need of support. Indeed, a study conducted by Kelley Fong noted that many "professional reporters" see a report to CPS as a means for accessing support or services for families in need.⁵⁴ This section explains why CPS is ill-equipped to provide such support effectively, and thus why schools' reports to CPS require reevaluation.

A. The Mismatch Between Family Needs and CPS Agency Focus

There is a mismatch between what the law requires CPS agencies to do and the broader needs that reporters seek to address. Mandatory reporting is focused on identifying discrete allegations of child maltreatment tied to parental fault; without such a finding, there is no legal basis for coercive state intervention in families. But, much of the support families need results not from intentional acts of parental abuse or neglect but from chronic conditions and assorted adverse childhood experiences (of both parents and children), which often cannot, and should not, be tied to parental fitness. Adverse childhood experiences and other childhood traumas are compounded when they occur in oppressed communities that experience a concentration or chronicity of poverty, violence, racism, or other environmental conditions.⁵⁵ The relationship between adversity within a family and adversity within a community is well known, but CPS agencies' treatment of such conditions is wholly disconnected. CPS agencies respond to family adversity—such as

⁵³ See *supra* Part II.B; Worley & Melton, *supra* note 49, at 106.

⁵⁴ Kelley Fong, *Getting Eyes in the Home: Child Protective Services Investigations and State Surveillance of Family Life*, 85 AMER. SOC. REV. 610, 620–21 (2020).

⁵⁵ Wendy Ellis & William Dietz, *A New Framework for Addressing Adverse Child and Community Experiences: The Building Community Resilience Model*, 17 ACAD. PEDIATRICS 7 (2017).

parental substance abuse, domestic violence, or housing instability—as parental fault. However, the roots of these family adversities are steeped in systemic inequities that create generational community adversity.⁵⁶

Consider Thomasville Heights, discussed above. There is little doubt that a child living in such less-than-ideal circumstances would benefit from some kind of intervention. However, child welfare staff, policy makers, and courts routinely fail to consider the conditions that caused such less-than-ideal circumstances. School personnel, like other mandated reporters, report adverse childhood experiences while ignoring the adverse community environments that played a role in producing them. CPS investigators remain indifferent to those community conditions because the law requires them to identify a perpetrator who can be held responsible for a substantiated allegation, not a complete set of factors contributing to challenging childhood circumstances.⁵⁷

This focus on parental fault while ignoring community adversity is apparent in many common CPS contexts. Consider housing cases, where the power imbalance between landlord and tenants heavily favors the former, dwarfing the ability of low-income tenants to enforce their legal rights. Moreover, a troubling history of governmental housing policies has deeply segregated our nation into the adverse community environments described above.⁵⁸ Yet when CPS investigates children living in unsuitable housing, their charge is to try to substantiate the allegations by identifying a perpetrator that is responsible for the child's welfare, or more directly, a parent that can be blamed for the unsuitable housing. Domestic violence cases also fit the narrative. Often in child welfare cases, the perpetrator of domestic violence is not the child's caretaker. However, to intervene, CPS needs to frame the domestic violence issue as one of parental fault, which they do by accusing the victim of domestic violence of failing to protect his or her (usually her)

⁵⁶ *Id.*

⁵⁷ See, e.g., MICAL RAZ, ABUSIVE POLICIES: HOW THE AMERICAN CHILD WELFARE SYSTEM LOST ITS WAY 5 (2020) (describing a system that “willfully ignores social and racial inequities, instead focusing myopically on the role of the individual”).

⁵⁸ See, e.g., RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (1997).

child.⁵⁹ Sadly, this occurs in cases where the caretaker has independently done much to protect their child.⁶⁰

In the many contexts where an adverse childhood experience has little to do with intentional parental conduct, such as witnessing domestic violence or living in unsuitable housing, a fault-based investigative response falls short. As we discuss below, alternatives such as referring a family to a supportive service or legal aid lawyer would yield better results.

However, outside of alternative or differential response, CPS will often only provide services after an investigation is substantiated, making a CPS investigation a prerequisite for support and establishing an adversarial relationship with families. Even more, this interaction creates a legal record to be forever invoked as an indictment of the parent's fitness, stigmatizing families who may need support to overcome family and/or community adversity.

B. False Perceptions of Accessing Services Through CPS Agencies

This false perception of the family regulation system serving as a support to families is inconsistent with the historically documented harm, surveillance, punishment, and policing experienced by families entangled within the system.⁶¹ It also ignores the reality that families and professionals can access services *without* CPS involvement.

Incorrect assumptions of the system's interactions with vulnerable families often ensnare them in a web of coercion and surveillance, one from which it is difficult to detach.⁶² Following a report to CPS agencies and substantiated investigation, CPS agencies or family courts often require families to complete services such as therapy, parenting classes, drug treatment, and

⁵⁹ See, e.g., *Nicholson v. Scoppetta*, 820 N.E.2d 840 (N.Y. 2004).

⁶⁰ Eli Hager, *The Hidden Trauma of "Short Stays" in Foster Care*, MARSHALL PROJECT (Feb. 11, 2020), <https://www.themarshallproject.org/2020/02/11/the-hidden-trauma-of-short-stays-in-foster-care> [<https://perma.cc/P42J-CWCP>].

⁶¹ DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* (2002).

⁶² Fong, *supra* note 54, at 620.

domestic violence classes as a part of their service plan.⁶³ Many families and mandated reporters call CPS with the express purpose of accessing such services.⁶⁴ In reality, access to these services and supports is not predicated on the forced engagement with CPS and can easily be obtained from community organizations. These services are often free or low cost and could be accessed by the families directly or by direct referrals from schools and other community-based agencies.

Indeed, for the most frequent services from which families may benefit—mental health and substance abuse treatment—CPS need not be involved. These services are available through mental health and substance abuse agencies and funded through Medicaid.⁶⁵ Unnecessary CPS agency involvement only serves to risk negatively impacting the provider's engagement with the family.⁶⁶

C. Narrow Cases When CPS Has a Monopoly on Services and the Risk that Monopoly May Grow

While most services that CPS agencies insist families participate in do not actually require CPS involvement, some discrete services currently require families to be referred to CPS. This requirement flows not from anything inherent in these services, but from flawed public policy requiring CPS involvement as a prerequisite to access services, creating perverse incentives to overreport families to the family regulation system.

Consider access to safe and affordable housing—an endemic problem for low-income families in America.⁶⁷ In 2018,

⁶³ Amy C. D'Andrade, *Parents and Court-Ordered Services: A Descriptive Study of Service Use in Child Welfare Reunification*, 96 FAMS. SOC'Y 25 (2018).

⁶⁴ See Fong, *supra* note 54.

⁶⁵ Indeed, "Medicaid is the single largest payer for mental health services in the United States and is increasingly playing a larger role in the reimbursement of substance use disorder services." *Behavioral Health Services, CTRS. FOR MEDICARE & MEDICAID SERVS.*, <https://www.medicaid.gov/medicaid/benefits/behavioral-health-services/index.html> [https://perma.cc/2JMZ-Y8B7] (last visited Jan. 6, 2021).

⁶⁶ J.D. Berrick et al., *Partnering with Parents: Promising Approaches to Improve Reunification Outcomes for Children in Foster Care*, 11 J. FAM. STRENGTHS 1, 1–13 (2018).

⁶⁷ See, e.g., MATTHEW DESMOND, *EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY* (2016).

child welfare agencies reported removing more than 25,000 children from their parents due in part to inadequate housing.⁶⁸ Recognizing that access to housing for families at risk of CPS involvement can prevent such unnecessary removals, the federal government's Family Unification Program (FUP) provides priority access to a Housing Choice Voucher for families that are at risk of foster care due to inadequate housing.⁶⁹ The federal government's own research has documented that the FUP and other housing subsidies result in fewer school disruptions and child behavior problems, less adult alcohol and drug problems and psychological distress, and significantly reduced intimate partner violence.⁷⁰ However, such housing services are "extremely scarce"⁷¹ and CPS agencies exclusively control access to the FUP vouchers which do exist. By federal law, CPS agencies are gatekeepers for these scarce resources and must certify that the "lack of adequate housing is a primary factor in the imminent placement of the family's child or children in out-of-home care"⁷² while collaborating with public housing agencies to identify eligible families.⁷³

Consider this legal structure from the point of view of a school. A school social worker learns that a family has been evicted and is moving from place to place.⁷⁴ The social worker wants to help the family access housing options and knows the local housing agency just received a grant for FUP vouchers.⁷⁵

⁶⁸ 2018 FFY NCANDS DATASET, *supra* note 9. *See also* Ruth White, *Understanding the Nexus of Child Welfare and Housing in America, in THE IMPACT OF HOUSING AND HOMELESSNESS ON CHILD WELL-BEING 4* (Traci LaLiberte et al. eds., 2017), https://www.cascw.org/wp-content/uploads/2017/04/CW360_Spring2017_WEB508.pdf [<https://perma.cc/9S56-J2QF>].

⁶⁹ *See* 42 U.S.C. § 1437(a)(1).

⁷⁰ *See* OFFICE OF POL'Y DEV. & RSCH., U.S. DEP'T OF HOUS. & URB. DEV., FAMILY OPTIONS STUDY: 3-YEAR IMPACTS OF HOUSING AND SERVICES INTERVENTIONS FOR HOMELESS FAMILIES (2016), <https://www.huduser.gov/portal/sites/default/files/pdf/Family-Options-Study-Full-Report.pdf> [<https://perma.cc/NET3-55MP>].

⁷¹ TINA LEE, CATCHING A CASE: INEQUALITY AND FEAR IN NEW YORK CITY'S CHILD WELFARE SYSTEM 13 (2016).

⁷² *See* 42 U.S.C. § 1437(a)(2).

⁷³ *See* 42 U.S.C. § 1437(a)(4).

⁷⁴ Variations on the basic fact pattern may apply. For instance, the parent may rely on an abusive partner for housing due to a lack of alternative housing options, but housing instability remains the central problem.

⁷⁵ There is limited funding, and local jurisdictions must apply for FUP vouchers. U.S. DEP'T OF HOUS. & URB. DEV., 2019 FAMILY UNIFICATION PROGRAM NOTICE OF FUNDING AVAILABILITY (2019),

The social worker cannot simply call the housing agency and explain how the children are at risk of harm due to housing instability. Rather, she must report the family to the CPS agency and hope that it will not only identify the housing need, but declare the children at imminent risk of foster care. The latter also requires CPS to identify the child's parent as being at fault for such imminent risk. Such a report to CPS comes with the risk that CPS agencies will do nothing, respond too coercively to it, or respond but fail to provide access to a FUP voucher.

The Family Unification Program is only one example. Some federal funds for "family preservation" services run through state CPS agencies.⁷⁶ State and local CPS agencies provide their own set of services not accessible elsewhere, and some states even codify this role for CPS agencies in statute.⁷⁷ We do not attempt a full listing of supports and services which are provided by and must be accessed through CPS agencies; that task is beyond the scope of this Article. Our point is to show that CPS agencies have a monopoly over accessing certain services, and that monopoly precludes other entities—like schools—from helping families access such services directly.

The most recent federal funding reform exacerbates these problems. The Family First Prevention and Services Act (FFPSA) explicitly seeks to incentivize states to spend money to prevent removing children from their parents to foster care, and thus shift spending from maintaining children in foster care to serving children in their families.⁷⁸ This shift is welcome, but it also risks expanding CPS agencies' control over services provided to families. Congress could have funded agencies distinct from CPS to provide essential services, but instead, it tied funding for evidence-based prevention services to CPS agencies and families

https://www.hud.gov/sites/dfiles/SPM/documents/2019_FUP_NOFA_FR-6300-N-41.pdf [<https://perma.cc/LR55-TS9F>].

⁷⁶ Title IV-B of the Social Security Act provides a modest amount of such funds. 42 U.S.C. §§ 621–629h. "Family preservation services" are defined in § 629a(a)(1).

⁷⁷ See, e.g., D.C. CODE §§ 4-1303.01a(7), 4-1303.03(a)(13) (2020).

⁷⁸ See, e.g., *Family First Prevention Services Act*, NAT'L COUNCIL STATE LEGISLATURES (April 1, 2020), <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> [<https://perma.cc/QM9M-5VZR>] (describing Family First as encouraging states to "develop prevention-focused-infrastructure" and permitting states to use federal Title IV-E funds to support services to help children remain with their families).

reported to CPS agencies. FFPSA not only funnels prevention money through CPS agencies, but requires those agencies to identify children as “candidate[s] for foster care,” defined as “being at imminent risk of entering foster care . . . but who can remain safely” out of foster care with the help of certain prevention services.⁷⁹ FFPSA funds can be used for specific services deemed to have some significant evidence base. So far, the federal government has certified several such services, including certain mental health and substance abuse treatments, as “well-supported,” “supported,” or “promising.”⁸⁰ Notably, there is nothing specific to these services that should require CPS agencies to refer families to them; they should be Medicaid-eligible services open to families referred by themselves or any professional that knows them.

Again, consider this legal structure from a school’s perspective. If a school becomes aware of significant child misbehavior and substance abuse, and has concerns about the effectiveness of a parent’s response to these issues, it could reasonably refer the family for Functional Family Therapy, a family-based intervention found to achieve positive results responding to those issues.⁸¹ FFPSA structurally incentivizes CPS agencies to become an access point for this service. Consequently, this encourages schools to refer the family to CPS, which will presumably investigate and determine if the child is a candidate for foster care, rather than refer the family directly to services. While we applaud FFPSA for directing funding to such services, we question why, in cases like this, schools should be pushed to use CPS agencies as a middleman and not pushed to refer families directly to Family First providers.

⁷⁹ 42 U.S.C. §§ 675(13), 671(e).

⁸⁰ *Find a Program or Service*, TITLE IV-E PREVENTION SERVS. CLEARINGHOUSE, https://preventionservices.abtsites.com/program?combine_1=&prograting%5B1%5D=1&prograting%5B2%5D=2&prograting%5B3%5D=3&page=0 [https://perma.cc/SK5H-WYBC] (last visited May 1, 2021). A complete list is available by filtering for “well-supported,” “supported,” and “promising” programs.

⁸¹ *Id.*

IV. AN ALTERNATIVE VISION: SCHOOLS
SERVING FAMILIES APART FROM CPS
AGENCIES AND THE FAMILY REGULATION
SYSTEM

The preceding sections support a demand for a new vision: CPS agencies certainly have an important role in responding to severe allegations of abuse and neglect where children are at imminent risk, but their forced foray into investigating and overseeing families living in abject poverty is misplaced. To address adverse childhood experiences that manifest in adverse community environments, public schools must have the autonomy and purpose to serve families outside the family regulation system.

The autonomy that schools need to serve children outside the family regulation system may require legislative and policy changes. Schools need access to the important services and funding streams currently monopolized by CPS, or the ability to refer families directly to such services without using CPS.⁸² Mandated reporting statutes need to be limited; education personnel should report severe child maltreatment when state coercion is needed to protect children, but the majority of other reports need not go to CPS.⁸³ Definitions of maltreatment, particularly neglect, may need to be revisited to disentangle adverse childhood experiences, adverse community environments, and other social concerns from intentional and willful conduct by parents.⁸⁴

Freedom from legal mandates to involve CPS will permit schools to reimagine their role in supporting families. Already, research demonstrates that reporters call CPS out of a desire to help families, not only because the law requires them to do so.⁸⁵ Thus, when that desire to help families can be satisfied without calling CPS, reporters should have no difficulty transitioning to this alternative vision, which we discuss more fully below.

⁸² See *supra* Part III.B–C.

⁸³ See, e.g., Raz, *Calling CPS*, *supra* note 36; Abraham Bergman, *A Pediatrician's Perspective on Child Protection*, in C. HENRY KEMPE, *supra* note 47, at 63, 63–69 (2013); Wald, *supra* note 47; Worley & Melton, *supra* note 49.

⁸⁴ See Josh Gupta-Kagan, *Finally Time for Realistic and Determinate Standards in Family Court*, 68 JUV. & FAM. CT. J. 31 (2017).

⁸⁵ Fong, *supra* note 54, at 620.

A. Losing Coercion over Families

Building a stronger structure for schools to provide or refer services and supports directly to families, rather than forcing schools to work through CPS agencies, would circumvent CPS agencies' coercive authority over families. Reduced coercion is a feature of the alternative vision discussed herein, as it empowers parents to use the services and supports they desire, and increases their opportunities to do so. Avoiding school-induced CPS agency coercion also promotes schools and families working effectively together. Finally, it reflects a recognition of CPS agencies' primary tool—not new services, but coercion. As one school social worker remarked, “[When CPS is involved,] I think parents either hear it differently or out of nervousness and fear of ‘what if I don’t accept this service?’”⁸⁶

This admission—that reporters who call CPS agencies are at least conscious of those agencies' coercive power—raises a range of concerns. It requires a subjective judgment that a family is obstinately refusing to comply with the school's recommendations—rather than legitimately disagreeing with those recommendations or facing obstacles to following them—and that exercising coercive power will lead to positive outcomes. It raises concerns that implicit bias in such judgments will contribute to racial and other disparities in reporting. Indeed, many CPS social workers express negative opinions of Black families;⁸⁷ a similar risk likely applies to school personnel.

We recognize that coercion is sometimes—albeit rarely—necessary to protect children from maltreatment: in those cases, reports to CPS are necessary and appropriate. However, reports to CPS simply to link families to voluntary services are unnecessary and inappropriate. Only when a professional or mandated reporter has suspicion of severe risk to a child should they report their suspicion to CPS.

We simultaneously recognize that even this alternative vision will raise concerns that any school-based services or referrals would come with too much surveillance and coercion. We respond in several ways. First, whatever coercive authority schools have over families is less than that of CPS agencies; that

⁸⁶ *Id.* at 621.

⁸⁷ Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 UCLA L. REV. 1474 (2011).

is why advocates for reforming the family regulation system call for investing in services through agencies separate from CPS.⁸⁸ Second, we recommend enacting these changes in the context of broader reforms which would limit the scope of CPS agency authority, such as narrowed definitions of abuse and neglect, narrowed mandatory reporting and mandatory investigation laws, and strengthened legal protections against unnecessary removals. Such reforms would limit the threat that schools would call CPS agencies to more severe cases. Third, we emphasize that many of the service referrals described below involve referrals to outside entities that would not have a duty to report families' confidential data to schools. Fourth, as described below, many of the individuals who schools could hire to interact with parents could be parents' peers and other community members.

B. Linking Children and Families to Services—Without CPS

When schools (and other reporters) use CPS to refer families to services, reporters and CPS risk a loss of trust and engagement with the family. CPS inherently has a “dual role”—surveillance and assistance⁸⁹—and the former can undermine its effectiveness at the latter.⁹⁰ Reforms to the family regulation system should establish new pathways to access resources without requiring CPS; the more CPS agencies are limited to cases where coercive authority is necessary to protect children, the more the family regulation system's scope will shrink, leaving space for a new child and family well-being system to emerge.

Schools provide fertile ground for such a child and family well-being system. This section outlines how schools can identify families' needs for public benefits, legal services, and mental health care, and how reorienting resources away from CPS agencies supports such a system.

1. Public Benefits

Schools know which children and families require income supports and other forms of public benefits, and they can also

⁸⁸ See, e.g., *Parents to City Council: Fund Communities, Not ACS*, RISE MAG. (Nov. 3, 2020), <https://www.risemagazine.org/2020/11/fund-communities-not-acs> [<https://perma.cc/7SV2-ATWM>].

⁸⁹ LEE, *supra* note 71, at 89.

⁹⁰ Lucas A. Gerber et al., *Understanding the Effects of an Interdisciplinary Approach to Parental Representation in Child Welfare*, 116 CHILD. & YOUTH SERV. REV. 116, 125 (2020).

take on the administration of public benefits to which families may be entitled. Schools already manage financial eligibility for programs under the Richard B. Russell National School Lunch Act.⁹¹ Schools already know⁹² which children are homeless (broadly defined⁹³) and must provide them with transportation to continue attending their home school⁹⁴ and with a “coordinated system” to help children and parents exercise their legal rights under the McKinney-Vento Homeless Assistance Act.⁹⁵

Schools need not stop there. They could assist families with applying and accessing other government financial benefits⁹⁶ like Supplementary Nutrition Assistance Program (SNAP), Temporary Aid to Needy Families (TANF), Medicaid, Supplemental Security Income (SSI), and housing assistance. These services should not require involvement with the CPS agency. Where the law requires CPS involvement—as with the Family Unification Program described in Part III.C—the law should change to permit a more direct and less coercive path to that assistance.

2. Legal Services Referrals

Helping families obtain public benefits is important, but when a child is wrongfully denied Social Security disability benefits, when a landlord refuses to make repairs, or when the family encounters a range of other challenges, the family may benefit from and desire legal assistance. Legal assistance can address many of the underlying conditions that currently lead to CPS agency involvement, and thus can help prevent the need for such involvement, a point the federal Children’s Bureau recently

⁹¹ School Lunch Programs Act, 42 U.S.C. §§ 1751–1769j.

⁹² State education agencies report some of these data. *See, e.g., New Data Show Number of NYC Students Who Are Homeless Topped 100,000 for Fifth Consecutive Year*, ADVOC. FOR CHILD. N.Y., (Dec. 3, 2020), <https://www.advocatesforchildren.org/node/1675> [https://perma.cc/LW3W-MJ7K] (using state education department data to document number of homeless students).

⁹³ The legal definition is broad enough to include anyone doubling up with friends or family after an eviction. 42 U.S.C. § 11434a(2).

⁹⁴ 42 U.S.C. § 11432(e)(3)(C).

⁹⁵ 42 U.S.C. § 11432(e)(3)(E)(i).

⁹⁶ The examples used in this section are governmental benefits. However, the same reasoning applies to schools connecting families with community resources and organizations that have additional support to promote the social determinants of health.

emphasized.⁹⁷ Schools should establish relationships with legal aid organizations so families may have access to preventative legal advocacy.

The subject matter of preventative legal advocacy is the bread and butter of poverty law practice, helping parents defend against an eviction or take action against a landlord to improve housing conditions, obtain or maintain public benefits, obtain legal protection against an abusive partner, arrange for temporary care of a child while the parent is away for inpatient drug treatment, a military deployment, incarceration, or other reasons.⁹⁸ These legal needs make up America's well-documented "justice gap"—the inadequate or unavailable legal assistance for the millions of low-income families who encounter these or similar civil legal problems.⁹⁹

School partnerships with legal services organizations can help fill that gap when legal needs affect children, and schools can identify and refer families who likely need legal services. This proposal echoes what medical providers do in medical-legal partnerships; medical personnel and social workers in their clinics or hospitals identify families who face some legal obstacle to improved health, such as poor housing conditions or access to

⁹⁷ ADMIN. FOR CHILD. & FAMS., U.S. DEP'T OF HEALTH & HUM. SERVS., CIVIL LEGAL ADVOCACY TO PROMOTE CHILD AND FAMILY WELL-BEING, ADDRESS THE SOCIAL DETERMINATES OF HEALTH, AND ENHANCE COMMUNITY RESILIENCE (2021) [hereinafter CIVIL LEGAL ADVOCACY].

⁹⁸ See VIVEK S. SANKARAN & MARTHA L. RAIMON, U. MICH. L. SCH. SCHOLARSHIP REPOSITORY CTR. CASE CLOSED: ADDRESSING UNMET LEGAL NEEDS & STABILIZING FAMILIES, 2 (2014), <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1085&context=other> [<https://perma.cc/7H8V-FP2R>] (noting several common fact patterns for legal services). See also AM. ACAD. OF ARTS & SCI., CIVIL JUSTICE FOR ALL: A REPORT AND RECOMMENDATIONS FROM THE MAKING JUSTICE ACCESSIBLE INITIATIVE 30 (2020) [hereinafter CIVIL JUSTICE FOR ALL], https://www.amacad.org/sites/default/files/publication/downloads/2020-Civil-Justice-for-All_0.pdf [<https://perma.cc/EE2T-FELC>] (noting family and housing law as accounting for 60% of all problems addressed by Legal Services Corporation-funded legal services organizations).

⁹⁹ LEGAL SERVS. CORP., THE JUSTICE GAP: MEASURING THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf> [<https://perma.cc/2B2V-U973>]. See also, e.g., U.S. DEP'T OF JUST., CIVIL LEGAL AID 101, at 2 (2018), <https://www.justice.gov/lair/file/828346/download> [<https://perma.cc/CBV4-MMXD>] (reporting that a majority of low-income Americans seeking free civil legal aid "are turned away because of the limited resources available").

public benefits, and refer the family to a legal services provider. Some have identified such partnerships as mechanisms to keep children and families from being perceived as needing CPS involvement.¹⁰⁰

Schools (and especially school social workers) can similarly flag potential clients for legal services organizations. Just as medical-legal partnerships feature formal agreements between medical clinics and legal services providers, schools and legal services providers would need to reach agreements. Indeed, the American Academy of Arts and Sciences recently recommended that legal services organizations partner with a variety of entities, including “educational institutions,” building off the medical-legal partnership model, to address the yawning access-to-justice gap in this country.¹⁰¹ Others have identified school-based legal services as a tool to fight against the school-to-prison pipeline.¹⁰²

Such a structure would not be without some tension. Families might have claims against the school district in school disciplinary or special education matters, so schools might question whether referring families to lawyers could conflict with the school’s interests. That tension is real, but resolvable. Patients may have medical malpractice claims against medical clinics, yet medical-legal partnerships have thrived. Family defenders providing pre-petition representation to parents investigated by CPS agencies for abuse and neglect have built-in tension with those agencies in every case, yet frequently agencies refer families for such representation, and pre-petition representation is an important and expanding practice.¹⁰³ If those models can overcome tension between partners, the same can occur with school-legal partnerships, and a new pathway to legal services can be built to provide services to keep children safe and away from CPS agencies.

¹⁰⁰ Kara R. Finck, *Medical Legal Partnerships and Child Welfare: An Opportunity for Intervention and Reform*, 28 WIDENER COMMONWEALTH L. REV. 23, 24 (2019).

¹⁰¹ CIVIL JUSTICE FOR ALL, *supra* note 98, at 21.

¹⁰² Barbara Fedders & Jason Langberg, *School-Based Legal Services as a Tool in Dismantling the School-to-Prison Pipeline and Achieving Educational Equity*, 13 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 212, 229–35 (2013).

¹⁰³ *See infra* note 112 and accompanying text.

Indeed, several local examples have been developed. The Chicago Law & Education Foundation has grown since 2010 to partner with several schools to provide legal services to low-income children and families.¹⁰⁴ The Atlanta Volunteer Lawyers Foundation began a “Standing with Our Neighborhoods” initiative in 2016, which has grown to place lawyers in nine public schools to help families encountering housing instability.¹⁰⁵ In 2018, the Moran Center for Youth Advocacy in Evanston, Illinois, opened a school-based civil legal services clinic focused on family law, housing, public benefits, and immigration issues,¹⁰⁶ and operates that clinic alongside an existing program representing children and families in special education and school disciplinary matters,¹⁰⁷ demonstrating that such representation need not doom school-legal services partnerships. The School-Based Health Alliance has identified school-based health centers that are tied to their own medical-legal partnerships, effectively tying schools to legal services.¹⁰⁸ Other school-based legal clinics have operated in Connecticut,¹⁰⁹ New York,¹¹⁰ and Los Angeles.¹¹¹

¹⁰⁴ *History*, CHI. L. & EDUC. FOUND., <https://lawclef.org/about-us/history/> [<https://perma.cc/P5S9-K5UT>] (last visited Oct. 18, 2020); *Programs*, CHI. L. & EDUC. FOUND., <https://lawclef.org/programs/> [<https://perma.cc/2KJM-Z48H>] (last visited June 2, 2021).

¹⁰⁵ *Standing with Our Neighbors*, ATLANTA VOLUNTEER LAWS. FOUND., <https://avlf.org/standing-with-our-neighbors> [<https://perma.cc/98FC-5BL3>] (last visited Oct. 14, 2020).

¹⁰⁶ *School-Based Civil Legal Clinic*, MORAN CTR. FOR YOUTH ADVOC., <https://moran-center.org/what-we-do/school-based-civil-legal-clinic> [<https://perma.cc/E85D-3QJT>] (last visited Oct. 18, 2020).

¹⁰⁷ *What We Do*, MORAN CTR. FOR YOUTH ADVOC., <https://moran-center.org/what-we-do> [<https://perma.cc/YN2W-8T4T>] (last visited Oct. 18, 2020).

¹⁰⁸ SCH.-BASED HEALTH ALL., SCHOOL-BASED HEALTH & MEDICAL-LEGAL PARTNERSHIPS (2018), <https://www.sbh4all.org/wp-content/uploads/2018/08/School-Based-Health-and-Medical-Legal-Partnership.pdf> [<https://perma.cc/Y7BS-MNHK>].

¹⁰⁹ Linda Conner Lambek, *Students Can Get Legal Help at School; Attorney Opens Clinic at Harding High*, CONN. POST (May 13, 2014), <https://connecticut.org/wp-content/uploads/2014/05/CT-Post-Harding-5-13-14.pdf> [<https://perma.cc/4J5D-FVL8>].

¹¹⁰ *Children's Project*, VOLUNTEERS LEGAL SERV., <https://volspobono.org/projects/childrens/#partnerschildren> [<https://perma.cc/E27D-UK38>] (last visited Oct. 18, 2020).

¹¹¹ Linda Jacobson, *School-Based Legal Clinic Addresses Needs of Los Angeles Immigrant Families*, HIGHER ED DIVE (May 10, 2019).

Our suggestion for school-based legal referrals takes one of the most important trends in child protection law—calls for expanding “pre-petition” representation, in which child protection agencies refer parents to legal services organizations when the agencies identify a need for such services¹¹²—a step further. Like any other service, there is nothing inherent in it that should require parents to be referred to CPS agencies to access it. Thus, while we welcome the expanding focus on parent representation and pre-petition representation for families already referred to CPS, we seek an alternative pathway to provide such legal services before such CPS involvement occurs.

3. School-Based Health Supports

Schools are uniquely positioned in communities to serve as a conduit for services and resources for students and their families. This is best demonstrated through their ability to provide medical and mental health support, especially to students from historically marginalized backgrounds who often struggle to gain access to adequate medical services within their community.

Schools, especially those with a School-Based Health Center (SBHC), may serve as a primary point of access to health care for these youth.¹¹³ SBHC’s have expanded since they were initially started in the 1960s and are now located in over 2,300 schools. They are often composed of a collaborative team of professionals including medical doctors, dentists, mental health practitioners, health educators, social workers, nutritionists, and other support staff who work together to meet the needs of the

<https://www.highereddive.com/news/school-based-legal-clinic-addresses-needs-of-los-angeles-immigrant-families/554559/> [<https://perma.cc/6SNK-JCGP>].

¹¹² See, e.g., Gianna Giordano & Jey Rajaraman, *Increasing Pre-Petition Legal Advocacy to Keep Families Together*, AM. BAR ASS’N. (Dec. 15, 2020), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2020/winter2021-increasing-pre-petition-legal-advocacy-to-keep-families-together/> [<https://perma.cc/QV3F-RXXQ>]; CASEY FAM. PROGRAMS, STRATEGY BRIEF: TRANSFORMING CHILD WELFARE SYSTEMS 2 (2020), <https://caseyfamilypro-wpengine.netdna-ssl.com/media/20.07-QFF-TS-Preventive-Legal-Support.pdf> [<https://perma.cc/9TW3-3M6G>] (“In some cases, families can also self-refer or be referred by other sources (such as the courts or community-based agencies).”). The “common elements” of such pre-petition legal services, however, involve CPS agency referrals.

¹¹³ Michael Arenson et al., *The Evidence on School-Based Health Centers: A Review*, 6 GLOB. PEDIATRIC HEALTH 1, 3 (2019).

youth and families they serve.¹¹⁴ School-based health services serve an integral role in addressing health disparities for youth and families from medically underserved communities which historically are more likely to engage with the family regulation system and to have their children removed and placed in foster care.¹¹⁵ Partly due to environmental stressors and experiences with complex trauma,¹¹⁶ foster youth commonly face mental health challenges, and they often go untreated due to lack of access to appropriate care. It has been widely documented that foster youth that have had numerous adverse childhood experiences are more likely to struggle academically in school and to experience substance use issues,¹¹⁷ homelessness, incarceration,¹¹⁸ and mental health challenges.¹¹⁹ Schools have the opportunity to disrupt this cycle by providing foster youth and other students (especially students at risk of becoming foster youth) with necessary mental health and medical services to address these needs in a non-coercive manner outside of CPS agencies. Collaboratively, health professionals and schools can work together to invest in youth and communities while ensuring that those that experience the most systemic barriers thrive.

4. Peer Support Models

Peer support models are slowly expanding within organizations serving families in the family regulation system, as a result of the growing recognition of the power differential between CPS agencies and families.¹²⁰ Broadly defined, a peer

¹¹⁴ *Id.* at 2–3.

¹¹⁵ Katherine Sanchez et al., *Fostering Connections and Medical Homes: Addressing Health Disparities Among Children in Substitute Care*, 32 CHILD. & YOUTH SERVS. REV. 286 (2010).

¹¹⁶ Patricia A. Resick et al., *A Critical Evaluation of the Complex PTSD Literature: Implications for DSM-5*, 25 J. TRAUMATIC STRESS 241, 242 (2012).

¹¹⁷ J.P. Mersky et al., *Impacts of Adverse Childhood Experiences on Health, Mental Health, and Substance Use in Early Adulthood: A Cohort Study of an Urban, Minority Sample in the U.S.*, 37 CHILD ABUSE & NEGLECT 917, 920 (2013).

¹¹⁸ Youngmin Yi & Christopher Wildeman, *Can Foster Care Interventions Diminish Justice System Inequality?*, 28 FUTURE CHILD. 37, 39 (2018).

¹¹⁹ Brenda M. Morton, *The Grip of Trauma: How Trauma Disrupts the Academic Aspirations of Foster Youth*, 75 CHILD ABUSE & NEGLECT 73, 74 (2018).

¹²⁰ *How Do Parent Partner Programs Instill Hope and Support Prevention and Reunification?*, CASEY FAM. PROGRAMS (June 4, 2019), <https://www.casey.org/parent-partner-program> [<https://perma.cc/D7TH-L9S8>].

support specialist is a parent or child who has previously experienced and navigated a system, such as the family regulation system, and receives training to support someone currently navigating that system.¹²¹ Peer support models have long existed outside the family regulation system, including some efforts in schools. Increased use of peer support models can both expand supports available to families and mitigate the risk that greater school involvement with families will become a new form of coercion.

Grassroots parent organizing efforts have brought together parents, schools, and community members to address inequality. Much of the parent organizing in underserved schools is developed out of the desire to address disparities in education and the local community.¹²² Within Los Angeles, parents from underserved districts have joined together to advocate for the rights of their children through the formation of organizations such as the Community Asset Development Re-defining Education (CADRE) program. CADRE parents seek to disrupt the carceral logics within schools through policy change, community resiliency, base building, leadership development, campaigns and movement building, and coalition building.¹²³ This grassroots organization has increased parent involvement within their community schools and strengthened parents' ability to advocate for themselves and their children through know-your-rights trainings, legal clinics, and engagement in participatory action research. Their work has helped to pass policies that have aided in decreasing school suspension rates within South Los Angeles.

The efforts of parent-led organizations within schools are also a safety mechanism for families and children by providing them a voice and support to ensure that schools do not perpetuate further coercion over vulnerable families. Parents involved in these grassroots efforts are often more engaged in their children's education and are empowered to speak up about the injustices they see within their communities and schools. Schools can

¹²¹ *Id.*

¹²² Kysa Nygreen, *Competing Paradigms of Educational Justice: Parent Organizing for Educational Equity in a Neoliberal Reform Context*, 49 EQUITY & EXCELLENCE EDUC. 202, 202 (2016).

¹²³ *Strategies*, CADRE, <http://cadre-la.org/newhome/whatwedo/strategies> [https://perma.cc/XZ8B-F23H] (last visited Feb. 25, 2021).

harness the power of these grassroots movements by bringing parents to the table as partners to build coalitions and networks of support.

Peer support models have a growing evidentiary base, with a diverse range of improved outcomes related to substance abuse, mental health, and family preservation.¹²⁴ Peer support models should be embedded in schools to ensure that parents in the community are formal school personnel that are charged with identifying and working beside peer families that are experiencing family or community adversity.

5. Increasing School Social Workers

Implementing the proposed changes will require a significant scaling up of work that schools already undertake to identify and address children's and family's needs. To achieve that scale, schools will need significantly more staff, especially social workers and other professionals and peer and community supports. The National Association of Social Workers recommends that schools have a ratio of one social worker for every 250 children, and one social worker for every fifty children with what they describe as "intensive needs."¹²⁵ Presently, schools fall far short of this measure—nationally, there is an average of 0.28 social workers per school, according to U.S. Department of Education's Office of Civil Rights,¹²⁶ and the ACLU has calculated the average national ratio to be 2,106 students to one social worker.¹²⁷

Moving to the recommended ratios requires addressing concerns that more school social workers would funnel more children to the family regulation system. We emphasize that increasing the numbers of school social workers should occur as

¹²⁴ CASEY FAM. PROGRAMS, *supra* note 120.

¹²⁵ NAT'L ASS'N OF SOC. WORKERS, NASW STANDARDS FOR SCHOOL SOCIAL WORK SERVICES 18 (2012), <https://www.socialworkers.org/LinkClick.aspx?fileticket=1Ze4-9-Os7E%3D&portalid=0> [<https://perma.cc/2PY4-YS99>].

¹²⁶ U.S. DEPT. OF EDUC., OFFICE OF C.R., *supra* note 14 (demonstrating that of the 97,533 schools listed in the CRDC School Support dataset, all but twenty-one schools provided data on the number of full-time equivalent social workers on staff).

¹²⁷ AM. CIV. LIBERTIES UNION, COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS 13 (2019), <https://www.aclu.org/report/cops-and-no-counselors> [<https://perma.cc/C4BU-FFHC>].

part of broader reforms shifting away from the reporting and investigation status quo and limiting school reports to CPS agencies to more severe cases. Recognizing that such a shift will require significant legal changes to mandatory reporting statutes and cultural changes within schools, we recommend several additional steps to ensure that additional school social workers facilitate voluntary, and not coercive, supports and services for families. School social worker job descriptions should make clear that their role is to offer supports and services to families. While voluntary reporting to CPS agencies would remain even if our recommendation to limit mandatory reporting is adopted, job descriptions should make clear that such reporting is only appropriate when social workers (or other school staff) suspect severe abuse or neglect. Relatedly, expanding the number of staff to help families obtain useful supports should not rely entirely on school social workers. Peer and community supports, discussed in Part IV.B.4, should be used as well.

6. Paying for Reforms

Enacting the reforms proposed in this section would require addressing concerns about cost, especially costs of more school social workers and services provided by schools. Much, if not most, of additional funds needed for more school social workers can be obtained from reorienting funding from the existing family regulation system and school-to-prison nexus. Shrinking the scope of CPS to focus on protecting children from severe—but relatively rare—forms of maltreatment would free up many social workers and the public dollars used to pay them. That funding stream could be redirected from CPS agencies to school systems.

Relatedly, shrinking schools' financial contributions to the carceral web described in Part II.A would free up money for school social workers and other staff. Many school districts spend significant sums on policing students, even elementary school students, an activity shown to increase school-based arrests but not school safety. Nationally, public schools employ more police officers than social workers—more than 27,000 police officers compared to 23,000 social workers¹²⁸—and students of color are

¹²⁸ U.S. COMM' ON C.R., BEYOND SUSPENSIONS: EXAMINING SCHOOL DISCIPLINE POLICIES AND CONNECTIONS TO THE SCHOOL-TO-PRISON PIPELINE FOR STUDENTS OF COLOR WITH DISABILITIES 165 (2019),

particularly likely to attend schools with police but no counselors.¹²⁹ For instance, the Richland County School District One¹³⁰ spends more than \$2.3 million annually to pay for a total of forty-nine police officers in its schools, twenty-eight of which are assigned to elementary schools.¹³¹ Most of those funds could be redirected to school social workers without jeopardizing safety. School districts can also access alternative funding streams to help pay for this Article's proposals, such as Medicaid which can help support mental health and substance abuse services as well as case management in certain circumstances.¹³²

The first step of covering the cost of services to families is to maximize funding from already existing sources. As noted above, Medicaid funds mental health services,¹³³ one of the primary services schools could provide. The federal Children's Bureau has catalogued a range of funding sources for civil legal services for impoverished families.¹³⁴

These steps can cover much of the reforms we propose without requiring new funding. Some new funding may, of course, also be required, which we submit is justified as a moral imperative to serve children and families more effectively, and as a long-term investment to help children avoid harmful outcomes in the legal system, schools, employment, and beyond.

<https://www.usccr.gov/pubs/2019/07-23-Beyond-Suspensions.pdf>
[<https://perma.cc/AJJ6-THUD>].

¹²⁹ *Id.* at 51.

¹³⁰ This is the home district of Josh Gupta-Kagan in Columbia, South Carolina.

¹³¹ Data on total cost and numbers of school resource officers (SROs) are taken from memoranda of agreement between the district and two separate local law enforcement agencies for the 2019–20 school year. RICHLAND CNTY. SCH. DIST. ONE & RICHLAND CNTY. SHERIFF'S DEP'T., MEMORANDUM OF AGREEMENT 2019–2020 & ADDENDUM 1; RICHLAND CNTY. SCH. DIST. ONE & COLUMBIA POLICE DEP'T., MEMORANDUM OF AGREEMENT 2019–2020, at 1. The District confirmed in a FOIA response that its expenditures for SROs came from general funds. RICHLAND CNTY. SCH. DIST. ONE, FOIA REQUEST RESPONSE (Aug. 10, 2020).

¹³² *See, e.g.*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN. & CTRS. FOR MEDICARE & MEDICAID SERVS., JOINT INFORMATIONAL BULLETIN: GUIDANCE TO STATES AND SCHOOL SYSTEMS ON ADDRESSING MENTAL HEALTH AND SUBSTANCE USE ISSUES IN SCHOOLS (July 1, 2019), <https://www.medicare.gov/federal-policy-guidance/downloads/cib20190701.pdf> [<https://perma.cc/QTZ3-99J7>].

¹³³ *See* sources cited *supra* note 65 and accompanying text.

¹³⁴ CIVIL LEGAL ADVOCACY, *supra* note 97, at 7–13.

V. CONCLUSION

Schools' roles in the present family regulation system powerfully illustrate the failures of that system. Schools are the largest single source of child abuse and neglect hotline reports to CPS agencies, but their reports are especially unlikely to be investigated, substantiated, or lead to meaningful protective action. Instead, they lead to unwanted and largely unhelpful CPS agency intervention and coercive regulation of families. For families that could benefit from voluntary supports, this CPS agency involvement represents a missed opportunity to provide more effective and less coercive assistance.

Schools also represent the promise of a different approach. School staff are in a position to know when families are in need of assistance and to provide such assistance directly, through partnerships with legal services and other community providers. Such assistance would require both a significant change in law, so schools would not be legally required to report families to CPS agencies, as well as in culture, so school staff would work collaboratively with families, and significant personnel and funding changes. However difficult, these changes are possible, and would help usher in a profoundly more effective way to assist children and families currently poorly served by CPS agencies.