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The School FOIA Project: Uncovering Racial Disparities in School Discipline and How to Respond

James Naughton

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The School FOIA Project: Uncovering Racial Disparities in School Discipline and How to Respond

James Naughton*

Since 1984, Illinois has had a Freedom of Information Act law on the books that allows anyone—including educational advocates—to request public records. This creates a useful avenue to access and review records for any public entity, including public school districts. This Article proposes that FOIA creates a powerful pathway for educational advocates to request information from school districts that can be tailored to drive reforms. This Article uses a case study focused on racial disparities in school disciplinary actions to illustrate how any educational advocate could use FOIA to obtain the relevant information to create data-driven arguments to advocate for change. This Article offers a blueprint for other advocates, examining what information is accessible, how to access it, and what to do once the information is received. Ultimately, this Article aims to inspire other advocates to recognize the tool that is the Illinois FOIA law and to enable those advocates to add FOIA to their toolkits for educational change.

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* James Naughton is an attorney who learned what social justice and activism is from Professors Mary Bird, Henry Rose, and Alan Raphael, as well as the late Jack Macnamara. This article is dedicated in Jack Macnamara’s honor—for his fearless leadership, his unwavering faith in the power of the community, and for the time he sat with me in a coffee shop for hours telling me his story. The author would also like to thank Parth Patel for his help in understanding and processing this data, Kaylyn Ahn for her fearless advocacy, and all of the teachers and students of District 214 who stand for racial equity.

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*“You should know that no matter how deep you bury the bodies,
someone will dig them up sooner or later.”*

— Anthony T. Hincks

INTRODUCTION

The federal Freedom of Information Act (FOIA) was passed in 1966 under the presidency of Lyndon B. Johnson. The Act, codified under 5 U.S.C. § 552, established a presumption that the public have access to federal information upon request. In President Johnson’s statement upon signing the senate bill into law, he stated, “This legislation springs from one of our most essential principles: a democracy works best when the people have all the information that the security of the Nation permits.”¹

The state of Illinois beat the federal government by nine years as it had already passed the State Records Act in 1957, which allowed for the inspection of state records. In 1984, the Illinois legislature codified a version of the federal FOIA law, declaring it to be the exclusive state statute on freedom of information.² In this Article, I argue for an expanded use of the Illinois FOIA by educational advocates in uncovering racial disparities in school discipline. School discipline has a deleterious impact on students of color, creating a feeder into the school-to-prison pipeline, reducing rates of high school graduation, and resulting

1. Presidential Statement on Signing the Freedom of Information Act 1966, 2 WEEKLY COMP. PRES. DOC. 895 (July 4, 1966).

2. 5 ILL. COMP. STAT. 140/1 et seq. (2020).

in a higher risk of involvement with the juvenile justice system.³

The Article will review the state of FOIA laws in Illinois as it relates to educational institutions. It will also provide a blueprint for educational advocates to use Illinois's FOIA law to request information from school districts to explore whether racial disparities in discipline exist. As a case study, this Article will highlight lessons learned from the author's experience with requesting disciplinary information from his local school district and include the raw and analyzed data from a recent FOIA request. Lastly, this Article will provide recommendations on how to address race-based discrimination in school districts using FOIA information.

I. ILLINOIS FOIA LAWS: A POWERFUL TOOL FOR EDUCATIONAL ADVOCATES

Illinois's current FOIA law⁴ applies to records and reports received on or after July 1, 1984.⁵ This does not shut the door on records created before July 1, 1984, when the Illinois FOIA came into being; the State Records Act⁶ allows an individual to request records prepared or received prior to July 1, 1984.⁷

The Illinois FOIA provides public access to government documents and records. The Act defines public records as:

[A]ll records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.⁸

3. Tracy L. Shollenberger, *Racial Disparities in School Suspension and Subsequent Outcomes: Evidence from the National Longitudinal Survey of Youth 1997*, in *CLOSING THE SCHOOL DISCIPLINE GAP: EQUITABLE REMEDIES FOR EXCESSIVE EXCLUSION* 31, 41 (Daniel J. Losen ed., 2015).

4. 5 ILL. COMP. STAT. 140/1 et seq. (2020).

5. *Carrigan v. Harkrader*, 496 N.E.2d 1213, 1214 (Ill. App. Ct. 1986) (“[The Illinois FOIA law] clearly applies to records and reports prepared or received on or after July 1, 1984.”).

6. 5 ILL. COMP. STAT. 160/1, 26 (2020).

7. *Pecora Oil Co. v. Johnson*, 509 N.E.2d 495, 498–99 (Ill. App. Ct. 1987) (“Section 3 of the [State Records Act] . . . states that ‘Reports and records of the obligation, receipt and use of public funds of the State are public records available for inspection by the public’”) (citations omitted).

8. 5 ILL. COMP. STAT. 140/2(c) (2020).

Examples of public records include contracts; names, titles, and salaries of public employees; and reports or studies.⁹ Illinois FOIA presumes that all records held by a public body are open to inspection and copying.¹⁰ As part of that presumption, Illinois FOIA defines “public body” to include, among other entities, school districts, state universities and colleges, and school boards.¹¹

However, not all public records are subject to release under Illinois FOIA. The Act exempts various categories of information,¹² such as security information for correctional facilities¹³ and power plants¹⁴ as well as educational information including test questions and answer keys and information regarding adjudication of student disciplinary cases to the extent it would reveal the student’s identity.¹⁵ But, if the information would otherwise be accessible via FOIA, the public body may simply redact the exempt information.¹⁶

In order to access these public records, individuals must submit a FOIA request. Any person or organization can submit such a request, and the request need only specify the information sought in sufficient detail that the public body can identify it—no specific forms required.¹⁷ Once received, the public body must either comply with or deny the request within five business days, barring some exceptions.¹⁸

Under the 1975 Illinois Student Records Act,¹⁹ a public preschool, day care center, kindergarten nursery, elementary or secondary educational institution, vocational school, special educational facility, and other public educational entities must keep records on its students.²⁰

The Illinois Student Records Act divides student records into two distinct categories: “student permanent record[s]” and “student

9. See *Illinois Freedom of Information Act: Frequently Asked Questions*, OFF. ILL. ATT’Y GEN. (Jan. 4, 2010), https://illinoisattorneygeneral.gov/government/FAQ_FOIA_Public.pdf [<https://perma.cc/PG9H-H63R>] (providing the FOIA definition of a “public record” and examples).

10. 5 ILL. COMP. STAT. 140/1.2 (2020).

11. 140/2(a).

12. 140/7.

13. 140/7(1)(e).

14. 140/7(1)(k).

15. 140/7(1)(j).

16. 140/7(1).

17. See OFF. ILL. ATT’Y GEN., *supra* note 9 (stating that anyone can make a FOIA request and explaining how to do so).

18. 5 ILL. COMP. STAT. 140/3(d) (2020). For example, if the requested information is stored at a different location or if the request would require an extensive search, the public body may extend the time period an additional five days, but it must notify the requester within the original five days of the need for the extension. See OFF. ILL. ATT’Y GEN., *supra* note 9 (listing the statutory allowances for an extension).

19. 105 ILL. COMP. STAT. 10/1 et seq. (2020).

20. 10/2(b).

temporary record[s].”²¹ By definition, student permanent records means minimum personal information, including the student’s name, birth date, address, grades and grade level, parents’ names and addresses, etc.²² Student temporary records include family background information, test scores, and information regarding serious disciplinary infractions that resulted in expulsion, suspension, or the imposition of punishment or sanction.²³ The Illinois Student Records Act defines serious disciplinary infractions as: “infractions involving drugs, weapons, or bodily harm to another.”²⁴

The Illinois Student Records Act also provides clear guidance on how long both permanent and temporary records are to be maintained. A student’s permanent records are to be kept for not less than sixty years after the student has transferred, graduated, or otherwise permanently withdrawn from the school,²⁵ while a student’s temporary records are to be maintained for five years.²⁶ In addition, school principals or their designees are given discretion to eliminate or correct information contained in temporary records.²⁷ There are numerous entities and individuals that can access school records of a student, which are enumerated in the Illinois School Records Act, without a FOIA request.²⁸ For example, a parent or student, an employee or official of the school district, or juvenile authorities (e.g., law enforcement officers or prosecutors) who request the information from a court prior to a trial can all readily access their relevant records.²⁹

A. *Litigation on the Freedom of Information Act in Illinois*

Litigation on the Freedom of Information Act in Illinois courts is extensive and reaches back to its inception. In the 1989 case, *Bowie v. Evanston Community Consolidated School District No. 65*, the Illinois Supreme Court held that both FOIA and the Illinois State Records Act are “to open governmental records to the light of public scrutiny.”³⁰ The Court also noted that, while there is a presumption that public records are

21. 10/2(e)–(f).

22. 10/2(e).

23. 10/2(f).

24. *Id.*

25. 105 ILL. COMP. STAT. 10/4(e) (2020).

26. 10/4(f).

27. 10/4(g).

28. 10/6(a)(1)–(12); *see also* *Ibata v. Bd. of Educ.*, 851 N.E.2d 658, 661 (Ill. App. Ct. 2006) (“School districts may reveal the contents of a student’s school record to attorneys representing the district in proceedings concerning the student’s special education placement, without prior parental notice.”).

29. 105 ILL. COMP. STAT. 10/6.5 (2020).

30. *Bowie v. Evanston Cmty. Consol. Sch. Dist. No. 65*, 538 N.E.2d 557, 559 (Ill. 1989) (citations omitted).

open and accessible, there is a conflict between the full disclosure guarantees of FOIA and the Act's limitations on disclosure.³¹ One of the limitations that the Illinois Supreme Court has clearly delineated is that the Act prohibits the disclosure of a school student record whereby the student may be individually identified.³²

Even after the Illinois Supreme Court's decision in *Bowie* there has been ongoing litigation as to what is protected and what is public information under FOIA. In *Local 1274, Illinois Federation of Teachers v. Niles Township High School District 219*, the plaintiffs, Local 1274, requested disclosure of the names and addresses of all of the district's enrolled students and their parents under Illinois's FOIA law.³³ The trial court granted summary judgment in favor of the school district.³⁴ Local 1274 stated that it wished to obtain the information for the purpose of "conducting mail surveys and otherwise communicating with the school community in preparation of [collective] bargaining proposals."³⁵ The appellate court affirmed the trial court's summary judgment order, citing Illinois case law for the proposition that "names, addresses, and telephone numbers constitute 'personal information' under the [FOIA], because they will reveal the identity of particular individuals."³⁶

In fact, the court in *Local 1274* revealed a split of authority among Illinois appellate courts.³⁷ As Thomas C. Britton and Bradley Colwell point out in *Local 1274*:

The Fourth District maintains that once information is found to fall within one of the exclusions under the FOIA, the inquiry ends. The First and Third Districts have adopted a four-pronged balancing test to determine if disclosure is appropriate: (1) the plaintiff's interest in disclosure, (2) the public interest in disclosure, (3) the degree of invasion of personal privacy, and (4) the availability of alternative means of obtaining the requested information.

The First District court [in this case], while not specifically adopting either of the approaches used by the other appellate courts, proceeded to apply the four-pronged balancing test, and concluded that the information was not likely to be subject to public disclosure.³⁸

31. *Id.*

32. *Id.* at 560.

33. *Local 1274, Ill. Fed'n of Tchrs. v. Niles Twp. High Sch. Dist. 219*, 678 N.E.2d 9, 10 (Ill. App. Ct. 1997).

34. *Id.* at 10–11.

35. *Id.* at 11.

36. *Id.* at 12 (citing *Lieber v. S. Ill. Univ.*, 664 N.E.2d 1155, 1160 (Ill. App. Ct. 1996)).

37. Thomas C. Britton & Bradley Colwell, *Survey of Illinois Law: Developments in Education Law 1997 & 1998*, 23 S. ILL. U. L.J. 967, 983 (1999).

38. *Id.* at 983–84 (citing *Local 1274*, 678 N.E.2d at 12–13).

The Fourth District still applies the rule that once information is found to fall under one of the exclusionary clauses of Illinois FOIA, the court will end its inquiry.³⁹ This circuit split has not been resolved by the Illinois Supreme Court and may be ripe for judicial clarification.

The Illinois State Records Act has also been subject to litigation. In *People ex rel. Gibson v. Peller*, the First District Court of Appeals held that the Illinois State Records Act applied to the School Board of District 89.⁴⁰ The First District thoroughly analyzed the school board's claim that the Illinois State Records Act did not apply to them.⁴¹ The Board claimed that it was not a state actor and taxpayers did not have the right to photograph its records. First, the court found that "[a] Board of Education is an agency of the state government."⁴² Second, the court found that, as an agency of the state government, the status of the board was administrative.⁴³ Finally, the court found that, as long as the board of education executes and administers the laws promulgated by the legislature, its members are public officers of the state government and subject to the Illinois State Records Act.⁴⁴

In a recent case, *Better Government Ass'n v. Illinois High School Ass'n*, the Illinois Supreme Court shut the metaphorical door by determining that the Better Government Association (BGA) could not use FOIA to access the records of the Illinois High School Association (IHSA) because it claimed that the IHSA was a not-for-profit charitable organization.⁴⁵ While the IHSA is a private, not-for-profit, unincorporated association, it has over 800 high schools who are members.⁴⁶ The IHSA establishes rules for high school sports competitions and each of its ten board members are principals of a member high school.⁴⁷ The Illinois Supreme Court went through a lengthy analysis, finding that the IHSA was not a public body, subsidiary body of local government, or local public entity, and was not under the control of any governmental association.⁴⁸ Therefore, the Illinois Supreme Court found that, under FOIA, the BGA was not entitled to

39. *Goodrich Corp. v. Clark*, 837 N.E.2d 953, 960–61 (Ill App. Ct. 2005).

40. *People ex rel. Gibson v. Peller*, 181 N.E.2d 376, 377 (Ill. App. Ct. 1962).

41. *Id.*

42. *Id.* (citations omitted).

43. *Id.* at 377–78 (citations omitted).

44. *Id.* at 378.

45. *Better Gov't Ass'n v. Ill. High Sch. Ass'n*, 89 N.E.3d 376, 379 (Ill. 2017).

46. Patrick T. Driscoll Jr., *What Constitutes Being a "Public Body" Subject to the Provisions of FOIA*, 19 PUB. SERVANT (Ill. State Bar Ass'n), Dec. 2017, at 5–6, https://www.isba.org/sites/default/files/sections/newsletter/%20December%202017_9.pdf [<https://perma.cc/7FNX-H7AJ>].

47. *Id.*

48. *Id.*

information regarding contracts between the IHSA and Nike or Gatorade.⁴⁹

While the Illinois Supreme Court's holding in *BGA* was discouraging for many proponents of an expansive reading of FOIA, there is a silver lining. The Illinois Supreme agreed with the BGA that the purpose of Illinois FOIA is "based on a policy of full, complete disclosure regarding the affairs of government to promote accountability in government and an informed citizenry."⁵⁰ The Illinois Supreme Court also issued a warning that governmental entities should not attempt to avoid their FOIA disclosure obligations by contractually delegating their responsibilities to a private entity.⁵¹

Overall, the spirit of FOIA and the Illinois State Records Act is intact. It would be wise for practitioners and educational advocates to be on the lookout for privatization efforts made by local school districts to prevent FOIA requests from being answered. As this Section demonstrates, courts across Illinois construe FOIA and the Illinois State Records Act in a liberal, broad manner.

B. National and State Data on FOIA Requests

To contextualize the use of FOIA at the national and state level, this Section will examine the number of requests made to the Illinois State Board of Education (ISBE) in Fiscal Year (FY) 2018⁵² as well as the number of requests made to the Federal Department of Education's Office of Civil Rights (DOE OCR). At this time, individual school districts are not required to report the amount of FOIA requests they receive in a fiscal year, so that data is not available. However, one may safely assume that the FOIA requests for individual school districts are substantially higher than the FOIA requests sent to the ISBE.⁵³

49. *Better Gov't Ass'n*, 89 N.E.3d at 380, 391.

50. *Id.* at 390.

51. *Id.*

52. This is the most recent data available through the Illinois State Board of Education's webpage at the time of writing.

53. This assumption is based on the number of schools and districts and the closeness of the relationship between schools and students versus the more removed relationship between students and ISBE.

In FY2018, ISBE received twenty-four FOIA requests.⁵⁴ Of those twenty-four requests, three were related to student discipline.⁵⁵ While these numbers may not seem striking at first glance, they do provide a glimpse into what can be obtained by the use of FOIA. For example, one request by Kalyn Belsha of the Chicago Reporter asked for the following:

- A list of districts that were identified as being in the top 20 percent for out-of-school suspension rates and expulsion rates and racial disproportionality in out-of-school suspensions and expulsions for the 2014–15, 2015–16 and 2016–17 school years. Please break this down by individual school year. (i.e. indicate which districts made the top 20% in 2014–15, in 2015–16 and separately in 2016–17.)
- An Excel spreadsheet that shows the data that ISBE used to calculate which public school districts were in the top 20 percent each year. If possible, for each year please show the RCDT code, the district name, the total district enrollment used, the out-of-school suspension rate used, the expulsion rate used, the out-of-school suspension rate for white students used, the out-of-school suspension rate for students of color used, the expulsion rate for white students used, and the expulsion rate for students of color used.⁵⁶

The information requested by Ms. Belsha was provided by ISBE,⁵⁷ which she used as a basis for a news article elucidating the racial disparities in school discipline.⁵⁸ As an example, below is a small fraction of the data that ISBE sent Ms. Belsha in response to her FOIA request.

54. FOIA Requests FY2018, ILL. STATE BD. OF EDUC., <https://www.isbe.net/Pages/FOIA-Requests.aspx?Year=2018> [<https://perma.cc/N9CM-JSCP>] (last visited Mar. 26, 2021).

55. *Id.*

56. Letter from Kalyn Belsha, Reporter, The Chi. Rep., to Megan Griffin, Freedom of Info. Off., Ill. State Bd. of Educ. (June 29, 2018), https://www.isbe.net/Documents_FOIA_Requests/18-377-belsha-req.pdf [<https://perma.cc/K3SC-PHEF>].

57. Letter from Kelly Weston, Asst. General Counsel, Freedom of Info. Off., Ill. State Bd. of Educ., to Kalyn Belsha, Reporter, The Chi. Rep. (July 16, 2018), https://www.isbe.net/Documents_FOIA_Response/18-377-belsha-cor.pdf [<https://perma.cc/ZG8R-JKX5>].

58. Dusty Rhodes, *Racial Disparities Persist in School Discipline*, ILL. PUB. MEDIA (July 20, 2018), <https://will.illinois.edu/news/story/racial-disparities-persist-in-school-discipline> [<https://perma.cc/5TE4-LXC5>].

*Table 1: Racial Disproportionality Data School Year 2016-17
(abridged)⁵⁹*

School District	School Year	Total White Students	Total Students of Color	Total Expulsions and Suspensions: White Students	Total Expulsions and Suspensions: Students of Color
Abingdon-Avon CUSD 276	2017	943	99	31	1
Addison SD 4	2017	996	3436	6	19
Adlai E Stevenson HSD 125	2017	2492	1654	33	19
Alden Hebron SD 19	2017	309	117	18	4
Alton CUSD 11	2017	3858	3040	223	525
Anna CCSD 37	2017	683	82	23	4
Antioch CCSD 34	2017	2449	646	25	9
Argenta-Oreana CUSD 1	2017	929	159	17	4
Argo CHSD 217	2017	686	1274	9	45
Arlington Heights SD 25	2017	4303	1384	7	4
Auburn CUSD 10	2017	1299	112	17	0
Aurora East USD 131	2017	484	14998	42	1481
Aurora West USD 129	2017	3354	9793	155	923

59. FOIA Requests FY2018 Log #18-377, ILL. STATE BD. OF EDUC., <https://www.isbe.net/Pages/FOIA-Requests.aspx?Year=2018> [<https://perma.cc/4SJZ-8M94>] (last visited Apr. 13, 2021) (navigate to the first document labeled “document: 18-377-belsha-doc4”). This table is not exhaustive and only provides a snapshot of what Ms. Belsha received from ISBE. For the full disproportionality rates for all 380 school districts across all three years, please visit the website in this citation.

This FOIA request and others like it provide educational advocates, students, parents, and community organizers with an opportunity to approach their school district informed and with data.⁶⁰

When examining the national data, there were 104 FOIA requests processed by the DOE for the Chicago Region in FY19.⁶¹ Overall, there were a total of 2,368 FOIA requests that were processed by the DOE for all regions in FY19, out of 3,482 requests made during that year or pending from an earlier year.⁶² The DOE initially denied 2,776 of these requests on the basis of the nine statutory exemptions under FOIA.⁶³ In essence, the DOE, under Secretary Betsy DeVos, successfully blocked responses to approximately 40% of all FOIA requests in FY19.⁶⁴ In addition, the backlog of requests increased from FY18 to FY19 from 618 requests to 857 requests.⁶⁵ Below are examples of the DOE's response to FOIA requests and what information was requested from them.

60. For more information on alternatives to exclusionary discipline, see Miranda Johnson & James Naughton, *Just Another School?: The Need to Strengthen Legal Protections for Students Facing Disciplinary Transfers*, 33 NOTRE DAME J.L. ETHICS & PUB. POL'Y 69 (2019).

61. U.S. DEP'T OF EDUC., OFF. OF THE EXEC. SECRETARIAT, 2019 FREEDOM OF INFORMATION ACT ANNUAL REPORT TO THE ATTORNEY GENERAL OF THE UNITED STATES 14 (2019), <https://www2.ed.gov/about/reports/annual/foia/foia-fy19.pdf> [<https://perma.cc/TS7B-CBQ2>].

62. *Id.* at 15 (This number is calculated by adding the total for each column: requests pending at the start of the fiscal year, requests received, requests processed, and requests pending at the end of the fiscal year).

63. *Id.* at 21 (calculated by adding the totals for each exemption). There are nine exemptions that were created to the Federal FOIA Act. For more information, see *Freedom of Information Act Exemptions*, U.S. DEP'T OF JUST., <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/foia-exemptions.pdf> [<https://perma.cc/ZS94-FK6D>] (last visited Apr. 14, 2021).

64. U.S. DEP'T OF EDUC., *supra* note 61, at 15, 21 (calculated by dividing the total number of denied requests by the requests made, processed or pending (2,776/ 6,964 is about equal to 40%)).

65. U.S. DEP'T OF EDUC., OFF. OF THE SEC'Y, 2019 CHIEF FOIA OFFICER REPORT 11 (2019), <https://www2.ed.gov/policy/gen/leg/foia/2019-ed-cfo-report-doj.pdf> [<https://perma.cc/Y2YP-K5GU>] (last visited Mar. 27, 2021).

Table 2: DOE Responses to FOIA Requests (December 2019)
(abridged)⁶⁶

Requester Name	Request Description	Organization	Final Disposition	Exemption Cited
Rice, Whitney	Effectiveness ratings and information from michigan dept of Education MDHHS and other agency information regarding my dismissal from Morrice Elementary School and International Academy of Flint especially as it relates to my mistakingly being placed on the exclusion from child care list registry and the expungement thereof	EDUStaff, LLC	Other Reasons - Not Agency Record	-
Meek, Amy	I request that documents be provided to me regarding any and all complaints filed with the Office of Civil Rights, U.S. Department of Education, regarding Cicero School District 99, Illinois. For each complaint, please provide documents containing the following information: 1) The date the complaint was filed; 2) Any information regarding the name of the school or institution within Cicero School District 99 about which the complaint was filed; 3) The type of discrimination included in the complaint; 4) The date the complaint was resolved, dismissed or closed, if applicable; 5) The basic reasons for OCR's decision; 6) Any other related information regarding the complaint. I am not requesting any records by which a complainant, or person on whose behalf the complaint was filed, may be individually identified and request that any potentially identifying information, including student names, addresses, telephone numbers, and private information not be transmitted to me. If you believe any responsive records would be kept by other public bodies, please forward this request to the appropriate personnel in those bodies.	Chicago Lawyers' Committee for Civil Rights	Granted/ Denied in Part	(b)(6); (b)(7)(C)

66. U.S. DEP'T OF EDUC., U.S. DEPARTMENT OF EDUCATION FOIA LOGS, <https://www2.ed.gov/policy/gen/leg/foia/foia-log.html> [<https://perma.cc/J53X-CDJF>] (last visited Apr. 14, 2021) (Navigate to the Excel sheet labeled "December 2019"). All spelling, grammatical, and other errors in the table are errors in the original source material.

Febres, Frances	I am looking for a copy of the following OCR decisions: Conejo Valley Unified Sch. Dist., 23 IDELR 448 (1995); Bd. of Educ. of the City of New York, 16 EHLR 373 (1989); and Arlington County (VA) Pub. Sch., 16 EHLR 1190. (Date Range for Record Search: From 01/01/1988 To 01/01/1996).	Cleary Giacobbe Alfieri Jacobs LLC	Other Reasons - Request Withdrawn	-
Nolen, Austin	I am requesting the following records of the Department of Education: I. The current contract(s) for alternative origination services between the Department and one or more third parties for origination of loans to students of Temple University, which does not have an origination agreement with the Department, and other universities, if included in the same contract; II. Documents reflecting the final resolutions (e.g. dismissing complaint, approving voluntary resolution agreement) of the following OCR investigations: 03-13-2311, 03-14-2336, 03-15-2389.	Spirit News	-	-
Buduson, Sarah	I request a copy of all Title IX sexual violence complaints, letters opening cases for investigation, and resolution and/or case disposition letters involving the following postsecondary institutions in Ohio between January 1, 2017 and the date this request is fulfilled: THE OHIO STATE UNIVERSITY UNIVERSITY OF CINCINNATI KENT STATE UNIVERSITY OHIO UNIVERSITY UNIVERSITY OF AKRON UNIVERSITY OF TOLEDO MIAMI UNIVERSITY CLEVELAND STATE UNIVERSITY WRIGHT STATE UNIVERSITY BOWLING GREEN STATE UNIVERSITY YOUNGSTOWN STATE UNIVERSITY CASE WESTERN RESERVE UNIVERSITY BALDWIN WALLACE UNIVERSITY JOHN CARROLL UNIVERSITY (Date Range for Record Search: From 01/01/2017 To 12/02/2019)	WEWS-TV	Granted/ Denied in Part	(b)(6); (b)(7)(A); (b)(7)(C)
Braggs, Ken	06-17-1747 - Iowa Park Consolidated ISD Audio recordings between named parties.	Walsh, Gallegos, Trevino, Russo & Kyle, P.C.	Denied in Full	(b)(5)

Rosse, Philippe	To assist with research I am currently undertaking, I would like to request Radford University's fully submitted 2017 application for Supporting Effective Educator Development Grant Program. The title of the grant was Appalachian Support for Specialized Education Training (ASSET) and was led by Matt Dunleavy with partnerships with SRI, Human Resources Research Organization (HumRRo) and simSchool. Of particular interest would be the inclusion of all budgetary information, especially as it deals with these partner organizations. Please note that I am again interested in the submitted application including all budgets and not the grant award.	GrantsAlert.com	Granted/ Denied in Part	(b)(4); (b)(6)
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The DOE and ISBE seem to mirror each other in their responses to wrongfully deny FOIA requests. While the DOE tracks its denied FOIA requests, ISBE does not appear to have a similar mechanism. However, the BGA was able to break down top offenders who ignored or wrongly used exemptions under the Illinois FOIA to block requests.⁶⁷ In both the federal and state categories, you will find the Chicago Public School system.⁶⁸ The fact that the Chicago Public School system performs so poorly in response to FOIA requests is compounded by the fact that “Chicago Public Schools has long suspended and expelled African-American boys at rates much higher than their classmates.”⁶⁹

While individual school districts do not track their FOIA requests, information on specific districts school discipline nevertheless is available on ISBE's website.⁷⁰ The data contained in this public information is also informative about racial disparities during the 2018–2019 school year. For example, during the 2018–2019 school year, 76,507 students of color received an out-of-school suspension compared to 26,019 of their white peers.⁷¹ In other words, students of color received

67. Annum Haider, *Analysis: Illinois Law Hasn't Stopped Public Agencies from Withholding Records*, BETTER GOV'T ASS'N (Jan. 10, 2019), <https://www.bettergov.org/news/analysis-illinois-law-hasnt-stopped-public-agencies-from-withholding-records/> [https://perma.cc/2JWT-85EF].

68. *Id.*

69. Kalyn Belsha, *As School Discipline Disparities Worsen, Illinois Has Yet to Require Reforms*, CHICAGO REP. (July 18, 2018), <https://www.chicagoreporter.com/as-school-discipline-disparities-worsen-illinois-has-yet-to-require-reforms/> [https://perma.cc/HG5Q-JFD9] (citation omitted).

70. EXPULSIONS, SUSPENSIONS, AND TRUANTS BY DISTRICT FY18-19, ILL. STATE BD. OF EDUC., <https://www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx> [https://perma.cc/44KK-GA89] (last visited June 27, 2020) (navigate to the 2018-19 excel sheet to access the data).

71. *Id.* (calculated by adding the totals for each race/ ethnicity).

approximately 75% of all out-of-school suspensions.⁷²

While it may be frustrating to piece together information from a myriad of sources, it is certainly worth it when an educational advocate can come up with useful data. It should prove a consolation that while the data on success rates of FOIA requests at the district level is typically unavailable, advocates can still request the relevant information themselves.

C. Threats to the Illinois FOIA Act

Aside from the exemptions mentioned in Section A, municipalities and other entities have attempted to use the COVID-19 pandemic as a reason to suspend FOIA and the Illinois FOIA five-day deadlines.⁷³ In a press release dated April 13, 2020, and penned by Brad Cole, Executive Director of the Illinois Municipal League, directed at Attorney General Kwame Raoul, he requested that the FOIA deadlines be extended for what appears to be an indefinite amount of time, citing the pandemic.⁷⁴ The Mayor of Chicago, Lori Lightfoot, also supported the Illinois Municipal League's request to indefinitely suspend FOIA deadlines.⁷⁵ As John Byrne, a reporter for the Chicago Tribune, pointed out, "though Chicago government has thousands of workers on its payroll, the mayor defended her stance on the grounds it will pull city employees away from more lifesaving efforts."⁷⁶ As the Chicago Sun Times Editorial Board stated, "it is never a good idea to restrict the public's right to information. Not even—or perhaps, especially—during this pandemic."⁷⁷

Attorney General Raoul responded that "[t]he Office of the Attorney

72. *Id.*

73. Letter from Brad Cole, Exec. Dir., Ill. Mun. League, to Kwame Raoul, Ill. Att'y Gen. (May 4, 2020), <https://www.iml.org/file.cfm?key=18862> [<https://perma.cc/MF38-D9RG>].

74. Press Release, Brad Cole, Ill. Mun. League, Municipalities Remain in Limbo Without Ruling from Attorney General on FOIA (Apr. 13, 2020), <https://www.iml.org/file.cfm?key=18639> [<https://perma.cc/2YW2-XZ6U>].

75. John Byrne, *Chicago Mayor Lightfoot Supports Suspending FOIA Deadlines During Coronavirus Shutdown, Says Saving Lives More Important*, CHI. TRIB. (Apr. 8, 2020), <https://www.chicagotribune.com/coronavirus/ct-coronavirus-chicago-lori-lightfoot-foia-requests-20200408-wnwzxwyqkbalberk3lk6yeol3y-story.html> [<https://perma.cc/Q6YK-9CJ8>]; see also Gregory Pratt, *Chicago Mayor Lori Lightfoot Reverses Course, Says Administration Will Fulfill Public's Open Records Requests During Ongoing Coronavirus Disruptions*, CHI. TRIB. (Mar. 18, 2020), <https://www.chicagotribune.com/politics/ct-chicago-suspends-fulfilling-foia-requests-20200318-wfftqzyzrxdx5fgn2rgn65fu74-story.html> [<https://perma.cc/PP98-W5GL>] (describing Mayor Lightfoot's course reversal after initially deciding to reject all FOIA submitted during the pandemic).

76. Byrne, *supra* note 75.

77. *Suspend the Freedom of Information Act? Even During a Pandemic, That's a Horrible Idea*, CHI. SUN TIMES (Apr. 9, 2020, 5:48 PM), <https://chicago.suntimes.com/2020/4/9/21214891/suspend-illinois-freedom-information-act-wrong-move-coronavirus-pandemic> [<https://perma.cc/C5TB-B34Z>].

General does not have the authority to suspend the statutory requirements of the Freedom of Information Act”⁷⁸ Attorney General Raoul further stated that only an executive order by the governor or a law created in the General Assembly would allow him to suspend FOIA deadlines.⁷⁹ The governor of Illinois, J.B. Pritzker, stated at a press conference on April 15, 2020, that he intended to fulfill FOIA records requests.⁸⁰

When put to a vote on May 23, 2020, the Illinois General Assembly declined to temporarily delay Freedom of Information Act law requirements.⁸¹ It was only after the removal of the language temporarily delaying FOIA requirements that the vote passed.⁸²

For those who have requested FOIA information before, it may come as no surprise that the legislatures sought to curtail FOIA requirements. As the Chicago Sun Times Editorial Board stated, “Pretty much every reporter who’s ever filed a FOIA request with a school district, village board or other government entity has had to engage in discussion about deadlines. Rarely is information provided within the initial five-day deadline.”⁸³ As legal commentators point out, “Illinois’ history and compliance with FOIA has not always been stellar . . . Illinois was the last state to enact a [FOIA] law permitting access to public records.”⁸⁴

The importance of access to school information cannot be understated. Without access to this crucial information, it is impossible for educational advocates to bring data to the table when discussing educational inequities. This data has proven crucial in making changes such as the

78. Greg Hinz, *Everyone Has Their Own Priorities*, CAPITOL FAX (Apr. 7, 2020), <https://capitolfax.com/2020/04/07/everyone-has-their-own-priorities-6/> [<https://perma.cc/TG79-ZWT8>].

79. Brett Rowland, *Mayors Ask Illinois Attorney General for More Time to Respond to Requests for Public Records*, CTR. SQUARE (Apr. 13, 2020), https://www.thecentersquare.com/illinois/mayors-ask-illinois-attorney-general-for-more-time-to-respond-to-requests-for-public-records/article_ea329fe4-7da4-11ea-9b92-6bf98e7076ad.html [<https://perma.cc/F2SG-VW9E>].

80. See J.B. Pritzker, Ill. Gov., *Coronavirus Press Briefing* (Apr. 15, 2020) (transcript), <https://www.rev.com/blog/transcripts/illinois-gov-j-b-pritzker-press-conference-transcript-april-15> [<https://perma.cc/G4QZ-7VJT>] (ensuring that the governor’s legal staff was working hard to fulfill all FOIA requests).

81. Jerry Nowicki, *Restore Illinois Commission Bill Passes After Removal of Remote Session, FOIA Delay Language*, HERALD&REVIEW (May 24, 2020), https://herald-review.com/restore-illinois-commission-bill-passes-after-removal-of-remote-session-foia-delay-language/article_7c573187-710a-55f2-a60c-86ac0449bda5.html [<https://perma.cc/765D-DFG4>].

82. *Id.*

83. *Suspend the Freedom of Information Act? Even During a Pandemic, That’s a Horrible Idea*, *supra* note 77.

84. Stephan Roth & Jeannie Romas-Dunn, *Freedom of Information Act – Recent & Proposed Changes*, 12 PUB. SERVANT (Ill. State Bar Ass’n), June 2011, at 6–7, <https://www.isba.org/committees/governmentlawyers/newsletter/2011/06/freedomofinformationactrecentpropos> [<https://perma.cc/34GZ-H89V>].

sweeping school discipline reform bill commonly known as SB 100.⁸⁵ Furthermore, the declared public policy of the Illinois FOIA is to align Illinois with the “philosophy of the American constitutional form of government . . . [so] that all persons are entitled to full and complete information regarding the affairs of the government”⁸⁶

II. A BLUEPRINT FOR EDUCATION ADVOCATES: USING ILLINOIS FOIA TO UNEARTH SCHOOL DISCIPLINE DISPARITIES

As discussed in the previous Part, all Illinois public schools, pre-K through public universities, are public entities for the purpose of the Illinois FOIA.⁸⁷ In essence, any member of the public can request discipline information from a school district.⁸⁸ As an initial matter, Illinois FOIA law breaks down requests into two categories: (1) requests made for commercial purposes and (2) requests made for noncommercial purposes.⁸⁹ Generally, members of the public are making requests for noncommercial purposes, e.g., to request specific data on discipline. A public entity must comply or deny a request for public records within five business days after the receipt of a FOIA request.⁹⁰ However, a public entity can request an extension of not more than five business days if they meet an enumerated reason under FOIA.⁹¹ If a request is made for a commercial purpose, then a public entity has twenty-one days to respond to it, or a reasonable amount of time.⁹²

This Part intends to offer a blueprint for education advocates to use the Illinois FOIA to uncover inequities in school discipline. The National Clearinghouse on Supportive School Discipline defines exclusionary discipline as “any type of school disciplinary action that removes or

85. S.B. 100, 99th Gen. Assemb. (Ill. 2015); see Jose I. Sanchez, *VOYCE’s Groundbreaking Bill, SB100, to Address “School-to-Prison Pipeline” Passes Illinois Legislature*, VOICES OF YOUTH IN CHI. EDUC. (May 21, 2015), <https://voyceproject.org/2015/05/21/groundbreaking-bill-sb-100-to-address-school-to-prison-pipeline-passes-illinois-legislature/> [<https://perma.cc/WNS2-M3SZ>] (describing the importance of SB 100 and its prioritization of creating safe, orderly schools, while addressing excessive uses of severe forms of discipline and providing struggling students with academic and behavioral support). See also *infra* Section II.C (outlining the effects of SB 100 on school disciplinary action).

86. 5 ILL. COMP. STAT. 140/1 (2020).

87. 105 ILL. COMP. STAT. 10/2 (2020).

88. 10/5–6.

89. 5 ILL. COMP. STAT. 140/3.1 (2020) (splitting FOIA requests into two separate categories).

90. 140/3(d) (“Each public body shall, promptly, either comply with or deny a request for a public within 5 business days after its receipt of the request . . .”).

91. 140/3(e)(i)–(vii) (listing the reasons for requesting an extension).

92. 140/3.1(a)–(b) (“A public body shall respond to a request for records to be used for a commercial purpose within 21 working days after receipt. . . . Unless the records are exempt from disclosure, a public body shall comply with a request within a reasonable period . . .”).

excludes a student from his or her educational setting.”⁹³ The National Clearinghouse states that the two most common exclusionary practices at schools include suspension and expulsion.⁹⁴ While suspension and expulsion are certainly types of exclusionary discipline, there are also detentions, in-school suspensions, transfers to alternative programs in lieu of disciplinary action, referrals to law enforcement, and in-school arrests by law enforcement.⁹⁵ All of these exclusionary methods of discipline have detrimental effects on students.

The first step for many education advocates is to access the exclusionary discipline (e.g., suspensions, expulsions, disciplinary transfers to alternative schools) data for their school. At this moment, the DOE Office of Civil Rights offers discipline data for districts and specific schools.⁹⁶ The issue with the DOE OCR data is that it is often outdated. After a survey of fifty school districts, the author found that the most recent data was recorded in 2017.⁹⁷ ISBE data may prove more useful as it offers end-of-the-year breakdowns of school discipline by type of discipline, student’s race, student’s gender, and incident type for each school and district.⁹⁸

A. *The Detrimental Impact of Exclusionary Discipline on Students*

School discipline starts at an early age for too many children. A joint policy statement issued by the U.S. Department of Health and Human Services and U.S. DOE found that “[y]oung students who are expelled or suspended are as much as ten times more likely to drop out of high school, experience academic failure and grade retention, hold negative school attitudes, and face incarceration than those who are not.”⁹⁹

The U.S. DOE, Office of Civil Rights released data for the 2013–14

93. *Exclusionary Discipline*, SCH. DISCIPLINE SUPPORT INITIATIVE, <https://supportiveschooldiscipline.org/learn/reference-guides/exclusionary-discipline#:~:text=Exclusionary%20discipline%20describes%20any%20type,schools%20include%20suspension%20and%20expulsion> [<https://perma.cc/LNH4-FH2A>] (last visited Mar. 27, 2021).

94. *Id.* (“Two of the most common exclusionary discipline practices at schools include suspension and expulsion.”).

95. See generally ILL. STATE BD. OF EDUC., *supra* note 70.

96. *Civil Rights Data Collection*, U.S. DEP’T EDUC., <https://ocrdata.ed.gov/> [<https://perma.cc/FD8V-HEWT>] (last visited Apr. 14, 2021) (illustrating the ability to search disciplinary data for districts and specific schools).

97. *Id.*

98. *Data Reporting and Collections: Expulsions, Suspensions, and Truants by District*, ILL. STATE BD. OF EDUC., <https://www.isbe.net/Pages/Expulsions-Suspensions-and-Truants-by-District.aspx> [<https://perma.cc/6SDS-UE7Z>] (last visited Mar. 27, 2021) (showing the categories the Illinois state board uses to track disciplinary actions in its schools).

99. U.S. DEP’T HEALTH & HUM. SERVS.; U.S. DEP’T EDUC., *POLICY STATEMENT ON EXPULSION AND SUSPENSION POLICIES IN EARLY CHILDHOOD SETTINGS* 1, 3 (2014) https://www.acf.hhs.gov/sites/default/files/documents/ecd/expulsion_suspension_final.pdf [<https://perma.cc/5NLJ-T9V>] [hereinafter *Policy Statement*].

school year finding that Black preschool children were 3.6 times as likely to receive one or more out-of-school suspensions as their white classmates.¹⁰⁰ Hispanic and Black boys represent nearly 65% of preschool boys suspended.¹⁰¹ Additionally, in 2014, Black girls represented 20% of preschool enrollment, but accounted for over 50% of female students receiving one or more out of school suspensions.¹⁰² National research suggests that these types of discipline disparity are not explained by differences in student behavior.¹⁰³

An after-school detention can also have lifelong effects on a student of any age. A study following seventh graders from 2000 to 2002 showed that students in detention were more likely to be held back, drop out, or be involved in criminal activity.¹⁰⁴ “School suspensions and expulsions have been associated with a reduced likelihood of high school graduation, decreased chance of postsecondary enrollment, and a higher risk for entry into the juvenile and criminal justice system.”¹⁰⁵

“Disciplinary policies disproportionately impact particular subgroups of students, particularly Black students and students with disabilities, as well as Hispanic/Latin[x] students in middle and high school, Native American students with disabilities, and lesbian, gay, bisexual, and transgender (‘LGBT’) students and students who are gender nonconforming.”¹⁰⁶ Finally, with school-based referrals to law

100. U.S. DEP’T EDUC. OFF. FOR CIV. RTS., 2013–2014 CIVIL RIGHTS DATA COLLECTION: A FIRST LOOK 1, 3 (2016), <http://www2.ed.gov/about/offices/list/ocr/docs/2013-14-first-look.pdf> [<https://perma.cc/ZK89-NSAX>] (“Black preschool children are 3.6 times more likely to receive one or more out-of-school suspensions as white preschool children.”).

101. See U.S. DEP’T EDUC. OFF. FOR CIV. RTS., CIVIL RIGHTS DATA COLLECTION-DATA SNAPSHOT: SCHOOL DISCIPLINE 1 (2014), <https://www2.ed.gov/about/offices/list/ocr/docs/crdc-discipline-snapshot.pdf> [<https://perma.cc/CQ7W-5VWN>] (“Black children represent 18% of preschool enrollment, but 48% of preschool children receiving more than one out-of-school suspension; in comparison, white students represent 43% of preschool enrollment but 26% of preschool children receiving more than one out of school suspension. Boys represent 79% of preschool children suspended once and 82% of preschool children suspended multiple times . . .”).

102. POLICY STATEMENT ON EXPULSION AND SUSPENSION POLICIES IN EARLY CHILDHOOD SETTINGS, *supra* note 99, at 3.

103. See WALTER S. GILLIAM ET AL., DO EARLY EDUCATORS’ IMPLICIT BIASES REGARDING SEX AND RACE RELATE TO BEHAVIOR EXPECTATIONS AND RECOMMENDATIONS OF PRESCHOOL EXPULSIONS AND SUSPENSIONS? 3 (Yale Child Study Center, 2016) (“Although the behaviors of children may impact adult decision-making processes, implicit biases about sex and race may influence how those behaviors are perceived and how they are addressed . . .”); see also 2013–2014 CIVIL RIGHTS DATA COLLECTION: A FIRST LOOK, *supra* note 100, at 6 (explaining that schoolchildren, no matter their race, generally have the same access to “high-rigor” courses).

104. TONY FABELO ET AL., BREAKING SCHOOLS’ RULES: A STATEWIDE STUDY OF HOW SCHOOL DISCIPLINE RELATES TO STUDENTS’ SUCCESS AND JUVENILE JUSTICE INVOLVEMENT 6 (Council of State Governments and the Public Policy Research Institute 2011).

105. Johnson & Naughton, *supra* note 60, at 73.

106. *Id.*

enforcement officers or school resource officers (SROs),¹⁰⁷ studies have shown that Black, male students are three times more likely to be arrested at school as their white male peers.¹⁰⁸

As demonstrated by the literature, there are inimical impacts with the use of every type of exclusionary discipline. It is outside the scope of this Article to discuss these impacts in full, but it is important to note there are significant harms inflicted upon minority students that are easily obscured under the guise of personal and educational privacy. Thus, FOIA laws are necessary to access the quantifiable data to drive changes to ameliorate these harms.¹⁰⁹ In summation, an education advocate can and should request specific information on the exclusionary discipline used (e.g., number of detentions, number of in-school suspensions, and number of out-of-school suspensions).

Besides the distinct types of exclusionary school discipline, there are also subgroup categories—race, gender identity, class, students with disabilities, and low-income students. All of this data can be legally requested by advocates and should be included in a FOIA request to a school or school district.

B. Breaking Down the FOIA Request into Subcategories

An education advocate may be interested in comparing certain subgroups of students. As stated above, there are a myriad of distinct subgroups that a proper FOIA request can parse out. For example, when looking at race, the data shows that Black boys are the most disciplined students nationwide.¹¹⁰ Another example is students with disabilities as

107. See *Frequently Asked Questions*, NAT'L ASS'N SCH. RES. OFFICERS, <https://www.nasro.org/faq/> [<https://perma.cc/87KL-LN62>] (last visited Feb. 12, 2021) (“A school resource officer, by federal definition, is a career law enforcement officer with sworn authority who is deployed by an employing police department or agency in a community-oriented policing assignment to work in collaboration with one or more schools.”); see also *SCHOOL RESOURCE OFFICERS AND INVESTIGATIONS AT CHICAGO PUBLIC SCHOOLS*, CHI. POLICE DEP'T (Aug. 29, 2019), https://home.chicagopolice.org/wp-content/uploads/2020/05/S04-01-02_CPD-SRO_Current_Effective-29AUG19.pdf [<https://perma.cc/63L3-S325>]; see also *School Resource Officer Program Information*, CHI. PUB. SCHS., <https://www.cps.edu/about/local-school-councils/school-resource-officer-program-information/> [<https://perma.cc/KYT8-6MPK>] (Aug. 17, 2020) (listing the schools in the Chicago Public Schools District that voted to retain SROs in their schools during the 2020–21 school year).

108. Evie Blad & Alex Harwin, *Analysis Reveals Racial Disparities in School Arrests*, PBS NEWS HOUR (Feb. 27, 2017, 4:09 PM), <https://www.pbs.org/newshour/education/analysis-reveals-racial-disparities-school-arrests> [<https://perma.cc/SHA2-9VXU>] (“Nationwide, black boys are at the highest risk, three times as likely to be arrested at school as their white male peers.”).

109. For more information on the impact of exclusionary discipline, see Russell J. Skiba et al., *What Do We Know About Discipline Disparities? New and Emerging Research*, in *INEQUALITY IN SCHOOL DISCIPLINE: RESEARCH AND PRACTICE TO REDUCE DISPARITIES* 21, 22–24 (Russell J. Skiba, Kavith Mediratta & M. KAREGA RAUSCH eds. 2016).

110. Thomas Rudd, *Racial Disproportionality in School Discipline: Implicit Bias Is Heavily*

opposed to students without disabilities. America’s Promise Alliance found that “[w]hile students with disabilities make up for 11.7 percent [nationwide] of the K–12 population, they account for a quarter of suspensions and expulsions, and nearly 30 percent of students referred to police”¹¹¹

Intersectional data is important because it reveals valuable patterns, such as the intersection between race, gender, and disability. When education advocates combine subgroups—such as Black students with disabilities—they see that Black boys with disabilities are the most disciplined of all students nationwide.¹¹² Thus, the importance of being specific in a FOIA request as to precisely which subgroups the requester wants information on cannot be understated. The combination of race, people with disabilities, and gender can all reveal striking data.

Geographic and socioeconomic data is important because it can reveal disparities within and between districts. As Jonathan Kozol points out in his seminal work, *Savage Inequalities*, there are glaring disparities in spending per pupil.¹¹³ These class differences also reveal troubling disparities based on the geographical location of a student.¹¹⁴

For instance, in a school district such as Oak Park–River Forest, which is lauded for its integration efforts,¹¹⁵ student performance on the SAT demonstrates massive racial and socioeconomic disparities in SAT outcomes. For instance, in the English/Language Arts achievement portion of the SAT, only a little over 25% of Black students were “meeting” or “exceeding” expectations while a full 81% of their white

Implicated, OHIO ST. UNIV.: KIRWAN INST. (Feb. 5, 2014), <http://kirwaninstitute.osu.edu/racial-disproportionality-in-school-discipline-implicit-bias-is-heavily-implicated/> [<https://perma.cc/4R96-MTVL>] (“Research shows that African American students, and especially African American boys, are disciplined more often and receive more out-of-school suspensions and expulsions than White students.”).

111. Beah Jacobson, *New Reports Reveal Extreme Discipline Disparities for Students with Disabilities*, AM’S. PROMISE ALL. (Apr. 30, 2018), <https://www.americaspromise.org/news/new-reports-reveal-extreme-discipline-disparities-students-disabilities> [<https://perma.cc/EC3R-Q7KD>].

112. *Id.*

113. JONATHAN KOZOL, *SAVAGE INEQUALITIES: CHILDREN IN AMERICA’S SCHOOLS* 258–59 (Crown Publishers, Inc. ed., 1991); *see also* Nicholas Munyan-Penney & Charles Barone, *Per-Pupil Expenditures in Illinois’ 10 Largest School Districts*, EDUC. REFORM NOW 1, 5 (Feb. 12, 2020), <http://edreformnow.org/wp-content/uploads/2020/02/Resource-Equity-IL.pdf> [<https://perma.cc/VBJ2-MM2T>] (demonstrating the consensus of educational experts that disadvantaged students require more funding to meet the educational level of their peers who come from middle and high income families).

114. *See* Munyan-Penny & Barone, *supra* note 113, at 5 (“[A] recent EdBuild study found that majority nonwhite districts receive, on average, \$2,226 less per-pupil than majority white districts.”).

115. John Gearen Jr., *Looking Back at a Pivotal Time in Oak Park History*, OAK PARK J., <https://www.oakpark.com/News/Articles/5-29-2018/Looking-back-at-a-pivotal-time-in-Oak-Park-history/> [<https://perma.cc/9CZ7-R8LE>] (Feb. 10, 2021) (describing a fair housing ordinance the city passed in 1968 with the support of the Oak Park Board of Realtors).

peers were “meeting” or “exceeding” expectations in 2018.¹¹⁶ For non-low-income students, a full 73% of students were “meeting” or “exceeding” expectations, while only 27% of their low-income peers were “meeting” or “exceeding” expectations.¹¹⁷ While a variety of factors may account for these disparate outcomes, the fact that the achievement gap between Black and white students was nearly 56% and between low-income and non-low-income students was 46% cannot be explained away easily. Education advocates should bear this in mind as well when comparing two different school districts. The emphasis on capturing a certain geographic area cannot be understated either as it allows the advocate to make firm, data-based conclusions.

Gender data is important because there are serious gender-based disparities in education. For example, gifted programs tend to favor young men. The feminist scholar Peggy Orenstein writes in her book *Schoolgirls: Young Women, Self-Esteem, and the Confidence Gap* about the gaps between gender, regardless of but often exacerbated by race, in the science, technology, engineering, and math fields.¹¹⁸ In data, that still rings true. Orenstein found that in the late 1980s, young men in one school district were referred to the gifted program twice as often as young women.¹¹⁹ Orenstein observes that the disparity between male and female recommendations for the gifted program stems from the fact that “educators reward assertiveness and aggression over docility, the very behavior that is prized in girls becomes an obstacle to their success.”¹²⁰ In an ongoing study conducted by Julian Stanley, Stanley has found that students who skipped a grade due to their giftedness or who took advanced placement courses had higher educational goals and a greater number of students in these two groups reported plans to earn a Ph.D.¹²¹ In a 1997 study, Davalos and Haensly found that 23.5% of students believed that a gifted program made a significant contribution to their lives and 47.5% of students also reported an improvement in their self-

116. *Oak Park & River Forest High School*, IL REP. CARD, <https://www.illinoisreportcard.com/school.aspx?source=trends&source2=sat.details&Schoolid=060162000130001> [<https://perma.cc/Q72D-D64X>] (last visited Dec. 20, 2018) (To access this data, choose the year 2018, and choose the demographics of both income levels and White and Black race/ethnicity.).

117. *Id.* (To access this data choose all ethnicities and choose both low and non-low income.)

118. See generally PEGGY ORENSTEIN, *SCHOOLGIRLS: YOUNG WOMEN, SELF ESTEEM, AND THE CONFIDENCE GAP* (1995).

119. *Id.* at 36.

120. *Id.*

121. See *Study of Mathematically Precocious Youth*, VANDERBILT UNIV., <https://my.vanderbilt.edu/smpy/> [<https://perma.cc/AJ4H-WB54>] (last visited Apr. 10, 2021); Tom Clynes, *How to Raise a Genius*, 537 NATURE 152, 154 (2016).

esteem.¹²² Given the obvious lifelong benefits of gifted programs, education advocates may well seek to ameliorate this issue. As part of their strategy, it is critical that their FOIA requests clearly specify they want data on not only gifted program enrollment, but broken down by gender (as well as other demographic factors). Using that information, advocates can isolate the problem, discover its causes, and craft a data-driven solution.

Finally, education advocates should request data broken down by grade level. For example, ninth grade is considered one of the most crucial years in a student's education.¹²³ If an education advocate were to FOIA high school data they will want to request grades 9–12.

As a word of caution when comparing subgroups of students or different districts to one another, it is paramount to request the total student body or the total district enrollment broken down by race or another relevant category. Otherwise, the data set will be skewed. For example, a comparison of only Black and white students within a district would exclude all students who identify with another race. As a result, such a data set would be incomplete.

C. Post-2015 Discipline in Illinois

In 2015, Illinois enacted groundbreaking legislation in the form of a school discipline reform act, Senate Bill 100 (SB 100),¹²⁴ that has since changed the face of school discipline in Illinois.¹²⁵ The intention of SB 100 was the “creation of safe and orderly schools while seeking to address excessive use of the most severe forms of punishment.”¹²⁶

In order to accomplish this objective, SB 100 sets new standards for the use of suspensions, expulsions, and disciplinary transfers to

122. Ruth A. Davalos & Patricia A. Haensly, *After the Dust Has Settled: Youth Reflect on Their High School Mentored Research Experience*, 19 ROEPER REV. 204, 204–07 (1997).

123. Michele Willens, *Ninth Grade: The Most Important Year in High School*, ATLANTIC (Nov. 1, 2013), <https://www.theatlantic.com/education/archive/2013/11/ninth-grade-the-most-important-year-in-high-school/281056/> [<https://perma.cc/GYH4-KQQH>] (“A lengthy, detailed guide from the National High School Center states that ‘more students fail ninth grade than any other grade in high school, and a disproportionate number of students who are held back in ninth grade subsequently drop out.’”).

124. See generally S.B. 100, 99th Gen. Assemb. (Ill. 2015).

125. See generally Dusty Rhodes, *Illinois Issues: New School Discipline Philosophy One Year Later*, ILL. PUB. MEDIA (Dec. 12, 2017), <https://will.illinois.edu/news/story/illinois-issues-new-school-discipline-philosophy-one-year-later> [<https://perma.cc/ND22-U2MG>].

126. James Naughton, *Disciplinary Placements in Alternative Schools: Reflections on Student Impact*, DUPAGE CNTY. BAR ASS'N, <https://www.dcba.org/mpage/v31-James-Naughton> [<https://perma.cc/perma.cc/4BGR-BLDY>] (last visited Apr. 14, 2021); see also *Senate Bill 100*, SPRINGFIELD EDUC. ASS'N, <https://springfieldeducation.org/senate-bill-100/> [<https://perma.cc/D32X-AC43>] (last visited Feb. 12, 2021) (“The bill seeks to address the causes and consequences of the ‘school-to-prison pipeline’ by legislating disciplinary guidelines for both public and charter schools.”).

alternative schools. For short-term suspensions, defined as three days or less out-of-school, a student must “pose a threat to school safety or a disruption to other students’ learning opportunities.”¹²⁷ For long-term suspensions, expulsions, or disciplinary transfers, a student must pose a threat to others or substantial disruption to the operation of the school, and the school must have exhausted all other available and appropriate behavioral and disciplinary interventions.¹²⁸

While data shows that school suspensions and expulsions have decreased as a result of this new legislation, the inverse is true of disciplinary transfers to alternative schools.¹²⁹ This data is available on ISBE, but as stated above, ISBE is often slow to update its data and a FOIA request may be the best route either (1) to show the trends from before and after SB 100 or (2) to uncover the impact of SB 100 in the current school year.

D. Piecing It Together: Creating a Cohesive, Comprehensive FOIA

As this Part has already demonstrated, there are a multiplicity of factors to consider when creating a FOIA request.¹³⁰ This Section will explore how to piece all of the distinct parts of a FOIA request into one cohesive document aimed at getting education advocates the data they need.

The Illinois FOIA also gives a public entity the right to charge the FOIA requester the “actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium.”¹³¹ In addition, under the Illinois FOIA, a public entity has the right to charge personnel costs associated with reproducing the records.¹³² A person may request a waiver or reduction of fee and that is often found on the form documents as well.¹³³ According to the Illinois FOIA, an individual can receive a

127. 2015 Ill. Laws 99–456 (codified as amended at 105 ILL. COMP. STAT. 5/10-22.6(b-15) (2020)); *see also* Naughton, *supra* note 126 (defining short-term suspensions as those three days or less in duration).

128. 2015 Ill. Laws 99–456 (codified as amended at 105 ILL. COMP. STAT. 5/10-22.6(b-20) (2019)) (explaining that in order to issue a long-term suspension, students must pose a threat to others or be a substantial disruption to school operations, and the school must have exhausted all other options); Naughton, *supra* note 126 (explaining the same).

129. Naughton, *supra* note 126; *see also* Johnson & Naughton, *supra* note 60, at 69 (“[D]isciplinary placements in alternative schools can have devastating consequences for students.”).

130. An example FOIA letter is located in Appendix A.

131. 5 ILL. COMP. STAT. 140/6(a) (2020).

132. 140/6(a)–(b) (providing that public entities may charge requesters for personnel costs associated with reproducing records if the request is either voluminous or for a commercial purpose).

133. 140/6(c); *see infra* note 136 (asking requesters to respond to the question, “Are you requesting a fee waiver?” and, if so, to attach a statement of purpose for the request).

waiver or reduction in fee if the person requesting the document states that they are requesting them for the “public interest.”¹³⁴ The Illinois FOIA clarifies that a waiver “is in the public interest if the principal purpose of the request is to access and disseminate information regarding the health, safety and welfare or the legal rights of the general public and is not for the principal purpose of personal or commercial benefit.”¹³⁵ Most requests by educational advocates will fall under the public interest category.

Some school districts will offer an individual an electronic form to fill out and sign.¹³⁶ In general, schools that provide FOIA forms will ask for demographic information—such as name, street address, and telephone number—and ask for a description of the records requested.¹³⁷ The FOIA form documents often ask if the copies of the documents should be received in electronic or paper form, if the documents are for a commercial purpose, and if a fee waiver is requested.¹³⁸ Of course, there is no one-size-fits-all approach to filling out a school district–provided form. This author has often found that requesting electronic copies of documents in an Excel format is the fastest, most efficient way to receive documents. Depending on the records sought, the year of the records, and the volume of the records, requesting electronic copies may not be feasible or even possible.

134. 5 ILL. COMP. STAT. 140/6(c) (2020) (requiring requesters who are seeking a waiver of fees associated with their request to state the specific purpose of the request and indicate that a waiver or reduction of the fee is in the public interest).

135. *Id.*

136. *E.g.*, *Freedom of Information Act (FOIA) Request*, TWP. HIGH SCH. DIST. 211, <https://adc.d211.org/cms/lib/IL49000007/Centricity/Domain/82/foia%20request%20form%202018.pdf> [<https://perma.cc/4WP3-ZCPE>] (last visited Mar. 2, 2021) (providing the FOIA request form for a school district in the northwest suburbs of Illinois).

137. *E.g.*, *id.* (providing space for this information on a request form); *see Illinois Freedom of Information Act: Frequently Asked Questions*, ILL. ATTORNEY GEN. 5–6 (2013), https://foia.ilattorneygeneral.net/pdf/faq_foia_government.pdf [<https://perma.cc/7QQB-RGT5>] (explaining that FOIA requests may be made anonymously and, as long as the public body understands what is being requested, need not describe the document requested with absolute specificity or accuracy).

138. *E.g.*, *Freedom of Information Act (FOIA) Request*, *supra* note 136; (asking the requester whether they want copies of the documents, whether they want electronic or paper copies, whether the request is for a commercial purpose, and whether the requester is asking for a fee waiver); *see also* 5 ILL. COMP. STAT. 140/6(a)–(c) (2020) (indicating that such information often determines how a public entity should respond to the request).

Another option for education advocates is to craft their own FOIA requests.¹³⁹ A public entity cannot force an individual to use its own “standard form.”¹⁴⁰

The first step in filing a FOIA is to find the FOIA officer. Under the Illinois FOIA, every public entity is required to designate a FOIA officer to receive, process, and grant or deny FOIA requests.¹⁴¹ This FOIA officer is required by law (1) to note the date the public entity received the FOIA request;¹⁴² (2) to compute the day on which the period for response will expire and make a notation on the written request; (3) to maintain an electronic or paper copy of the written request, including all documents submitted with the request until the request has been complied with or denied; and (4) to create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of any other communications.¹⁴³

The easiest way to find a FOIA officer is to simply use a Google search. For instance, if an advocate were looking for the FOIA officer for District 204, she can simply type in “District 204 FOIA Officer,” and the result should be at the top.¹⁴⁴ Once an advocate has located the FOIA officer, she can either address a letter, email, or fax to that individual requesting the information.¹⁴⁵ She does not have to state a reason for the FOIA request and should not be asked to provide one unless the public entity is inquiring as to whether the FOIA request is for commercial or noncommercial use.¹⁴⁶ To avoid these issues, advocates can simply begin

139. See *How to File a FOIA in Illinois*, BETTER GOV'T ASS'N (JULY 22, 2015, 7:00 PM), <https://www.bettergov.org/news/how-to-file-a-foia-in-illinois/> [https://perma.cc/WTY9-J59S] (providing instructions for filing a FOIA request in Illinois).

140. 5 ILL. COMP. STAT. 140/3(c) (2020) (“A public body may not require that a request be submitted on a standard form . . .”); see also *How to File a FOIA in Illinois*, *supra* note 139 (listing the information that must be included in a FOIA request, but emphasizing that there is no “magic language” to a request).

141. 5 ILL. COMP. STAT. 140/3.5(a) (2020).

142. 140/3.5(a)(1); 140/3(d)–(f); see also *supra* note 18, and accompanying text (explaining that a public entity has five business days to respond to a FOIA request and can take up to five additional business days to respond to the request by notifying the requester).

143. 5 ILL. COMP. STAT. 140/3.5(a)(1)–(4) (2020).

144. For example, this author ran a Google search for the “District 204 FOIA Officer,” and the first link listed Louis Lee as the FOIA officer. See *Illinois Freedom of Information Act*, INDIAN PRAIRIE SCH. DIST. 204, <http://www.ipsd.org/Subpage.aspx/FOIA> [https://perma.cc/8Y2G-7PM3] (last visited March 8, 2021).

145. 5 ILL. COMP. STAT. 140/3(c) (2020) (“Requests for inspection or copies shall be made in writing and directed to the public body. Written requests may be submitted to a public body via personal delivery, mail, telefax, or other means available to the public body. A public body may honor oral requests for inspection or copying.”); see ILL. ATT’Y GEN., *supra* note 9, and accompanying text.

146. 5 ILL. COMP. STAT. 140/3(c) (2020) (“A public body may not . . . require the requester to specify the purpose for a request, except to determine whether the records are requested for a commercial purpose or whether to grant a request for a fee waiver.”).

any written request by stating in a letter, email, or fax that (1) this is a formal request for public records under the Illinois Freedom of Information Act (FOIA), (2) the request is not for any commercial purpose, and (3) they are not requesting any individually identifiable information.

The next step is to break down the information that advocates are seeking in their FOIA requests. As an example, to get data on disciplinary actions, a requester should consider including categories such as (1) School Population, (2) Students Receiving Detentions, (3) Students Receiving In-School Suspensions, (4) Students Receiving Out-of-School Suspensions, (5) Students Receiving Expulsions with Educational Services, (6) Students Receiving Expulsions without Education Services, (7) Students Transferred to an Alternative Program in Lieu of Other Discipline, (8) Students Referred to Law Enforcement, and (9) School-based Arrests by Law Enforcement. Of course, an education advocate is free to choose if they wish to include all of these categories, or if they are only looking for specific ones—this is merely a list of exclusionary discipline that an individual may wish to request from a school or school district.

The next step in gathering a complete data set is breaking down the total school population into demographic categories, such as race, gender identity, students with and without disabilities, income, and English proficiency. For example, if education advocates wish to compare the race of students receiving out-of-school suspensions, they should request “School Population,” the total number of students who identify as Black or African American, Hispanic or Latinx, white or Caucasian, Pacific Islander, two or more races, and other. To get a better insight into the discipline, the advocates may also wish to request that the discipline be broken down by additional demographic data, such as grade level (e.g., ninth through twelfth grade), gender identity (e.g., male, female, gender nonconforming), and disability status (e.g., students with and without an IEP). Once the school population data is spelled out in the letter, the education advocates can move on to the next step.

The education advocates have now broken down the school population into usable information. Regardless of the breakdown, it is essential to get the figures on the entire school population to avoid any skewed analysis. The next step for an education advocate may be to request the out-of-school suspension data. Under this heading, the education advocate can put the following and more: (1) total number of students who were suspended that identify as Black or African American, Hispanic or Latinx, white or Caucasian, Pacific Islander, and other; (2) total number of students who were suspended in each of the grades nine, ten, eleven, and twelve; (3) total number of students who were

suspended that identify as male, female, or gender nonconforming; (4) total number of students grades nine through twelve who were suspended that have a disability (5) total number of out-of-school suspensions that were one- to three-day suspensions and the number of four-day or longer suspensions; (6) average length of suspension in the fall and spring semesters and for the school year as a whole; (7) total number of students who were suspended one time, two to three times, and four or more times.

The final step then is to specify the format for the requested documents. This author prefers to request the documents in an Excel sheet because it tends to make data analytics a simpler process. However, advocates can request that the documents be available physical documents, PDF scans, or original electronic format made available in person, via email, or via paper mail.¹⁴⁷

If the FOIA request is denied, an advocate has several options.¹⁴⁸ As an initial step an advocate will want to look at the reason for denial—a requirement under FOIA. This individual can go to the FOIA statute and read the exemption that the public entity is claiming.¹⁴⁹ An individual can read the statutory language of the claimed exemption and push back on the public entity as to why the exemption does not apply under the circumstances.¹⁵⁰ Another option is to submit a request for review with the Public Access Counselor of the Illinois Attorney General’s Office.¹⁵¹ Importantly, an individual has sixty calendar days from the denial of a FOIA request to submit a request for review with the Illinois Attorney General’s Office.¹⁵² The final option is to file a lawsuit to enforce FOIA rights.¹⁵³ If the FOIA request is granted, then the requester will receive the relevant raw data. The next section explores how to analyze that data.

E. Analyzing Raw FOIA Data from a School District

After receiving the requested information from a school district, the raw data can often seem baffling.¹⁵⁴ Often times, the data will come back

147. 5 ILL. COMP. STAT. 140/3(c) (2020).

148. 140/9(a).

149. 140/9(b); 140/7 (listing exemptions).

150. 5 ILL. COMP. STAT. 140/9(a) (2020).

151. *Id.*; see also *How to Submit a Request for Review*, ILL. ATT’Y GEN., <http://foia.ilattorneygeneral.net/pdf/How%20to%20Submit%20a%20Request%20for%20Review.pdf> [<https://perma.cc/BMU5-2DXQ>]. (last visited Mar. 14, 2021) (explaining that a “member of the public may submit a Request for Review to” the Public Access Counselor).

152. ILL. ATT’Y GEN., *supra* note 151; (“A Request for Review must be submitted to the PAC within 60 calendar days after the denial of the FOIA request or the conduct that is alleged to have violated OMA.” (citing 5 ILL. COMP. STAT. 140/9.5(a); 120/3.5(a) (2020)).

153. 5 ILL. COMP. STAT. 140/11 (2020).

154. *E.g.*, UNITED STATES DEP’T EDUC., *supra* note 66 (demonstrating with sample FOIA data that does not include a race, gender, or disability category breakdown in the data).

as what may be considered “raw data.”¹⁵⁵ Raw data is defined as “any data object that hasn’t undergone thorough processing, either manually or through automated computer software. Raw data may be gathered from various processes and IT resources.”¹⁵⁶

Below is an example of raw data generated by a school district in response to a FOIA request by the author.

*Table 3: Response to FOIA Request for Information on School Discipline*¹⁵⁷

SCHOOL YEAR 2014–2015								
	Student Population	Suspensions	Expulsions	Alternative Programs	Student Population	Suspensions	Expulsions	Alternative Programs
Sub Group	Fall				Spring			
Race								
Black/African American	625	96	0	26	631	92	0	26
Hispanic/Latinx	2329	211	1	72	2320	204	0	67
White/Caucasian	5983	191	0	94	5980	186	0	105
Grade Level								
Grade 9	2742	101	0	24	2760	96	0	29
Grade 10	2716	141	0	34	2731	138	0	44
Grade 11	2827	167	1	50	2389	162	0	59
Grade 12	3054	146	0	110	3009	141	0	90
Gender								
Male	5797	383	1	137	5791	367	0	142
Female	5541	172	0	81	5547	170	0	80
IEP Status								
IEP	1078	142	0	144	1078	135	0	159

155. *Raw Data: What Does Raw Data Mean?*, TECHOPEDIA, (<https://www.techopedia.com/definition/1230/raw-data> [<https://perma.cc/3MQ5-NUA9>] (last visited Mar. 21, 2021).

156. *Id.*

157. Ill. Sch. Dist. 211, Raw Discipline Data Provided in Response to FOIA Request (2014 – 2015) (on file with author).

# of IEP by category	Fall	Spring	
Autism	141	142	
Deafness	1	1	
Emotional Disability	199	203	
Hearing Impairment	12	12	
Intellectual Disability	100	99	
Multiple Disabilities	12	12	
NULL	2	3	
Orthopedic Impairment	7	7	
Other Health Impairment	149	148	
Specific Learning Disability	398	394	
Speech/Language Impairment	41	41	
Traumatic Brain Injury	8	8	
Visual Impairment	8	8	
# of suspensions	Fall	Spring	
1-3 Day Suspensions	138	127	
4+ Day Suspensions	26	22	
	Fall	Spring	Whole Year
Average Suspension Length (Days)	1.489	1.440	1.464
# of Students Suspended	Fall	Spring	Whole Year
Suspended 1 time	210	245	326
Suspended 2-3 times	107	83	177
Suspended 4+ times	9	19	56
	Fall	Spring	Whole Year
Average Alternative Program Enrollment Length (Days)	64.965	69.652	134.617

Additionally, this sample FOIA response does not include all of the data points. The total school population for District 211 during the 2014–2015 school year was approximately 11,338 based on the student enrollment figures from the FOIA request. When examining the FOIA response, however, there is an error in that it did not account for all race-

based classifications. However, the ISBE Illinois District Report Card can be used to remedy that error. The Report Card shows that 53.5% of the students were white, 6.6% were Black, 20.7% were Hispanic, 16.7% were Asian, 0.1% were Pacific Islander, 0.2% were American Indian, and 2.1% were two or more races.¹⁵⁸

To calculate how many suspensions Black students received (who account for only 6.6% of the total student population), one divides the number of suspensions given to Black students by the total number of suspensions, and multiply by 100. Adding the total number of suspensions for grades nine through twelve during Fall 2014, District 211 had 555 suspensions total. Black students received 96 of those suspensions. Dividing 96 by 555 yields the decimal point 0.173, which multiplied by 100 equals 17.3% of all suspensions. Looking at the white student suspension rate, white students accounted for 53.5% of the student population and only 34.4% of suspensions. In sum, nonwhite students accounted for 65.6% of all suspensions while making up 46.5% of the student population. The fact that students of color make up less than half of District 211's total student population but account for almost two-thirds of their suspensions is telling evidence of racial inequity in school discipline. The next section will look at using real FOIA data to explore disparities in two suburban school districts.

III. A CASE STUDY BETWEEN TWO SUBURBAN DISTRICTS

The following Part will consider two different suburban Illinois school districts, Districts 214 and 211, using the information obtained through FOIA requests. The purpose of this Part is to illustrate how an educational advocate can use two school districts—geographically close to one another—to look at differences in exclusionary discipline practices.

A. FOIA Information from District 214

The first district, District 214, is located in the Northwest Suburbs of Illinois and captures a mainly middle-class demographic. Using a FOIA request, this author was able to obtain demographic and exclusionary disciplinary data on the student body.¹⁵⁹ Once the total school population has been determined, the total number of students from a specific

158. *Illinois School District 211 Report Card for 2014*, ILL. STATE BD. EDUC., http://webprod.isbe.net/ereportcard/publicsite/getReport.aspx?year=2014&code=050162110_e.pdf [<https://perma.cc/S6CF-9KHF>] (last visited Mar. 21, 2021). Of note, there is a disparity in the total student enrollment between the data generated by the FOIA request (total enrollment of 11,338) and the ISBE Report Card (12,265).

159. Ill. Sch. Dist. 214, FOIA Information Obtained by Author (June 18, 2020), https://drive.google.com/file/d/1ld1KZ9CZGkDTkyA3uDn_z_iEK_-TziUN/view [<https://perma.cc/E9VX-E2GY>].

category, such as race, can be compared to the total student population. In the example below, the total number of students from grades nine through twelve for the year 2017 was 11,700.¹⁶⁰ The FOIA data demonstrates that there were 811 total school suspensions that same year.¹⁶¹ The FOIA data also shows that of those 811 school suspensions, 49 were given to Black students, 506 were given Hispanic/Latinx students, and 233 were given to white/Caucasian students.¹⁶² The remaining 23 suspensions were classified as “Other” due to inability to classify the data by a specific race category.¹⁶³

Table 4: Total School Population for District 214¹⁶⁴

	2017	
	# of Students	% of Total Student Population
Grade Level		
Grade 9	2,978	25.5
Grade 10	3,062	26.1
Grade 11	2,898	24.8
Grade 12	2,762	23.6
TOTAL	11,700	100
Gender		
Male	5,971	51.0
Female	5,729	49.0
TOTAL	11,700	100
Race/Ethnicity		
Black/African American	255	2.2
Hispanic/Latinx	3,636	31.1
White/Caucasian	6,559	56.1
Other	1,250	10.7
TOTAL	11,700	100

160. *Id.*; see also *infra* Table 4 (explaining that the total number of students in grades 9–12 is 11,700).

161. Ill. Sch. Dist. 214, *supra* note 159; see also *infra* Table 5 (explaining the total number of suspensions in 2017 for the state of Illinois).

162. Ill. Sch. Dist. 214, *supra* note 159; see also *infra* Table 5 (explaining suspensions per demographic in the state of Illinois for 2017).

163. Ill. Sch. Dist. 214, *supra* note 159.

164. *Id.*

Table 5: *Suspensions in District 214*¹⁶⁵

	2017	
	# of Suspensions	% of Total Suspensions
Grade Level		
Grades 9–12	811	100
TOTAL	811	100
Gender		
Male	537	66.2
Female	274	33.8
TOTAL	811	100
Race/Ethnicity		
Black/African American	49	6.0
Hispanic/Latinx	506	62.4
White/Caucasian	233	28.7
Other	23	2.8
TOTAL	811	100

In order to calculate the percentage of suspensions given to students of color in 2017, the author determined the percentage by adding together the number of Hispanic/Latinx and Black students that were given school suspensions in 2017, dividing the resulting sum ($49 + 506 = 555$) by 811, or the total number of school suspensions in 2017, and finally multiplying the result by 100. That result yields 68.4% of students of color being suspended.

This analysis demonstrates that there are clear disparities in discipline rates. Of those suspended, 49 identified as Black out of a total Black district population of 255.¹⁶⁶ The total district-wide student population was 11,700.¹⁶⁷ In other words, although Black students account for approximately 2.2% of the district's student population, they received 6.0% of the District's suspensions.¹⁶⁸

In 2017, district-wide the percentage of students of color suspended in grades nine through twelve accounted for 68.4% of all suspensions, while their white peers accounted for only 28.7% of all suspensions.¹⁶⁹ In other

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

words, students of color were more than two times more likely to be suspended.¹⁷⁰

In 2017, students of color district-wide accounted for 70% of referrals to alternative programs, compared with 26% of their white peers.¹⁷¹ Again, a student of color is almost three times more likely to be referred to an alternative school.¹⁷²

This same methodology can be used to find disparities in all areas of FOIA-requested data.

B. FOIA Information from District 211

To demonstrate that this is not a phenomenon unique to District 214, the author also submitted a FOIA request to nearby District 211. What the data demonstrates below is that disparities in all types of exclusionary discipline are still rampant even after the passage of SB 100.

Using the same data analysis, the author found disparities in discipline in District 214's neighbor, District 211. Again, looking at the total school population of District 211 we can begin to make comparisons. Using this information, we can look at suspensions in the district with a clearer lens.

170. *Id.*

171. *Id.*

172. *Id.*

Table 6: Total School Population for District 211¹⁷³

	2017	
	# of Students	% of Total Student Population
Grade Level		
Grade 9	6,018	25.0
Grade 10	5,839	24.3
Grade 11	6,094	25.3
Grade 12	6,098	25.4
TOTAL	24,049	100
Gender		
Male	12,370	51.4
Female	11,679	48.6
TOTAL	24,049	100
Race/Ethnicity		
Black/African American	1,367	5.7
Hispanic/Latinx	5,915	24.6
White/Caucasian	11,445	47.6
Other	5,322	22.1
TOTAL	24,049	100
Students with an IEP		
Students with an IEP	2,550	10.6
Students without an IEP	21,499	89.4
TOTAL	24,049	100

173. Data on file with author.

Table 7: Suspensions in District 211¹⁷⁴

	2017	
	# of Suspensions	% of Total Suspensions
Grade Level		
Grade 9	124	27.1
Grade 10	127	27.7
Grade 11	112	24.5
Grade 12	95	20.7
TOTAL	458	100
Gender		
Male	300	65.5
Female	158	34.5
TOTAL	458	100
Race/Ethnicity		
Black/African American	105	22.9
Hispanic/Latinx	186	40.6
White/Caucasian	134	29.3
Other	33	7.2
TOTAL	458	100
Students with an IEP		
Students with an IEP	153	33.4
Students without an IEP	305	66.6
TOTAL	458	100

The data shows that there are large disproportionalities in school discipline. District 211 faces a nearly identical problem to District 214. In 2017, 63.5% of suspensions were given to students of color¹⁷⁵ as opposed to 29% given to their white peers, despite students of color composing only 30.3% of the student population.¹⁷⁶

The most striking data point is the number of students with an IEP (individualized education program or students with disabilities) who faced suspension. Students with IEPs received 33.4% of suspensions,

174. Data on file with author.

175. This figure is calculated by summing the percentage of suspensions given to Black (22.9%) and Latinx (40.6%) students. *See supra* Table 7.

176. This figure is calculated by summing the percentage of students that are Black (5.7%) and Latinx (24.6%).

despite only accounting for 10.6% of the student population. Students with disabilities have additional school discipline protections under the Individuals with Disabilities Education Act.¹⁷⁷ When a student with a disability faces a disciplinary action that could remove them from their school environment for more than ten days, or when the total cumulative days of suspension for that school year will surpass ten out-of-school suspension days, the school is required to hold a manifestation determination review (MDR).¹⁷⁸ An MDR is conducted to determine whether the action that led to exclusionary discipline was a manifestation of a student's disability.¹⁷⁹ If the disability is the cause of the student's behavior, then the school district cannot discipline the student.¹⁸⁰ However, if the action is found not to be a manifestation of a student's disability, then the student can be disciplined as any other student.¹⁸¹ The determination of an MDR can be appealed as well. The U.S. Supreme Court stated in *Honig v. Doe* that “[w]e think it clear, however, that Congress very much meant to strip schools of the *unilateral* authority they had traditionally employed to exclude disabled students, particularly emotionally disturbed students, from school.”¹⁸²

The federal government does not keep data on the number of students who do not face discipline because of their disability. The closest source in Illinois is ISBE's annual report, which states that there was a total of four due process complaints¹⁸³ against schools in the state based on the outcome of an MDR.¹⁸⁴

The sheer number of students with disabilities raises two questions. First, whether District 211 is in violation of the Individuals with Disabilities Education Act and a DOE OCR investigation should be launched. Second, why there is such disproportionality in school

177. Individuals with Disabilities Education Act, Pub. L. No. 101-476, 104 Stat. 1103, 1142 (1990) (codified at 20 U.S.C. §§ 1400–1482). See also Crystal Grant, *Special Education by Zip Code: Creating Equitable Child Find Policies*, 52 LOY. U. CHI. L.J. 127, 128–132 (2021) (illustrating an example of geographical, racial, and socioeconomic inequity in contravention of the IDEA).

178. *Student Discipline*, ILL. STATE BD. EDUC., https://www.isbe.net/Documents/ch10-student_discipline.pdf [<https://perma.cc/9DRM-7BBP>] (last visited Mar. 15, 2021).

179. *Id.*

180. *Id.*

181. *Id.*

182. *Honig v. Doe*, 484 U.S. 305, 323 (1988).

183. *Special Education Due Process Hearings*, ILL. LEGAL AID, <https://www.illinoislegalaid.org/legal-information/special-education-due-process-hearings> [<https://perma.cc/J7A7-LBS7>] (May 24, 2020). A due process hearing is for students with disabilities during which their parent(s), guardian(s), and/or attorney/advocate can address special education disputes. These can involve the provision of special education services, funding for services, and school discipline. The due process complaint is similar to a trial. *Id.*

184. 2019 ANNUAL REPORT, ILL. STATE BD. OF EDUC. 56 (Jan. 2020), <https://www.isbe.net/Documents/2019-Annual-Report.pdf> [<https://perma.cc/K4RU-C68K>].

discipline for students with disabilities. Similar to other students, exclusionary discipline for students with disabilities has long been linked to negative outcomes such as course failure, dropping out of school, and involvement in the criminal justice system.¹⁸⁵ This case study is small in both its geographic scope and the data analyzed. It is offered for illustrative purposes, with the hope that it will spur further research and requests using larger sample sizes. The important point is that FOIA laws are powerful tools to use to analyze data from public entities, such as schools.

IV. USING INFORMATION OBTAINED FROM A FOIA REQUEST TO ADVOCATE FOR CHANGE

Once racial or other disparities in discipline in a district are identified, there are a multitude of options to pursue. This Part will explore each of those options in order of what may be considered least drastic to most.

The first option is to draft a letter to the school principal or local board of education, pointing out the inequities identified.¹⁸⁶ It has been the experience of this author that this is a sound first approach to addressing inequities in school districts. In some (but not all) school districts, administrators or the board of education are unaware about the disparities that exist in their district. Sharing the disparities in their school district with the superintendent and board of education often initiated a dialogue about the district's equity efforts.

Another option that cannot be overlooked—at any cost—is to engage with the students of the district. The students in the community are the ones directly impacted by the disparities in their school, and their voice is often the most powerful. Posting the data on social media platforms such as Instagram is an efficient and effective way to reach and mobilize potential student advocates. For example, in Illinois, SB 100 was passed largely by the efforts of Voices of Youth in Chicago Education (VOYCE).¹⁸⁷ As a key point, this author would share his opinion that students are the most effective changemakers, and taxpayers or parents of students should take a supportive role in their advocacy.

Another way to advocate is to bring the FOIA request data to a local school board meeting. This author, along with a cohort of students and

185. See generally Mary Wagner et al., *Youth with Disabilities: How Are They Doing? The First Comprehensive Report from the National Longitudinal Transition Study of Special Education Students*, SRI INT'L (Sept. 1991), <https://files.eric.ed.gov/fulltext/ED341228.pdf> [<https://perma.cc/QV9G-5DYB>].

186. An example of this type of letter is available in Appendix B of this Article.

187. *Educate, Don't Incarcerate: A Youth-Led Campaign to Invest in Healing Young People*, VOICES OF YOUTH IN CHI. EDUC., <http://voyceproject.org/education-not-incarceration/> [<https://perma.cc/Y4NQ-XS7A>] (last visited Mar. 15, 2021).

teachers, brought the data to District 214 at a board of education meeting.¹⁸⁸ This meeting resulted in sweeping changes in the district and the implementation of anti-racist education. One cannot overlook the centrality of data in making points to a school board—data is difficult to dispute.

If a school district or board is recalcitrant in making changes, there are also state and federal options. In Illinois, ISBE offers a complaint for special education disputes, such as when a school refuses to provide specific special education services or denies a student an IEP.¹⁸⁹ However, one may also file a complaint with the DOE OCR.¹⁹⁰ As stated on the DOE OCR website:

Discrimination on the basis of race, color, and national origin is prohibited by *Title VI of the Civil Rights Act of 1964*. This includes discrimination based on a person's limited English proficiency or English learner status; and actual or perceived shared ancestry or ethnic characteristics, including membership in a religion that may be perceived to exhibit such characteristics¹⁹¹

The same holds true for discrimination on the basis of sex under title IX of the Education Amendments Act of 1972 and disability status under section 504 of the Rehabilitation Act of 1973 and title II of the American with Disabilities Act of 1990.¹⁹²

The complaint must be filed within 180 days of the last act of discrimination.¹⁹³ As the discrimination is likely to be ongoing, one would hypothetically have no time limit on when to file; however, it is best to file as soon as practicable.

The final avenue is to sue the school district for discrimination directly under the same statutes. There are a number of ways to approach cases against school districts, including state and federal constitutional challenges as well as statutory challenges. As stated above, there are

188. Tom Robb, *Responding to Race, Equity Concerns, Dist. 214 Superintendent Agrees to Meetings with Students, Faculty*, J. & TOPICS (July 10, 2020), <https://www.journal-topics.com/articles/responding-to-race-equity-concerns-dist-214-superintendent-agrees-to-meetings-with-students-faculty/> [<https://perma.cc/7H28-DYMU>].

189. *Special Education Complaint Investigation Process*, ILL. STATE BD. EDUC., <https://www.isbe.net/Pages/Special-Education-Complaint-Investigation-Process.aspx> [<https://perma.cc/LLT2-WMUV>] (last visited Mar. 15, 2021).

190. *How to File a Discrimination Complaint with the Office of Civil Rights*, OFF. CIV. RTS., <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html> [<https://perma.cc/YWZ5-K3JL>] (last visited Mar. 15, 2021).

191. *Id.*

192. Title XI of the Education Amendments Act of 1972, 20 U.S.C. § 1681(a); Rehabilitation Act of 1973 § 504, 29 U.S.C. § 794; Americans with Disabilities Act of 1990 §§ 201–2, 42 U.S.C. §§ 12131–32; see also *How to File a Discrimination Complaint with the Office of Civil Rights*, *supra* note 190.

193. *How to File a Discrimination Complaint with the Office of Civil Rights*, *supra* note 190.

many statutes to sue under, depending on the type of discrimination.¹⁹⁴ There are also a multitude of legal aid organizations in Illinois that handle educational equity cases that can help bring and litigate these suits.¹⁹⁵

In order to have a constructive dialogue with a board of education, superintendent, or principal, it is not only helpful to come equipped with data, but with a solution. There are a number of proposed methods for reducing disparities in exclusionary discipline. Below, I will discuss two of the most popular. These two methods are applicable to a school district or school that have two distinct sets of issues. One is geared toward schools or school districts that have particularly high numbers of exclusionary discipline practices. In that case, an advocate may want to advocate for restorative justice to be implemented in schools. The second is directed at those schools where there are a high number of student encounters with SROs. These two issues are by no means mutually exclusive and are broken down for readability. In addition, there are numerous other issues to advocate for, such as disparities in discipline based on gender or disability status, or lack of special education resources in schools. The methods below are likely inapplicable to those issues but will hopefully provide room for future research.

A. Restorative Justice in Schools

Restorative justice has proven efficacious in reducing discipline in general and also for addressing racial disparities.¹⁹⁶ In no way is restorative justice the sole answer to discriminatory school discipline, but it is a place to start.

During the 1980s and 1990s, following the introduction of the “broken windows” theory of policing by the New York City Police Department, schools began to implement similar no-tolerance policies for certain behaviors.¹⁹⁷ The reach of state statutes expanded, allowing districts to expel students for offenses like disrespect, defiance, disorderly conduct, and other unspecified offenses outlined in the school’s code of

194. See generally *id.*; see also statutes cited *supra* note 192.

195. The author does not endorse any of the following organizations but lists them as a resource for education advocates: (1) LEGAL AID CHI., <https://www.legalaidchicago.org/> (last visited Apr. 14, 2021); (2) MEXICAN AM. LEGAL DEF. & EDUC. FUND, <https://www.maldef.org/> (last visited Apr. 14, 2021); (3) EQUIP FOR EQUAL., <https://www.equipforequality.org/> (last visited Apr. 14, 2021); and, (4) ACLU OF ILL., <https://www.aclu-il.org/> (last visited Apr. 14, 2021).

196. See, e.g., Thalia González, *Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline*, 41 J.L. & EDUC. 281, 308–09 (2012) (providing examples of successful restorative justice efforts in Illinois schools). Professor González uses an example from Illinois—the Peoria Public School system, which implemented restorative justice practices—where schools saw a decrease in detention referrals by 35% and a decrease in referrals among Black students by 43%. *Id.*

197. DEREK W. BLACK, *ENDING ZERO TOLERANCE: THE CRISIS OF ABSOLUTE SCHOOL DISCIPLINE* 42 (2016).

conduct.¹⁹⁸ School discipline was commonly applied to minor offenses, including disobedience, disrespect, attendance problems, and classroom disruption.¹⁹⁹

Restorative justice originated in the premodern native cultures of the South Pacific and Americas.²⁰⁰ These cultures emphasized the offenders' accountability for the harm they caused and offered them a way to make amends to their victims and the community.²⁰¹ Restorative justice arrived on the scene in American schools, juvenile justice, and communities largely in the early 2000s.²⁰²

In schools, restorative justice operates as an “array of non-hierarchical, consensus-based practices—dialogues, circles, conferences, and mediations—for both the preventative and response components of school-based restorative justice.”²⁰³ As outlined by Lydia Nussbaum, a continuum of restorative justice practices are available to schools.²⁰⁴ As Nussbaum categorizes it, there are three tiers of restorative justice.²⁰⁵ The first is informal restorative justice which includes proactive, restorative dialogue.²⁰⁶ These proactive, restorative dialogues often take place spontaneously, and teachers trained in restorative justice practices can defuse a situation by asking open-ended, nonthreatening questions such as “Can you tell me what happened?”; “What led you to do that to your classmate?”; and “How do you think this impacted Rosa and what can you do to improve the situation?”²⁰⁷

Nussbaum's second tier is more formal and includes community conferences and problem-solving circles.²⁰⁸ These conferences may occur when a conflict arises within a group of students.²⁰⁹ The community conferences involve a facilitator with specialized training who meets separately and individually with each party involved before the conference to understand each person's concerns and assess his or her

198. Johnson & Naughton, *supra* note 60, at 72–73.

199. *Id.* at 73.

200. Laura Mirsky, *Restorative Justice Practices of Native American, First Nation and Other Indigenous People of North America: Part One*, IIRP NEWS (Apr. 27, 2004) <https://www.iirp.edu/news/restorative-justice-practices-of-native-american-first-nation-and-other-indigenous-people-of-north-america-part-one> [<https://perma.cc/YQL9-FTSQ>].

201. *Id.*

202. Thalia González, *Restorative Justice from the Margins to the Center: The Emergence of a New Norm in School Discipline*, 60 HOW. L.J. 267, 268 (2016).

203. Lydia Nussbaum, *Realizing Restorative Justice: Legal Rules and Standards for School Discipline Reform*, 69 HASTINGS L.J. 583, 586 (2018).

204. *Id.* at 607.

205. *Id.* at 607–11.

206. *Id.* at 607.

207. *Id.* at 607–08.

208. *Id.* at 608.

209. *Id.*

willingness to participate.²¹⁰ The facilitator then schedules the conference, creates a space where everyone is heard by establishing a rule that everyone gets to speak once before anyone can speak again, and guides them through open-ended questions similar to the ones used in more informal restorative justice.²¹¹ At the end of the conference, the facilitator will have participants collaborate to form a written agreement and develop a plan for monitoring and review.²¹²

The most formal of these practices in the continuum are called restorative conferencing, restorative mediation, or victim-offender mediation.²¹³ These may be used to address serious problems such as bullying, assault, or theft.²¹⁴ Participation in this restorative conference (and all restorative practices) is always voluntary, and, especially in this case, the victim should not be pressured into participating.²¹⁵ The facilitator stays neutral and any outcome must be generated by the participants themselves.²¹⁶ If the participants reach an agreement, it must be by consensus, and the agreement can focus on “specific changes to behavior in the future, an apology to victims and school staff, restitution or in-kind service to the victim, a community service project”²¹⁷ After the agreement is signed, it is monitored by the facilitator or school administration.²¹⁸

The efficacy of restorative justice has been borne out in multiple research studies. For example, in Chicago Public Schools after the implementation of restorative justice programs in a school, there was a “63% decrease in misconduct reports and an 83% decrease in arrests for a high school in just one year.”²¹⁹ Illinois is not alone in seeing the results of implementing restorative justice practices. In a comparative study of twenty-four schools in Oakland, California, restorative justice practices dropped the absenteeism rate in restorative justice schools by 24% while it rose 62% for non-restorative-justice schools.²²⁰ Finally, in a study of

210. *Id.* at 608–09.

211. *Id.* at 609.

212. *Id.*

213. *Id.*

214. *Id.*

215. *Id.* at 610.

216. *Id.*

217. *Id.*

218. *Id.* at 611.

219. Marilyn Armour, *Restorative Practices: Righting the Wrongs of Exclusionary School Discipline*, 50 U. RICH. L. REV. 999, 1020 (2016) (citing HIGH HOPES CAMPAIGN, FROM POLICY TO STANDARD PRACTICE: RESTORATIVE JUSTICE IN CHICAGO PUBLIC SCHOOLS 7 (2012)).

220. *Id.* (citing SONIA JAIN ET AL., RESTORATIVE JUSTICE IN OAKLAND SCHOOLS IMPLEMENTATION AND IMPACTS: AN EFFECTIVE STRATEGY TO REDUCE RACIALLY DISPROPORTIONATE DISCIPLINE, SUSPENSIONS AND IMPROVE ACADEMIC OUTCOMES, at vi, 12,

Minnesota elementary schools, the implementation of restorative justice saw a decrease in referrals for violent behavior by half at one elementary school.²²¹

The research on restorative justice is promising, although the practice of implementing it is still being worked out according to the needs of different school settings and demographics. However, as the data shows and the zero-tolerance policies of the 1980s and 1990s have taught us, exclusionary discipline is not effective in helping students succeed. An education advocate, armed with FOIA data and a solid understanding of restorative justice practices, can effectively persuade school officials to pilot a restorative justice program to decrease inequities in school discipline. Ultimately, it is the FOIA data that allows an educational advocate to identify issues of disproportionality in discipline, utilize FOIA laws to collect data, and present a case to a school district.

B. The Removal of School Resource Officers (SROs) from Schools

A school resource officer (SRO) is a sworn police officer who has been stationed in a school.²²² The rise of SROs came during the zero-tolerance era of school discipline in the 1980s and 1990s, and, unlike the focus on exclusionary discipline, SROs are still stationed in schools across America.²²³ Students and community activists have raised a number of concerns about SROs, including a general lack of role-specific training, the criminalization and arrest of students as a feeder to the school-to-prison pipeline, and police militarization.²²⁴

Funding for SROs comes from both the state and federal government and generally involves an intergovernmental contract between the local school district and local police department.²²⁵ In a recent dispute over whether to keep SROs in schools, the Chicago Public Schools (CPS) Board of Education rejected a community proposal to remove SROs from

57 (2014), <http://www.ousd.org/cms/lib07/CA01001176/Centricity/Domain/134/USD-RJ%20Report%20revised%20Final.pdf> [<https://perma.cc/L5J9-PERK>].

221. *Id.* (citing David R. Karp & Beau Breslin, *Restorative Justice in School Communities*, 33 *YOUTH & SOC'Y* 249, 257 (2001)).

222. Erin R. Archerd, *Restoring Justice in Schools*, 85 *U. CIN. L. REV.* 761, 764 (2017); *see also* SCHOOL RESOURCE OFFICERS (SRO) AND INVESTIGATIONS AT CHICAGO PUBLIC SCHOOLS, *supra* note 107 (providing additional resources on SROs).

223. *See* Archerd, *supra* note 222, at 767 (discussing the origins of SROs). Nationwide, 45% of schools report having an SRO, for a total of over 52,000 SROs across the country. Stephen Sawchuk, *What Districts Should Know About Policing School Police*, *EDUC. WEEK* (Oct. 1, 2019), <https://www.edweek.org/leadership/what-districts-should-know-about-policing-school-police/2019/10> [<https://perma.cc/HZ7B-N9CU>].

224. *See* Archerd, *supra* note 222, at 766 (explaining that the “disproportionate punishment of minorities . . . adds an extra layer of criminalization to the punishment, making it ever more likely that students will enter the prison pipeline.”).

225. *Id.* at 768–69.

schools.²²⁶ CPS's contract with the Chicago Police Department (CPD) ensures that CPS pays CPD \$33 million for SRO services.²²⁷ In Chicago, CPD issued a special order on SROs, outlining training requirements and qualifications for an SRO.²²⁸ However, this has not prevented incidents such as the one experienced by Laurentino Howard's daughter when she was dragged down a flight of stairs and tased by CPD officers at her high school.²²⁹

While this incident occurred in a school district that ostensibly has role-specific training, this trend repeats itself throughout schools across the nation.²³⁰ In other states, it has taken litigation to make training a requirement for school resource officers. For example, in Meridian, Mississippi, the U.S. Department of Justice sued the school district and eventually entered into a consent decree requiring that "Meridian must provide written clarification to the Meridian Public School District Police Department and School Resource Officers on school police officers' roles and responsibilities in the school"²³¹ An unpublished Department of Justice report even stated that "[t]he first SROs did not receive training in how to be an SRO or how to teach class until after they had been on the job for many months."²³²

226. Matt Masterson, *CPS Board Rejects Motion to Terminate Contract with Police Department*, WTTW NEWS (June 24, 2020, 4:08 PM), <https://news.wttw.com/2020/06/24/cps-board-rejects-motion-terminate-contract-police-department> [<https://perma.cc/B4X6-YBE3>].

227. *Id.*

228. SPECIAL ORDER S04-01-02: SCHOOL RESOURCE OFFICERS AND INVESTIGATIONS AT CHICAGO PUBLIC SCHOOLS, CHICAGO POLICE DEP'T (Aug. 29, 2019), http://directives.chicagopolice.org/CPDSergeantsExam_2019/directives/data/a7a57be2-12bbf857-d2912-bc05-359e192136838537.html?ownapi=1 [<https://perma.cc/7V3U-TVPW>].

229. Masterson, *supra* note 226 ("Black students accounted for 66% of police contacts despite making up just 36% of the CPS population, while the rate of contacts for Black girls was seven times higher than that of White girls.").

230. Archerd, *supra* note 222, at 770 (citing Mark Keierleber, *Why So Few School Cops Are Trained to Work with Kids*, ATLANTIC (Nov. 5, 2015), <http://www.theatlantic.com/education/archive/2015/11/why-do-most-school-cops-have-no-student-training-requirements/414286/> [<https://perma.cc/AUB9-XFVQ>] (noting that only 12 states have laws requiring SRO training)); *see, e.g.*, Angela Ciolfi & Sarah Gross, *Ciolfi and Gross: To Reduce Criminalization of Childhood, We Should Start by Training SROs*, RICHMOND TIMES-DISPATCH (Apr. 27, 2015), http://m.richmond.com/opinion/their-opinion/guest-columnists/article_94d8b7dd-9857-5b65-a267-d873d760266f.html?mode=jqm [<https://perma.cc/8AAT-JR3X>] ("[In Virginia], no specialized training in working with kids is required at all, and only 1 percent of the total training hours at Virginia's police academies cover juvenile justice topics.").

231. Nussbaum, *supra* note 203, at 620–21 (citing Consent Order at 4, *Barnhardt v. Meridian Mun. Separate Sch. Dist.*, No. 4:65-cv-01300 (S.D. Miss. Mar. 22, 2013)).

232. PETER FINN ET AL., CASE STUDIES OF 19 SCHOOL RESOURCE OFFICER (SRO) PROGRAMS 17 (2005), <https://www.ojp.gov/pdffiles1/nij/grants/209271.pdf> [<https://perma.cc/H5HZ-W7RN>].

A 2018 study by Monique W. Morris, Rebecca Epstein, and Aishatu Yusuf found that only nineteen states require SRO training.²³³ As is obvious, most states do not require specialized training for sworn police officers who often carry firearms into school.²³⁴ This lack of training has led to incidents throughout the country—from a student with a disability being thrown across a classroom in South California²³⁵ to an eight-year-old boy being handcuffed, not at the wrist but at the bicep because the handcuffs were too small.²³⁶ Education advocates seeking to alleviate frequent and disparate encounters between students and law enforcement can demand that SROs are required to undergo more training. Or, even better, demand that SROs are removed entirely. Using the data from a FOIA request that shows student encounters with SROs can highlight the negative impact SROs are having on the student population and disproportionately on students of color. By using a data-driven approach, school and government officials are more likely to be persuaded to take action.

The presence of SROs also operates as a conveyor belt for the school-to-prison pipeline. The school-to-prison pipeline is characterized by early contact between students and law enforcement that either generates a criminal charge, creates a criminal record, or impairs a student's ability to move forward with their education, making it more likely the student will end up incarcerated.²³⁷ For example, if a student is being disrespectful or disobedient, the teacher has several options for discipline.

233. MONIQUE W. MORRIS ET AL., *BE HER RESOURCE: A TOOLKIT ABOUT SCHOOL RESOURCE OFFICERS AND GIRLS OF COLOR* 11 (2018), https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2018/05/17_SRO-final_Acc.pdf [<https://perma.cc/SYM8-L2G4>].

234. *Id.* at 59 n.20 (“Many state laws do not require training specific to duties as SROs. *See, e.g.*, ARIZ. STAT. § 15-155(A) (2015) (providing that SROs must be certified peace officers but requiring no additional training for them); CONN. GEN. STAT. § 7-294x (2017) (no specialized training requirements for SROs except for drug detection and gang identification); FLA. STAT. § 943.13 (2016) (requiring only that SROs pass a ‘commissions-approved basic recruit training program’); MD. CODE § 26-102(a) (2016) (providing that SROs shall be police officers assigned to schools; requiring no specialized training requirements for SROs); MICH. COMP. LAWS § 380.1240(1) (2015) (allowing schools to employ law enforcement officers but requiring no specialized training for them); MISS. CODE § 37-7-321(2) (2016) (requiring that SROs receive ‘a minimum level of basic law enforcement training’); MO. REV. STAT. § 162.215(1); § 590.200(1)–(2) (2015) (requiring only that SROs receive training in defensive techniques and prevention of handling emergencies in schools); NEV. REV. STAT. § 391.281(3)–(4) (2015) (requiring that SROs be trained police officers, but not requiring any specialized training for SROs . . .”). *See id.* for more statutes on SRO training.

235. Keierleber, *supra* note 230 (noting that only twelve states have laws requiring SRO training).

236. *Id.*

237. *See* Blad & Harwin, *supra* note 108 (“The U.S. Departments of Education and Justice delivered in 2014 their strongest message about what activists call the ‘school-to-prison pipeline.’”).

In schools with SROs, those options could include an arrest or other contact with law enforcement. In schools with SROs, punishment by an SRO can carry with it criminal charges or criminal treatment.²³⁸ For example, at Spring Valley High School in South Carolina, a Black female student was arrested after her teacher called the school's vice principal, who sent an SRO to remove the student from the classroom because she was using her phone.²³⁹ This is not an aberration. In Florida, an SRO handcuffed and arrested a six-year-old for battery.²⁴⁰ Recent data shows that nearly 70,000 students were arrested in U.S. schools during the 2013–2014 school year.²⁴¹

There are massive discrepancies between Black and white student arrests, too. As Lauren Maddox found, “although [B]lack students make up sixteen percent of the school population, they comprise twenty-seven percent of students referred to law enforcement and thirty-one percent of school-based arrests.”²⁴² As part of a FOIA request for advocates focusing on school discipline, requesters should ask for the racial breakdown of (1) student referrals to and (2) student arrests by SROs. In addition, education advocates can FOIA request their local police department to see the number of complaints against an SRO.

Finally, many advocates and scholars have pointed out that the police are becoming increasingly militarized.²⁴³ Under President Bush, the Pentagon started a program called the “1033 program, which allows law enforcement to get their hands on Department of Defense technology.”²⁴⁴ Some examples include the CPD purchasing a Department of Defense helicopter used in war and more than 300 military rifles.²⁴⁵

238. See González, *supra* note 196, at 287.

239. Lauren A. Maddox, “His Wrists Were Too Small”: School Resource Officers and the Over-Criminalization of America’s Students, 6 U. MIAMI RACE & SOC. JUST. L. REV. 193, 193–94 (2016).

240. Shuvu Batta, *Video Shows Florida School Officer Boasting After Arresting Six-Year-Old*, WORLD SOCIALIST WEB SITE (Feb. 27, 2020), <https://www.wsws.org/en/articles/2020/02/27/polif27.html> [https://perma.cc/8GJT-SL4V].

241. *Which Students Are Arrested the Most?*, EDWEEK (2017), <https://www.edweek.org/ew/projects/2017/policing-americas-schools/student-arrests.html#/overview> [https://perma.cc/HUC2-MD6S] (providing Education Week Research Center’s 2017 original analysis of Civil Rights Data Collection).

242. Maddox, *supra* note 239, at 199–200 (citing U.S. DEP’T OF EDUC. OFF. FOR C. R. CIVIL RIGHTS DATA COLLECTION DATA SNAPSHOT: SCHOOL DISCIPLINE 1 (2014)).

243. Jonathan Mummolo, *Militarization Fails to Enhance Police Safety or Reduce Crime but May Harm Police Reputation*, 115 PNAS 9181, 9181 (2018), <https://www.pnas.org/content/pnas/115/37/9181.full.pdf> [https://perma.cc/KP9T-B8S9].

244. Brian Miller, *The Militarization of America’s Police: A Brief History*, FOUND. FOR ECON. EDUC. (May 24, 2019), <https://fee.org/articles/the-militarization-of-americas-police-a-brief-history/> [https://perma.cc/X3B6-NFBN].

245. Sven Gustafson, *Pentagon Armed Police with Billions in Vehicles, Weapons*, AUTOBLOG

These weapons have found their ways into schools. “By 2014, over twenty-six school districts have participated in the Department of Defense’s program, receiving grenade launchers, armored vehicles, and M-16 rifles for use on school campuses.”²⁴⁶ The Compton Unified School District in California allows SROs to carry assault rifles.²⁴⁷ As Jonathan Mummolo statistically demonstrated in his 2018 study, “citizens react negatively to the appearance of militarized police units in news reports and become less willing to fund police agencies and less supportive of having police patrols in their own neighborhoods.”²⁴⁸

This is another area where education advocates can step in and use a FOIA request to determine whether their police department has utilized the 1033 program. An advocate may be able to break it down into subcategories such as expenditures on military grade equipment, such as rifles, grenades, and tear gas. Once advocates have this data, it is imperative to advocate for changes in their school districts by meeting with their local school board or elected officials to discuss issues around SROs.

CONCLUSION

The way forward is to start utilizing the tools that we have as education advocates and community members to make our voices heard. It can start with a simple FOIA request from a student, a parent, or a taxpayer and turn into a movement to halt discriminatory discipline or remedy some other issue in education. The way forward is also filled with frustration as FOIA requests are frequently turned down by school districts. A student, an advocate, or a parent with a meaningful understanding of FOIA laws can make lasting change in their school district.

It is also important to listen to and learn from the students who experience these disparities every day. Never should the lead be thrust upon them to make change, but if the students organize and unite for change, then it is our duty as advocates, parents, and taxpayers to support them.

(June 8, 2020, 12:15 PM), <https://www.autoblog.com/2020/06/08/surplus-military-vehicles-weapons-police-departments/> [<https://perma.cc/KR7R-4WQN>].

246. Maddox, *supra* note 239, at 208 (citing *US School Districts Given Free Machine Guns and Grenade Launchers*, *GUARDIAN* (Sept. 18, 2014, 12:30 AM), <http://www.theguardian.com/world/2014/sep/18/us-school-districts-given-free-machine-guns-and-grenade-launchers> [<https://perma.cc/2HGF-M5XP>]).

247. *Id.* (citing Conor Friedersdorf, *Compton School Board Approves AR-15 Rifles for Campus Police*, *ATLANTIC* (Aug. 19, 2014), <http://www.theatlantic.com/national/archive/2014/08/compton-school-board-approves-ar-15-rifles-for-campus-police/378738/> [<https://perma.cc/YFB5-QGLN>]).

248. Mummolo, *supra* note 243, at 9186.

Through conversations with school administrators, districts, and other educational professionals, we can collaborate to implement restorative justice. We can work on dismantling the school-to-prison pipeline. We can help our students, regardless of the color of their skin, have a brighter future.

We stand at a moment in history where innumerable voices are rightfully declaring that Black lives matter. While the Illinois FOIA might not be the flashiest way to generate change, it has proven effective. As education advocates searching for equity for Black and brown children in K–12 education, the Illinois FOIA has become another hammer in our tool box. Let's use it to dismantle systemic racism in our schools, smash the school-to-prison pipeline, and build equity.

APPENDIX A: SAMPLE FOIA REQUEST²⁴⁹*Via electronic mail*

[Date]

[Name of FOIA Officer]

[Title of FOIA Officer]

[Address of location where FOIA officer works]

Dear Mr./Ms. [Name]:

The following is a formal request for public records under the Illinois Freedom of Information Act (FOIA), 5 ILCS §§ 140/1 et seq. The request is not for any personal or commercial purpose, and I do not seek individually identifiable information.

I am requesting that the following data for the [year–year] and [year–year] school years for District [Number]. In responding to this request, please divide the data into fall and spring semesters for each of the given school years.

School Population

- Total number of students who identify as Black/African American, Hispanic/Latinx, white/Caucasian, Pacific Islander, American Indian, two or more races, and other
- Total number of students in each of the grades 9, 10, 11, and 12
- Total number of students who identify as male, female, and gender nonconforming
- Total number of students grades 9–12 with an individual education program (IEP) in total and by their eligibility category

Students Receiving Suspensions

- Total number of students who were suspended that identify as Black/African American, Hispanic/Latinx, white/Caucasian, Pacific Islander, American Indian, two or more races, and other
- Total number of students who were suspended in each of the grades 9, 10, 11, and 12
- Total number of students who were suspended that identify as male, female, and gender nonconforming
- Total number of students grades 9–12 who were suspended with an individual education program (IEP)
- Total number of out-of-school suspensions resulting in 1- to 3-day suspensions and 4-day or longer suspensions
- Average length of suspension in the fall and spring semesters and for the school year as a whole
- Total number of students who were suspended 1 time, 2–3 times, and ≥ 4 times

249. This is meant to be a sample and should be modified according to an education advocate's needs.

Students Receiving Expulsions

- Total number of students who were expelled that identify as Black/African American, Hispanic/Latinx, white/Caucasian, Pacific Islander, American Indian, two or more races, and other
- Total number of students who were expelled in each of the grades 9, 10, 11, and 12
- Total number of students who were expelled that identify as male, female, or gender nonconforming
- Total number of students grades 9–12 who were expelled with an individual education program (IEP)

Students Placed in an Alternative Program

- Total number of students placed in an alternative program who identify as Black/African American, Hispanic/Latinx, white/Caucasian, Pacific Islander, American Indian, two or more races, and other
- Total number of students placed in an alternative program in each of the grades 9, 10, 11, and 12
- Total number of students placed in an alternative program who identify as male, female, or gender nonconforming
- Total number of students grades 9–12 who were placed in an alternative program with an individual education program (IEP)
- Average length of student's enrollment at an alternative program in the fall and spring semesters and for the school year as a whole

School Resource Officers

- Total number of School Resource Officers in the district
- Number of students referred to law enforcement
- Number of students with school-related arrests
- Total number of student complaints against School Resource Officers
- Total number of parent/guardian complaints against School Resource Officers
- Total number of students referred to law enforcement in each of the grades 9, 10, 11, and 12
- Total number of students involved in school-related arrests in each of the grades 9, 10, 11, and 12
- Total number of students referred to law enforcement who identify as male, female, or gender nonconforming
- Total number of students involved in school-related arrests who identify as male, female, or gender nonconforming
- Total number of students referred to law enforcement who identify as Black/African American, Hispanic/Latinx, white/Caucasian, Pacific Islander, American Indian, two or more races, and other
- Total number of students involved in school-related arrests who identify as Black/African American, Hispanic/Latinx, white/Caucasian, Pacific Islander, American Indian, two or more races, and other

- Outcomes of student referrals to law enforcement—e.g., talk with student/no parent(s) or guardian(s) present, formal talk with student with parent(s) or guardian(s) present or an attorney, station adjustments, and any other type of outcome.
- Outcomes of students in school-related arrests—e.g., return to school in under five days, in under ten days, never returned to school, taken to a juvenile detention center.

Please email the records requested to [requester's name] at [email address]. I ask that the data requested be provided electronically in Microsoft Excel form.

I look forward to hearing from you in writing within **five working days**, as required by 5 ILCS § 140(3). Please contact [requester's name] at [phone number] or [email address] if you have any questions regarding this request.

Sincerely,

/s/

[Requester's Name]

APPENDIX B: SAMPLE LETTER TO A BOARD OF EDUCATION²⁵⁰*Via electronic mail*

[Date]

Board of Education
District [Number]
[Address]

Dear Board of Education:

I am writing in regard to data received on [date] from a Freedom of Information Act (FOIA) request from Township District [number]. I am a resident of [City, Town, etc.]. I am, however, discouraged by the data that I received in response to my FOIA request (see attached to electronic mail).

In the [20XX–20XX] school year, district-wide, there were [number] school suspensions. Of those suspended, [number] identified as African American out of a total African American district population of [number]. The total district-wide student population was [number]. In other words, although African American students account for approximately [percent] of the district's student population, they received [percent] of the district's suspensions.

During the [20XX–20XX] school year, district-wide, the percentage of students of color suspended in grades 9–12 accounted for [percent] of all suspensions while their white peers accounted for only [percent] of all suspensions. In other words, you were [multiplier] more likely to be suspended if you were a student of color.

In [20XX–20XX], students of color district-wide accounted for [percent] of referrals to alternative programs compared with [percent] of their white peers. Again, if you are a student of color you were [multiplier] more likely to be referred to an alternative school.

Finally, in the [20XX–20XX] school year, students of color accounted for [percent] of all referrals to law enforcement while their white peers accounted for [percent]. Please see the attached FOIA request and data analysis for more information on the disproportionate use of school discipline.

As research has shown, the impact of school discipline is not benign.

School suspensions and expulsions have been associated with a reduced likelihood of high school graduation, decreased chance of post-secondary enrollment, and a higher risk for entry into the juvenile and criminal justice system. Disciplinary policies disproportionately impact particular subgroups of students, particularly Black students and students with disabilities, as well as Hispanic/Latino students in middle and high school, Native American students with disabilities, and lesbian, gay, bisexual, and transgender (“LGBT”) students and students who are gender non-conforming.²⁵¹

As a taxpayer in District [number], I want a better future for our students regardless of the color of their skin. The Transforming School Discipline Collaborative (TSDC) offers a Model

250. This is meant to be a sample letter to a Board of Education and does not fit all situations. This can be disregarded, modified, or used in any form.

251. Johnson & Naughton, *supra* note 60, at 73 (citations omitted).

Student Code of Conduct.²⁵² This Model Student Code of Conduct “takes a preventive, positive approach to discipline rather than focusing exclusively on ‘punishment.’”²⁵³ As a concrete step, the TSDC provides a flowchart for when an incident occurs, which considers classroom-based interventions and restorative interventions before exclusionary discipline is used on a student.²⁵⁴ In addition, the TSDC provides a disciplinary checklist that can be modified or implemented as is into the District’s disciplinary policy.²⁵⁵

Restorative justice has been shown to be effective at reducing school suspensions and improving the overall school climate.²⁵⁶ In fact, in a survey done by the nonpartisan, nonprofit education research center, WestEd, schools responded that their restorative justice programs were successful.²⁵⁷ From the student side, the survey states that “[s]tudents have reported that they’re feeling more connected to their school and their classes.”²⁵⁸ I believe that everyone on our school board would want students to feel more connected to their schools, peers, and district.

I respectfully request that the School Board and Superintendent [Name] review the attached data, implement restorative justice practices district-wide, and dedicate the district to reducing racial disparities in education.

Sincerely,

[Name]

252. TSDC’S MODEL STUDENT CODE OF CONDUCT, TRANSFORMING SCH. DISCIPLINE COLLABORATIVE (2016), <https://www.transformschooldiscipline.org/tsdc-toolkit/#anchor-model-code> (scroll down to download “TSDC’s Model Student Code of Conduct”).

253. *Id.* at 1.

254. *Id.* at 11.

255. *Id.* at 14–17.

256. SARAH GUCKENBURG ET AL., RESTORATIVE JUSTICE IN U.S. SCHOOLS 18–20 (2016), <https://www.wested.org/wp-content/uploads/2016/11/1453742980resourcerestorativejusticeinusschoolspractitionersperspectives-3.pdf> [<https://perma.cc/SFM8-44XE>] (discussing successful examples of implementing restorative justice in schools).

257. *Id.* at 18.

258. *Id.* at 20.