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Schoolhouse Property

ABSTRACT. The Fifth and Fourteenth Amendments prohibit government actors from interfering with an individual's property without due process of law. Property interests protected by the Due Process Clause are created by subconstitutional sources of law, such as federal, state, or local statutes or regulations, that create reasonable expectations of an entitlement, such as welfare benefits, in recipients. Individuals holding legitimate claims of entitlement to property are typically afforded procedural protections. In the landmark 1975 decision *Goss v. Lopez*, the Supreme Court determined that state laws entitling children to free public education conferred on public primary- and secondary-school students a property interest in education. To avoid unjust deprivation of students' property interests, the Court held that the Due Process Clause requires school officials to provide students subject to suspension or expulsion with, at minimum, informal notice and opportunity to be heard by the school disciplinarian—a requirement that, in practice, affords students little protection against unjust exclusion. Since 1975, however, students' constitutionally protected property interests have expanded beyond just education. Comprehensive fifty-state surveys of state laws and regulations reveal that the majority of states require schools to provide additional benefits to students, specifically government-subsidized meals and health services. This Note evaluates these entitlements and argues that they constitute property interests falling within the ambit of the Due Process Clause. As a result, students subject to exclusionary discipline are deprived not only of education, as the *Goss* Court foresaw, but also meals and health services. These additional property interests may require reevaluation and expansion of the minimum procedural requirements that schools must afford students subject to suspension or expulsion.

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This Note features three appendices regarding public primary- and secondary-school students' rights to education granted by state constitutions and corollary entitlements to school meals and school health services granted by state laws and regulations. Each of these appendices are published online following the Note.



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INTRODUCTION

The Due Process Clause forbids government actors, including public-school officials,¹ from interfering with an individual's "life, liberty, or property, without due process of law."² The Clause protects some of the interests most vital to American democracy. The Supreme Court has understood the principal value of the Clause as promoting accurate decision making,³ thus restraining arbitrary government action.⁴ Procedural protections – often in the form of notice and opportunity to be heard before a government decision maker – function, in addition to facilitating accuracy of the substantive decision,⁵ to promote participatory and dignitary values⁶ and advance fundamental fairness.⁷

The precise scope of the "property" interests protected by the Due Process Clause, and the process that must precede its deprivation, has provoked significant debate since the middle of the twentieth century.⁸ In the 1970 decision *Goldberg v. Kelly*, the Supreme Court expanded the scope of constitutionally protected

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1. See *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637–38 (1943) (clarifying that public-school officials, as government actors, are subject to constitutional limits on government action).
 2. U.S. CONST. amends. V, XIV. The Supreme Court has read the cryptic language of the Due Process Clause as imposing both substantive and procedural limitations on government action. See Ryan C. Williams, *The One and Only Substantive Due Process Clause*, 120 YALE L.J. 408, 417–18 (2010). This Note focuses on the latter.
 3. Robert L. Rabin, *Job Security and Due Process: Monitoring Administrative Discretion Through a Reasons Requirement*, 44 U. CHI. L. REV. 60, 76 (1976) (observing that the "[u]nderlying . . . conception" of the Court's early 1970s due-process jurisprudence "is the vital interest in promoting an accurate decision, in assuring that facts have been correctly established and properly characterized in conformity with the applicable legal standard").
 4. See *Murray's Lessee v. Hoboken Land & Improvement Co.*, 59 U.S. (18 How.) 272, 276 (1856).
 5. See, e.g., Martin H. Redish & Lawrence C. Marshall, *Adjudicatory Independence and the Values of Procedural Due Process*, 95 YALE L.J. 455, 476 (1986).
 6. See, e.g., Jerry L. Mashaw, *Administrative Due Process: The Quest for a Dignitary Theory*, 61 B.U. L. REV. 885, 902–03 (1981) (highlighting participation in hearings as a "dignitary process value[]"); David L. Kirp, *Proceduralism and Bureaucracy: Due Process in the School Setting*, 28 STAN. L. REV. 841, 845–49 (1976) (describing how hearings both facilitate accuracy in substantive outcomes and reduce the possibility of biased decision-making).
 7. See, e.g., Sanford H. Kadish, *Methodology and Criteria in Due Process Adjudication—A Survey and Criticism*, 66 YALE L.J. 319, 346 (1957) (explaining that one of the "objectives" of due process, to "insur[e] the reliability of the [adjudicatory] process," is "often expressed in terms of 'fairness'").
 8. See Cynthia R. Farina, *On Misusing "Revolution" and "Reform": Procedural Due Process and the New Welfare Act*, 50 ADMIN. L. REV. 591, 591–99 (1998) (summarizing "the debate about the direction of procedural due process").

property to statutory entitlements, specifically welfare benefits.⁹ By broadening the forms of property receiving constitutional protection, *Goldberg* initiated the “due process revolution,”¹⁰ resulting in a series of Supreme Court decisions finding that public employment,¹¹ immigration status,¹² and, most importantly for this Note, public primary- and secondary-school education¹³ are property under the Due Process Clause,¹⁴ requiring the government to afford property-holders some kind of process.¹⁵

Courts assess procedural due-process claims implicating property interests in two steps. The first step asks whether there exists a property interest protected by the Due Process Clause.¹⁶ “To have a property interest in a benefit,” a person must “have a legitimate claim of entitlement to it.”¹⁷ Legitimate claims of entitlement, in turn, arise from subconstitutional sources of positive law – such as federal, state, or local law or regulation, or express or implied government contracts – that create reasonable expectations of specific benefits.¹⁸

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9. *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970).
 10. Richard J. Pierce, Jr., *The Due Process Counterrevolution of the 1990s?*, 96 COLUM. L. REV. 1973, 1974 (1996) (noting that until *Goldberg*, property rights “were defined narrowly” by the Supreme Court “to include only forms of property that are usually the fruits of an individual’s labor, such as money, a house, or a license to practice law”).
 11. *See, e.g., Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538, 542-43 (1985) (establishing that government employees, including, in this case, public-school security guards, are entitled to due process before termination on the grounds that state law granted public employees a property interest in their employment).
 12. *See, e.g., Landon v. Plasencia*, 459 U.S. 21, 34-35 (1982) (finding that lawful permanent residents are entitled to procedural protections under the Due Process Clause).
 13. *Goss v. Lopez*, 419 U.S. 565, 573-76 (1975).
 14. *See, e.g., Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 430 (1982) (“[T]he types of interests protected as ‘property’ are varied and, as often as not, intangible, relating ‘to the whole domain of social and economic fact.’” (quoting *Nat’l Mut. Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 646 (1949) (Frankfurter, J., dissenting))).
 15. *Loudermill*, 470 U.S. at 541 (“The right to due process ‘is conferred, not by legislative grace, but by constitutional guarantee. While the legislature may elect not to confer a property interest . . . it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards.” (quoting *Arnett v. Kennedy*, 416 U.S. 134, 167 (1974) (Powell, J., concurring in part and concurring in result in part))).
 16. *Ky. Dep’t of Corrs. v. Thompson*, 490 U.S. 454, 460 (1989). In other words, before determining what specific procedures are due, a court must make a threshold determination that an interest protected by the Due Process Clause is, in fact, implicated.
 17. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 565, 577 (1972).
 18. *Id.* at 576-77; *see Rodney A. Smolla, The Reemergence of the Right/Privilege Distinction in Constitutional Law: The Price of Protesting Too Much*, 35 STAN. L. REV. 69, 72-73 (1982).

If a court finds a protected property interest beyond a *de minimis* level,¹⁹ it moves on to the second step, which asks what, if any, process is due.²⁰ In answering this question, courts focus on identifying the specific procedures that will promote accuracy in the substantive decision.²¹ While the Supreme Court has explained that when state action implicates one's property interests the Due Process Clause requires, at minimum, notice and a meaningful opportunity to be heard,²² the "precise contours" of the procedures required by the Constitution are determined by the factual circumstances presented by each case.²³ Courts balance three interests: (1) the private property interest affected by the government's action; (2) the risk of erroneous deprivation through the procedures used and the probable value of additional procedures; and (3) the financial and administrative burdens that additional procedures would impose on the government.²⁴ The private interest weighs heavily in this analysis: the formality of the process required corresponds to the court's perception of the significance of the implicated property interest.²⁵ The more consequential the property interest, the more likely courts are to mandate more formal, trial-like procedures. Thus, due-process analysis, in both steps, "is sensitive to the facts and circumstances" that

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19. See *Ingraham v. Wright*, 430 U.S. 651, 674 (1977) ("There is, of course, a *de minimis* level of imposition with which the Constitution is not concerned.>").
 20. *Thompson*, 490 U.S. at 460. A court may determine that a constitutionally protected interest is implicated at the first step of the due-process inquiry but nevertheless not require any process at the second step if the burdens the procedure would impose on the government outweigh the value of any "additional [procedural] safeguard[s]." See, e.g., *Ingraham*, 430 U.S. at 682 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)).
 21. Rabin, *supra* note 3, at 76.
 22. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950))); *Grannis v. Ordean*, 234 U.S. 385, 394 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard."); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (stating that the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner"); see also Larry Bartlett & James McCullagh, *Exclusion from the Educational Process in the Public Schools: What Process Is Now Due*, 1993 BYU EDUC. & L.J. 1, 8-9 (explaining that, though the exact procedures required by the Due Process Clause depend in part on the nature of the deprivation, courts have recognized that due process requires notice and an opportunity to be heard).
 23. Jason Parkin, *Due Process Disaggregation*, 90 NOTRE DAME L. REV. 283, 301-02 (2014); see, e.g., *Hannah v. Larche*, 363 U.S. 420, 442 (1960) (explaining that the specific procedure required "varies according to specific factual contexts"); *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) ("The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved . . .").
 24. *Mathews*, 424 U.S. at 334-35.
 25. Frank H. Easterbrook, *Substance and Due Process*, 1982 SUP. CT. REV. 85, 89.

a specific deprivation presents.²⁶ At the first step, changes in substantive law may affect the existence or scope of a property interest, as well as the perceived import of the interest. At the second step, changed circumstances may affect how courts weigh the property interest against competing interests to establish the specific process due.

In *Goss v. Lopez* in 1975, the Supreme Court followed these two steps in determining whether students hold due-process rights to challenge their exclusion from school via short suspensions of ten days or less.²⁷ The Court first found that state laws guaranteeing resident children a free public education and compelling school attendance vested in students a constitutionally protected property interest in public education.²⁸ In other words, when school officials exclude students from the school setting even temporarily through suspensions, they deprive students of an important interest protected by the Due Process Clause.²⁹ The Court then, at the second step, considered which specific procedures were due to ensure that a school official's decision to suspend a student was based on accurate findings of misconduct.³⁰ After weighing the interests of the student in avoiding unjust exclusion from school against the state interest in maintaining order in schools and conserving resources, the Court determined that schools owe students only informal, "rudimentary" procedures.³¹ Specifically, school officials must give a student facing suspension "notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story."³² The Court specified that an

26. Jason Parkin, *Dialogic Due Process*, 167 U. PA. L. REV. 1115, 1119, 1127-28 (2019); see also *Cafeteria & Rest. Workers Union, Local 473 v. McElroy*, 367 U.S. 886, 895 (1961) ("The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.").

27. 419 U.S. 565 (1975). *Goss* remains the only case that the Supreme Court has decided with respect to public-school students' procedural rights when facing exclusionary discipline and is expressly limited "to the short suspension, not exceeding 10 days." See *id.* at 584.

28. *Id.* at 572-74.

29. *Id.* at 576. Suspensions of ten days were deemed not de minimis. *Id.* The Court did not address the precise procedure constitutionally demanded for suspensions exceeding ten days or expulsions, instead merely noting that longer exclusions from the school setting "may require more formal procedures." *Id.* at 584.

30. *Id.* at 577-78, 581.

31. *Id.* at 581.

32. *Id.*

informal conversation between student and disciplinarian moments after the alleged misconduct occurs will typically satisfy this notice-and-hearing requirement.³³

Goss's threshold determination – that public-school students hold a property interest in their educations – remains significant.³⁴ But the specific process it prescribed to protect that interest has done little in practice to shield students from unjust exclusion from schools.³⁵ Many commentators, addressing only the second step of the due-process inquiry, have called for additional procedures that might better protect students from unjust exclusion from school, such as mediation or representation at hearings.³⁶ Fewer, however, have suggested raising the procedural floor by reexamining the legal source of the property interest at stake at the first step. This Note provides such an approach by explaining how the procedural minimum for exclusionary discipline can be reevaluated upon a finding, at the first step of the due-process inquiry, that the state has conferred additional entitlements to students.³⁷

Unlike many other constitutional guarantees, an individual's procedural rights are not fixed in time³⁸ – they evolve with both substantive developments in the law and evolving societal standards for “fairness.”³⁹ Indeed, the Court has repeated the maxim that “due process is flexible and calls for such procedural

33. *Id.* at 582; see JUSTIN DRIVER, *THE SCHOOLHOUSE GATE: PUBLIC EDUCATION, THE SUPREME COURT, AND THE BATTLE FOR THE AMERICAN MIND* 144-45 (2018) (discussing the minimal procedural requirements imposed by *Goss v. Lopez*).

34. See *infra* Section II.B.2.

35. See, e.g., Nadine Strossen, *Protecting Student Rights Promotes Educational Opportunity: A Response to Judge Wilkinson*, 1 MICH. L. & POL'Y REV. 315, 316-18 (1996).

36. See, e.g., John M. Malutinok, *Beyond Actual Bias: A Fuller Approach to an Impartiality in School Exclusion Cases*, 38 CHILD'S LEGAL RTS. J. 112, 138-42 (2018) (proposing the addition of a requirement of impartial adjudication); Simone Marie Freeman, Note, *Upholding Students' Due Process Rights: Why Students Are in Need of Better Representation at, and Alternatives to, School Suspension Hearings*, 45 FAM. CT. REV. 638, 644-46 (2007) (proposing representation at exclusionary hearings); James W. McMasters, Comment, *Mediation: New Process for High School Disciplinary Expulsions*, 84 NW. U. L. REV. 736, 737-38, 764-70 (1990) (proposing student-teacher mediation).

37. See Parkin, *supra* note 26, at 1119 (emphasizing that the specific procedure that satisfies the Due Process Clause is “amenable to reevaluation and revision”).

38. *Cafeteria & Rest. Workers Union, Local 473 v. McElroy*, 367 U.S. 886, 895 (1961) (“[D]ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.” (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 162 (1951) (Frankfurter, J., concurring))).

39. Parkin, *supra* note 23, at 322; see *Griffin v. Illinois*, 351 U.S. 12, 20-21 (1956) (Frankfurter, J., concurring) (“‘Due process’ is, perhaps, the least frozen concept of our law – the least confined to history and the most absorptive of powerful social standards of a progressive society.”).

protections as the particular situation demands.”⁴⁰ The minimal procedures that *Goss* prescribed may have satisfied the constitutional requirements of the Due Process Clause in 1975. As both the legal landscape of entitlements and societal circumstances have evolved, however, those procedures may now be insufficient.⁴¹

This Note argues that as the state has conferred additional entitlements on public primary- and secondary-school students in the form of school meals and health services, students’ property interests in avoiding unjust exclusion from school has correspondingly broadened. Given this expansion, the due-process protections owed to students subject to removal from school must be reevaluated. Since *Goss* was decided in 1975, both federal and state law have conferred additional entitlements — “legally enforceable individual right[s]” — upon students.⁴² Federal nutrition-assistance programs have expanded to fund and administer a wide array of school-meal programs for all children.⁴³ Most importantly, fifty-state surveys reveal that states often require schools to participate in these federal-meal programs or a state equivalent.⁴⁴ Similarly, the great majority of states now require schools to provide health services of some kind to

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40. *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see also* *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005) (observing that the Court has “declined to establish rigid rules” to govern the due-process inquiry); *Hannah v. Larche*, 363 U.S. 420, 442 (1960) (“‘Due process’ is an elusive concept. Its exact boundaries are undefinable, and its content varies according to specific factual contexts.”).
41. *Cf.* Jason Parkin, *Adaptable Due Process*, 160 U. PA. L. REV. 1309, 1311, 1314-17 (2012) (summarizing how changes in the administration of public benefits may have changed the specific procedures necessary to comport with the dictates of the Due Process Clause).
42. *See* David A. Super, *The Political Economy of Entitlement*, 104 COLUM. L. REV. 633, 648 (2004). David A. Super helpfully delineates six different types of entitlements: subjective, unconditional, positive, budgetary, responsive, and functional. *See id.* at 644-58. This Note, when referring to entitlements, employs Super’s definition of “positive entitlement,” one that confers “a legally enforceable individual right,” *id.* at 648, since that is the definition that courts use to determine whether a benefit constitutes a property interest protected by the Due Process Clause, *id.* at 648-50.
43. *See* Richard B. Russell National School Lunch Act, ch. 281, §§ 2-11, 60 Stat. 230, 230-34 (1946) (codified at 42 U.S.C. §§ 1751-1759 (2018)); *see also* *infra* Section III.A. Super observes that federal provisions concerning school lunches and breakfasts meet the criteria for budgetary, responsive, and functional entitlements, and arguably meet the criteria for unconditional entitlements, in addition to the positive-entitlement definition used in this Note. Super, *supra* note 42, at 728. In effect, then, regardless of one’s definition of “entitlement,” school-meal services meet it.
44. This Note features three online appendices. Appendix A displays relevant constitutional provisions from all fifty states concerning the right to education. Appendix B provides, where applicable, states’ laws and regulations pertaining to school meals. And Appendix C provides, where applicable, states’ laws and regulations pertaining to school healthcare. In each of the

students.⁴⁵ Many states go so far as to require *preventive* healthcare to students at no cost to all parents, or, in some states, at no cost to indigent parents.⁴⁶

On the whole, since 1975, the school has become more than the child’s source of academic instruction and socialization – it has become a supplier of nutritional meals and a provider of health services.⁴⁷ Accordingly, the deprivation suffered by children excluded from school, for any period of time, has increased beyond what the *Goss* Court anticipated.⁴⁸ As students’ interests in avoiding unjust removal from the school setting evolve, so too should the protections they receive in the course of exclusion.⁴⁹

This Note proceeds in four parts. Part I outlines how the creation and growth of the welfare and administrative states in the twentieth century prompted a shift in procedural due-process jurisprudence. Through the 1960s and 1970s, the Supreme Court broadened its understanding of the types of “property” protected by the Due Process Clause, which in turn facilitated the extension of procedural rights to additional classes of individuals, including students in *Goss v. Lopez*.

Part II examines *Goss* and its consequences in greater depth, focusing on *Goss*’s threshold finding that students have a protected property interest in their educations. Under the Court’s flexible conception of due process, that key determination serves as the basis for judicial “reevaluation” of the minimum process required by the Due Process Clause as students’ entitlements expand.⁵⁰

Part III identifies the functions of the school that have undergone significant growth, in both nature and scope, since *Goss* was decided. Fifty-state surveys of laws and regulations reflect paradigm shifts in the school’s role in society – it is now the centerpiece of child-welfare programs. Federal nutritional programs have expanded massively since *Goss*, and most states have enacted laws or prom-

appendices, I exclude (1) state provisions that relate to measures related only during the COVID-19 public health emergency; and (2) state provisions regarding public charter schools and private schools. Each appendix is current as of March 1, 2022.

45. See *infra* Appendix C; Section III.B.

46. See *infra* Appendix C.

47. See *infra* Part III; Appendices B & C.

48. See Patricia Wald, *Goss v. Lopez: Not the Devil; Nor the Panacea*, 1 MICH. L. & POL’Y REV. 331, 333 (1996).

49. Cf. Parkin, *supra* note 41, at 1317 (“By undermining many of the factual assumptions that originally justified the right to a fair hearing, these changes in the facts and circumstances of welfare programs and welfare recipients have increased the risk that benefits will be erroneously terminated.”).

50. Parkin, *supra* note 26, at 1152-53 (explaining that the Supreme Court’s due-process jurisprudence “open[s] the door to reevaluation of procedural due process precedents when changes in the underlying facts and circumstances bear upon the factors that courts must consider when evaluating challenges to existing procedures”).

ulgated regulations mandating schools to participate in the federal-meal programs and provide children with government-subsidized meals. Moreover, the laws and regulations of many states now also require the provision of formal school health services to students.⁵¹ Such programs, guaranteed to at least some students by statute or regulation, create reasonable expectations of entitlements in public-school students that constitute property interests.⁵² These additional property interests affect students' interest in avoiding unjust removal from the school environment, and necessitate a reevaluation of whether the procedural safeguards demanded by the Due Process Clause in 1975 continue to satisfy due process today.⁵³

In light of Part III's analysis of the additional statutory and regulatory entitlements to students that properly constitute property interests falling within the ambit of the Clause, Part IV provides preliminary thoughts on additional procedures, beyond the informal notice-and-hearing requirement from *Goss*, that students should be afforded when facing exclusionary discipline, subject to the duration of the exclusion, variations in state entitlement schemes, and the scope of benefits to which the specific student is entitled.

I. THE EVOLUTION OF DUE PROCESS "PROPERTY"

Before the middle of the twentieth century, courts defined the types of property protected by the Due Process Clause narrowly,⁵⁴ limiting the interests that received procedural protection from government interference.⁵⁵ To distinguish

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51. See *infra* Appendices B & C. Inspiration for looking to applicable state laws and regulations to see change over time is drawn from James Bryce, who commented in 1888 that "he who would understand the changes [in] the American democracy will find far more instruction in a study of the state governments than of the federal Constitution." 1 JAMES BRYCE, *THE AMERICAN COMMONWEALTH* 366 (Indianapolis, Liberty Fund, Inc. 1995) (1888). Moreover, localities, via school district boards of education, can and have mandated additional nutritional and health programs. See Timothy D. Lytton, *An Educational Approach to School Food: Using Nutrition Standards to Promote Healthy Dietary Habits*, 2010 UTAH L. REV. 1189, 1190. I omit analysis of local regulations for the sake of brevity. See *infra* note 276.
 52. See *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972) (holding that constitutionally protected property interests are not created by the Constitution but "stem from an independent source such as state law").
 53. See Parkin, *supra* note 41, at 1362-65 (arguing that amending the procedures demanded by the Due Process Clause to account for "changing facts and circumstances is faithful to the Court's" understanding of due process).
 54. Smolla, *supra* note 18, at 71-73; LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* § 10-8 (1978).
 55. Peter N. Simon, *Liberty and Property in the Supreme Court: A Defense of Roth and Perry*, 71 CALIF. L. REV. 146, 147-48 (1983).

between the property interests affected by government action that required process and those that did not, courts invoked the “right/privilege distinction”: government interference with traditional private property *rights* was required to follow the dictates of due process, while government interference with *privileges* was not.⁵⁶ The interests that received protection as rights were only those “that would enjoy protection at common law against invasion by private parties,”⁵⁷ such as land or chattel ownership.⁵⁸ All other interests that could be affected by government interference, such as public employment or public benefits, were deemed “privileges” not protected by the Clause,⁵⁹ giving government officials extensive freedom to modify or terminate them “using almost any (or almost no) procedures.”⁶⁰

In the latter half of the twentieth century, however, the Supreme Court’s due-process jurisprudence transformed as the Court formally abandoned the right/privilege distinction and embraced a broader conception of “property.”⁶¹

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56. Edward L. Rubin, *Due Process and the Administrative State*, 72 CALIF. L. REV. 1044, 1051-52 (1984). Under the right/privilege distinction, “governmentally created ‘privileges’ may be initially given to recipients on the condition that they surrender or curtail the exercise of constitutional freedoms that they would otherwise enjoy” and “may be denied to or withdrawn from recipients without affording them the procedural due process protections that would normally attach to the denial or the taking of ‘rights.’” Smolla, *supra* note 18, at 72; *see also* Cafeteria & Rest. Workers Union, Local 473 v. McElroy, 367 U.S. 886, 895 (1961) (“Where it has been possible to characterize [a] private interest . . . as a mere privilege subject to the Executive’s plenary power, it has traditionally been held that notice and hearing are not constitutionally required.”).
57. Richard B. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1667, 1717 (1975).
58. Common-law property rights “involved ‘the free use, enjoyment, and disposal of all [one’s] acquisitions, without any control or diminution, save only by the laws of the land.’” Caleb Nelson, *Adjudication in the Political Branches*, 107 COLUM. L. REV. 559, 567 (2007) (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *138).
59. *See* Stewart, *supra* note 57, at 1717-18. The Clause was interpreted as setting “few restraints—either substantive or procedural—upon the government in its dispensation of benefits.” Simon, *supra* note 55, at 147. Despite the hostility of early American courts toward protecting the populace from arbitrary interference with government-provided benefits, the document from which the language of due process is derived, the Magna Carta, was itself aimed broadly at “limit[ing] the arbitrary power of government” by providing a “right to participate equally” to those affected by government decisions. Jane Rutherford, *The Myth of Due Process*, 72 B.U. L. REV. 1, 9 (1992).
60. Simon, *supra* note 55, at 148. For example, in 1950, the D.C. Circuit held that government employment did not, without more, confer a constitutionally protected property interest entitling public employees to procedural protections prior to termination. *See* *Bailey v. Richardson*, 182 F.2d 46, 57 (D.C. Cir. 1950).
61. JERRY L. MASHAW, *DUE PROCESS IN THE ADMINISTRATIVE STATE* 1-3 (1985) (explaining how the Due Process Clause has served as a vehicle for the growth of the modern administrative

This doctrinal change responded to a number of legal, social, and cultural developments, including the rise of the welfare and administrative states, which portended government involvement in individuals' private lives to a greater extent than ever before.⁶² The newfound breadth of the federal government's power led the Supreme Court to extend procedural protections to protect those benefits by broadening its definition of the types of "property" protected by the Due Process Clause.⁶³ Section I.A summarizes the history of government involvement in poverty alleviation and child welfare, explaining how New Deal legislation led to a larger role for the federal government in both realms. Section I.B then examines how the Supreme Court reconceptualized constitutionally protected "property" in light of that expansion.

A. *The Rise of the Welfare and Administrative States*

For the first two hundred years of American development, poverty relief efforts were rendered by private individuals or charities, and local governments. Colonial poor-relief policy treated poverty as a local problem to be addressed by local communities.⁶⁴ Colonial assemblies passed legislation that, paralleling the English model for poor relief,⁶⁵ made each town or county responsible for its own poor.⁶⁶ In practice, however, services to those in need were provided not by localities but informally by private actors: primarily the family,⁶⁷ religious groups, and charitable organizations.⁶⁸ Assistance throughout the Colonial Era typically took the form of "outdoor relief," which provided the poor with food,

state); Pierce, *supra* note 10, at 1974-77 (recounting the historical evolution in the Supreme Court's interpretation of the Due Process Clause); see also *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) ("The constitutional challenge [to benefits termination] cannot be answered by an argument that public assistance benefits are 'a "privilege" and not a "right."'") (quoting *Shapiro v. Thompson*, 394 U.S. 618, 627 n.6 (1969))).

62. See Simon, *supra* note 55, at 149.

63. *Id.*

64. See MICHAEL B. KATZ, *IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA 13-14* (1986); WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA 16-18* (4th ed. 1989).

65. KATZ, *supra* note 64, at 14.

66. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW 185* (4th ed. 2019) (quoting a 1788 New York law which provided that "every city and town shall support and maintain their own poor" (quoting DAVID M. SCHNEIDER, *THE HISTORY OF PUBLIC WELFARE LAW IN NEW YORK STATE: 1609-1866*, at 112 (1938))); TRATTNER, *supra* note 64, at 17.

67. So-called kin responsibility "denied public aid to individuals with parents, grandparents, adult children, or grandchildren who could take them into their homes." KATZ, *supra* note 64, at 14.

68. FRIEDMAN, *supra* note 66, at 185.

money, or shelter.⁶⁹ And, like England, the colonies lacked any formal child-welfare system; orphans and the children of “paupers” who could not receive care from relatives, neighbors, or church officials received outdoor relief, like destitute adults.⁷⁰

From the Founding to the Civil War, as during the Colonial Era, government officials did not consider poverty “a matter of public policy significance.”⁷¹ State involvement grew primarily to fill needs that localities could not meet.⁷² States’ aid to the poor took the form of “indoor relief,” or “poor houses” – barebones institutions that housed the poor and demanded labor as a condition of housing.⁷³ Even then, through the nineteenth century, “society relied much more on private institutions . . . than on government” to respond to poverty, in part because the poorhouse system sought to deter individuals from seeking government assistance.⁷⁴ Services to children in need were similarly limited;⁷⁵ states did not become involved in child welfare until the end of the nineteenth century.⁷⁶ The federal government was not involved in the provision of welfare to the poor.⁷⁷ Indeed, the animating principle for all such public aid remained one of local control and administration through the nineteenth century.

69. KATZ, *supra* note 64, at 3-14.

70. Brenda G. McGowan, *Historical Evolution of Child Welfare Services*, in *CHILD WELFARE FOR THE TWENTY-FIRST CENTURY: A HANDBOOK OF PRACTICES, POLICIES, AND PROGRAMS* 10, 11-12 (Gerald P. Mallon & Peg McCart Hess eds., 2005).

71. DAVID A. SUPER, *PUBLIC WELFARE LAW* 5 (2017).

72. See William P. Quigley, *Reluctant Charity: Poor Laws in the Original Thirteen States*, 31 U. RICH. L. REV. 111, 117 (1997).

73. KATZ, *supra* note 64, at 3-35; TRATTNER, *supra* note 64, at 52-58; FRIEDMAN, *supra* note 66, at 188-89 (detailing the creation and popularization of poorhouses).

74. FRIEDMAN, *supra* note 66, at 185-87; see also TRATTNER, *supra* note 64, at 63-67 (describing the role of private charities).

75. However, orphanages existed for children whose parents had passed away or were deemed unable to support them. SUPER, *supra* note 71, at 5.

76. Clare Huntington & Elizabeth S. Scott, *Conceptualizing Legal Childhood in the Twenty-First Century*, 118 MICH. L. REV. 1371, 1380-81 (2020). The federal government did, however, support the creation of systems of public schooling through land grants soon after the Founding. DAVID TYACK, THOMAS JAMES & AARON BENAVIDE, *LAW AND THE SHAPING OF PUBLIC EDUCATION, 1785-1954*, at 13-14 (1987).

77. See SUPER, *supra* note 71, at 7; FRIEDMAN, *supra* note 66, at 185. The only tradition of federal welfare aid that existed in the late-eighteenth and early-nineteenth centuries was limited to survivors of natural disasters and veterans. FRIEDMAN, *supra* note 66, at 185-86.

Even as federal regulation in the public-health-and-safety sphere increased during the Progressive Era,⁷⁸ the federal government remained absent from poor relief efforts.⁷⁹ As before, private actors served as the primary source of assistance.⁸⁰ In the relatively few instances where state and local officials were charged with dispensing aid, they enjoyed virtually complete discretion to deny relief.⁸¹ Nothing resembling modern procedural protections applied to the termination of government benefits.

The division of responsibility between the various levels of government shifted dramatically in the 1930s. The federal government, responding to the inability of states to meet demands for assistance during the Great Depression, abandoned the preexisting local- and state-driven system of poor relief in favor of a nationalized welfare state.⁸² New Deal legislation imposed additional duties on the federal government to aid those in need,⁸³ spurring broader conceptions of classical liberal rights, including property.⁸⁴

The Social Security Act of 1935, the centerpiece of the New Deal's public-benefits programs, reflected this redefinition of "property," at least insofar as it understood the government as a means of ensuring economic security.⁸⁵ The Act was designed to "convert the nation's poor relief operations . . . into a modern public welfare system" by centralizing and bureaucratizing welfare.⁸⁶ It estab-

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78. FRIEDMAN, *supra* note 66, at 732-40 (delineating the rise of federal involvement in the regulation of food production, medication, business, and environmental protection). The Progressive Era also saw a movement to ensure the welfare of children. KATZ, *supra* note 64, at 113-17.
79. See SUPER, *supra* note 71, at 7 ("Before the 1930s, responsibility for aid to the poor—including financing and decisions on the proper mix between indoor and outdoor relief, in-kind and cash assistance, direct and work relief, etc.—was primarily local."); Joseph Daval, Note, *The Problem With Public Charge*, 130 YALE L.J. 998, 1009 (2021) ("[L]ocal institutions funded by charitable organizations and state governments played the nation's social-welfare function (albeit poorly), while the federal government played little role.").
80. TRATTNER, *supra* note 64, at 84-93.
81. SUPER, *supra* note 71, at 7.
82. *Id.* at 8.
83. KATZ, *supra* note 64, at 246 ("New Deal legislation forced states as well as the federal government to expand their commitment to social welfare.").
84. See, e.g., William E. Forbath, *Constitutional Welfare Rights: A History, Critique and Reconstruction*, 69 FORDHAM L. REV. 1821, 1832 (2001). But see James W. Ely, Jr., *The Progressive Era Assault on Individualism and Property Rights*, 29 SOC. PHIL. & POL'Y 255 (2012) (arguing that the reconsideration of classical liberal rights began during the Progressive Era and paved the way for the New Deal).
85. See Forbath, *supra* note 84, at 1833.
86. Karen M. Tani, *Welfare and Rights Before the Movement: Rights as a Language of the State*, 122 YALE L.J. 314, 325-27 (2012).

lished social-insurance programs, including old-age pensions and unemployment aid, as well as means-tested welfare programs, most notably the Aid to Dependent Children program.⁸⁷ In contemplating a more active role for the federal government in financing and regulating state and local social-welfare efforts,⁸⁸ the Act produced a more stable benefits-administration regime. The Supreme Court's ratification of this social legislation as constitutional⁸⁹ arguably signaled its jurisprudential abandonment of the classical liberal conception of "property."⁹⁰ Federal expansion into poverty relief efforts continued to grow both financially and bureaucratically through the 1950s and 1960s,⁹¹ as Congress enacted additional sweeping means-tested programs like Medicaid and the food stamp program, later renamed the Supplemental Nutrition Assistance Program (SNAP), which gave low-income households supplemental funds to purchase food.⁹²

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87. 42 U.S.C. § 602 (2018); see Tani, *supra* note 86, at 326 (detailing the relief provided to people who could not work, including the elderly, children, and the blind). Notably, however, most of the earnings-based social-insurance programs were funded and administered entirely by the federal government and provided substantially more generous benefits than their means-tested counterparts, which were funded on a matching basis. SUPER, *supra* note 71, at 8. The Aid to Dependent Children program (ADC) provided federal funding to support widows and their children, and was later replaced and expanded by the Aid to Families with Dependent Children program (AFDC), which provided federal matching funds to states that met detailed national eligibility criteria to administer cash-assistance programs. KATZ, *supra* note 64, at 129, 237, 267. In 1996, AFDC was replaced by the Temporary Assistance for Needy Families (TANF) program, which shifted primary responsibility for welfare from the federal government back to state governments. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.
88. Tani, *supra* note 86, at 325-26, 328-30; see also April Land, *Children in Poverty: In Search of State and Federal Constitutional Protections in the Wake of Welfare "Reforms,"* 2000 UTAH L. REV. 779, 781 (describing the federal government's role in administering the ADC and later AFDC programs). States, however, retained significant decision-making authority with respect to the "terms and amounts of aid." SUPER, *supra* note 71, at 8.
89. In *Steward Machine Co. v. Davis* in 1937, the Supreme Court upheld the Social Security Administration's (SSA) unemployment insurance program. 301 U.S. 548 (1937). That same year, the Court also determined that the Act's old-age pension program was constitutional. *Helvering v. Davis*, 301 U.S. 619 (1937).
90. Jerry L. Mashaw, "Rights" in the Federal Administrative State, 92 YALE L.J. 1129, 1129 & n.1 (1983). In fact, the interpretations of the Act by at least one early SSA official seemed to demonstrate an understanding that individuals receiving public benefits had a "right" to those payments and could invoke due process to avail themselves of that right in the face of potential deprivation. Tani, *supra* note 86, at 343-44.
91. Andrew Hammond, *Litigating Welfare Rights: Medicaid, SNAP, and the Legacy of the New Property*, 115 NW. U. L. REV. 361, 372 (2020); SUPER, *supra* note 71, at 8-11; KATZ, *supra* note 64, at 269.
92. Hammond, *supra* note 91, at 385.

The expansion of the federal government's role during the New Deal extended to schools as well.⁹³ The regulation of public education, long considered the domain of states and localities,⁹⁴ shifted in part to the federal government.⁹⁵ New Deal programming made public schools the focal institution of the government's campaign to address malnutrition and starvation among the nation's children.⁹⁶ Early iterations of school-meal programs sought to assist both hungry children and farmers struggling with crop surpluses at the same time by buying surplus agricultural products from farmers and providing the food to schools for student lunches.⁹⁷ Congress formalized the program through the National School Lunch Act (NSLA) in 1946, which contributed federal grant money to participating schools to subsidize the costs of school lunches for all children.⁹⁸

The growth in the scale, variety, and import of the welfare and administrative states from the New Deal through the 1960s led to a shift in both the legal literature and the public consciousness that government benefits were akin to a "right[] of the needy, not simply a gratuity."⁹⁹ Furthermore, because public-benefits recipients relied directly on the government for their livelihoods—their ability to buy food and access healthcare—they were uniquely vulnerable to arbitrary

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93. See John E.B. Myers, *A Short History of Child Protection in America*, 42 *FAM. L.Q.* 449, 452-53 (2008) (“[T]he federal government, prior to 1935 . . . played an insignificant role in child welfare policy and funding.”).
94. See *Milliken v. Bradley*, 418 U.S. 717, 741 (1974) (“No single tradition in public education is more deeply rooted than local control over the operation of schools . . .”). The Constitution implicitly delegates the power to regulate public education to state governments. See U.S. CONST. amend. X (providing that powers not expressly delegated to the federal government “are reserved to the States respectively, or to the people”). But the precise distribution of regulatory authority between the federal government and the states was and remains unclear. See Michael Heise, *The Political Economy of Education Federalism*, 56 *EMORY L.J.* 125, 129 (2006) (“A cursory examination reveals that efforts to find unambiguous boundaries demarcating the policy spheres for federal, state, and local actors in the education sector will likely generate more questions than answers.”).
95. SUSAN LEVINE, *SCHOOL LUNCH POLITICS: THE SURPRISING HISTORY OF AMERICA’S FAVORITE WELFARE PROGRAM* 43 (2008) (stating that the federal government’s expanded role in the 1930s “brought Washington-based funds and federal officials into the nation’s schools”).
96. JANET POPPENDIECK, *FREE FOR ALL: FIXING SCHOOL FOOD IN AMERICA* 44 (2010). Local school-meal programs, first formed in the 1890s, often lacked sufficient funding to meet the demand for student lunches. *Id.* at 43.
97. *Id.* at 44-45.
98. *Id.* at 47; Richard B. Russell National School Lunch Act, ch. 281, §§ 2-11, 60 Stat. 230, 230-34 (1946) (codified at 42 U.S.C. §§ 1751-1759 (2018)); see *infra* Section III.A.
99. Simon, *supra* note 55, at 149. There is not, however, a constitutional right to basic assistance—a claim that the Supreme Court rejected in *Dandridge v. Williams*, 397 U.S. 471 (1970). See Hammond, *supra* note 91, at 376-77.

government determinations regarding benefits eligibility and termination¹⁰⁰ if constraints were not placed on government decision-making.¹⁰¹

In two landmark 1964 and 1965 articles,¹⁰² Professor Charles Reich sought to address this imbalance by arguing for a “system of protections for the individual” against arbitrary government action.¹⁰³ Calling for the abandonment of the right/privilege distinction in due-process jurisprudence defining “property,” Reich explained that the creation and growth of the modern welfare and administrative states had rendered almost all Americans dependent on government “largess” in one form or another—whether via social-welfare programs, public employment, occupational licensing, contracting, use of public space, or the provision of public services like education.¹⁰⁴ With this government largess, however, came the specter of government interference in individuals’ private lives.¹⁰⁵ Owing to the government’s newfound capacity to directly infringe on most Americans’ private autonomy, Reich argued for a legal reconceptualization of government largess, including public benefits, as property rights.¹⁰⁶ Extending to government-provided benefits the same legal status as traditional common-law property rights would provide procedural protection against arbitrary government action.¹⁰⁷ Put differently, to adequately guard against government infringement on private autonomy, government benefits “must enjoy the same legal protections as traditional common-law forms of property.”¹⁰⁸

B. *The Due-Process Revolution*

The Supreme Court adopted Reich’s “expansive” conception of property rights in 1970.¹⁰⁹ In *Goldberg v. Kelly*, the Court was forced to grapple with its

100. Matthew Diller, *The Revolution in Welfare Administration: Rules, Discretion, and Entrepreneurial Government*, 75 N.Y.U. L. REV. 1121, 1135-36 (2000).

101. See Tani, *supra* note 86, at 317-18.

102. Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964) [hereinafter Reich, *The New Property*]; Charles A. Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245 (1965) [hereinafter Reich, *Individual Rights*].

103. Charles A. Reich, *The New Property After 25 Years*, 24 U.S.F. L. REV. 223, 224 (1990).

104. Reich, *The New Property*, *supra* note 102, at 734-37.

105. See *id.* at 746 (explaining that when the government “hands out something of value, whether a relief check or a television license . . . it automatically gains” power to supervise that grant, bringing a wide range of previously insulated, private individual decisions within its control).

106. *Id.* at 771.

107. *Id.* at 785-86.

108. Forbath, *supra* note 84, at 1865.

109. Pierce, *supra* note 10, at 1976-77.

understanding of “property” in determining whether the Due Process Clause affords procedural rights to welfare recipients at risk of having their benefits terminated by the state.¹¹⁰ Until that point, most welfare recipients did not receive process before their benefits were terminated¹¹¹ and were instead left at the mercy of local discretion.¹¹² The Court, in recognizing a property interest in welfare benefits for the first time, replaced the right/privilege distinction¹¹³ with the more expansive conception of property advocated by Reich—that government entitlements granted by statute are a form of property that, like the “old property,” places limits on government action under the Due Process Clause.¹¹⁴ Welfare benefits, Justice Brennan wrote for the majority, are more akin to “property” than “gratuity.”¹¹⁵ By expanding the definition of property protected by the Clause to include a wider range of interests than previously recognized, the Court extended due-process protections previously enjoyed primarily by affluent owners of traditional property to the poor.¹¹⁶

The Court then proceeded to the second step of the due-process inquiry: identifying the process due.¹¹⁷ Foreshadowing its decision in *Goss v. Lopez*, the Court explained that in circumstances where the deprivation is less grievous, “some kind of hearing,”¹¹⁸ even a fairly informal one, may satisfy constitutional

110. *Goldberg v. Kelly*, 397 U.S. 254, 262 n.8 (1970) (“Much of the existing wealth in this country takes the form of rights that do not fall within traditional common-law concepts of property.”).

111. See Bridgette Baldwin, *In Supreme Judgment of the Poor: The Role of the United States Supreme Court in Welfare Law and Policy*, 23 WIS. J.L. GENDER & SOC’Y. 1, 11 (2008).

112. See TRATTNER, *supra* note 64, at 45 (noting that local responsibility for poverty alleviation efforts led to both “inadequate and unequal standards” and “inefficient and sometimes corrupt administration”).

113. See *Goldberg*, 397 U.S. at 262 (“The constitutional challenge cannot be answered by an argument that public assistance benefits are ‘a “privilege” and not a “right.”’” (quoting *Shapiro v. Thompson*, 394 U.S. 618, 627 n.6 (1969))).

114. See *id.* (“[Welfare] benefits are a matter of statutory entitlement for persons qualified to receive them.”); see also Hammond, *supra* note 91, at 365 (explaining that the Court drew on Reich’s theory in *Goldberg*).

115. *Goldberg*, 397 U.S. at 262 n.8 (citing Reich, *Individual Rights*, *supra* note 102, at 1255; Reich, *The New Property*, *supra* note 102). Some have criticized *Goldberg* for its conclusory adoption of Reich’s formulation of “new property” without providing an independent explanation for its conclusion. See, e.g., Pierce, *supra* note 10, at 1974.

116. Parkin, *supra* note 26, at 1124; Rebecca E. Zietlow, *Giving Substance to Process: Countering the Due Process Counterrevolution*, 75 DENVER U. L. REV. 9, 17 (1997).

117. See *Goldberg*, 397 U.S. at 266-71.

118. *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974).

due-process requirements.¹¹⁹ In the context of a potential welfare termination, however, where the deprivation is highly burdensome,¹²⁰ more formal procedure is required: welfare recipients have the right to notice and the opportunity to be heard before their benefits are terminated.¹²¹ At the hearing, recipients have the right to present “arguments and evidence,” and “confront and cross-examine adverse witnesses.”¹²² In establishing procedural safeguards resembling those of a formal judicial trial,¹²³ the Court “placed great emphasis on the hardship that welfare recipients endure when their benefits are terminated.”¹²⁴

Goldberg’s conception of property extended the scope of the Due Process Clause’s protection to new classes of individuals,¹²⁵ resulting in an “explosion”¹²⁶ of due-process challenges to government action.¹²⁷ Following *Goldberg*, “federal, state, and local agencies established fair hearing systems for a wide range of public benefits in addition to welfare, including food stamps, Medicaid, and Supplemental Security Income”¹²⁸ In the years that followed, the Court extended

119. *Goldberg*, 397 U.S. at 266-71. The Court has held on several occasions that the degree of formality that the Due Process Clause requires of a hearing depends on the interests involved. See, e.g., *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971).

120. *Goldberg*, 397 U.S. at 264 (“For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care. . . . [T]ermination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits.” (emphasis omitted)).

121. *Id.* at 267-68. “Fair pre-deprivation procedures . . . reduce the likelihood of erroneous deprivations” Richard H. Fallon, Jr., *Some Confusions About Due Process, Judicial Review, and Constitutional Remedies*, 93 COLUM. L. REV. 309, 329 (1993). “Even after a deprivation has occurred, however, the Due Process Clause” may provide further protection by “requir[ing] judicial review of official action and, when review is granted . . . creat[ing] entitlements to judicial remedies.” *Id.*

122. *Goldberg*, 397 U.S. at 268-69.

123. Henry J. Friendly, “*Some Kind of Hearing*,” 123 U. PA. L. REV. 1267, 1299 (1975).

124. Redish & Marshall, *supra* note 5, at 471; see *Goldberg*, 397 U.S. at 262-63 (explaining that, in outlining the specific procedures required by the Due Process Clause, courts consider “the extent to which [the interest holder] may be ‘condemned to suffer grievous loss.’” (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 138 (1951) (Frankfurter, J., concurring))).

125. Parkin, *supra* note 26, at 1116-17.

126. Friendly, *supra* note 123, at 1268. “[F]ederal court complaints of procedural due process deprivation in the 1970s showed a 350 percent increase over the 1960s.” MASHAW, *supra* note 61, at 9.

127. Parkin, *supra* note 26, at 1116-17. The “due-process revolution” as it relates to civil cases is commonly attributed to the Supreme Court’s decision in *Goldberg* and Reich’s work. *Id.*; Joseph Landau, *Due Process and the Non-Citizen: A Revolution Revisited*, 47 CONN. L. REV. 879, 887 (2015); Zietlow, *supra* note 116.

128. Parkin, *supra* note 41, at 1315-16 (citations omitted).

its new due-process framework to a variety of government deprivations, including the suspension of driver's licenses,¹²⁹ termination of government employment,¹³⁰ and disciplinary determinations for incarcerated individuals.¹³¹

A pair of Supreme Court decisions decided two years after *Goldberg* provided additional guidance on how "property" would be defined, as well as the judiciary's role in procedural due-process challenges.¹³² In *Board of Regents v. Roth*, the Court addressed the first step of the due-process inquiry by definitively outlining the scope of "property" protected by the Due Process Clause.¹³³ The Court explicitly approved *Goldberg's* implication that property interests warranting procedural protections are neither rooted in common-law property concepts nor set in "rigid or formalistic" categories.¹³⁴ Rather, courts must examine whether a government-conferred benefit constitutes a property interest more flexibly, in light of changing "social and economic fact."¹³⁵ "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. . . . He must, instead, have a legitimate claim of entitlement to it."¹³⁶ Without

129. See *Bell v. Burson*, 402 U.S. 535, 542-43 (1971) (holding that the government's suspension of an individual's driver's license implicated a property interest protected by the Due Process Clause, triggering procedural protections).

130. See *Perry v. Sindermann*, 408 U.S. 593, 598, 602-03 (1972) (extending due-process rights to a nontenured public college professor on the grounds that some public employees hold property interests in their jobs).

131. See *Wolff v. McDonnell*, 418 U.S. 539, 563-69 (1974) (explaining that prison inmates were entitled to some process—notice, written findings of fact, and a record of the reasons for a determination—before prison officials could constitutionally reduce their "good-time" credits, which constitute property within the meaning of the Due Process Clause).

132. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972); *Sindermann*, 408 U.S. 593.

133. *Roth*, 408 U.S. at 577; see also Thomas W. Merrill, *The Landscape of Constitutional Property*, 86 VA. L. REV. 885, 917 (2000) ("The decision that initiated the Court's inquiry into the meaning of property for procedural due process purposes was *Board of Regents v. Roth*."); Rowland Richards III, *Promissory Estoppel and "Property" in the Due Process Clause: Toward a Consistent Rationale*, 20 VT. L. REV. 847, 847 (1996) (stating that *Roth* is one of "the definitional cases for the meaning of property within the Fourteenth Amendment"). In *Roth*, the Court found that that a professor at a public college, who had been hired for one year, did not have a property interest in employment for any time beyond the contract year and thus was not entitled to due-process protection. *Roth*, 408 U.S. at 578.

134. *Roth*, 408 U.S. at 571-72 ("[T]he Court has fully and finally rejected the wooden distinction between 'rights' and 'privileges' that once seemed to govern the applicability of procedural due process rights. The Court has also made clear that property interests protected by procedural due process extend well beyond actual ownership of real estate, chattels, or money." (internal footnotes omitted)); see Merrill, *supra* note 133, at 917.

135. *Roth*, 408 U.S. at 571 (quoting *Nat'l Mut. Ins. Co. v. Tidewater Transfer Co.*, 337 U.S. 582, 646 (1949) (Frankfurter, J., dissenting)); Parkin, *supra* note 26, at 1120.

136. *Roth*, 408 U.S. at 577.

a valid claim to an entitlement, the Court found, individuals do not have a constitutional right to process in the course of a government-effectuated deprivation or termination.¹³⁷ Legitimate claims of entitlement to property are not derived from the Constitution; rather, they “are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law – rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.”¹³⁸ In other words, protected property interests are established when subconstitutional sources of law, such as federal and state statutes or regulations, or express or implied government contracts, bestow some sort of expectation or guarantee to a class of individuals.¹³⁹ A necessary corollary of this is that property interests may be created or destroyed as the law develops to grant, modify, or revoke substantive guarantees.

Perry v. Sindermann, *Roth*'s companion case, addressed the second step of the due-process inquiry.¹⁴⁰ The Court held that, upon a finding that substantive guarantees made by the state constitute property interests protected by the Due Process Clause, it is in the province of the judiciary to determine the proper scope of procedural protections.¹⁴¹ Together, the *Roth-Perry* decisions stand for the proposition that “legislatures create property, and courts protect it.”¹⁴²

Having traced both the historical development of the administrative and welfare states and the resultant developments in due-process jurisprudence in Part I, Part II proceeds to examine the due-process rights of public primary- and secondary-school students specifically.

137. *Id.* at 578.

138. *Id.* This methodology for ascertaining property interests is quite broad. For example, in *Arnett v. Kennedy*, the Court held that a statute prohibiting termination of employees of the federal government except “for cause” conferred a property interest in continued employment. 416 U.S. 134, 155 (1974).

139. See, e.g., *Roth*, 408 U.S. at 578; *Bishop v. Wood*, 426 U.S. 341, 344-45 (1976). However, “a benefit is not a protected entitlement if government officials may grant or deny it in their discretion.” *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005).

140. 408 U.S. 593 (1972).

141. *Id.* In doing so, the Court rejected a positivist conception of the Due Process Clause which would require only that government actors afford process as prescribed by statute or by other provisions of the Constitution. See *Williams*, *supra* note 2, at 420-21.

142. Simon, *supra* note 55, at 146. In the education context, legislatures create property interests by entitling children or their families to certain programs, like state-subsidized schools. It is then the responsibility of courts to determine the appropriate scope of procedures that will protect students from arbitrary or unjust deprivations of their property interests.

II. THE PROPERTY INTERESTS OF PUBLIC-SCHOOL STUDENTS

Alongside the emergence of the due-process revolution in the 1960s and 1970s was the rise of the children's-rights movement, in which "advocates began to argue for recognition of children as rights-bearing persons, with independent legal interests not represented by their parents or the state."¹⁴³ The Supreme Court embraced this position in the 1967 decision *In re Gault*, holding that, under the Due Process Clause, children in delinquency proceedings bear certain procedural rights.¹⁴⁴ Two years after *Gault*, the Court began issuing opinions granting constitutional rights, albeit often in limited form, to public primary- and secondary-school students.¹⁴⁵ It was in this rights-recognitive climate that the Court determined that public-school students subject to exclusionary discipline are entitled to some process.¹⁴⁶

A. *Goss v. Lopez: Setting the Procedural Floor for Exclusionary Discipline of Public-School Students*

In 1975, the Supreme Court considered for the first time whether to extend constitutional due-process protections to public primary- and secondary-school

143. Huntington & Scott, *supra* note 76, at 1390. Prior to the twentieth century, children were not regarded as holding meaningful legal rights. In fact, "[i]n eighteenth century English common law, the term children's rights would have been a nonsequitur. Children were regarded as chattels of the family and wards of the state, with no recognized political character or power and few legal rights." Hillary Rodham, *Children Under the Law*, 43 HARV. EDUC. REV. 487, 489 (1973).

144. 387 U.S. 1, 30-31, 41 (1967) (concluding that in juvenile delinquency hearings that may result in a child's involuntary commitment to an institution, the Due Process Clause requires that "the child and his parents . . . be notified of the child's right to be represented by counsel retained by them, or if they are unable to afford counsel, that counsel will be appointed to represent the child"). "In the majority of its cases, the Supreme Court has viewed young people, not as full-fledged autonomous persons, but instead as vulnerable and dependent beings in need of protection." Martin R. Gardner, "Decision Rules" and Kids: Clarifying the Vagueness Problems with Status Offense Statutes and School Disciplinary Rules, 89 NEB. L. REV. 1, 34 (2010).

145. Huntington & Scott, *supra* note 76, at 1391; see, e.g., *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (holding that public-school students retain First Amendment rights to freedom of expression in the school setting); *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (finding that public-school students have a limited Fourth Amendment right to be free from unreasonable searches by school officials).

146. See Stewart, *supra* note 57, at 1719-20 (stating that *Goss* "seem[s] to indicate that an individual has a 'property' entitlement to be free of unauthorized governmental action").

students facing suspension.¹⁴⁷ In *Goss v. Lopez*, suspended students from Columbus, Ohio public schools challenged an Ohio statute permitting school administrators to suspend students for up to ten days without providing any sort of process.¹⁴⁸

The Court, relying on its noneducation due-process decisions,¹⁴⁹ held that public schools must provide at least rudimentary due-process procedures – informal notice and a hearing – prior to suspending students.¹⁵⁰ The Court, in a relatively short opinion, followed the now-familiar two-step analysis. First, it found that students hold a property interest in their educations based on two provisions in the Ohio state code: one required the state to provide a free education to children, and the other, the compulsory-attendance law, required children to attend school.¹⁵¹ A ten-day suspension constituted a deprivation of that property interest beyond a *de minimis* level, triggering constitutional scrutiny.¹⁵² Because Ohio, like all other states,¹⁵³ had “chosen to extend the right to an education to [children between the ages of 5 and 21],” it could not “withdraw that right on grounds of misconduct, absent fundamentally fair procedures to determine whether the misconduct [had] occurred.”¹⁵⁴ The Court also found that students held a liberty interest¹⁵⁵ in avoiding unjust exclusion: suspensions,

147. In the 1960s, before *Goss* was decided, some lower courts began obligating schools to provide some minimal procedural protections to students before issuing suspensions or expulsions. See DRIVER, *supra* note 33, at 143-44.

148. *Goss v. Lopez*, 419 U.S. 565, 567-69 (1975). The *Goss* plaintiffs challenged “the sweeping, indiscriminate suspension of black students . . . for allegedly taking part in demonstrations following Black History Week.” Strossen, *supra* note 35, at 319.

149. See *Goss*, 419 U.S. at 573.

150. *Id.* at 577-84. In doing so, the Supreme Court drew upon the rationale from a landmark decision from the Fifth Circuit that held that students at public colleges and universities were entitled to notice and hearing prior to expulsion for misconduct. See *id.* at 576 n.8; Dixon v. Ala. State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961).

151. *Goss*, 419 U.S. at 573-74.

152. *Id.* at 573-75.

153. All state constitutions guarantee resident children a free public primary and secondary education. See *infra* Appendix A. States prescribe, by statute, different models for the funding of public schools, with some states relying on sales taxes and local property taxes, and others relying primarily on state income taxes. R. Craig Wood, *The Changing Landscape of Funding Public Elementary and Secondary Education in the United States*, in THE OXFORD HANDBOOK OF CHILDREN AND THE LAW 505, 506 (James G. Dwyer ed., 2020).

154. *Goss*, 419 U.S. at 574.

155. Unlike property interests, liberty interests “originate in the Constitution” itself. *Meachum v. Fano*, 427 U.S. 215, 226 (1976) (internal quotation marks omitted). Such liberty interests include

which could adversely affect students' reputations and future educational and occupational opportunities, implicated a liberty interest warranting some process.¹⁵⁶

The Court, having found constitutionally protected interests, proceeded to the second step of due-process analysis, in which it determined what specific procedures were due to students subject to short-term suspension.¹⁵⁷ Balancing the interests of students in "avoid[ing] unfair or mistaken exclusion" from school with the state's interest in maintaining "[s]ome modicum of discipline and order,"¹⁵⁸ the Court required only "rudimentary" procedures that would not be too costly or risk impairing the educational environment.¹⁵⁹ The Court found that schools must provide a student facing a suspension of ten days or less "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story."¹⁶⁰ In most cases, this procedure amounts to nothing more than a requirement that the administrator "informally discuss the alleged misconduct with the student minutes after it has occurred," typically prior to effectuating the suspension.¹⁶¹ More formal procedures, the Court explained, are not required so

not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.

Meyer v. Nebraska, 262 U.S. 390, 399 (1923).

156. *Goss*, 419 U.S. at 574-76. A fuller discussion of liberty interests is beyond the scope of this Note.
157. *Id.* at 577-79 ("[T]he timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved.").
158. *Id.* at 579-80 ("The risk of error . . . should be guarded against if that may be done without prohibitive cost").
159. *Id.* at 578-81. The Court's balancing of the student's private interest against the state's interest in avoiding undue fiscal or administrative burdens in *Goss* is "substantially the same" as the balancing test it articulated for all civil due-process property inquiries one year later in *Mathews v. Eldridge*. Note, *Due Process, Due Politics, and Due Respect: Three Models of Legitimate School Governance*, 94 HARV. L. REV. 1106, 1106 n.6 (1981); see also Bartlett & McCullagh, *supra* note 22, at 37 ("The ruling in *Goss* was an obvious effort to strike a balance between school officials possibly making a mistake in erroneously suspending a student and the added burden of a full due process hearing to administration of public schools.").
160. *Goss*, 419 U.S. at 581.
161. *Id.* at 582. However, students presenting either a "continuing danger" or "an ongoing threat of disrupting the academic process, may be immediately removed from school," with the "necessary notice and rudimentary hearing" following "as soon as practicable." *Id.* at 582-83. The Court decided that no time between notice and the informal hearing was necessary, fearing that such a requirement would impose too heavy a burden on schools. See *id.* at 583.

as to not overwhelm school administrators.¹⁶² As Justin Driver summarizes, the decision did not give students the right to “call their own witnesses, cross-examine witnesses, or acquire legal representation,” though states and school districts could choose to surpass the procedural minimum that *Goss* set and provide students with such rights.¹⁶³

The opinion provides little else to guide lower courts, states, or school districts. For example, the Court did not state whether in-school suspensions or transfers to alternative schools implicate a property interest beyond a *de minimis* level—an issue that lower courts would soon confront. Similarly, though the Court observed that suspensions of more than ten days and expulsions may require “more formal procedures,” it explicitly limited the scope of its decision to suspensions of ten days or less.¹⁶⁴ Nor did the opinion address the potential issue of partiality of the school administrator conducting the informal hearing and making the disciplinary decision.¹⁶⁵ Instead, the Court assumed that school officials would make disciplinary decisions fairly.¹⁶⁶

Because the *Goss* Court explicitly limited the scope of its decision to suspensions “not exceeding [ten] days,”¹⁶⁷ lower courts were left to determine whether other forms of exclusion from school warranted procedural protections.¹⁶⁸ For example, in due-process challenges to short suspensions of one to three days, school officials have invoked the defense that the exclusion constitutes merely a

162. *Id.* at 583 (contending that “to impose in each [short-term suspension] even truncated trial-type procedures might overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in educational effectiveness”).

163. DRIVER, *supra* note 33, at 145.

164. *Goss*, 419 U.S. at 584 (“[W]e have addressed ourselves solely to the [issue of the] short suspension, not exceeding 10 days. Longer suspensions or expulsions for the remainder of the school term, or permanently, may require more formal procedures.”); *see also* DRIVER, *supra* note 33, at 144 (discussing the procedures for reviewing such punishments).

165. Bartlett & McCullagh, *supra* note 22, at 24.

166. *Id.*; *see Goss*, 419 U.S. at 580. The decision maker is not, in practice, limited to the facts and arguments presented by the student at the informal hearing. *See* Bartlett & McCullagh, *supra* note 22, at 37 (noting that school authorities have discretion to determine which factors are relevant to the disciplinary decision). Thus, school officials, likely familiar with the student, may consider outside information about the student in determining whether or not to proceed with disciplinary action. This lack of impartiality can have effects inimical to the principles of fundamental fairness underlying due process. Redish & Marshall, *supra* note 5, at 479 (“Once th[e] protection [of an independent adjudicator] is dispensed with, the provision of all other procedural safeguards cannot cure the violation of fundamental fairness.”).

167. *Goss*, 419 U.S. at 584. The Supreme Court has yet to determine the precise scope of the process due in the case of long-term suspensions or expulsions, though it has suggested, in dicta, that suspensions exceeding ten days or expulsions “may require more formal procedures.” *Id.*

168. Bartlett & McCullagh, *supra* note 22, at 14.

de minimis deprivation, such that no process is due to the student.¹⁶⁹ Lower courts have typically rejected this argument, determining that even three-day out-of-school suspensions implicate students' property interests in education beyond a de minimis level.¹⁷⁰ In-school suspensions that deprive students of learning opportunities may similarly implicate a student's property interest and require some procedural protections.¹⁷¹

These appraisals of the principles of *Goss* notwithstanding, lower courts have taken a somewhat restrictive view of the scope of students' property interests in education when student-plaintiffs claiming a property interest in a particular facet of education fail to identify a legal source providing an independent entitlement to it.¹⁷² Courts have declined to find a property interest requiring some

169. *Id.* at 14-17 (observing that *Goss* "left open the possibility that a shorter suspension may be de minimis" and examining lower-court decisions deciding whether short suspensions were de minimis). The *Goss* Court itself rejected a similar argument from the defendant school district that a ten-day suspension was de minimis. *See Goss*, 419 U.S. at 575-76 (remarking that, because of the importance of primary and secondary education, the "total exclusion from the educational process . . . is a serious event in the life of the suspended child").

170. *See, e.g., Hillman v. Elliot*, 436 F. Supp. 812, 815 (W.D. Va. 1977) ("Any time a child misses his classes, he is deprived of a learning experience that cannot be repeated."). Lower courts have, either explicitly by addressing the issue, or implicitly by requiring that schools afford process to students in the course of imposing three-day suspensions, acknowledged that such suspensions are not merely de minimis deprivations. *See, e.g., Boster v. Philpot*, 645 F. Supp. 798, 804 (D. Kan. 1986) (finding that the suspended students, who received notice and an informal hearing, "clearly received all process due them"); *Bystrom v. Fridley High Sch.*, 686 F. Supp. 1387, 1394 (D. Minn. 1987) (applying *Goss*'s requirements in the context of a challenge to a three-day suspension).

171. *See, e.g., Laney v. Farley*, 501 F.3d 577, 584 (6th Cir. 2007) (finding that an in-school suspension may trigger due-process protection when it "so isolates a student from educational opportunities that it infringes her property interest in an education"). *But see Esparza v. Bd. of Trs.*, No. 98-50907, 1999 WL 423109, at *4 (5th Cir. June 4, 1999) (deciding that an in-school suspension did not necessitate *Goss*-type notice and hearing because "the plaintiffs are not being deprived of their access to public education . . . [r]ather, they are only being 'transferred from one school program to another program with stricter discipline'" (quoting *Nevaras v. San Marcos Consol. Indep. Sch. Dist.*, 111 F.3d 25, 26 (5th Cir. 1997))).

172. *See Bartlett & McCullagh, supra* note 22, at 13-23 (examining lower-court rulings).

degree of process in the individual components of education,¹⁷³ such as attending a particular school,¹⁷⁴ taking specific classes,¹⁷⁵ participating in athletic programs¹⁷⁶ and extracurricular activities,¹⁷⁷ or attending certain school social functions¹⁷⁸ absent a subconstitutional source of entitlement, such as state law, to that particular aspect of the educational program.¹⁷⁹ Even in circumstances in which a student's property interest is clearly implicated and the deprivation is in

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173. See, e.g., *Boynton v. Casey*, 543 F. Supp. 995, 1001 (D. Me. 1982) (explaining that students' property interests in education "does not necessarily encompass every facet of the educational program"); *Dallam v. Cumberland Valley Sch. Dist.*, 391 F. Supp 358, 361 (M.D. Pa. 1975) ("The myriad activities which combine to form [the] education process cannot be dissected to create hundreds of separate property rights, each cognizable under the Constitution."). Unlike individual aspects of education such as enrolling in specific classes, however, students are statutorily entitled to meal services and healthcare in many states. See *infra* Part III; Appendices B & C.
174. See, e.g., *Harris ex rel. Harris v. Pontotoc Cnty. Sch. Dist.*, 635 F.3d 685, 690 (5th Cir. 2011) ("A student's transfer to an alternative education program does not deny access to public education and therefore does not violate a Fourteenth Amendment interest."); *Buchanan v. City of Bolivar*, 99 F.3d 1352, 1359 (6th Cir. 1996) (citing several cases that found that a property interest is not implicated "when the sanction imposed is attendance at an alternative school absent some showing that the education received at the alternative school is significantly different from or inferior to that received at his regular public school").
175. See, e.g., *Casey v. Newport Sch. Comm.*, 13 F. Supp. 2d 242, 246 (D.R.I. 1998) (holding that the five-week removal of a student from a single class, when the student received alternative instruction in that subject, did not implicate a constitutionally protected property right "absent a state law provision" that provided an "entitlement to particular aspects of the educational program"); *Arundar v. DeKalb Cnty. Sch. Dist.*, 620 F.2d 493, 494 (5th Cir. 1980) (noting that the right to education does not include the right to "a particular curriculum choice").
176. See, e.g., *Lowery v. Euverard*, 497 F.3d 584, 588 (6th Cir. 2007) ("It is well-established that students do not have a general constitutional right to participate in extracurricular athletics."); *Seamons v. Snow*, 84 F.3d 1226, 1235 (10th Cir. 1996) ("[T]he innumerable separate components of the educational process, such as participation in athletics and membership in school clubs, do not create a property interest subject to constitutional protection."); *Hebert v. Ventetuolo*, 638 F.2d 5, 6 (1st Cir. 1981) (reasoning that because no state law conferred on students a property interest in participating in school athletics, suspensions from school athletic teams need not meet *Goss's* informal notice-and-hearing requirements); *Denis J. O'Connell High Sch. v. Va. High Sch. League*, 581 F.2d 81, 84 (4th Cir. 1978) ("[T]he speculative possibility of acquiring an athletic scholarship [is not] a federally protected property right.").
177. See, e.g., *Angstadt v. Midd-West Sch. Dist.*, 377 F.3d 338, 344 (3d Cir. 2004) (finding no constitutionally protected property interest in "participation in extracurricular activities"); *Mazevski v. Horseheads Cent. Sch. Dist.*, 950 F. Supp. 69, 72 (W.D.N.Y. 1997) (finding no protected property interest in participating in the school marching band); *Pegram v. Nelson*, 469 F. Supp. 1134, 1139 (M.D.N.C. 1979) ("The opportunity to participate in extracurricular activities is not, by and in itself, a property interest.").
178. See, e.g., *Kirby v. Loyalsock Twp. Sch. Dist.*, 837 F. Supp. 2d 467, 476-77 (M.D. Pa. 2011) (holding that a student did not have a protected property interest in attending her senior class night, her senior class trip, or her graduation).
179. See *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972).

fact more severe than that addressed by *Goss*, as with out-of-school suspensions of more than ten days or expulsions,¹⁸⁰ students seeking more formal, trial-like procedures, like the opportunity to confront their accusers or cross-examine witnesses, have had limited success.¹⁸¹

Lower-court decisions declining to extend additional process to students may be better understood in light of a 1976 Supreme Court case addressing the second step of the due-process inquiry. In *Mathews v. Eldridge*, decided a year after *Goss*, the Court explicitly adopted a “cost-benefit, interest-balancing approach” for determining, upon a finding of a constitutionally protected interest, the specific procedure required in civil contexts.¹⁸² This is the same approach alluded to in *Goss*.¹⁸³ Under *Mathews*, courts, at the second step of the due-process inquiry, consider three factors to determine the specific procedures required by the Due Process Clause:

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180. *Goss v. Lopez*, 419 U.S. 565, 584 (1975) (suggesting that longer exclusions from the school setting “may require more formal procedures”).
181. See, e.g., *Newsome v. Batavia Loc. Sch. Dist.*, 842 F.2d 920, 924 (6th Cir. 1988) (deciding that a student’s due-process rights were not violated when the school denied him the opportunity to cross-examine his student accusers and school administrators at his hearing); *Brewer v. Austin Indep. Sch. Dist.*, 779 F.2d 260, 263 (5th Cir. 1985) (holding that, in connection with a hearing for an offense punishable by a semester-long suspension, the student did not have the right to cross-examine witnesses); *E.K. v. Stamford Bd. of Educ.*, 557 F. Supp. 2d 272, 276–77 (D. Conn. 2008) (applying the *Mathews* balancing test and finding that the admission of hearsay evidence at a student’s expulsion hearing without allowing him to confront student witnesses did not violate his due-process rights); see also Derek W. Black, *The Constitutional Limit of Zero Tolerance in Schools*, 99 MINN. L. REV. 823, 858 (2015) (“[W]here schools do not act voluntarily [to provide procedural protections exceeding *Goss*’s minimal requirements], federal courts are generally unwilling to impose any additional process.”).
182. *Parkin*, *supra* note 26, at 1122. The Court in *Mathews*, at the first step of the due-process inquiry, found that termination of Social Security disability insurance implicated a constitutionally protected property interest in line with *Goldberg*’s broader conception of property. *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976). At the second step, however, the Court determined that the termination of disability benefits did not warrant the same formal, trial-type predeprivation hearings to which welfare recipients were entitled because terminated disability beneficiaries were not necessarily confronted with the immediately desperate situation of terminated welfare beneficiaries described in *Goldberg*, and because the termination of disability benefits was primarily based on objective criteria provided by physicians. *Id.* at 340–45.
183. *Mathews*, 424 U.S. at 334–35. Though *Goss* was decided before the Court articulated the *Mathews* balancing test, the *Goss* Court engaged in a similar exercise to determine what process was due for high-school students. See Charles H. Koch, Jr., *Sources of Administrative Procedure*, in 32 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 8129 (2021) (recognizing that *Goss* balanced interests in much the same way as *Mathews*, though *Mathews* is understood as articulating the governing model of civil due process). This is perhaps because the Court had articulated a similar, if less decisive, standard in

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.¹⁸⁴

Though scholars have heavily criticized this balancing approach,¹⁸⁵ it remains the primary means by which courts determine the specific procedures required for government deprivations of constitutionally protected property interests.¹⁸⁶ Contemporary due-process analysis at the second step, guided by *Mathews*, requires a “fact-intensive” inquiry into the circumstances presented by a particular denial or revocation of a protected interest.¹⁸⁷ The process historically afforded for a particular type of deprivation does not factor into the analysis.¹⁸⁸ Accordingly, the Court's jurisprudence “open[s] the door to reevaluation of procedural due-process precedents when changes in the underlying facts and

the 1961 case *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, which provided, in language that *Mathews* later echoed, that “consideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by the governmental action.” 367 U.S. 886, 895 (1961).

184. *Mathews*, 424 U.S. at 335.

185. See, e.g., Cynthia R. Farina, *Conceiving Due Process*, 3 YALE J.L. & FEMINISM 189, 234 (1991) (“If due process is to mark out and defend a sphere in which the individual is reliably preserved from the demands of the collective, how can the extent of the protection the individual receives turn on some calculus explicitly designed to maximize aggregate welfare?”); Gerald E. Frug, *The Judicial Power of the Purse*, 126 U. PA. L. REV. 715, 776 (1978) (pointing out the lack of clarity underlying how the *Mathews* factors are to be “weighed” against each other); Jerry L. Mashaw, *The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value*, 44 U. CHI. L. REV. 28, 46 (1976) (“The Supreme Court's analysis in [*Mathews*] is not informed by systematic attention to any theory of the values underlying due process review.”).

186. Parkin, *supra* note 23, at 294-97 (explaining that *Mathews*, by its terms, applied only to “the generality of cases, not the rare exceptions,” but that the Court has not clearly outlined which circumstances give rise to a second-step due-process inquiry that is not a *Mathews* balancing test (quoting *Mathews*, 424 U.S. at 344)). The Court has applied the *Mathews* balancing test to almost every civil case. *Id.* at 291-92; see, e.g., *Parham v. J.R.*, 442 U.S. 584, 599-600 (1979) (characterizing the *Mathews* test as the “general approach” for determining the specific procedures required following a determination that a protected interest is implicated); *Turner v. Rogers*, 564 U.S. 431, 444-45 (2011) (noting that in civil proceedings, courts will “determine the ‘specific dictates of due process’ by examining the [*Mathews* factors]” (quoting *Mathews*, 424 U.S. at 335)).

187. Parkin, *supra* note 26, at 1119; see also *id.* at 1126 (“[T]he Court has since applied *Mathew's* fact-driven, interest-balancing approach across a wide range of civil proceedings . . .”).

188. *Id.* at 1152-53.

circumstances bear upon the [*Mathews*] factors.”¹⁸⁹ As any one of the *Mathews* factors – the private interest affected, the value of additional process, or the government burden – changes, the constitutionally required process may also change.¹⁹⁰

B. The Present State of Students’ Due-Process Rights: Goss’s Minimal Protection but Lasting Import

Goss remains the Supreme Court’s only pronouncement regarding the due-process rights of public primary- and secondary-school students in the context of exclusionary discipline. Accordingly, the Court has not yet had the opportunity to evaluate whether the informal notice-and-hearing requirement fulfilled its purpose. Nor has it reevaluated the *Mathews* factors in light of the changed legal landscape, which vests additional property interests in students.

1. *Critiques of Goss*

Goss has been lambasted by both prodiscipline commentators and students’ rights advocates for diametrically opposing reasons. Prodiscipline commentators argue that the Supreme Court should not have found the Due Process Clause applicable to the school setting, and should have instead left decisions about disciplinary procedures to local school officials. On the other side, education reformers and advocates have taken the view that *Goss* correctly found constitutionally protected interests in avoiding unjust exclusion from the school setting, but failed to outline procedures that afford students meaningful protection.

Those in the prodiscipline camp criticize *Goss* for (1) setting *too high* a procedural floor for students, purportedly facilitating the overlegalization of American schools by involving the federal judiciary in decisions properly left to the discretion of localities;¹⁹¹ and (2) in practice, paralyzing educators on the ground, ultimately undermining administrators’ ability to maintain order through discipline.¹⁹² Both of these claims, however, lack support.

189. *Id.* at 1153.

190. *See id.*

191. DRIVER, *supra* note 33, at 148-50 (commenting that *Goss*’s nominal procedural requirements have been “distorted” by some commentators “falsely contending that the opinion required schools to offer suspended students elaborate procedural protections” resembling those of a criminal trial).

192. *Id.* at 150; e.g., Julie Underwood, *The 30th Anniversary of Goss v. Lopez*, 198 EDUC. L. REP. 795, 802 (2005) (“The common perception among administrators is [that] ‘the law’ or ‘requirements of due process’ prevent them from reacting to student disciplinary situations.”).

First, the contention that the *Goss* Court improperly inserted itself into policy choices rightfully made by local communities misunderstands the scope of the decision.¹⁹³ The Court, recognizing that education regulation is typically left to states and localities, did not delineate specific aspects of the necessary procedures,¹⁹⁴ instead instructing schools to provide “some kind of notice” and “some kind of hearing.”¹⁹⁵ Though the Court had, in other contexts, outlined the process due to interest holders in greater detail,¹⁹⁶ it left the matter of drafting the specific procedural rules that govern exclusionary discipline of students to school administrators.¹⁹⁷

Nor did *Goss* impose “substantive limits” on school discipline,¹⁹⁸ thus hindering the claim that the decision would subvert the maintenance of order in schools. The decision sought not to protect students deemed “deserving” of exclusionary discipline from the consequences of their actions.¹⁹⁹ Instead, by instituting minimum procedural requirements that would ensure a school official’s decision to remove a student from school was justified and based on a complete and accurate understanding of the facts, it sought to ensure the accuracy of the

193. See DRIVER, *supra* note 33, at 148-49 (noting that conservative critiques characterize *Goss* as “a prime example of judicial overreach”).

194. See *Goss v. Lopez*, 419 U.S. 565, 578 (1975) (“Judicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint. . . . By and large, public education in our Nation is committed to the control of state and local authorities.” (quoting *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968))).

195. *Id.* at 579 (emphasis added).

196. See, e.g., *Goldberg v. Kelly*, 397 U.S. 254, 266-71 (1970); *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 545-48 (1985) (detailing procedures for employee discharge); *Hamdi v. Rumsfeld*, 542 U.S. 507, 532-35 (2004) (detailing procedures for U.S. citizens held as enemy combatants); see also *Parkin*, *supra* note 23, at 289-91.

197. See *Freeman*, *supra* note 36, at 641-42.

198. Black, *supra* note 181, at 823, 844, 847-49. Some states and localities, however, have independently set limits on the form and duration of exclusionary discipline for specific violations. See, e.g., N.C. GEN. STAT. § 115C-390.2(d) (West 2022) (“Board policies shall not allow students to be long-term suspended or expelled from school solely for truancy or tardiness offenses and shall not allow short-term suspension of more than two days for such offenses.”); *Students Rights and Responsibilities: Student Code of Conduct*, CLEVELAND METRO. SCH. DIST. 32 (2020), <https://www.clevelandmetroschools.org/2021SCOC> [<https://perma.cc/NG7K-KVKF>] (“[Suspension] should be considered to address only the most serious infractions within each level of disciplinary classifications.”).

199. *Goss*, 419 U.S. at 579 (“The Due Process Clause will not shield [a student] from suspensions properly imposed, but it disserves both his interest and the interest of the State if his suspension is in fact unwarranted.”).

decision to suspend students.²⁰⁰ Today, as in 1975, schools retain broad discretion to set and enforce conduct rules of their choosing;²⁰¹ *Goss* merely requires school officials to provide adequate process in the course of removing a student from school for a violation of these rules to safeguard against *unjust* deprivation.

The second contention – that *Goss* has fundamentally undermined the efficacy of school discipline and the ability of schools to maintain order over students – also falls flat.²⁰² Even assuming, contrary to an abundance of evidence, that exclusionary discipline is effective,²⁰³ comprehensive empirical analysis of

200. *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974) (“[T]he touchstone of due process is protection . . . against arbitrary action of government.”).

201. See, e.g., Gardner, *supra* note 144, at 33 (“[E]ducational policymakers are allowed broad deference in implementing open-ended disciplinary rules in order to maintain order in their schools.”); MICHAEL PRAIRIE, TIMOTHY GARFIELD & NANCY L. HERBST, COLLEGE AND SCHOOL LAW: ANALYSIS, PREVENTION, AND FORMS 201 (Nancy L. Herbst ed., 2010) (“[T]he disciplinary process now seeks to regulate almost every aspect of student behavior. . . . Schools may adopt policies intended to create a more disciplined learning environment”); see also *id.* (asserting that while schools “are wise to state their standards of conduct in reasonably clear and narrow rules, . . . courts have upheld general standards of behavior that emphasize the need for ‘flexibility’”).

202. In the years before *Goss*, “the annual suspension rate for all racial groups, except African Americans, was below ten percent.” Black, *supra* note 181, at 832. After *Goss*, suspensions have doubled and “the rate [of suspensions] for each demographic group has increased significantly,” with a rate of twenty-four percent for Black students and above ten percent for almost every other major demographic group in 2015. *Id.*

203. “The most common rationale for suspending students is to deter students from future infractions of school conduct rules.” J. States, R. Detrich & R. Keyworth, *School Suspension and Student Outcomes: Does Suspension Impact Student Achievement and Dropout Rates?*, WING INST. (2015), <https://www.winginstitute.org/does-suspension-impact-student> [<https://perma.cc/VV5E-VQ7L>]. A substantial body of empirical research illustrates, however, that exclusionary discipline does not deter misbehavior, nor does it translate to stronger academic performance or safer schools. Russell J. Skiba, *Zero Tolerance, Zero Evidence: An Analysis of School Disciplinary Practice*, IND. EDUC. POL’Y CTR. 13 (Aug. 2000), <https://files.eric.ed.gov/fulltext/ED469537.pdf> [<https://perma.cc/E8ZV-GL27>] (finding “little evidence, direct or indirect, supporting the effectiveness of suspension or expulsion for improving student behavior or contributing to overall school safety”). In fact, the use of exclusionary discipline has negative short- and long-term effects on both excluded and nonexcluded students. See, e.g., Brian Daly, Cindy Buchanan, Kimberly Dasch, Dawn Eichen & Clare Lenhart, *Promoting School Connectedness Among Urban Youth of Color: Reducing Risk Factors While Promoting Protective Factors*, 17 PREVENTION RESEARCHER 18, 18 (2010) (stating that exclusionary discipline harms school connectedness and, indirectly, students’ physical and mental health); Johanna Lacoë & Matthew P. Steinberg, *Do Suspensions Affect Student Outcomes?*, 41 EDUC. EVALUATION & POL’Y ANALYSIS 34, 35–36 (2019) (finding that suspensions are negatively correlated with both academic achievement and student attendance); Amity L. Noltemeyer, Rose Marie Ward & Caven McLoughlin, *Relationship Between School Suspension and Student Outcomes: A Meta-Analysis*, 44 SCH. PSYCH. REV. 224, 234 (2015) (concluding, after conducting a meta-analysis of studies on the effects of exclusionary discipline, that there is a “statistically significant positive

lower-court decisions in the years following *Goss* “disconfirm[s] the hypothesis that *Goss* has spawned a modern trend of judicial intervention that has hampered public school discipline.”²⁰⁴ Nor do school officials, according to a national survey, believe that *Goss*’s highly informal hearing requirement imposes a “significant burden” on schools, rendering the contention that educators have been reluctant to suspend or expel students due to *Goss*’s procedural limits questionable.²⁰⁵ Further, the dramatic increase in school suspensions and expulsions since *Goss*—despite the fact that students today are better behaved than their 1970s counterparts²⁰⁶—suggests that, in practice, educators’ disciplinary efforts have not been impeded.²⁰⁷ As Driver points out, “[i]f more than 3.5 million different students are annually suspended when educators feel inhibited,

relationship between overall suspension rate and dropout rate”); Alison Evans Cuellar & Sara Markowitz, *School Suspension and the School-to-Prison Pipeline*, 43 INT’L REV. L. & ECON. 98 (2015) (using administrative data to conclude that suspensions are correlated with long-term criminal activity and the probability of arrest); Aaron Kupchik & Thomas J. Catlaw, *Discipline and Participation: The Long-Term Effects of Suspension and School Security on the Political and Civic Engagement of Youth*, 47 YOUTH & SOC’Y 95 (2015) (discovering that suspended students are less likely to vote or volunteer as young adults); Brea L. Perry & Edward W. Morris, *Suspending Progress: Collateral Consequences of Exclusionary Punishment in Public Schools*, 79 AM. SOCIO. REV. 1067, 1081-83 (2014) (explaining that school districts with high rates of exclusionary discipline see lower rates of academic success among even those students who are not suspended or expelled).

204. Perry A. Zirkel & Youssef Chouhoud, *The Goss Progeny: A Follow-Up Outcomes Analysis*, 13 U.C. DAVIS J. JUV. L. & POL’Y 333, 347 (2009). The authors of the study concluded that school districts’ success defending against *Goss* challenges to exclusionary discipline stemmed from the “wide latitude afforded in the constitutional holding in *Goss*, along with its flexible multi-factor test.” *Id.* at 346.
205. DRIVER, *supra* note 33, at 152 (summarizing the results of a 1985 survey by the National Center for Education Statistics).
206. Black, *supra* note 181, at 835 (reporting that data indicate that “students are not misbehaving any more today than they were in prior eras,” and that today’s students are less likely to engage in more serious misbehavior than their 1970s counterparts). In fact, the “dramatic spike” in the use of exclusionary discipline “results from schools increasingly suspending and expelling students for relatively minor misbehavior . . . that in the past would have been dealt with informally.” Derek W. Black, *Reforming School Discipline*, 111 NW. U. L. REV. 1, 3 (2016).
207. See DRIVER, *supra* note 33, at 152. The sharp increase in suspensions and expulsions since the 1970s is attributable, at least in part, to the widespread promulgation of zero-tolerance policies in schools in the 1990s. See Black, *supra* note 181, at 835-37. For example, the Gun-Free Schools Act of 1994 conditioned federal funding to states on their adoption of zero-tolerance policies that subjected students found in possession of a firearm on school grounds to a mandatory minimum one-year expulsion. 20 U.S.C. § 7961(b) (2018). The Act, however, permits schools to “modify [the] expulsion requirement on a case-by-case basis.” *Id.* Soon after the Act’s passage, “all fifty states enacted the required zero tolerance policies, [and] a large majority of states chose to go further by requiring the expulsion of students who commit drug, alcohol, and other school infractions, as well.” Eric Blumenson & Eva S. Nilsen, *One Strike and*

one struggles to comprehend the state of affairs that would exist if educators felt unbridled.”²⁰⁸

In fact, the rise in the use of exclusionary discipline since 1975 bolsters critiques of *Goss* from the opposing camp. Education reformers contend that *Goss* has failed to provide meaningful due-process protections to students, or set *too low* a procedural bar to adequately protect students from official overreach,²⁰⁹ if the informal notice and hearing it required are provided at all.²¹⁰ They argue that the procedures required by *Goss* are too weak to impose practical limitations on disciplinary overreach by school officials.²¹¹ Instead of setting disciplinary procedures that promote decisions based on accurate assessments of the facts, *Goss* merely allowed schools to “routinize process to produce the favored result” – the student’s suspension or expulsion.²¹²

Perhaps the most common critique is that *Goss*’s procedural requirements of “some kind of notice” and “some kind of hearing” are too vague to provide adequate guidance to students, schools, or lower courts.²¹³ On this view, by not

You’re Out? Constitutional Constraints on Zero Tolerance in Public Education, 81 WASH. U. L.Q. 65, 70 (2003) (footnote omitted). Zero-tolerance policy regimes tend to include, in addition to mandatory suspension and expulsion policies, the “[e]xpansion of disciplinary action to trivial infractions” that historically were handled informally, intrusive “[s]urveillance and searches,” and “[c]riminal referral and punishment.” See *id.* at 71-74. Challenges to zero-tolerance policies as facial violations of substantive due process have generally been unsuccessful in lower courts. See, e.g., *Ratner v. Loudoun Cnty. Pub. Schs.*, 16 F. App’x 140, 142 (4th Cir. 2001) (asserting that “courts are not properly called upon to judge the wisdom of a zero tolerance policy” of a school, even when it resulted in the four-month-long suspension of a student who took his peer’s knife to prevent her from harming herself).

208. DRIVER, *supra* note 33, at 152.

209. See, e.g., Richard B. Saphire, *Specifying Due Process Values: Toward a More Responsive Approach to Procedural Protection*, 127 U. PA. L. REV. 111, 171-72 (1978).

210. Empirical studies of schools’ provision of process to students two decades after *Goss* show that in-person hearings before a school board or hearing officer to review school districts’ decisions to suspend students occurred only fifty-three percent of the time. Donald H. Stone, *Crime & Punishment in Public Schools: An Empirical Study of Disciplinary Proceedings*, 17 AM. J. TRIAL ADVOC. 351, 359 (1993). When schools did provide a hearing, basic notice protections, such as provision of a summary of witness statements, were not given in sixty-five percent of the cases. *Id.* at 355.

211. Saphire, *supra* note 209, at 171-72.

212. Black, *supra* note 181, at 846; see Kirp, *supra* note 6, at 842 (anticipating the possibility that *Goss*’s informal notice-and-hearing requirements would be reduced to “prepunishment ceremonies”).

213. See, e.g., Black, *supra* note 181, at 847-49 (commenting that *Goss* lacked “meaningfully enforceable substance”); Lee E. Teitelbaum, *School Discipline Procedures: Some Empirical Findings and Some Theoretical Questions*, 58 IND. L.J. 547, 579 (1983) (explaining that by not specifying the content of the required notice, the *Goss* Court created uncertainty in what was constitutionally

specifying more clearly the notice required, *Goss* enables disciplinarians to punish students for violations of school rules that outline prohibited conduct without adequate specificity and descriptions of alleged misconduct that deprive students of information, which in turn prevents them from meaningfully defending against the claim.²¹⁴ Similarly, the *Goss* Court did not specify the content of the required hearing, besides stating that the student must have the opportunity to explain his side of the story, without addressing whether the disciplinarian had to base their decision on the student's argument.²¹⁵ As a result, school administrators can cut a student's explanation short, and may not consider it at all when making the disciplinary decision.²¹⁶ This sort of "hollow" procedure²¹⁷ does not allow for meaningful participation on the part of the student – though meaningful participation is a key principle animating due process generally.²¹⁸ The result,

required); Philip T.K. Daniel & Karen Bond Coriell, *Suspension and Expulsion in America's Public Schools: Has Unfairness Resulted from a Narrowing of Due Process?*, 13 HAMLIN J. PUB. L. & POL'Y 1, 15-32 (1992); Zirkel & Chouhoud, *supra* note 204, at 346 (hypothesizing that the "most likely reason" for federal-court decisions favoring school districts in procedural challenges to exclusionary discipline is "the wide latitude" that *Goss* afforded school disciplinarians); *see also* Rutherford, *supra* note 59, at 7 ("[I]f the governing principle is too vague, the opportunity to participate may be meaningless.").

In other cases involving procedural due-process rights, the Supreme Court has outlined the specific procedures required with much greater specificity. *See, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254, 264, 269-70 (1970) (explaining that welfare recipients are entitled to timely notice of termination and a pretermination hearing at which they have the opportunity to present evidence orally and to confront and cross-examine witnesses); *Morrissey v. Brewer*, 408 U.S. 471, 489 (1972) (holding that before an individual's parole could be revoked, the parolee had a right to written notice of the alleged violations and disclosure of evidence against the parolee, as well as to a hearing before a neutral body in which he could present witnesses and documentary evidence and confront and cross-examine adverse witnesses); *Wolff v. McDonnell*, 418 U.S. 539, 563-79 (1972) (requiring, in prison proceedings to deprive incarcerated individuals of their earned "good-time" credit, advance written notice of the claimed violation, a hearing at which the inmate is permitted to call witnesses and present documentary evidence, and, once a decision has been made, a written statement from the fact finders explaining the evidence relied on and the reason for the disciplinary action).

214. *See, e.g.*, *Walker v. Bradley*, 320 N.W.2d 900, 902 (Neb. 1982) (finding the notice requirement of *Goss* had been satisfied where advance notice of suspension for fighting did not include details of the *multiple* incidents of fighting).

215. *See Goss v. Lopez*, 419 U.S. 565, 582-83 (1975).

216. Dennis J. Christensen, *Democracy in the Classroom: Due Process and School Discipline*, 58 MARQ. L. REV. 705, 719-20 (1975).

217. Kirp, *supra* note 6, at 842.

218. *See Armstrong v. Manzo*, 380 U.S. 545, 552 (1965) (explaining that the opportunity to be heard "must be granted at a meaningful time and in a meaningful manner"); Rutherford, *supra* note 59, at 6-7 (explaining that a primary goal of due process is meaningful participation by the affected individual).

when students challenge their exclusion from school on procedural grounds, is excessive judicial deference to school administrators' decisions.²¹⁹

Critics further argue that *Goss's* procedural floor does not satisfy another core element of due process: that the decision maker be independent and unbiased.²²⁰ A decision maker's neutrality is essential for purposes of reliable and unbiased factual and substantive determinations, and thus for meaningful opportunity to be heard.²²¹ *Goss* implied that a single school official could perform multiple functions that are considered incompatible in other contexts²²² — including “observer of misconduct, provider of notice, hearing officer, and dispenser of short-term suspension” — and still be considered fair.²²³ The risk of partiality infecting a hearing with a student is magnified when the adjudicator lacks the requisite experience or training to maintain impartiality, as is likely the case for at least some school officials,²²⁴ even assuming good faith. And, as others have noted, the *Goss* Court's assumption of the “benevolent administrator” who makes just decisions in the student's best interests is wholly unfounded.²²⁵ School officials may make decisions that are not in the student's best interest;²²⁶ they may even

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219. See Alicia C. Insley, *Suspending and Expelling Children from Educational Opportunity: Time to Reevaluate Zero Tolerance Policies*, 50 AM. U. L. REV. 1039, 1052 (2001).
220. See Redish & Marshall, *supra* note 5, at 475-79; *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980) (explaining that adjudicatory neutrality “safeguards . . . the promotion of participation and dialogue by affected individuals in the decisionmaking process”).
221. See Redish & Marshall, *supra* note 5, at 477 (depicting independent adjudicators as the “*sine qua non*” of due process).
222. See Adrian Vermeule, *Optimal Abuse of Power*, 109 NW. U. L. REV. 673, 679-80 (2015) (describing how the combination of prosecutorial and adjudicative functions by decision makers in the administrative state may raise concerns of fairness).
223. Bartlett & McCullagh, *supra* note 22, at 24; see *Goss v. Lopez*, 419 U.S. 565, 582-83 (1975). Lower courts have permitted the commingling of functions. See, e.g., *Newsome v. Batavia Loc. Sch. Dist.*, 842 F.2d 920, 927 (6th Cir. 1988).
224. Cf. William G. Buss, *Procedural Due Process for School Discipline: Probing the Constitutional Outline*, 119 U. PA. L. REV. 545, 619-20 (1971) (describing how school board members are unlikely to be properly trained in adjudication).
225. Black, *supra* note 181, at 844-47; see also Wayne McCormack, *The Purpose of Due Process: Fair Hearing or Vehicle for Judicial Review?*, 52 TEX. L. REV. 1257, 1262 (1974) (“The abuses of the old ideals of juvenile courts and *in loco parentis* theories have amply demonstrated that danger lurks inherently in the notion of informal adjudicatory procedures.” (footnotes omitted)).
226. Educators may pursue goals that conflict with the goals of the school administration and policy makers. That government actors may act to further their own self-interest rather than the collective good is recognized across fora. See Jeffrey J. Rachlinski & Cynthia R. Farina, *Cognitive Psychology and Optimal Government Design*, 87 CORNELL L. REV. 549, 551-54 (2002). Specifically in the school context, research shows that school officials use suspension as a “‘push-out’ tool to encourage low-achieving students and those viewed as ‘troublemakers’ to leave school before graduation.” Skiba, *supra* note 203, at 13.

make decisions that conflict with the goals of other school administrators or policy makers.²²⁷ Their decision may be based on the student's past behavior, prejudice or partiality against the student,²²⁸ or personal interest in the outcome.²²⁹ When school officials base disciplinary decisions on information other than an objective assessment of the evidence before them, other procedural safeguards that serve to ensure students have meaningful opportunity to participate and promote accurate factfinding bear little practical significance because even the most formal hearing requirements are rendered inconsequential by the decision maker's ability to make decisions unrelated to the facts in dispute.²³⁰

Others question the adequacy of procedure, as in *Goss*, that fuses the traditionally distinct notice-and-hearing requirements together into one short conversation occurring mere minutes after the misconduct is alleged to have occurred.²³¹ The Court's due-process jurisprudence provides that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."²³² In other words, students must have a "reasonable opportunity to prepare" a response.²³³ But, where notice-and-hearing requirements are "collapse[d] . . . into one conversation,"²³⁴ the hearing might follow seconds after notification of the alleged infraction, which itself may follow immediately after the infraction, leaving students with virtually no time to formulate an effective response.²³⁵ The risk of inadequate procedure owing to the fusion of the notice-

227. See Morgan Polikoff & Shira Korn, *School Accountability*, in *THE OXFORD HANDBOOK OF CHILDREN AND THE LAW*, *supra* note 153, at 521, 521.

228. Explicit and implicit racial bias on the part of disciplinarians likely account for at least part of the disparity in rates of exclusionary discipline between white and nonwhite students. See Erik J. Girvan, *Towards a Problem-Solving Approach to Addressing Racial Disparities in School Discipline Under Anti-Discrimination Law*, 50 U. MEM. L. REV. 995, 1011 (2020) (explaining that school disciplinarians may "anticipate more inappropriate behavior from black students than white students, view black students as older and more culpable than similarly aged white students, or more quickly conclude that black students are troublemakers" (footnotes omitted)).

229. See McCormack, *supra* note 225, at 1259-62 (describing types of bias that may affect decision makers' judgment, including "personal interest in the outcome").

230. Cf. Redish & Marshall, *supra* note 5, at 477 (explaining that strong bias in adjudication renders "traditional procedural protections . . . a sham").

231. Elizabeth J. Upton, Note, "Some Kind of Notice" Is No Kind of Standard: The Need for Judicial Intervention and Clarity in Due Process Protections for Public School Students, 86 GEO. WASH. L. REV. 655, 667-68 (2018).

232. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

233. See, e.g., *In re Gault*, 387 U.S. 1, 33 (1967).

234. Upton, *supra* note 231, at 665.

235. See *id.* at 667-68.

and-hearing components into one conversation is heightened by students' developmental capacities and the tense nature of school disciplinary action. Both the stress of potentially being removed from school²³⁶ and the hierarchical nature of the school setting may make it even more difficult for students to formulate a cogent response in the moments between "notice" and "hearing."²³⁷

Reforms are needed to address the lack of meaningful protections available to students under *Goss's* requirements. Those arguing that *Goss* sets too low a procedural bar have suggested several improvements to the existing procedural regime, including proposing mediation as an alternative to *Goss's* informal notice-and-hearing requirements,²³⁸ requiring that the school disciplinary decision maker be impartial,²³⁹ and affording students the right to confront and cross-examine witnesses at hearings.²⁴⁰ However, these reforms, concerned only with the second step of judicial inquiry into the specific types of procedure required, are unlikely to be successful without a showing that at least one of the three *Mathews* factors – the individual's private property interest, the "risk of an erroneous deprivation" and "value" of "additional or substitute procedural safeguards," and the government's interest in avoiding undue "fiscal and administrative burdens"²⁴¹ – has changed in some way to warrant reevaluation of *Goss's*

236. Children "tend to make bad decisions in emotionally charged or pressured situations." Vivian E. Hamilton, *Immature Citizens and the State*, 2010 BYU L. REV. 1055, 1110.

237. Children, especially young children, do not have the same decision-making competence as adults. See *id.* at 1102-07; cf. Bonnie L. Halpern-Felsher & Elizabeth Cauffman, *Costs and Benefits of a Decision: Decision-Making Competence in Adolescents and Adults*, 22 J. APPLIED DEV. PSYCH. 257, 271-72 (2001) (noting that "there are important differences in decision-making competence between early adolescents and adults" while cautioning that "future research is needed to fully understand adolescent-adult differences in decision-making competence"). The Supreme Court has repeatedly recognized that children's unique cognitive and developmental characteristics warrant heightened constitutional protection. See, e.g., *J.D.B. v. North Carolina*, 564 U.S. 261, 279-81 (2011) (finding that, owing in part to children's more limited cognitive and developmental characteristics vis-à-vis adults, the age of a criminal suspect should inform the decision of whether the suspect should receive a *Miranda* warning pursuant to the Fifth Amendment); *Roper v. Simmons*, 543 U.S. 551, 569-70, 578 (2005) (holding that the Cruel and Unusual Punishment Clause of the Eighth Amendment prohibits the death penalty for juveniles, in part because children's underdeveloped cognitive capacities impede their decision-making). Accordingly, in determining which procedures are required in the context of exclusionary discipline, consideration of how the student's age affects his ability to form cogent arguments may be justified.

238. *McMasters*, *supra* note 36, at 764-70.

239. *Malutinok*, *supra* note 36, at 138-42.

240. Brent M. Pattison, *Questioning School Discipline: Due Process, Confrontation, and School Discipline Hearings*, 18 TEMP. POL. & C.R. L. REV. 49, 49-51 (2008).

241. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

procedural requirements.²⁴² The following Section explains why, notwithstanding its shortcomings, *Goss* remains critical in protecting students from arbitrary exclusion for several reasons, chief among them the Court's threshold determination that students have a constitutionally protected property interest in attending school.

2. *Goss's Continuing Relevance*

Despite the compelling criticisms of *Goss's* modest procedural requirements for failing to adequately safeguard students' property interests, *Goss* retains significance for at least four reasons. First, and most obviously, it required thousands of school districts across the country to implement basic due-process procedures in the course of suspending or expelling students,²⁴³ and encouraged districts that already met its informal notice-and-hearing standard "to afford [students even] stronger protections."²⁴⁴ By raising the procedural bar for the use of exclusionary discipline, *Goss* bore special import for racial justice in schools.²⁴⁵ Though certainly not precluding the possibility of racially motivated decisions, *Goss* placed a check on school administrators' use of suspension and expulsion to exclude students of color in an effort to maintain, in practice, the systems of segregation that *Brown v. Board of Education* outlawed.²⁴⁶

242. See Parkin, *supra* note 26, at 1152-53.

243. DRIVER, *supra* note 33, at 154. Though national school-administrator groups "denied that [*Goss*] would have much effect" on the grounds that most schools already provided the procedures that the decision mandated, surveys of state laws and school-district policies and practices illustrate that laws and regulations compelling school districts to adopt policies affording due process to students often went ignored. Kirp, *supra* note 6, at 853; Stone, *supra* note 210, at 359 (finding that, two decades after *Goss*, schools gave students hearings in suspension proceedings only fifty-three percent of the time).

244. DRIVER, *supra* note 33, at 154.

245. See *id.* at 157-58.

246. Josie Foehrenbach Brown, *Developmental Due Process: Waging a Constitutional Campaign to Align School Discipline with Developmental Knowledge*, 82 TEMP. L. REV. 929, 947 (2009) ("In school systems seeking to resist desegregation in the 1970s, school discipline was frequently manipulated to effect the 'pushout' of black students arriving in previously white schools."); J. Harvie Wilkinson III, *Goss v. Lopez: The Supreme Court as School Superintendent*, 1975 SUP. CT. REV. 25, 32 (explaining that *Goss* aimed to "vindicate the promise of *Brown* . . . [and] help relieve racial tensions by enhancing the appearance of evenhanded discipline"); see DRIVER, *supra* note 33, at 157-58. The ongoing disproportionate punishment of students of color, particularly Black boys, shows that *Goss* was not totally successful. See, e.g., Edward W. Morris & Brea L. Perry, *The Punishment Gap: School Suspension and Racial Disparities in Achievement*, 63 SOC. PROBS. 68, 70 (2016) (noting that Black students continue to be "punished at higher rates" and "are also more likely to experience severe punishment"). However,

Second, in addition to raising the procedural bar for excluding students from school, *Goss* “signaled” the Supreme Court’s willingness to apply various constitutional provisions to schools.²⁴⁷ That students hold a due-process right to dispute exclusion from school was by no means guaranteed in 1975.²⁴⁸ At that point, the Court had decided few cases on the constitutional rights of public primary- and secondary-school students, none of which extended the protections of the Due Process Clause specifically to students.²⁴⁹ *Goss*’s endorsement of students as rights holders thus provided more solid jurisprudential grounding for the emerging students’ rights movement.²⁵⁰

Relatedly, in affirming that students retain their constitutional rights even in the school setting,²⁵¹ *Goss* serves an expressive function that informs student conceptualizations of American democratic values.²⁵² The Court has itself repeatedly recognized that the public school is the primary setting in which students are prepared for participation in American democracy,²⁵³ and further that

declining to mandate even the minimal procedural requirements that *Goss* established would have given school disciplinarians carte blanche to perpetuate a form of the segregated school systems that *Brown* outlawed. See Wilkinson, *supra*, at 31.

247. See DRIVER, *supra* note 33, at 155-56.

248. *Id.* (providing historical context that shows how changes in the membership of the Supreme Court and mounting public concerns about student misbehavior could have resulted in a decision that held the Due Process Clause inapplicable to schools, quashing the students’ rights movement in the process).

249. *Id.* (explaining that in 1975, the notion that public primary- and secondary-school students bore individual constitutional rights – beyond a cabined version of the First Amendment right to free expression – did not yet have a sturdy jurisprudential basis).

250. See *id.*

251. Just six years before *Goss*, the Supreme Court held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty Sch. Dist.*, 393 U.S. 503, 506 (1969). This language was broadened to reflect the applicability of other constitutional provisions to the school setting in later decisions, which state more generally that students “do not shed their constitutional rights . . . at the schoolhouse gate.” See, e.g., *Morse v. Frederick*, 551 U.S. 393, 397 (2007); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 655-56 (1995).

252. See DRIVER, *supra* note 33, at 155; see also Saphire, *supra* note 209, at 119-21 (explaining that process reinforces “respect for human dignity,” even when the substantive result is deprivation or termination of one’s property interest).

253. See, e.g., *Ambach v. Norwick*, 441 U.S. 68, 76-77 (1979) (recognizing that public schools “inculcat[e] fundamental values necessary to the maintenance of a democratic political system”); *New Jersey v. T.L.O.*, 469 U.S. 325, 373 (1985) (Stevens, J., concurring in part and dissenting in part) (“Schools are places where we inculcate the values essential to the meaningful exercise of rights and responsibilities by a self-governing citizenry.”).

school officials can transmit specific values by modeling behavior.²⁵⁴ Because students are socialized to understand and appreciate American constitutional values from the broader school environment and the actions of school administrators,²⁵⁵ schools must not only invoke the rhetoric of fairness, reasoned decision-making, and participatory values that undergird due-process protections; they must also act and structure themselves accordingly.²⁵⁶ Schools, by affording students even minimal due-process rights, instill in students principles of individual dignity and fair treatment fundamental to American democracy.²⁵⁷

Finally, and most importantly for the purposes of this Note, even if the actual process that the *Goss* Court required was inadequate, the first analytical step that it took—finding that public-school students have a constitutionally protected property interest in education entitling them to *some* process in the context of exclusionary discipline—marked a sea change in education jurisprudence.²⁵⁸ By deciding that state statutes vested in students a property right to attend school in its threshold due-process inquiry, the Court left open the possibility of raising the procedural floor in the future as entitlements conferred upon students by the state evolve.²⁵⁹ Without a determination that students hold property interests in their educations, progress towards meaningful procedural protections in schools would have halted.

Part III argues that, as the government has granted additional statutory entitlements to K-12 public-school students in the form of both nutritional meals

254. *Ambach*, 441 U.S. at 78-79. Education reformers have long recognized that “the school environment influences the habits, dispositions, and social attitudes of children” heavily. MICHAEL A. REBELL, *FLUNKING DEMOCRACY: SCHOOLS, COURTS, AND CIVIC PARTICIPATION* 82 (2018).

255. Betsy Levin, *Educating Youth for Citizenship: The Conflict Between Authority and Individual Rights in the Public School*, 95 *YALE L.J.* 1647, 1648-49 (1986). When schools do not respect democratic and participatory values, “students are likely to get mixed signals with regard to the democratic values needed to function as citizens in our society: The way in which school administrators operate schools may have a more powerful influence on students than the lessons in their civics textbooks.” *Id.* at 1649.

256. *See id.* at 1671-72.

257. Schools should strive to model proceedings that reach accurate decisions and that are fundamentally fair. Schools adopting hollow procedures risk conveying to students that their due-process rights, and their constitutional rights more generally, are insignificant. *See* Michael A. Ellis, *Procedural Due Process After Goss v. Lopez*, 1976 *DUKE L.J.* 409, 423-24.

258. *See Black*, *supra* note 181, at 842-43 (noting that *Goss*, in recognizing education as “a fundamental or vested property right” under the Constitution, broke with previous Supreme Court decisions which “had treated education as a contingent right”); *see also* Merrill, *supra* note 133, at 887 (“The Court has rendered numerous decisions . . . reaffirming the idea that property is a precondition of procedural due process protection.”).

259. *See Arnett v. Kennedy*, 416 U.S. 134, 185 (1974) (White, J., concurring in part and dissenting in part) (“While the State may define what is and what is not property, once having defined those rights the Constitution defines due process.”).

and school health services, those students' property interests in attending school also increases. Exclusionary discipline today deprives students not only of access to academic education, but also to food and healthcare. Understanding these additional entitlements as bolstering students' property interests under the *Mathews* balancing test invites "reevaluation" of the minimal procedural requirements for exclusionary discipline set by *Goss* in favor of broader procedural rights for students.²⁶⁰

III. CHANGES IN FEDERAL AND STATE LAW SINCE *GOSS V. LOPEZ*

As described in Section I.B, the *Roth* Court redefined property interests protected by the Due Process Clause as arising from substantive guarantees in sub-constitutional sources of law²⁶¹: federal, state, or local laws or regulations, or an express or implied agreement with the government that support "claims of entitlement" by guaranteeing a benefit to an individual or class of individuals.²⁶² Once the existence of a protected property interest is ascertained at the first step, courts prescribe the specific procedures that are constitutionally required at the second step.²⁶³

The *Goss* Court examined whether students held a property interest in "public education"²⁶⁴ under Ohio law which, like all other states, guarantees free public education to resident children²⁶⁵ and requires children of certain ages to attend school through compulsory-attendance provisions.²⁶⁶ The statutory right to education and obligation to attend school vest in students a property interest

260. See Parkin, *supra* note 26, at 1151-53.

261. Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 572, 577 (1972).

262. *Id.* at 577; accord Bishop v. Wood, 426 U.S. 341, 344-45 (1976); see Land, *supra* note 88, at 787 ("A person's interest in a benefit is a property interest for due process purposes if there are such rules or mutually explicit understandings that support the claim of entitlement to the benefit that he may assert.").

263. See Perry v. Sindermann, 408 U.S. 593, 601-03 (1972).

264. See *Goss v. Lopez*, 419 U.S. 565, 573-74 (1975).

265. See *infra* Appendix A. State constitutions vary in the scope of educational obligations they impose on legislatures: some use "only general education language" to provide for a system of free public schools while others require that public schools meet a certain minimum quality, while still others impose "more specific education mandate[s]." See Gershon M. Ratner, *A New Legal Duty for Urban Public Schools: Effective Education in Basic Skills*, 63 TEX. L. REV. 777, 815-16 (1985). These differences, however, do not factor into whether students have a property interest in education—even the undermost constitutional mandates "impose duties on the state to provide some form of public education" sufficient to confer upon students a property interest in their educations. See *id.*

266. *Ingraham v. Wright*, 430 U.S. 651, 660 n.14 (1977).

in their educations and, accordingly, procedural rights to prevent unjust deprivation of that interest.²⁶⁷

In this Part, I use comprehensive fifty-state surveys to demonstrate how the function of public primary and secondary schools has grown beyond merely academic preparation to encompass the provision of meals and healthcare to at least some students. Federal and state laws and regulations have granted at least some students guarantees in school-meals and school-health services that constitute property interests beyond those contemplated by the *Goss* Court in 1975. The deprivation of meals and healthcare arguably constitutes a far more grievous injury to students than the mere academic loss that the *Goss* Court anticipated, inviting reevaluation of the process due in the course of exclusion from school.

Before exploring how recent statutory and regulatory developments have conferred in students property interests in school-meals and school-health services, however, one matter is worth addressing. Well before *Goss v. Lopez* was decided in 1975, the federal government had already enacted legislation that created, funded, and regulated meal programs in which schools could voluntarily participate.²⁶⁸ Neither the briefs of the parties, nor the lower-court decisions, nor the Supreme Court's narrow decision²⁶⁹ addressed whether these federal meal programs themselves conferred a protected property interest on students. That this question went unanswered is arguably attributable to the contemporary novelty of both the students' rights movement²⁷⁰ and the still-developing jurisprudential application of due-process protections to property interests arising from legislative guarantees, such as statutory grants of government benefits.²⁷¹ Moreover, there was no federal law that guaranteed children healthcare in schools at the time that *Goss* was decided, nor did Ohio, the home state of the

267. *Goss*, 419 U.S. at 574 (“[T]he State is constrained to recognize a student’s legitimate entitlement to a public education as a property interest which is protected by the Due Process Clause . . .”).

268. *See, e.g.*, Richard B. Russell National School Lunch Act, ch. 281, §§ 2-11, 60 Stat. 230, 230-34 (1946) (codified at 42 U.S.C. §§ 1751-1759 (2018)).

269. The Supreme Court’s decision was so limited in scope that it addressed itself only to the precise type of exclusionary discipline to which the student-plaintiffs were subject: suspensions of ten days or less. *Goss*, 419 U.S. at 584. The Court ignored other clearly related forms of exclusionary discipline like in-school suspensions, longer suspensions, and expulsions.

270. *See supra* notes 143-145 and accompanying text; *see also* DRIVER, *supra* note 33, at 155-56 (noting that in 1975, the students’ rights movement was “in its infancy”).

271. *See supra* Part I (describing the jurisprudential expansion of the types of property protected by the Due Process Clause following *Goldberg* and *Roth*).

plaintiffs challenging their suspensions, include any such provision in its statutory code.²⁷² Without a source of law even arguably creating a property interest in healthcare,²⁷³ there was no basis upon which to argue for more formal procedural protections.

Developments in the legal landscape since *Goss* was decided in 1975, however, have affected students' property interests related to education. Since *Goss*, both federal and state involvement in education have increased significantly.²⁷⁴ Federal law creating the school-meal programs, though originally enacted in 1946, has been broadened by amendment to provide additional funding, increasing the percentage of schools that participate. And, since 1975, the federal government has passed laws regarding the provision of school-health services.²⁷⁵ Most importantly for purposes of this Note, the majority of states have enacted laws or promulgated regulations that require schools to provide at least some students with particular benefits: government-subsidized meals and healthcare.²⁷⁶ Building on the guarantees of federal law, these state laws and regulations vest in students property interests protected by the Due Process Clause, because they create reasonable expectations in the receipt of benefits.²⁷⁷

272. The most basic of the Ohio statutory provisions concerning school-meal services, which requires high-need Ohio school districts to participate in the federal meal programs, was not enacted until 1976, one year after *Goss* was decided, and was not effective until 1977. See 1976 Ohio Laws 1427.

273. Even current Ohio laws permit, but do not require, schools to provide various health services to students and thus do not create property interests in all students in the state. See, e.g., OHIO REV. CODE ANN. § 3313.68(A) (West 2021); *Id.* § 3313.673(A).

274. Funding is one example: in the 2017–2018 academic year, the funding of public primary and secondary education in the United States reflected expenditures of approximately \$625 billion, or approximately \$12,300 per student. Wood, *supra* note 153, at 505, 506.

275. INSTITUTE OF MEDICINE COMM. ON COMPREHENSIVE SCH. HEALTH PROGRAMS IN GRADES K-12, SCHOOLS & HEALTH: OUR NATION'S INVESTMENT 48 & n.4 (Diane Allensworth, Elaine Lawson, Lois Nicholson & James Wyche eds., 1997) [hereinafter SCHOOLS & HEALTH: OUR NATION'S INVESTMENT].

276. See *infra* Appendices B & C. Even in those states that do not mandate the provision of such benefits, localities can and have adopted policies requiring schools to provide students with subsidized meals and healthcare. See Lytton, *supra* note 51, at 1190 (noting the existence of “stricter state and local sales restrictions and nutrition standards”). For the sake of brevity, this Note does not examine the policies of localities. It is, however, worth noting that to the extent that individual school districts mandate the provision of nutritional programs and health services to students such that students have a reasonable expectation that they will receive that benefit, the procedural floor set by *Goss* may be reevaluated. Cf. *James v. Cleveland Sch. Dist.*, No. 19-CV-66-DMB-RP, 2021 WL 3277239, at *15 (N.D. Miss. July 30, 2021) (explaining that a school district's student handbook may create an entitlement subject to procedural protection).

277. See *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972).

Unlike post-*Goss* lower-court decisions, which held that students lacked a constitutionally protected property interest in individual components of education such as attending a particular school,²⁷⁸ the provision of meals and healthcare constitute specific statutory entitlements guaranteed by federal and state law. The expanding nature and scope of entitlements that statutes confer upon students have created a corresponding increase in students' property interests in avoiding unjust exclusion from school. In addition to depriving students of academic opportunities, suspension or expulsion may restrict—or even eliminate—their access to government-subsidized nutritional meals and school-health services,²⁷⁹ a loss resembling that of the welfare recipients in *Goldberg* upon benefits termination.²⁸⁰

This suggests that even if the minimal procedures that the *Goss* Court required in 1975 were constitutionally adequate at the time, the functions of American public schools have expanded such that exclusion from school now constitutes a much greater deprivation. Couched in terms of the *Mathews* balancing test,²⁸¹ students' interest in avoiding unjust exclusion from school has increased, while the school's countervailing interests in maintaining order and discipline and avoiding costly administrative burdens have remained the same. Accordingly, the procedures that school officials afford students in the course of exclusionary discipline should be expanded in light of the expansions of federal law, as well as the recent enactments of state statutes and regulations, that shift the balance of the *Mathews* factors.²⁸²

This approach is consistent with the Court's flexible due-process jurisprudence, which permits evolution of the specific procedures required as the implicated interests and the weight assigned to each prong of the *Mathews* test

278. See *supra* notes 172–181 and accompanying text.

279. For example, a Florida criminal statutory provision states that a suspended or expelled student “who enters or remains upon the campus or any other facility owned by any such school commits a trespass upon the grounds of a school facility and is guilty of a misdemeanor of the second degree . . .” FLA. STAT. § 810.097 (2022). Similarly, the Chicago public-school system's student code of conduct provides that “[a] student serving out-of-school suspension is not allowed to come onto school property, participate in extracurricular activities, or attend school-sponsored events. A student may be considered trespassing if he or she comes onto school grounds while suspended out of school.” *Chicago Public Schools Policy Manual: Student Code of Conduct*, CHI. PUB. SCH. (June 23, 2021), <https://policy.cps.edu/download.aspx?ID=263> [<https://perma.cc/KZ7U-W8TE>]. The policy makes no exceptions for students seeking meals or healthcare.

280. See *infra* Part IV; see also *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (“[W]elfare provides the means to obtain essential food . . . and medical care.”).

281. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

282. See *Parkin*, *supra* note 26, at 1152–53.

change.²⁸³ Indeed, as the Court recognized in 1961, “[d]ue process,’ unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances.”²⁸⁴ And, as one scholar has summarized, “[t]he more things change, the more likely it is that decades-old procedures must be updated”²⁸⁵ This Part will demonstrate how the statutory and regulatory regimes have changed as schools have become recognized sources of social services and child-welfare programs.²⁸⁶ Sections III.A and III.B detail the development and current scope of school-meal services and school-health services, respectively. Fifty-state surveys show that states have, in many instances, come to mandate, and students have come to expect, schools to provide services beyond education.

A. School-Meal Services

This Section examines the inception and growth of school-meal services, focusing in Section III.A.i on the development of the federal government’s statutory creation and regulation of the school-meal programs. Evaluating this statutory scheme illustrates how, by guaranteeing every public-school student at a participating school a state-subsidized lunch, the government has arguably already conferred property interests in school meals on nearly all public primary- and secondary-school students in the country. Section III.A.ii then analyzes the contemporary legal landscape by evaluating the statutes and rules regulating the provision of meal services to students of all fifty states, which reveal that in a plurality of states, students have clear entitlements to school meals, and in the great majority, all low-income students have such entitlements.

283. See Redish & Marshall, *supra* note 5, at 470-74; see also Parkin, *supra* note 26, at 1152 (explaining that the *Mathews* balancing test “reject[s] one-size-fits-all approaches to procedural due process, instead directing courts to consider the facts and circumstances of the specific procedural setting in which the due process challenge arises”).

284. *Cafeteria & Rest. Workers Union, Local 473 v. McElroy*, 367 U.S. 886, 895 (1961) (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 162 (1951) (Frankfurter, J., concurring)). The Court has repeated this pronouncement in several cases since. See, e.g., *Connecticut v. Doe*, 501 U.S. 1, 10 (1991).

285. Parkin, *supra* note 26, at 1117.

286. WHITE HOUSE CONFERENCE ON FOOD, NUTRITION, AND HEALTH: FINAL REPORT 216 (1969) (“As a delivery system, the school has its major client, the growing child, under conditions that cannot be rivaled. His presence at a particular attendance unit can be predicted and planned for.”).

1. *The Historical Development of School-Meal Services*

During the Progressive Era, private charitable organizations, rather than the government, undertook to provide meals to hungry children in schools.²⁸⁷ These organizations were concerned that many poor children, who were required to attend school by compulsory-attendance laws enacted at the turn of the twentieth century, were too hungry to concentrate on their schoolwork.²⁸⁸

The Great Depression—during which the number of both farmers struggling with surplus crop yields and families with children going hungry skyrocketed—prompted federal involvement and the first of a series of instances of growth in the scope of school services.²⁸⁹ To address the needs of both groups, Congress authorized the U.S. Department of Agriculture (USDA) to purchase surplus food commodities for use in school lunches.²⁹⁰ Congress formalized this program in 1946 through the NSLA, which had two explicit goals: “to safeguard the health and well-being of the Nation’s children” and “to encourage the domestic consumption of nutritious agricultural commodities” by assisting the states in “providing an adequate supply of foods and other facilities for the establishment, maintenance, operation, and expansion of nonprofit school-lunch programs.”²⁹¹ The Act created the National School Lunch Program (NSLP), administered by USDA,²⁹² which allocated federal grant money to participating

287. POPPENDIECK, *supra* note 96, at 43.

288. *Id.* For detailed accounts of the food-service programs that local charities provided in the late-nineteenth and early-twentieth centuries, see Gordon W. Gunderson, *The National School Lunch Program: Background and Development*, U.S. DEP’T AGRIC. 5-12 (2008), <https://fns-prod.azureedge.net/sites/default/files/resource-files/NSLP-program-history.pdf> [<https://perma.cc/7X8N-RDMS>].

289. POPPENDIECK, *supra* note 96, at 44.

290. LEVINE, *supra* note 95, at 46; see Donald T. Kramer, Annotation, *Construction and Application of National School Lunch Act (42 U.S.C.A. § 1751 et seq.) and Child Nutrition Act of 1966 (42 U.S.C.A. § 1771 et seq.)*, 14 A.L.R. Fed. 634 § 2 (1973).

291. Richard B. Russell National School Lunch Act, ch. 281, §§ 2-11, 60 Stat. 230, 230-34 (1946) (codified at 42 U.S.C. §§ 1751-1759 (2018)). The federal government itself recognized in 1969 that the program’s association with the distribution of surplus commodities “does not yield the best return in terms of nutritional effectiveness or administrative efficiency.” WHITE HOUSE CONFERENCE ON FOOD, NUTRITION, AND HEALTH, *supra* note 286, at 235. Contemporary commentators argue that the continued use of surplus commodities in school meals has resulted in the distribution of high-fat, calorie-dense food to students, contributing to health issues. See Ellen Fried & Michele Simon, *The Competitive Food Conundrum: Can Government Regulations Improve School Food?*, 56 DUKE L.J. 1491, 1502-03 (2007).

292. Sheila A. Taenzler, Comment, *The National School Lunch Program*, 119 U. PA. L. REV. 372, 372 (1970); see also Kramer, *supra* note 290, § 3(a) (giving background on the National School Lunch Act (NSLA)).

schools to partially subsidize all school meals that complied with federal guidelines, including those for students whose families could afford to pay for them.²⁹³ In other words, participation in the NSLP was not capped at a certain number of schools or students.²⁹⁴ Though the dollar amount of the federal subsidy depended then and still depends on the child's family income, the Act, by providing a government-subsidized school lunch to each student at a participating school, created an entitlement.²⁹⁵

But, because schools were not required to participate in the NSLP,²⁹⁶ many students did not receive government-subsidized lunches.²⁹⁷ As schools received, at the time, federal reimbursement for each meal at the same rate, regardless of whether the student received it for free or at a reduced price, high-need schools did not participate as often as their wealthier counterparts.²⁹⁸ In fact, through the 1950s, USDA "largely ignored the [NSLA's] provisions requiring participating schools to offer free lunches to children who could not afford to pay," so even eligible children at participating schools often did not receive the lunches to which they were statutorily entitled.²⁹⁹ The NSLP, early on, was not just poorly

293. National School Lunch Act §§ 4, 9 (codified at 42 U.S.C. § 1755 (2018)) (providing that lunches "shall be served without cost or at a reduced cost to children who are determined by local school authorities to be unable to pay the full cost of the lunch"); Gunderson, *supra* note 288, at 12.

294. Caps on the absolute number of individuals who can receive a benefit despite meeting all eligibility requirements may invalidate arguments that such a benefit constitutes a property interest, as the numerical limit renders the benefit too indefinite to establish a legitimate claim to an entitlement and, accordingly, a property interest. See Andrew Hammond, *Welfare and Federalism's Peril*, 92 WASH. L. REV. 1721, 1732 (2017) (describing how a federal welfare statute explicitly disclaimed a right to a benefit such that "no individual could sue the state for failing to provide a benefit for which that individual is legally eligible").

295. See Super, *supra* note 42, at 728. While an entitlement must have some limiting eligibility criteria to give rise to a property interest, the circumscription of the benefit here to students suffices. See *id.* at 668 (noting the "very liberal eligibility rules" of the school-meal programs).

296. See *Briggs v. Kerrigan*, 307 F. Supp. 295, 298 (D. Mass. 1969) (interpreting the NSLA to require only those schools that choose to participate in the federal program to provide free or reduced-price meals to eligible children).

297. POPPENDIECK, *supra* note 96, at 134-35; see LEVINE, *supra* note 95, at 116 (explaining that before the 1960s, state and local officials, not the federal government, set the eligibility criteria for free and reduced-price meals).

298. See POPPENDIECK, *supra* note 96, at 54-57.

299. LEVINE, *supra* note 95, at 103. This is perhaps a reflection of the U.S. Department of Agriculture's continued focus in the 1950s on addressing agricultural surplus, rather than child poverty. *Id.* at 106.

administered, but also poorly funded.³⁰⁰ Participating schools typically exhausted federal funds before the end of the school year,³⁰¹ requiring schools to request additional state funding or find ways to fund the meals independently.³⁰²

Greater public concern for the poor in the 1960s prompted several amendments to the NSLA, broadening its scope³⁰³ and implicating the critical question of whether the NSLP would remain a means by which to manage agricultural commodity markets or serve as a universal child-nutrition program.³⁰⁴ In 1962, the Act authorized funding for free meals at schools in high-need areas.³⁰⁵ As part of President Johnson's War on Poverty, the Child Nutrition Act of 1966 (CNA) was enacted, aiming to address administrative and funding problems that had plagued the NSLP's administration since its inception.³⁰⁶ The CNA increased federal funding for school food services,³⁰⁷ including the reimbursement rate for school meals to incentivize school participation.³⁰⁸ It also established a federal milk program,³⁰⁹ a school breakfast program (SBP),³¹⁰ and a preschool meal program to reach children not yet in primary school, arguably vesting more

300. POPPENDIECK, *supra* note 96, at 53 (explaining that federal “[a]ppropriations . . . failed to keep pace with either the expansion of the program or rising food prices”).

301. *Id.*

302. LEVINE, *supra* note 95, at 102-03. But state and local efforts to fund school meals often failed. “By 1960, fewer than 10 percent of the National School Lunch Program meals were offered for free.” *Id.* at 103.

303. Kramer, *supra* note 290, § 3(a); *see also* POPPENDIECK, *supra* note 96, at 49-54 (discussing child-nutrition assistance during the Johnson administration).

304. LEVINE, *supra* note 95, at 109-10. It was eventually established as the latter.

305. Act of Oct. 15, 1962, Pub. L. No. 87-823, § 11, 76 Stat. 944, 946-47 (codified at 42 U.S.C. §§ 1752-1760 (2018)); 42 U.S.C. § 1759a (2018) (establishing a formula for disbursing special funds to high-need schools); *see* POPPENDIECK, *supra* note 96, at 49.

306. LEVINE, *supra* note 95, at 116. To some extent, however, the Child Nutrition Act (CNA) failed to meaningfully change the tradition of local control regarding the distribution of school meals as eligibility criteria continued to differ widely across states and localities. *Id.* at 116-18.

307. *See* POPPENDIECK, *supra* note 96, at 50-51 (explaining how the CNA provided federal money for state administrative expenses related to the meal programs, food programs for preschools and day cares, and breakfast programs, all motivated by a new understanding of school-meal services “through an antipoverty lens”). But the federal funding, again left to local administration and discretion, often did not translate into meals for poor children. LEVINE, *supra* note 95, at 128.

308. *See* Kristie Gurley, Note, *For the Health of It: How the Quantified Health Benefits of the USDA Nutrition Standards Justify Reauthorization and Increased Funding for School Meal Reimbursement*, 53 HARV. J. ON LEGIS. 387, 392 (2016); Child Nutrition Act of 1966, Pub. L. 89-642, § 4(d), 80 Stat. 885, 886 (codified at 42 U.S.C. §§ 1771-1793 (2018)).

309. Child Nutrition Act § 3; *see also* Kramer, *supra* note 290, § 3(a) (explaining that the “Act provides funds for a special milk program”).

310. Child Nutrition Act § 4.

entitlements in children.³¹¹ Just two years later, Congress, again responding to public outcry against child hunger,³¹² further amended the NSLA to fund the creation of other programs to feed children when school was not in session, like the Summer Meals Program.³¹³ To improve administrative efficiency and reach more children, the Food and Nutrition Service (FNS), housed within USDA, was created.³¹⁴

Despite the additional funding, bureaucratic programming, and steps toward administrative efficiency, the amended NSLP remained ineffective at reaching poor children.³¹⁵ In the early 1970s, Congress again responded by passing a series of amendments to the NSLA that further broadened its reach. In addition to allocating additional funding,³¹⁶ the amendments set “uniform national standards to define eligibility for free and reduced [price] meals”³¹⁷ and provided for *full* federal reimbursement of those meals.³¹⁸ If the NSLP’s original funding structure, subsidizing meals for all students at participating schools, did not already constitute an entitlement giving rise to a property interest, the 1970s

311. *Id.* § 12. Though in previous iterations of the law, federal money could only cover the cost of food itself, “the [S]ecretary of [A]griculture was authorized to approve reimbursement of up to 80 percent of the costs of obtaining, preparing, and serving breakfasts.” POPPENDIECK, *supra* note 96, at 51.

312. POPPENDIECK, *supra* note 96, at 58–59; LEVINE, *supra* note 95, at 132 (explaining how the CNA failed to provide free lunches to poor children – one of the key problems plaguing the National School Lunch Program’s (NSLP) administration – resulting in public calls for school-lunch reform).

313. POPPENDIECK, *supra* note 96, at 63. At the same time, programs aimed at ending hunger for adults, like the Food Stamp Program, were “dramatically expanded and liberalized.” *Id.*

314. Gunderson, *supra* note 288, at 26.

315. POPPENDIECK, *supra* note 96, at 58 (noting that only about one-third of the six million eligible students received free or reduced-price lunch).

316. See LEVINE, *supra* note 95, at 153 (describing the dramatic growth of total federal appropriations for school lunches from 1946, when the NSLA was passed, to the 1970s).

317. Helena C. Lyson, *National Policy and State Dynamics: A State-Level Analysis of the Factors Influencing the Prevalence of Farm to School Programs in the United States*, 63 FOOD POL’Y 23, 25 (2016). At the time, “children from families with incomes below 125 percent of the federal poverty line were entitled to free meals, and those from families with incomes up to 195 percent were entitled to 20 cent lunches and 10 cent breakfasts.” POPPENDIECK, *supra* note 96, at 62.

318. POPPENDIECK, *supra* note 96, at 61. In other words, though Congress continued to reimburse schools for all qualifying meals served to eligible students, “there was no cap on the funds that a state could receive.” *Id.* Schools continued to receive partial reimbursements for meals served to all other students. *Id.*

amendments, by clearly defining the class of eligible beneficiaries³¹⁹ and removing discretion as to whether to bestow the benefit,³²⁰ surely rendered school meals “an entitlement for low-income children who attended schools that chose to participate in the program.”³²¹ Notably, unlike other federal welfare statutes which explicitly provide that means-tested aid programs do not constitute entitlements and thus do not confer a protected property interest on recipients,³²² the federal school-meal program statutes do not disclaim the creation of any entitlement to benefits.³²³

Though by 1969 the White House had released a report recognizing that “[e]very child has a right to the nutritional resources that he needs to achieve optimal health,”³²⁴ lawsuits brought in this period centered not on securing the status of school-meal programs as entitlements conferring property interests on students, but rather on challenging discriminatory rules and increasing funding for school lunches.³²⁵ The focus on local administration of the school-meal programs and practical efforts to ensure free meals for poor children clarifies why, when the *Goss* suit was initiated, neither the advocates nor the courts contemplated the federal school-meal programs as potential entitlements.

Following *Goss*, the NSLP continued to grow. By 1990, it was the largest federal child-nutrition program, and its growth continued into the twenty-first

319. See Land, *supra* note 88, at 787 (“[A] property interest must be rooted in the statute defining eligibility for the benefit. A person’s interest in a benefit is a property interest for due process purposes if there are such rules or mutually explicit understandings that support the claim of entitlement to the benefit that he may assert.”).

320. *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005) (remarking that “a benefit is not a protected entitlement if government officials may grant or deny it in their discretion”).

321. POPPENDIECK, *supra* note 96, at 62.

322. The law that replaced the AFDC program with TANF included such a provision. See Professional Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 401(b), 110 Stat. 2105, 2113 (codified as amended at 42 U.S.C. § 601 (2018)) (disclaiming that receipt of cash benefits under TANF establishes an individual entitlement by stating that the program “shall not be interpreted to entitle any individual or family to assistance under any State program funded under this part”). This provision released state governments of constitutional obligations to provide due process to TANF recipients seeking to challenge benefits denials or termination. Hammond, *supra* note 294, at 1732.

323. In fact, over the past thirty years, amendments in federal welfare laws have transferred discretion in benefits administration to states, disincentivizing welfare spending and weakening the capability to set procedural safeguards. See Hammond, *supra* note 294, at 1729-35. However, the federal government has not offloaded responsibility for the school-meal programs—quite the opposite. The federal government has taken increasing interest in the federal school-meal programs and has continued to increase funding and administrative efforts. See generally LEVINE, *supra* note 95 (discussing the national politics of school-meal programs).

324. WHITE HOUSE CONFERENCE ON FOOD, NUTRITION AND HEALTH, *supra* note 286, at 216.

325. See LEVINE, *supra* note 95, at 143.

century.³²⁶ The most recent substantive amendment to the NSLA was the Healthy, Hunger-Free Kids Act of 2010, which both reauthorized and increased funding for the lunch program.³²⁷ In addition to heightening nutritional standards and authorizing additional federal reimbursement,³²⁸ the Act automatically enrolls a child in the NSLP if a child's family participates in SNAP, Medicaid, or other means-tested federal programs.³²⁹ The Act also created the Community Eligibility Provision (CEP), giving high-need schools the option of offering free meals to all of their students regardless of individual eligibility status.³³⁰ At all schools participating in the CEP, then, all students, by virtue of being guaranteed a free lunch, are entitled to and hold property interests in free lunches.

2. Contemporary School-Meal Services

Today, the NSLP is the country's second-largest nutrition-assistance program³³¹ after SNAP.³³² Though the school-nutrition programs continue to operate on a "voluntary basis,"³³³ approximately ninety-five percent of public schools currently participate in the NSLP.³³⁴ Of the millions of children eligible for free or reduced-price lunch,³³⁵ the NSLP provides roughly 29.6 million students free or reduced-price lunches annually, at a cost of approximately \$14.2

326. *Id.* at 180.

327. Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended at 42 U.S.C. § 1751 (2018)).

328. Melissa D. Mortazavi, *Are Food Subsidies Making Our Kids Fat? Tensions Between the Healthy Hunger-Free Kids Act and the Farm Bill*, 68 WASH. & LEE L. REV. 1699, 1713-14 (2011).

329. See 7 C.F.R. § 245.9(f)(1) (2016). This automatic enrollment provision arguably reflects federal recognition of the NSLP as an entitlement on par with other welfare benefits.

330. Healthy, Hunger-Free Kids Act § 104.

331. Econ. Rsch. Serv., *National School Lunch Program*, U.S. DEP'T AGRIC. (2021), <https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/national-school-lunch-program> [<https://perma.cc/YN6N-6APM>].

332. The Supplemental Nutrition Assistance Program (SNAP) provides supplemental funding to purchase food to low-income Americans. Econ. Rsch. Serv., *Supplemental Nutrition Assistance Program*, U.S. DEP'T AGRIC. (2021), <https://www.ers.usda.gov/topics/food-nutrition-assistance/supplemental-nutrition-assistance-program-snap> [<https://perma.cc/8E8P-CD7M>].

333. Kathryn L. Plemmons, *The National School Lunch Program and USDA Dietary Guidelines: Is There Room for Reconciliation?*, 33 J.L. & EDUC. 181, 186 (2004).

334. *National School Lunch Program Facts*, FOOD RSCH. & ACTION CTR. (Nov. 2016), <https://frac.org/wp-content/uploads/cnslp.pdf> [<https://perma.cc/58PC-7FFS>].

335. Currently, students who come from families earning less than 130 percent of the federal poverty level are eligible for free meals. Students who come from families earning between 130 percent and 185 percent of the federal poverty guidelines are eligible for reduced-price meals.

billion to the federal government.³³⁶ The SBP provides 14.8 million students with breakfast annually for approximately \$4.5 billion.³³⁷ Together, the NSLP and SBP meals provide more than half of many students' daily caloric intake.³³⁸ The Summer Food Service Program, also administered by FNS, provided free meals to 4.7 million children per day in July 2020.³³⁹

These child-nutrition programs, taken together, reflect a federal commitment to providing students with healthy meals throughout the school day and even during school breaks. The federal school-meal programs alone, which at least partially subsidize all school meals regardless of the student's ability to pay, arguably confer a property interest in school meals in all students. Indeed, David A. Super notes that federal school-meal programs constitute positive entitlements that, as property interests, implicate the Due Process Clause.³⁴⁰ For low-income students receiving fully subsidized meals at school, who often do not have access to food at home,³⁴¹ then, suspension from school is not just an academic deprivation, but a nutritional and wellness deprivation as well. Exclusion

Food & Nutrition Serv., *Child Nutrition Programs Income Eligibility Guidelines (2019-2020)*, U.S. DEP'T AGRIC. (Mar. 20, 2019), <https://www.fns.usda.gov/cnp/fr-032019> [<https://perma.cc/H6K4-RJK6>].

336. *National School Lunch Program*, *supra* note 331; see *The National School Lunch Program*, U.S. DEP'T AGRIC. (Nov. 2017), <https://fns-prod.azureedge.net/sites/default/files/resource-files/NSLPFactSheet.pdf> [<https://perma.cc/5NNP-A4FB>].

337. Econ. Rsch. Serv., *School Breakfast Program*, U.S. DEP'T AGRIC., <https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/school-breakfast-program> [<https://perma.cc/G2VT-EZJ3>]. Of the more than 2.4 billion breakfasts served in 2019, *see id.*, 80 percent were free and another 5 percent were provided at a reduced price, *see* Econ. Rsch. Serv., *Participation in USDA's School Breakfast Program Doubled Between 1999 and 2019*, U.S. DEP'T AGRIC., <https://www.ers.usda.gov/data-products/charts-of-note/charts-of-note/?topicId=14873> [<https://perma.cc/LX42-HY3F>].

338. Anna Karnaze, Note, *You Are Where You Eat: Discrimination in the National School Lunch Program*, 113 NW. U. L. REV. 629, 631 (2018).

339. Econ. Rsch. Serv., *Summer Food Service Program*, U.S. DEP'T AGRIC., <https://www.ers.usda.gov/topics/food-nutrition-assistance/child-nutrition-programs/summer-food-service-program> [<https://perma.cc/H5QY-9JMP>].

340. *See* Super, *supra* note 42, at 648-51, 728.

341. *See* Econ. Rsch. Serv., *Food Insecurity by Household Characteristics*, U.S. DEP'T AGRIC., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx> [<https://perma.cc/2YG6-XVH7>] (stating that 28.6 percent of households with incomes below 185 percent of the poverty threshold are food insecure). Current welfare laws do not provide families with money to buy lunch on weekdays for children enrolled in primary and secondary school, on the understanding that they receive such meals for free at school.

from school may induce both poor short-term nutrition and longer-term malnourishment.³⁴² Indeed, a long-term suspension or expulsion, if the student does not otherwise have access to food, could result in severe malnourishment, with lasting damage to the student's health and academic performance.³⁴³

However, even if the growing funding and commitment to the school-nutrition programs is insufficient to confer a property interest in school meals on students at the ninety-five percent of public schools that participate nationwide, state laws that *require* all public schools or high-need schools to participate in the federal nutrition programs or a state equivalent effectively confer such a property interest.³⁴⁴

A fifty-state survey of state laws and regulations concerning school lunch services reveals that states *require* public schools to participate in the NSLP or a state equivalent.³⁴⁵ In at least these states, all public-school students hold a property interest in receiving a government-subsidized meal at school arising from the statutory guarantees. States that do not mandate public-school participation in the NSLP generally leave the decision to municipalities or local boards of education, which may independently decide to participate.³⁴⁶ In those schools, the decision to participate in the NSLP is likely sufficient to confer on students a property interest in school meals.³⁴⁷

342. FOOD & NUTRITION SERV., U.S. DEP'T. AGRIC., INSTRUCTION 791-1, PROHIBITION AGAINST DENYING MEALS AND MILK TO CHILDREN AS A DISCIPLINARY ACTION (1988), <https://www.fns.usda.gov/cn/prohibition-against-denying-meals-and-milk-children-disciplinary-action> [<https://perma.cc/YLU2-7BT5>] (instructing state agencies administering the school-meal programs that schools cannot deny meals to students as a disciplinary measure, but that “[d]isciplinary action which indirectly results in the loss of meals or milk is allowable (e.g., a student is suspended from school)”).

343. See Katherine Alaimo, Christine M. Olson & Edward A. Frongillo, Jr., *Food Insufficiency and American School-Aged Children's Cognitive, Academic, and Psychosocial Development*, 108 *PEDIATRICS* 44, 48-50 (2001).

344. Appendix B, which surveys state laws and regulations regarding the provision of meal services, excluded laws regarding charter schools, though some states hold charter schools to similar standards. See, e.g., DEL. CODE ANN. tit. 14, § 506(f) (West 2021) (requiring charter schools to provide free or reduced-price lunch and breakfast to children who would qualify under the federal public-school nutrition programs). Appendix B also excludes any COVID-19-specific state laws and regulations.

345. See *infra* Appendix B; e.g., ME. STAT. tit. 20-A, § 6602(1)(A) (2021) (“A public school shall participate in the National School Lunch Program in accordance with [federal regulations] and provide Type A meals as determined by the United States Department of Agriculture.”).

346. See, e.g., MONT. CODE ANN. § 20-10-201(3) (West 2021) (“The superintendent of public instruction may . . . enter into agreements and cooperate with any federal agency, district, or other agency or person, prescribe regulations, employ personnel . . . to . . . provide for the establishment, operation, and expansion of school food services.” (emphasis added)).

347. Local rules are, like federal and state statutes, sources of entitlements under *Roth*, provided they establish a mutual understanding. See *Bishop v. Wood*, 426 U.S. 341, 344-45 (1976).

Several states that do not mandate participation in the NSLP nevertheless require schools to provide free meals to defined categories of high-need students.³⁴⁸ In those states, it is likely that, at schools that do not participate in the NSLP, only those students who meet the state eligibility criteria have a property interest in receiving school meals.³⁴⁹ Other states prohibit public schools from withholding food from students who cannot afford to pay for it.³⁵⁰ While such statutes are unlikely to vest in students a property interest as they do not guarantee receipt of any particular benefit, they still reflect widespread recognition of the importance of proper nutrition in schools and the school as a source of meals.

Further, analysis of state statutory reimbursements for participation in the federal school-meal programs or a state equivalent shows that thirty-four states provide additional subsidies or reimbursements for school meals.³⁵¹ Many states that do not require schools to participate in the federal programs provide regulatory or financial incentives for participation in the NSLP.³⁵²

348. See *infra* Appendix B; e.g., OHIO REV. CODE ANN. § 3313.813(C)(1) (West 2021) (stating that each school district must “establish a lunch program in every school where at least one-fifth of the pupils in the school are eligible under federal requirements for free lunches”).

349. Even if this were the case, the heightened property interest would be vested in those students who are most likely to be suspended. See Tom Loveless, *2017 Brown Center Report on American Education: How Well Are American Students Learning?*, BROOKINGS INST. 29 (Mar. 2017) (“Schools in wealthier communities are less likely to suspend African-American students than other schools.”); see also Skiba, *supra* note 203, at 11 (“Studies of school suspension have consistently documented over-representation of low-income students . . .”).

350. See *infra* Appendix B; e.g., ARK. CODE ANN. § 6-18-715(c)(2) (2021) (prohibiting public schools from “[p]revent[ing] a student from accessing the school’s meal or snack services”). If a student owes money for a meal or snack, Arkansas schools are empowered only to contact the parent or guardian of the student to either “[a]ttempt collection of the owed money” or “[r]equest that the parent or guardian apply for meal benefits in a federal or state child nutrition program,” but may not withhold food from the child. *Id.* § 6-18-715(d).

351. See *infra* Appendix B; e.g., CONN. GEN. STAT. § 10-215b(a) (2021) (“The State Board of Education is authorized to expend in each fiscal year, within available appropriations, an amount equal to (1) the money required pursuant to the matching requirements of said federal laws and shall disburse the same in accordance with said laws, and (2) ten cents per lunch served in the prior school year in accordance with said laws by any local or regional board of education . . . that participates in the National School Lunch Program and certifies . . . that the [state] nutrition standards . . . shall be met.”); FLA. STAT. ANN. § 595.404(8) (West 2021) (requiring the state’s Department of Education to “annually allocate . . . as applicable, funds provided from the school breakfast supplement in the General Appropriations Act based on each district’s total number of free and reduced-price breakfast meals served”); 24 PA. STAT. AND CONS. STAT. ANN. § 13-1337.1(a)(1) (West 2021) (“[E]ach school which offers the school lunch program shall receive a reimbursement of no less than ten cents (10¢) per lunch served . . .”).

352. See *infra* Appendix B; e.g., MISS. CODE ANN. § 37-11-8 (2021) (conditioning state grant money on school participation in the NSLP as part of its “Healthier School Initiative”).

In addition, thirty-four states require at least some public schools, most often those in high-need areas, to adopt the federal SBP or a state equivalent.³⁵³ Notably, only one of these states disclaims the creation of an entitlement.³⁵⁴ Thirty-four states, some of which mandate participation in the federal nutrition programs and some of which do not, provide additional reimbursements to schools to support their meal programs.³⁵⁵ Some states require schools to provide students eligible for reduced-price lunches with completely free lunches.³⁵⁶ At least six states currently require that high-need school districts also provide summer breakfast, lunch, or both.³⁵⁷

Even states that neither mandate participation in the NSLP or SBP nor allocate additional funding to incentivize individual school participation still find ways to provide children, particularly those from low-income families, with food. For example, some state statutes explicitly contemplate the provision of excess food in public schools to needy students.³⁵⁸ Though the exact procedural entitlements of students may vary according to the state that they live in, taken together, federal and state laws and regulations demonstrate a national intent to provide healthy meals to K-12 public-school students. At least in the nineteen states that mandate participation in the NSLP, students have a clear statutory entitlement to government-subsidized meals and, accordingly, an additional

353. See *infra* Appendix B; e.g., 16 R.I. GEN. LAWS ANN. § 16-8-10.1(a) (West 2021) (“All public schools shall make a breakfast program available to students attending the school. The breakfast meal shall meet any rules and regulations that are adopted by the commissioner.”); WASH. REV. CODE ANN. § 28A.235.160(3) (West 2021) (“[E]ach school district shall implement a school breakfast program in each school where more than forty percent of students eligible to participate in the school lunch program qualify for free or reduced-price meal reimbursement . . .”).

354. See COLO. REV. STAT. ANN. § 22-82.7-107 (West 2021).

355. See *infra* Appendix B; e.g., MINN. STAT. ANN. § 124D.111(1) (West 2021) (“Each school year, the state must pay participants in the national school lunch program the amount of 12.5 cents for each full paid and free student lunch and 52.5 cents for each reduced-price lunch served to students.”); 24 PA. STAT. AND CONS. STAT. § 13-1337.1(a)(1) (2021) (“[E]ach school which offers the school lunch program shall receive a reimbursement of no less than ten cents (10¢) per lunch served . . .”).

356. See *infra* Appendix B; e.g., COLO. REV. STAT. § 22-82.9-105 (2021) (requiring the state legislature to appropriate funds “to allow school food authorities to provide lunches at no charge for children in state-subsidized early education programs . . . or in kindergarten through twelfth grade . . . who would otherwise be required to pay a reduced price for lunch”).

357. See, e.g., 105 ILL. COMP. STAT. ANN. 126/20(b) (West 2021); VT. STAT. ANN. tit. 16, § 1264(a) (West 2021); ME. REV. STAT. ANN. tit. 20, § 6602(c) (2021); MO. REV. STAT. § 191.810; NEB. REV. STAT. § 79-10,140 (2021); WASH. REV. CODE § 28A.235.160 (2021).

358. See *infra* Appendix B; e.g., ARK. CODE ANN. § 6-18-716 (West 2021) (providing the mechanism for schools’ voluntary distribution of excess food).

property interest in avoiding unjust exclusion from the school setting and losing access to meals.

The COVID-19 pandemic has shed greater light on children’s food insecurity and the importance of school-meal programs in alleviating child hunger.³⁵⁹ To feed the thirty million children who lost access to meals following school closures, Congress, through the Families First Coronavirus Response Act in March 2020, created the pandemic-EBT program, which provided supplemental funds for food both to households that already received SNAP benefits and to households not already receiving SNAP benefits with children who would have received free or reduced-price meals missed while schools were closed.³⁶⁰ This prevented at least 2.7 million children from going hungry in the weeks after states issued benefits.³⁶¹ The pandemic-EBT program is notable for its creation of what is virtually a new child-nutrition benefit – albeit a temporary one – by merging aspects of SNAP with the school-meal apparatus.

In addition to creating the pandemic-EBT program, Congress later authorized FNS to grant waivers to the existing school-meal program regulations to support school districts’ innovative approaches to providing meals to students.³⁶² USDA ultimately allowed all students, regardless of income level or geographic location, to receive free summer meals through the agency’s summer-meal programs and extended this initiative to allow schools across the country to serve free meals to all students during the 2020-21 school year.³⁶³ The federal government further encouraged food delivery to students learning virtually and

359. See, e.g., Yael Cannon, *Injustice Is an Underlying Condition*, 6 U. PA. J.L. & PUB. AFFS. 201, 222 (2020). Early in the pandemic, food banks, school systems, and cities instituted meal and grocery giveaways, but these were not enough to remedy the void left by the shift to virtual learning. *Id.* at 222-23. As a result, food insecurity in American households increased from 10.5 percent in 2019 to 17.7 percent (and 21.8 percent in households with children) in May 2020. *Id.* at 222.

360. Families First Coronavirus Response Act, Pub. L. No. 116-127, § 1001(b), 134 Stat. 178, 179 (2020) (codified at 7 U.S.C. § 2011 note (2018)); see Lily Zaballos, *Innovations in School Food During COVID-19*, HUNTER COLL. N.Y.C. FOOD POL’Y CTR. (Jan. 19, 2021), <https://www.nycfoodpolicy.org/innovations-in-school-food-during-covid-19> [https://perma.cc/PZ9N-R7XF].

361. Lauren Bauer, Abigail Pitts, Krista Ruffini & Diane Whitmore, *The Effect of Pandemic EBT on Measures of Food Hardship*, BROOKINGS INST. 5 (July 2020), https://www.brookings.edu/wp-content/uploads/2020/07/P-EBT_LO_7.30.pdf [https://perma.cc/CJB5-L52J].

362. Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 3511, 134 Stat. 281, 400 (2020) (codified at 20 U.S.C. § 7861 note (2018)); see Mary Kathryn Poole, Sheila E. Fleischhacker & Sara N. Bleich, *Addressing Child Hunger When School Is Closed – Considerations During the Pandemic and Beyond*, 384 NEW ENG. J. MED. e35(1), e35(1)-(3) (2021).

363. See Press Release, U.S. Dep’t of Agric., Trump Administration Extends Free Meals for Kids for Entire School Year (Oct. 9, 2020), <https://www.fns.usda.gov/news-item/usda-040120> [https://perma.cc/L59H-3F68].

issued guidance to schools on various models to facilitate food distribution while minimizing potential spread of the virus, including drive-through, walk-up, and delivery.³⁶⁴ Several states enacted laws or promulgated regulations requiring schools to find alternative means to distribute meals to students.³⁶⁵ Others have provided additional SNAP benefits to families who typically do not receive them to cover the meals of school-aged children on the grounds that they would have received a free or reduced-price lunch at school.³⁶⁶ In some states, then, students may have additional entitlements during the pandemic. Moreover, the statutes further reflect legislative recognition of the important role of schools as sources of meals.

B. School-Health Services

School-health services³⁶⁷ are “the procedures carried out by physicians, nurses, dentists, teachers, and others to appraise, protect, and promote the

364. See *Safely Distributing School Meals During COVID-19*, CTDS. FOR DISEASE CONTROL & PREVENTION (Feb. 11, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/safely-distributing-meals.html> [<https://perma.cc/3P4Z-YSJW>]. Even after schools reopened for in-person learning in the 2021-22 school year, some of the country’s largest school districts have continued to provide free meals for pick-up even when students are required to quarantine at home or when schools close for breaks. See, e.g., *School Meals*, NYC DEP’T EDUC., <https://www.schools.nyc.gov/school-life/food/school-meals> [<https://perma.cc/7H64-9K35>].

365. See, e.g., N.J. STAT. ANN. § 18A:33-27.2 (West 2021) (“In the event that a board of education is provided a written directive by either the New Jersey Department of Health or the health officer of the jurisdiction to institute a public health-related closure due to the COVID-19 epidemic, the district shall implement a program during the period of the school closure to provide school meals to all students enrolled in the district who are eligible for the free and reduced price school lunch and school breakfast programs.”).

366. See, e.g., Ned Lamont, Exec. Order No. 9K, *Protection of Public Health and Safety During COVID-19 Pandemic—Increased Protective Measures in Response to COVID-19 Resurgence*, CT (Nov. 5, 2020), <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-9K.pdf> [<https://perma.cc/JSJ2-ZT7A>] (“The provisions [regarding funding for school nutrition programs] . . . are modified for the duration of the public health and civil preparedness emergencies to authorize the Commissioner of Education to temporarily waive or modify any requirements contained therein where statutory eligibility is contingent upon participation in a specific federal food and nutrition program, where local and regional boards of education’s participation has been changed as a result of widespread participation in emergency programs authorized by the federal U.S. Department of Agriculture to operate due to the COVID-19 public health emergency, and the district continues to participate in a relevant federal child nutrition program.”).

367. In this Section, I do not detail the provision of school-health services to students with disabilities, as such services developed distinctly under federal law to address the discriminatory exclusion of children with disabilities from public schools. It suffices to note that federal law

health of students and school personnel.”³⁶⁸ Such procedures are designed to appraise the health status of students, counsel students and parents “for the purpose of helping [students] obtain needed treatment,” and provide care for injury or illness,³⁶⁹ on the understanding that poor health inhibits learning and academic performance.³⁷⁰

School-health services today are broader than those provided in the past. Thousands of public schools across the country now require comprehensive health appraisals, rather than mere periodic physical examinations.³⁷¹ Comprehensive health appraisals include determinations of the “total health status” of students through “observation, screening tests, study of information concerning the student’s past health experience, and medical (both physical and mental), dental, and vision examinations,”³⁷² and are often supplemented by psychological examinations.³⁷³

1. *The Historical Development of Student-Health Services*

Like the movement to provide school meals to students, the movement for the provision of school-health services began in the 1890s.³⁷⁴ And, as with the school-meal programs, the federal government was not involved in these early

entitles students with disabilities to health services that are necessary for each student to benefit from their educations. Thus their property interest in school-health services differs from students without disabilities.

368. JOINT COMM. ON HEALTH PROBS. IN EDUC. OF THE NAT’L EDUC. ASS’N & THE AM. MED. ASS’N, SCHOOL HEALTH SERVICES 3 (Charles C. Wilson ed., 1953) [hereinafter SCHOOL HEALTH SERVICES]. Note that school-health services are distinguishable from health education, wherein schools provide “learning experiences which favorably influence understandings, attitudes, and conduct relating to individual and community health.” *Id.* at 2.

369. *Id.* at 3. This Note focuses primarily on procedures designed to appraise the health status of students, such as screening programs, as those are the benefits that have been guaranteed to students by state laws and regulations.

370. AM. SCH. HEALTH ASS’N & U.S. PUB. HEALTH SERV., SCHOOL HEALTH: FINDINGS FROM EVALUATED PROGRAMS 1 (2d ed. 1998) (“Because children’s health and learning are linked, children cannot learn when they are not well or when health concerns interrupt their ability to concentrate.”).

371. See SCHOOL HEALTH SERVICES, *supra* note 368, at 4; SCHOOLS & HEALTH: OUR NATION’S INVESTMENT, *supra* note 275, at 155.

372. SCHOOL HEALTH SERVICES, *supra* note 368, at 4.

373. *Id.* at 37.

374. See David Tyack, *Health and Social Services in Public Schools: Historical Perspectives*, 2 FUTURE CHILD. 19, 20 (1992) (describing how Progressive Era popular press shed light on children’s issues). “Schools were attractive targets for reformers seeking to improve the health and welfare of children, for schools provided sustained contact with children and a captive audience.” *Id.* at 21.

efforts.³⁷⁵ Rather, the movement was initiated and carried out by private individuals and organizations who sought to control communicable diseases in order to reduce school absences related to illness.³⁷⁶ Physicians, for example, proposed that students receive medical inspections in schools.³⁷⁷ Medical professionals also pioneered the provision of free health inspections for students and healthcare clinics in schools.³⁷⁸ Over the course of the first half of the twentieth century, the purpose of health services in schools broadened to ascertain “immunization compliance,³⁷⁹ screen for vision and hearing impairments,³⁸⁰ and refer students to outside physicians.”³⁸¹

By the mid-twentieth century, the “major purpose” of school-health programs had, according to the American Academy of Pediatrics, grown even broader: “to maintain, improve and promote the health of the school age child,” and included supervision of each of the physical, mental, emotional, and social elements of school life.³⁸² Recognizing the importance of students’ mental health

375. See generally *id.* (outlining early social-reform efforts).

376. Kerry Redican & Charles Baffi, *Health Services*, STATE UNIVERSITY, <https://education.stateuniversity.com/pages/2037/Health-Services.html> [<https://perma.cc/6RQX-RCXF>].

377. Tyack, *supra* note 374, at 21.

378. *Id.* at 20.

379. I exclude from my analysis in Appendix C of state healthcare programs in schools the various state immunization mandates, as such requirements fall within the ambit of state police power and implicate only a duty of parents to immunize their children, rather than any affirmative entitlement of students. See, e.g., *Hartman v. May*, 151 So. 737 (Miss. 1934) (upholding a Mississippi law which required children to receive smallpox vaccinations during non-epidemic periods for public-school admission). Health-related admissions requirements do not deprive children of their property right to attend public schools, and may in fact supersede that right. See *Freeman v. Zimmerman*, 90 N.W. 783, 786 (Minn. 1902) (“The welfare of the many is superior to that of the few, and, as the regulations compelling vaccination are intended to and enforced solely for the public good, the rights conferred thereby are primary and superior to the rights of any pupil to attend the public schools.”). With respect to student entitlements, I note only that some states prohibit schools from excluding unvaccinated indigent children if they are unable to afford immunizations. See, e.g., COLO. REV. STAT § 25-4-905(1) (2021) (“No indigent child shall be excluded, suspended, or expelled from school unless the immunizations have been available and readily accessible to the child at public expense.”). These statutes, viewed in conjunction with compulsory-attendance laws and state constitutional provisions requiring states to provide children with free primary- and secondary-school education, could arguably indicate that indigent children hold a subinterest, relating to their primary entitlement to attend school, in receiving immunizations. I do not address that issue here.

380. Emily G. Narum, *Making the Grade: School-Based Telemedicine and Parental Consent*, 53 SAN DIEGO L. REV. 745, 748 (2016).

381. SCHOOL HEALTH SERVICES, *supra* note 368, at 11.

382. Comm. on Sch. Health, *School Health Policies*, 24 PEDIATRICS 672, 672 (1959).

in academic outcomes, schools hired psychologists to provide group and individual counseling to students.³⁸³ At this time, boards of education and health departments also began coordinating at the state level to improve school-health programs³⁸⁴—a practice that continues to this day.³⁸⁵

Both the scope and nature of school-health services provided to students in public primary and secondary schools have further expanded since the 1960s and 1970s.³⁸⁶ In 1965, the federal government created Medicaid, which works in part to provide healthcare for poor children primarily through the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) service, which includes, among other services, physical examinations and vision, hearing, and dental services.³⁸⁷ Furthermore, the proliferation of school-based health centers (SBHCs) has made the provision of comprehensive healthcare to students more common. SBHCs provide a range of both preventive and diagnostic services and aim to bring medical, mental, and dental healthcare to underserved populations.³⁸⁸ The number of SBHCs has only increased: between 1990 and 2002, the number of SBHCs increased 650%.³⁸⁹ SBHCs are an effective vehicle for preventing and treating a wide variety of health issues, including both physical-health concerns

383. See Jonathan Sandoval, *The History of Interventions in School Psychology*, 31 J. SCH. PSYCH. 195, 204 (1993); Sara Agnafors, Mimmi Barmark & Gunilla Sydsjö, *Mental Health and Academic Performance: A Study on Selection and Causation Effects from Childhood to Early Adulthood*, 56 SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY 857, 857 (2021) (finding that “[m]ental health problems in early childhood and adolescence increase the risk for poor academic performance”).

384. SCHOOL HEALTH SERVICES, *supra* note 368, at 12–13. Whether responsibility for school-health services will rest primarily with the relevant educational agency or the public-health agency varies by state and depends on various factors such as “legislative provisions, traditional practice in the community, and personnel available.” *Id.* at 12.

385. See *infra* Appendix C for current examples of coordination between boards of education and health departments.

386. Mary H.B. Gelfman & Nadine C. Schwab, *School Health Services and Educational Records: Conflicts in the Law*, 64 EDUC. L. REP. 319, 319 (1991).

387. 42 U.S.C. § 1396(a)(43) (2018).

388. Laurie Scudder, Patricia Papa & Laura C. Brey, *School-Based Health Centers: A Model for Improving the Health of the Nation’s Children*, 3 J. NURSE PRACTITIONERS 713, 718 (2007); Mina Silberberg & Joel C. Cantor, *Making the Case for School-Based Health: Where Do We Stand?*, 33 J. HEALTH POL. & L. 3, 4 (2008).

389. 2002 *State Survey of School-Based Health Center Initiatives*, CTR. FOR HEALTH & HEALTH CARE IN SCHS., <http://healthinschools.org/wp-content/uploads/2016/09/SBHCNationalSurvey2002.pdf> [<https://perma.cc/9L4J-99KY>].

and mental-health disorders.³⁹⁰ The federal government has supported the development of SBHCs in various ways. The federal Patient Protection and Affordable Care Act, passed in 2010, established a grant program to fund SBHCs.³⁹¹ Moreover, the Public Health Services, Maternal and Child Health Bureau has established the Healthy Schools, Healthy Communities initiative to support and strengthen SBHCs.³⁹² Some states now even require schools to operate SBHCs.³⁹³ The rapid growth of SBHCs since 1990 arguably reflects a “renewed focus on the potential for schools to address health and social problems.”³⁹⁴

2. Contemporary School-Health Services

Today, state laws and regulations require thousands of schools to provide a wide variety of health services to students, including health assessments, physical examinations, vision and auditory screenings, and dental services.³⁹⁵ Many states even mandate the provision of *preventative* healthcare to students.³⁹⁶ For example, California defines the “focus of school health services” to be “the prevention of illness and disability, and the early detection and correction of health problems.”³⁹⁷

Thirty-one states require schools to provide some sort of physical examination or developmental screening to either all students or to indigent students

390. See Michael Arenson, Philip J. Hudson, NaeHyung Lee & Betty Lai, *The Evidence on School-Based Health Centers: A Review*, 6 GLOB. PEDIATRIC HEALTH 1, 4-6 (2019). School-based health centers (SBHCs) are also positively correlated with favorable academic outcomes. Melina Bersamin, Robert W. S. Coulter, Jenna Gaarde, Samantha Garbers, Christina Mair & John Santelli, *School-Based Health Centers and School Connectedness*, 89 J. SCH. HEALTH 11, 11-12 (2019).

391. 42 U.S.C. § 280h-4 (2018); see also Matt Brothers, *The PPACA's Impact on the Scope of Practice of Nurse Practitioners*, 23 ANNALS HEALTH L. ADVANCE DIRECTIVE 79, 85-86 (2013) (describing the creation of a federal grant program to support SBHCs).

392. SCHOOLS & HEALTH: OUR NATION'S INVESTMENT, *supra* note 275, at 48.

393. See, e.g., DEL. CODE ANN. tit. 14, § 4126(a) (West 2021) (“All public high schools, including vocational-technical schools, but not including charter schools, are required to have a school-based health center . . .”).

394. SCHOOLS & HEALTH: OUR NATION'S INVESTMENT, *supra* note 275, at 46.

395. See *infra* Appendix C.

396. See, e.g., HAW. REV. STAT. § 302A-851 (2021) (“There shall be . . . a permanent comprehensive school health services program for grades kindergarten through twelve in all the public schools of this State. It is in the general welfare of the State to protect, preserve, care for, and improve the physical and mental health of Hawaii's children by making available the public schools . . . preventative care, health appraisals and follow-ups, and health room facilities.”).

397. CAL. EDUC. CODE § 49426 (West 2021).

unable to afford medical care.³⁹⁸ Thirty-one states require schools to provide vision or auditory screenings, or both, multiple times through the student's progression through primary and secondary school.³⁹⁹ Ten states require schools to provide oral healthcare of some kind, taking cues from school systems that have operated dental clinics for decades.⁴⁰⁰ Students who miss such screenings due to suspension or expulsion may not have an opportunity to receive such screenings later on, which may delay or prevent the identification of serious problems with their physical or mental health, vision, hearing, or dental hygiene.

For students who cannot afford or access healthcare from outside providers, the school becomes their primary provider of care.⁴⁰¹ Recent federal interpretation of Medicaid law supports this contention: “the Centers for Medicare and Medicaid Services issued guidance exempting schools from the ‘free care policy,’ which had previously disallowed Medicaid reimbursements for services provided to Medicaid-enrolled students if [schools] provided those same services

398. See *infra* Appendix C; e.g., CAL. EDUC. CODE § 49450 (West 2021) (“The governing board of any school district shall make such rules for the examination of the pupils in the public schools under its jurisdiction as will insure proper care of the pupils”); 24 PA. CONS. STAT. § 14-1402(e) (2021) (“The school physicians of each district or joint board shall make a medical examination and a comprehensive appraisal of the health of every child of school age, (1) upon original entry into school in the Commonwealth, (2) while in sixth grade, [and] (3) while in eleventh grade”); 28 PA. CODE § 23.7(a) (2021) (requiring, in addition to the medical examination, “[h]eight and weight measurement shall be conducted at least once annually and preferably twice annually.”); LA. STAT. ANN. § 17:392.1(B)(1)-(2) (2021) (requiring that “[c]very child in public school in grades kindergarten through third shall be screened, at least once, for the existence of impediments to a successful school experience” including “dyslexia and related disorders,” “[a]ttention deficit disorder,” and “[s]ocial and environmental factors that put a child at risk of dropping out of school”). In Louisiana, students who are found to need services to ameliorate the effect of a possible learning disorder or at-risk factor “shall have [assistance] provided to them.” LA. STAT. ANN. § 17:392.1(D). “[T]he costs relative to the implementation of the [screening program] shall be covered by funds appropriated by the state.” *Id.* § 17:392.3.

399. See *infra* Appendix C; e.g., ALASKA STAT. ANN. § 14.30.127(a) (West 2021) (“A vision and hearing screening examination shall be given to each child attending school in the state. The examination shall be made when the child enters school . . . and at regular intervals specified by regulation by the governing body of the district.”); 14-800-815 DEL. ADMIN. CODE § 3.1.1 (2021) (“Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening by January 15th of each school year.”); N.Y. EDUC. LAW § 905(1) (McKinney 2021) (“The director of school health services of each school district . . . shall conduct screening examinations of vision [and] hearing . . . of all students at such times and as defined in the [state regulations], and at any time deemed necessary.”).

400. Cf. SCHOOL HEALTH SERVICES, *supra* note 368, at 126. While the Social Security Amendments of 1967 authorized a pilot dental program for school children, it ultimately was not funded. WHITE HOUSE CONFERENCE ON FOOD, NUTRITION AND HEALTH, *supra* note 286, at 48.

401. Cf. *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970) (observing that “welfare provides the means to obtain . . . medical care”).

free to other students,”⁴⁰² increasing the reimbursements for which schools are eligible.⁴⁰³ In one commentator’s words, “[t]he guidance recognized health services as part of accessing a free appropriate public education as required under federal education laws.”⁴⁰⁴

Federal programs reflect state-level trends—they provide funding and support for mental-healthcare programs in schools. For example, the Substance Abuse and Mental Health Services Administration, a branch of the Department of Health and Human Services, sponsors school-based mental-healthcare programs, including the Safe Schools/Healthy Students Initiative, the Systems of Care Program, the Cooperative Agreements for State-Sponsored Youth Suicide Prevention and Early Intervention, and the Mental Health Transformation State Incentive Grant Program.⁴⁰⁵ Additionally, at least five states provide for mental-health counseling, including mental-health assessments and crisis intervention.⁴⁰⁶ Other states are experimenting with grant funding to help local school districts establish mental-health counseling programs.⁴⁰⁷ Quantitative studies illustrate “positive outcomes” for students who receive psychological interventions at school.⁴⁰⁸ Students who are suspended, and especially those who are expelled—who may need mental-health services the most—may be deprived of such services for extended periods of time.

Further, many states require various programs to protect students’ oral and dental health.⁴⁰⁹ Empirical studies show that students who cannot afford dental care have lower attendance and academic-achievement rates.⁴¹⁰ Many states either provide dental screenings to all children as a matter of course or provide them to those who cannot afford them.⁴¹¹ At least ten states also authorize

402. Eric Chung, *The Child Welfare and Education Gap*, 36 YALE L. & POL’Y REV. 365, 407-08 (2018).

403. *Id.* at 408.

404. *Id.*

405. Tessa Heller, Note, *Mandatory School-Based Mental Health Services and the Prevention of School Violence*, 24 HEALTH MATRIX 279, 307 (2014).

406. See *infra* Appendix C; see, e.g., ILL. ADMIN. CODE tit. 77, § 641.20(b) (2021).

407. See *infra* Appendix C; IND. CODE § 20-20-18.5-2 (West 2021) (establishing grant funding for the provision of mental-health counselors in schools); NEV. REV. STAT. § 388.266 (West 2021) (“To the extent that money is available for the purpose, the Department shall . . . [m]ake and administer block grants to school districts and charter schools to employ or contract with social workers and other mental health workers in schools with identified needs.”).

408. Howard S. Adelman & Linda Taylor, *Mental Health in Schools and System Restructuring*, 19 CLINICAL PSYCH. REV. 137, 138 (1999).

409. See, e.g., KAN. STAT. ANN. § 72-6251 (West 2021); NEB. REV. STAT. ANN. § 79-248 (West 2021).

410. See Jacqueline Fox, *The Epidemic of Children’s Dental Diseases: Putting Teeth into the Law*, 11 YALE J. HEALTH POL’Y, L. & ETHICS 223, 237-38 (2011).

411. See *infra* Appendix C.

school-based dental sealant programs as another preventative measure to tooth decay, and other states are considering implementing similar measures.⁴¹² Students who happen to be suspended or expelled on the days that schools bring in dentists to provide dental cleanings and fillings may be deprived of such care with little recourse. In sum, almost every state requires schools to provide some sort of health service to students – but even in those states that do not provide for a particular sort of service as a matter of right to students, individual school districts may provide them.

Though the precise procedures required will depend on a variety of factors, including the relevant state law and school policy, Part IV provides preliminary thoughts on additional safeguards that could protect students from unjust deprivations of not just academic opportunity and socialization, but also food and healthcare.

IV. REBALANCING INTERESTS: REEVALUATING THE PROCEDURAL FLOOR FOR EXCLUSIONARY DISCIPLINE

As the state confers additional entitlements upon a class of individuals, the process required by the Due Process Clause to deprive one of those entitlements may change.⁴¹³ In this case, federal and state law have conferred on public-school students additional property interests in meals and health services. These entitlements were conferred upon students on the understanding that without these services, the goals of education themselves could not be met: inadequate nutrition and poor health inhibit learning.⁴¹⁴

Having established that the vast majority of students have additional property interests in their education arising out of federal- and state-law guarantees of meal and healthcare programs, the next question is whether these heightened

412. *States Stalled on Dental Sealant Programs: A 50-State Report*, PEW CHARITABLE TRS. (Apr. 2015), https://www.pewtrusts.org/~media/assets/2015/04/dental_sealantreport_final [<https://perma.cc/4VHY-QAU3>].

413. *See Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972). *See generally* Parkin, *supra* note 26 (discussing the need to reweigh the *Mathews* factors in response to new facts and circumstances).

414. *See, e.g.*, 105 ILL. COMP. STAT. 125/0.05 (2021) (recognizing, in the legislative findings of a statute requiring the state board of education to reimburse schools for meals provided for free to students, that there is “a correlation between adequate nutrition and a child’s ability to perform well in school”); N.J. STAT. ANN. § 18A:40-5.5 (West 2021) (recognizing, in legislative findings, that depression “can lead to . . . poor academic and workplace performance”). *See generally* Tyack, *supra* note 374, at 20-23 (explaining that the reformers in the Progressive Era aimed to provide both meals and health services on the understanding that sick or unhealthy children would not learn well).

property interests justify procedures more demanding than those outlined in *Goss v. Lopez*. I argue that, under the *Mathews* balancing test, they do.⁴¹⁵

The precise nature of the procedure due to students subject to suspension or expulsion will depend on various factors, including the duration of the exclusion, the scope of the state or local law or regulation providing for the benefit, and the student themselves—for example, students who are entitled to both school meals and healthcare may be entitled to more process since their exclusion from school constitutes a more grievous deprivation than a student who only received one or the other.⁴¹⁶ Accordingly, a full account of the exact process due to students is beyond the scope of this Note. In this Part, I merely provide some preliminary thoughts, recognizing, as the Supreme Court has, that the “exact boundaries” of due process are “undefinable” and the “content [of the procedure] varies according to specific factual contexts.”⁴¹⁷

While some states already require schools to provide procedures beyond those mandated in *Goss*,⁴¹⁸ I argue for a higher procedural floor that accords with the school services guaranteed to students.⁴¹⁹ I draw on the eleven elements of a

415. Admittedly, in the 1980s and 1990s, the Supreme Court retreated from the full implications of *Goldberg* and, in the words of some, launched a “due process counterrevolution.” Pierce, *supra* note 10, at 1988; see Hammond, *supra* note 91, at 376-82. However, the Supreme Court’s retreat does not necessarily indicate that other courts are hostile to due-process claims based on entitlements conferred by federal or state law. See, e.g., *Perdue v. Gargano*, 964 N.E.2d 825, 832 (Ind. 2012) (“There is no question that [Medicaid, SNAP, and TANF] are ‘property’ entitled to the full panoply of due process protections.”).

416. Younger students, for example, may require additional procedural safeguards to ensure that school administrators’ decisions are fundamentally fair. See Emily Buss, *Constitutional Fidelity Through Children’s Rights*, 2004 SUP. CT. REV. 355, 357-62.

417. *Hannah v. Larche*, 363 U.S. 420, 442 (1960).

418. *DRIVER*, *supra* note 33, at 149; see *Goss v. Lopez*, 419 U.S. 565, 583-84 (1975) (indicating that school districts are free to provide additional procedural protections if they deem them appropriate). For example, Florida requires that school officials make a “good faith effort . . . to immediately inform the parent by telephone of the student’s suspension and the reason.” FLA. STAT. § 1002.20(4)(a)(1) (2021). Further, “[e]ach suspension and the reason must be reported in writing within 24 hours to the parent by United States mail [and a] good faith effort must be made to use parental assistance before suspension unless the situation requires immediate suspension.” *Id.* With respect to expulsion, Florida law states that “[p]ublic school students and their parents have the right to *written* notice of a recommendation of expulsion, including the charges against the student and a statement of the right of the student to due process” *Id.* § 1002.20(4)(b) (emphasis added).

419. See *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972) (“[Property interests] are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law—rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.”).

fair hearing that Judge Henry Friendly outlined in his seminal 1975 article.⁴²⁰ They are: (1) an unbiased tribunal; (2) notice of the proposed action and the grounds asserted for it; (3) an opportunity to present reasons why the proposed action should not be taken; (4) the right to call witnesses; (5) the right to know the evidence against oneself; (6) the right to have decisions based only on the evidence presented; (7) the right to counsel; (8) the making of a record; (9) a statement of reasons for the decision; (10) public attendance; and (11) judicial review.⁴²¹

By *Goss*'s terms, students hold procedural rights only to elements (2), (3), and (5) – notice, opportunity to be heard, and to know the evidence against oneself – even though their property interest in education – and meals and health services – is substantial.⁴²² And in practice, some students do not receive *any* of these elements in a meaningful way that promotes *Goss*'s goal of fair and accurate decision-making.⁴²³ This becomes particularly troublesome when one considers that students subject to exclusionary discipline now lose access not only to their educational opportunities, but also to nutritional meals and preventive and diagnostic healthcare.⁴²⁴ Upon evaluation of this heightened interest, it seems that deprivation of meals or healthcare services, in addition to the educational opportunity loss that *Goss* recognized, can arguably require, from Judge Friendly's list, (1) an unbiased adjudicator; (2) *separate* notice; (3) a *separate* hearing; and (9) a statement of reasons for the decision.⁴²⁵ Such procedures promote accurate decision-making and dignitary and participatory interests without imposing onerous burdens on schools. I exclude other elements of a fair trial because of the significant burden they would impose on the government or the lack of value they have as additional procedural safeguards in the particular context of exclusionary discipline. For example, though cross-examination of adverse witnesses is often useful, it is not universally applicable to the thousands of disciplinary

420. See generally Friendly, *supra* note 123, at 1278-95 (listing fair-hearing procedures required by due process).

421. *Id.* Note that Judge Friendly takes as a given the *separate* elements of notice and hearing. See *id.* at 1280-81. In addition to these factors, which were formulated with the capacities of adults in mind, there may be others that are necessary for due-process procedures for children, see Buss, *supra* note 416, at 355, such as representation by a parent, that are necessary to achieve fundamental fairness.

422. See *Goss*, 419 U.S. at 577-84.

423. See *supra* Section II.B.2.

424. See *supra* Part III; *infra* Appendices B & C.

425. See Friendly, *supra* note 123, at 1279-95.

hearings that are held in schools every day and would result in significant delay.⁴²⁶

Below, I weigh each factor of the *Mathews* balancing test—the private interest, the risk of an erroneous deprivation, the value of additional procedures, and the state’s interest in avoiding undue administrative and financial burdens⁴²⁷—in light of students’ expanded entitlements.

A. *Students’ Property Interests Affected by Exclusionary Discipline*

As discussed above, the first factor that courts consider in outlining the specific process due is “the private interest that will be affected by the official action.”⁴²⁸ In the context of exclusionary discipline, the *Goss* Court explained that “[t]he student’s interest is to avoid unfair or mistaken exclusion from the educational process, with all of its unfortunate consequences.”⁴²⁹ In light of the federal and state requirements for nutrition and healthcare, the deprivation that a suspension or expulsion imposes on a student reaches new heights. Exclusionary discipline not only hinders the child’s academic development and socialization—which are themselves critical—but now also implicates at least some children’s access to food and both physical and mental healthcare.

The parallels of these deprivations to *Goldberg*, though imperfect, are worth noting. The severe nature of the deprivation was central to the Supreme Court’s decision that the Due Process Clause requires that the state provide, before the termination of welfare benefits, formalized procedures.⁴³⁰ Welfare recipients are

426. See *id.* at 1284–86. The Supreme Court has, in considering a challenge by incarcerated individuals to the loss of up to eighteen months in “good-time” credits, found a constitutional right to more formal procedures. See *Wolff v. McDonnell*, 418 U.S. 539, 563–67 (1974). But *Wolff* also demonstrates that, when the government actor is functioning in an institutional capacity, the Court puts great emphasis on the government’s burden. Even when the deprivation imposed is more grievous than the loss of meals or healthcare—that is, the loss of freedom itself—if the cross-examination requirement would burden the government, the Court has been particularly reluctant to acknowledge this particular procedural requirement. See *id.* at 567–69.

427. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); see *Parkin*, *supra* note 26, at 1126 (“[The *Mathews* test] focused on current conditions and the relative costs and benefits of expanding or modifying existing procedures.”).

428. *Mathews*, 424 U.S. at 335.

429. *Goss v. Lopez*, 419 U.S. 565, 579 (1975).

430. See *Goldberg v. Kelly*, 397 U.S. 254, 267–71 (1970); see also *Friendly*, *supra* note 123, at 1299 (observing that although *Goldberg* stated that the required hearing “need not take the form of a judicial or quasi-judicial trial,” it nonetheless “demand[ed] almost all the elements of [a trial]” (quoting *Goldberg*, 397 U.S. at 266)).

entitled to notice and trial-like evidentiary hearings in which recipients “present[] . . . arguments and evidence orally,” and have the opportunity to question witnesses and the right to appear through counsel before an unbiased adjudicator who, upon weighing of the evidence, renders a reasoned decision.⁴³¹ As the Court explained, “[t]he extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be ‘condemned to suffer grievous loss’”⁴³² The termination of welfare benefits, which provide recipients with “the means to obtain essential food . . . and medical care,”⁴³³ leaves even eligible recipients awaiting resolution of the eligibility dispute “immediately desperate,” warranting predeprivation trial-like procedures.⁴³⁴

Here, though the deprivations of nutritional meals and school-health services to students are perhaps not as dire as a similar deprivation to adult welfare recipients, society has long recognized that such services are essential to ensuring that students are able to reap the benefits of education,⁴³⁵ which is itself “the most important function of state and local governments.”⁴³⁶ Children suspended or expelled from school may face a situation similar to that of the welfare recipients who had their benefits terminated in *Goldberg*. This interest, then, seems to be sufficiently strong in light of *Goldberg*’s more formal procedures to warrant more than merely “some kind of notice” and “some kind of hearing.”⁴³⁷

431. *Goldberg*, 397 U.S. at 267-68, 270-71. Note, however, that *Goldberg* did not require the government to provide welfare recipients with counsel as in the criminal trials of indigent defendants. It merely provided that welfare recipients may appear through counsel if they so choose. *Id.* at 270.

432. *Id.* at 262-63 (quoting *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 168 (1951) (Frankfurter, J., concurring)).

433. *Id.* at 264.

434. *Id.*

435. See, e.g., *Health and Academic Achievement*, CTRS. FOR DISEASE CONTROL & PREVENTION 2, https://www.cdc.gov/healthyyouth/health_and_academics/pdf/health-academic-achievement.pdf [<https://perma.cc/6DEZ-ML7U>] (“Lack of adequate consumption of specific foods, such as fruits, vegetables, or dairy products, is associated with lower grades among students.”); Thomas Matingwina, *Health, Academic Achievement and School-Based Interventions*, in *HEALTH AND ACADEMIC ACHIEVEMENT* 143, 143 (Blandina Bernal-Morales ed., 2018) (“There is a statistically significant relationship between health and academic achievement.”); Stephanie L. Jackson, William F. Vann, Jr., Jonathan B. Kotch, Bhavna T. Pahl & Jessica Y. Lee, *Impact of Poor Oral Health on Children’s School Attendance and Performance*, 101 AM. J. PUB. HEALTH 1900, 1905 (2011) (finding a negative correlation between oral health and likelihood of poor performance in school).

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

437. See *Goss v. Lopez*, 419 U.S. 565, 579 (1975).

B. *The School's Interest*

The private interest in receiving process is weighed against the government's interest.⁴³⁸ *Mathews* conceptualized the government interest as "including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."⁴³⁹ As the *Goss* Court noted, this interest, which remains unchanged, may counter students' property interests.⁴⁴⁰ Requiring some of the more onerous components from Judge Friendly's list, such as guaranteeing students the right to counsel for the hearing, imposes significant burdens on schools—particularly underfunded ones—that are inconsistent with the realities of school discipline.⁴⁴¹ It would also demand that educators take on the role of quasi litigators or adjudicators, roles for which they are untrained.⁴⁴²

Considering this government interest in isolation, a court might tend to require only minimal procedural protections. However, the *Goss* Court did not recognize that in the special setting of the school, the state may hold interests that actually militate in favor of providing more process to students, not less.⁴⁴³ Unlike more adversarial settings wherein the government decision maker's interests are adverse to the individual's interests, with respect to the institutional setting of the school, the state has a recognized role as promoting democratic values in students. Accordingly, the state has an interest in promoting accurate substantive decisions, supporting students' participation for purposes of ensuring the student is not alienated from the school setting,⁴⁴⁴ affirming students' dignity,⁴⁴⁵ and modeling to students fundamentally fair procedures that are central to free

438. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

439. *Id.*

440. See *Goss*, 419 U.S. at 580-83. In many students' rights cases, the Supreme Court has scaled back traditional constitutional protections in applying them to a school setting, in part because of concerns that schools have a powerful interest in maintaining order and discipline. See DRIVER, *supra* note 33, at 94-140 (explaining how, in a series of free-expression cases, the Supreme Court prioritized school maintenance of order over students' speech rights).

441. Cf. Redish & Marshall, *supra* note 5, at 471 (explaining that though principles of fairness underlying due process may militate in favor of requiring administrative proceedings to imitate a judicial trial, "[t]he realities of the burgeoning administrative state . . . demonstrated that the implementation of such procedures across the board was not possible").

442. Buss, *supra* note 224, at 619-20.

443. Here I do not mean to argue that individual school officials share the same goals as students, but rather that the state—the relevant party in the *Mathews* inquiry—has interests more closely aligned with those of students.

444. Mashaw, *supra* note 185, at 50 ("[L]ack of personal participation causes alienation and a loss of that dignity and self-respect that society properly deems independently valuable.").

445. *Id.*

societies in preparing students for adult citizenship.⁴⁴⁶ While these are more often addressed as due-process values, I highlight here that the state has independent interests, as educator, in ensuring students come away with the accuracy, participatory, fairness, and dignitary values that due process promotes. I address, in turn, the factors from Friendly's list that implicate these interests: (1) independent adjudicators; (2)-(3) requirements of separate notice and hearing; and (9) the provision of a written statement of decisions.

Interest in Accuracy. It would be prudent for the state to pursue, in the school context especially, substantively accurate results – which is itself a goal underlying due-process protections generally.⁴⁴⁷ Here, both the state and the student share an interest in accuracy – the student so that he is not unjustly deprived of his property interests, and the school so that it can effectively carry out its duty to educate without disruption. Given that exclusionary action based on inaccurate information often “reflects a biased and indiscriminate use of official authority,” it is both antithetical to the rule of law generally⁴⁴⁸ and is likely to alienate students, who may feel that their rights have been disregarded. Student feelings of alienation predict poor academic performance and dropout rates, lack of further academic qualification, reduced educational benefits, and a failed attachment to the school as an institution of learning.⁴⁴⁹

446. Redish & Marshall, *supra* note 5, at 476; *see, e.g.*, *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943) (“That [schools] are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.”); *see also* *New Jersey v. T.L.O.*, 469 U.S. 325, 373-74 (1985) (Stevens, J., concurring in part and dissenting in part) (“Schools are places where we inculcate the values essential to the meaningful exercise of rights and responsibilities by a self-governing citizenry. If the Nation’s students can be convicted through the use of arbitrary methods destructive of personal liberty, they cannot help but feel that they have been dealt with unfairly.” (citation omitted)); *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954) (recognizing that education is “the very foundation of good citizenship. Today it is a principal instrument in awakening the student to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.”).

447. *Greenholtz v. Neb. Penal Inmates*, 442 U.S. 1, 13 (1979) (“The function of legal process, as that concept is embodied in the Constitution, and in the realm of factfinding, is to minimize the risk of erroneous decisions.”); *see also supra* note 3 and accompanying text.

448. Redish & Marshall, *supra* note 5, at 476.

449. Tina Hascher & Gerda Hagenauer, *Alienation From School*, 49 INT’L J. EDUC. RES. 220, 221 (2010).

Perhaps the most important procedural safeguard is the guarantee of an independent adjudicator,⁴⁵⁰ which plays an important role in reaching accurate decisions. The presence of an unbiased adjudicator, such as an administrator who did not witness the alleged misconduct and does not know the student well, furthers accurate substantive decisions by ensuring that bias does not infect the proceeding and reducing the possibility that the decision maker bases his findings on factors other than the evidence before him.⁴⁵¹ This is especially important in the school setting, where, unlike most other state adjudicatory contexts, the participants of the adjudication are involved in an ongoing institutional relationship,⁴⁵² heightening the potential for bias. Indeed, in other due-process decisions in institutional settings, the Court has required an unbiased adjudicator.⁴⁵³ The requirement in similar contexts arguably reflects the principle that an untrained official like a prison guard or a teacher, who has repeated interactions with the participants, may have additional difficulty maintaining impartiality.⁴⁵⁴ This is especially true considering the confluence of roles of the school decision maker. The disciplinarian may witness the misconduct or receive secondhand allegations of it, investigate the misconduct, provide notice to the student, hear the student's side of the story, and make the final decision as to punishment.

Providing separate notice and hearing is also likely to further the student's perception that the substantive decision made was accurate. If the student does not receive at least some time between notice and hearing to formulate what the student believes is a cogent response, his participation is cheapened by the lack of opportunity to prepare. Lastly, a requirement that officials explain their decisions increases accountability and incentivizes a fuller consideration of the facts and evidence, facilitating more accurate decisions.⁴⁵⁵

State Interest in Participation and Dignity. The state has an interest in allowing the child to engage in adjudicative processes. The Supreme Court has recognized in contexts beyond the school that the state retains an interest in "foster[ing] the dignity and well-being of all persons within its borders."⁴⁵⁶ This interest is even

450. Redish & Marshall, *supra* note 5, at 456-57 ("Regardless of what other procedural safeguards are employed, the values of due process cannot be realized absent [the] core element [of independent adjudicator].").

451. *Id.* at 476-77.

452. Rubin, *supra* note 56, at 1150.

453. *See, e.g.,* Wolff v. McDonnell, 418 U.S. 539, 570 (1974).

454. *See id.*

455. Rabin, *supra* note 3, at 78.

456. Goldberg v. Kelly, 397 U.S. 254, 265 (1970).

stronger in schools, which prepare students “for participation as citizens” by inculcating democratic values.⁴⁵⁷ Accordingly, schools have an interest in promoting student participation in adjudicative processes.

Without an independent adjudicator, the right to participate might feel meaningless, as the student may believe that the school official has already decided to take disciplinary action.⁴⁵⁸ This also may have the psychological effect of making the student feel helpless, as he feels there is little chance of persuading the decision maker to act differently.⁴⁵⁹ The state has an interest in both promoting feelings of psychological wellbeing in the student and in making the process appear fair.

A “reasons requirement” – that the decision maker gives the affected party reasons for their substantive decision – furthers participatory values as well by facilitating the student’s sense that he participated in the decision-making process and was treated justly.⁴⁶⁰ A reasons requirement will further that interest by requiring the disciplinarian to address the student, implicitly recognizing the student’s role in the decision-making process and giving them feelings of empowerment that may further their engagement in school more generally.⁴⁶¹

State Interest in Maintaining School Order. Perhaps counterintuitively, a reasons requirement may also preserve school order. The Court has recognized on numerous occasions that the school, like other institutional settings, has a paramount interest in maintaining order and stability.⁴⁶² Though the *Goss* Court regarded the school’s need to maintain an academic environment conducive to

457. *Ambach v. Norwick*, 441 U.S. 68, 76 (1979). The Founders recognized a need for values education that would also serve the purposes of the Constitution and prepare students to participate in and uphold democratic processes. Susan H. Bitensky, *A Contemporary Proposal for Reconciling the Free Speech Clause with Curricular Values Inculcation in the Public Schools*, 70 NOTRE DAME L. REV. 769, 774 (1995).

458. See Redish & Marshall, *supra* note 5, at 488.

459. *Id.*

460. Mashaw, *supra* note 185, at 50.

461. Martha L. Morgan, *The Constitutional Right to Know Why*, 17 HARV. C.R.-C.L. L. REV. 297, 307 (1982).

462. See, e.g., *Bethel Sch. Dist. No. 43 v. Fraser*, 478 U.S. 675, 681 (1986) (asserting that it is the responsibility of schools to “teach[] students the boundaries of socially appropriate behavior” and “inculcate the habits and manners of civility as indispensable . . . to the practice of self-government”); *Tinker v. Des Moines Indep. Comm. Sch. Dist.*, 393 U.S. 503, 518-24 (1969) (Black, J., dissenting) (concluding in the context of student expression that great deference should be given to the decisions of school administrators given the principal mission of the school as a socializing institution for inculcating respect for authority); see also Mark G. Yudof, *Tinker Tailored: Good Faith, Civility, and Student Expression*, 69 ST. JOHN’S L. REV. 365, 368 (1995).

learning as an interest militating in favor of less process,⁴⁶³ the provision of written reasons for a decision may facilitate the maintenance of school order in that the student may be more willing to respect the disciplinarian's decision – even an adverse one – if the decision is perceived as rational and fair.⁴⁶⁴ A statement of reasons that led to the decision helps facilitate that understanding.⁴⁶⁵ Accordingly, providing a written statement of reasons for decisions may avert student disruptions of the learning environment⁴⁶⁶ and inculcate respect for the school as an institution.

Still, the additional procedures suggested above – the requirement of an independent adjudicator, separate notice and hearing, and the production of a reasoned decision – implicate the government's interest in avoiding undue administrative burden. They are likely to require additional time and possibly additional school personnel. However, this interest, particularly because independent adjudicators may merely be other teachers, and because disciplinarians need not provide the highly detailed, legalistic reasoned decisions that judges and administrative-law judges give,⁴⁶⁷ is not a persuasive reason to exempt school officials from these procedural requirements.

C. *The Risk of Erroneous Exclusion from the School Setting and the Probable Value of Additional Procedural Safeguards*

The final factor that courts weigh in determining the specific procedure due is “the risk of an erroneous deprivation of [the private] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.”⁴⁶⁸ The Supreme Court emphasized in *Goldberg* that the “opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard.”⁴⁶⁹ Certain additional procedural safeguards are useful to primary- and secondary-school students, who, as a class, differ from

463. *Goss v. Lopez*, 419 U.S. 565, 580 (1975) (“Some modicum of discipline and order is essential if the educational function is to be performed.”).

464. See Friendly, *supra* note 123, at 1292.

465. Morgan, *supra* note 461, at 307-09.

466. See *id.*

467. *Id.* at 332 (“The nature of the statement of reasons and its method of preparation will of course depend on the particular decisional circumstances.”).

468. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

469. *Goldberg v. Kelly*, 397 U.S. 254, 268-69 (1970). Jerry L. Mashaw has argued, in a similar vein, that “[t]he logical and limited extension of that principle is that when due process cannot be assured by trial-type hearings, additional or different techniques for assuring fairness become

adults.⁴⁷⁰ Again, the parallels to *Goldberg* are instructive: there, the Court held that to be meaningful, the opportunity to be heard must provide the individual “an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.”⁴⁷¹ The Court found that the specific barriers that welfare recipients are likely to face cut in favor of providing for oral, not just written, submissions to show their continuing eligibility for benefits before the decision maker herself.⁴⁷²

Public primary- and secondary-school students, as a class, have analogous limitations. In various constitutional contexts, the Supreme Court has recognized that, by virtue of their age and cognitive immaturity, children do not have the same decision-making capacities as adults.⁴⁷³ Accordingly, they may need more time to formulate arguments beyond the mere seconds *Goss* accords between notice and hearing.⁴⁷⁴ The notice-and-hearing requirements should be kept separate, rather than collapsed into a single conversation, to ensure the student has meaningful opportunity to compose himself.⁴⁷⁵ As in welfare termination hearings,⁴⁷⁶ a hearing regarding the suspension or expulsion of a student may well turn on his credibility. Providing time for the student to collect his thoughts before the hearing renders him more likely to articulate a reasoned response to the allegations against him, thus mitigating the risk of an unjust suspension or expulsion. Notably, this imposes little burden on the government beyond a short temporal delay—providing a student with a hearing even hours after notice would likely give the student enough time to make a reasoned decision about how best to proceed.

Similarly, other procedural requirements vindicate the student’s heightened interest in avoiding unjust exclusion from the school setting and add only minimally to the government’s administrative burden, while also supporting the gov-

appropriate.” Jerry L. Mashaw, *The Management Side of Due Process: Some Theoretical and Litigation Notes on the Assurance of Accuracy, Fairness, and Timeliness in the Adjudication of Social Welfare Claims*, 59 CORNELL L. REV. 772, 810 (1974).

470. See, e.g., *J.D.B. v. North Carolina*, 564 U.S. 261, 279–81 (2011) (requiring an age-sensitive analysis in deciding whether a criminal suspect should receive a *Miranda* warning).

471. *Goldberg*, 397 U.S. at 268.

472. *Id.* at 269. It was not enough that welfare recipients could present their positions to the decision maker in writing or secondhand through their caseworkers, as “[w]ritten submissions are an unrealistic option for most recipients, who lack the educational attainment necessary to write effectively and who cannot obtain professional assistance.” *Id.*

473. See *supra* notes 231–237 and accompanying text.

474. *Id.*

475. See Friendly, *supra* note 127, at 1111.

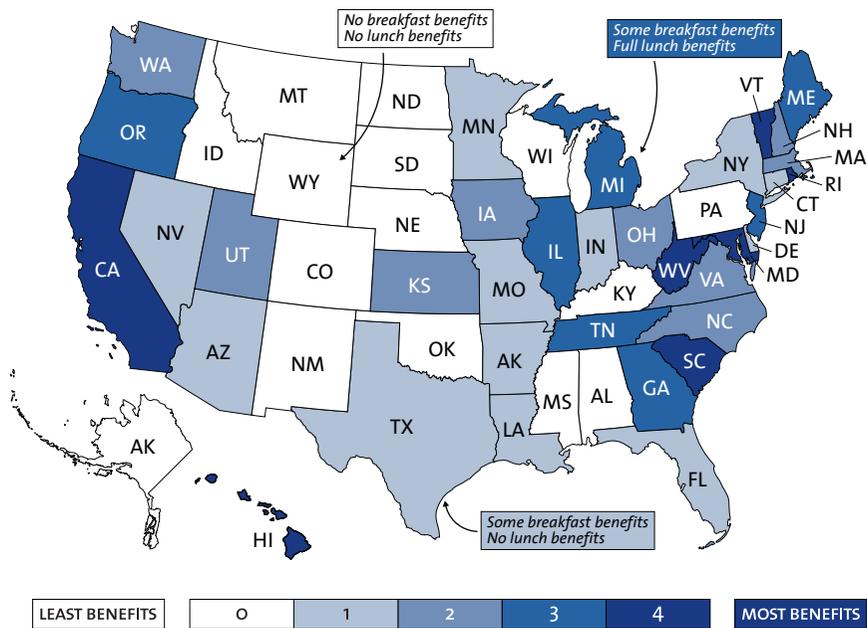
476. *Goldberg v. Kelly*, 397 U.S. 254, 268–69 (1970).

ernment's countervailing interest in instilling respect for constitutional principles in students. For example, mandating that the final decision maker for a student's punishment be an *unbiased* adjudicator adds little governmental burden, while potentially preventing a substantial deprivation. Though it is possible that the *Goss* Court determined that the conventional due-process requirement of an unbiased decision maker was outweighed by the government's interest in conserving administrative and fiscal resources, now that children facing suspension or expulsion risk not only unjust deprivations of their educations, but also long-term harms to their health and well-being, the procedural floor that *Goss* set warrants reconsideration.

CONCLUSION

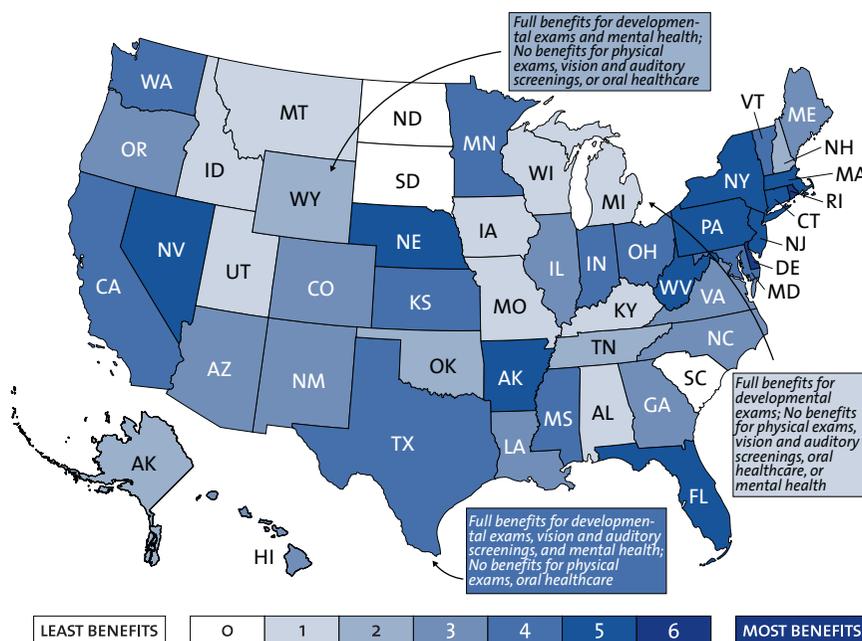
In *Goss v. Lopez*, the Supreme Court in 1975 held that state laws guaranteeing children an education conferred on public-school students a property interest in their educations. This interest is sufficiently important to warrant at least some procedural protections to students subject to suspension or expulsion. The Court, balancing the interests of students against the state, required school officials to provide only informal notice and hearing in the form of a conversation minutes after the misconduct has occurred. Since *Goss*, students' property interests in their education accruing from the statutory provision of entitlements, including meals and health services, have increased. Therefore, instead of arguing for a change in the procedural requirements unsupported by a change in the underlying interests of the student vis-à-vis the government, this Note has argued that the additional federal and state entitlements conferred on students since *Goss* warrant reevaluation of the procedural floor that *Goss* set. Providing at least some of the processes necessary to have a meaningful opportunity to be heard will help prevent unjust deprivation not just of academic opportunity, but also of meals and health services.

FIGURE 1. STATE LAWS AND REGULATIONS—NUTRITION



NUTRITION BENEFITS TO WHICH STUDENTS ARE ENTITLED are scored on a 0–4 scale, with 4 representing the most benefits. Two factors, entitlement to school breakfast benefits and entitlement to school lunch benefits, are ranked on a 0–2 scale, where 0 represents no benefits, 1 represents some benefits, and 2 represents full benefits. These factors are then summed to obtain an overall score. See Appendix B for more information.

FIGURE 2. STATE LAWS AND REGULATIONS—HEALTHCARE



SCHOOL HEALTH SERVICES TO WHICH STUDENTS ARE ENTITLED by state law or regulation are scored on a 0–6 scale, with 0 representing no services and 6 representing the full panoply of services. The services evaluated are (1) physical examinations/health appraisals; (2) developmental screenings, such as literacy assessments and dyslexia screenings; (3) vision screenings; (4) auditory screenings; (5) oral healthcare; and (6) mental-health services. One point is allocated for each of the six services that a state requires schools to provide to students, and then summed to obtain an overall score for each state. Points are not allocated for state laws and regulations included in Appendix C that permit or incentivize, but do not require, schools to provide the above services, as such laws and regulations do not categorically confer an entitlement on students. Moreover, because the definition and scope of each of the six health services outlined above vary widely between states, this map serves only as a rough approximation of state school-health entitlement schemes. See Appendix C for more information.

APPENDIX A: STATE CONSTITUTIONS—RIGHT TO EDUCATION¹

STATE	MANDATED PROVISION OF EDUCATION BY THE STATE
AL	“It is the policy of the state of Alabama to foster and promote the education of its citizens in a manner and extent consistent with its available resources, and the willingness and ability of the individual student . . .” ALA. CONST. art. XIV, § 256; “The State Board of Education . . . shall seek in every way to direct and develop public sentiment in support of public education.” ALA. CODE § 16-3-11 (2021). “[P]ursuant to <i>Ala. Const.</i> art. I, §§ 6, 13 and 22 and art. XIV, § 256, Alabama school-age children, including children with disabilities, have and enjoy a constitutional right to attend school in a liberal system of public schools established, organized, and maintained by the state, which shall provide all such schoolchildren with substantially equitable and adequate educational opportunities . . .” Opinion of the Justices, 624 So. 2d 107, 165 (Ala. 1993). “[E]ducation is a fundamental right under the Alabama constitution.” <i>Id.</i> at 159.
AK	“The legislature shall by general law establish and maintain a system of public schools open to all children of the State . . .” ALASKA CONST. art. VII, § 1.
AZ	“The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system . . .” ARIZ. CONST. art. XI, § 1.
AR	“Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.” ARK. CONST. art. 14, § 1.
CA	“A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.” CAL. CONST. art. IX, § 1.
CO	“The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools . . .” COLO. CONST. art. IX, § 2.
CT	“There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.” CONN. CONST. art. VIII, § 1.
DE	“The General Assembly shall provide for the establishment and maintenance of a general and efficient system of free public schools . . .” DEL. CONST. art. X, § 1.
FL	“Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools . . .” FLA. CONST. art. IX, § 1.
GA	“The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia.” GA. CONST. art. VIII, § 1, para. 1.
HI	“The State shall provide for the establishment, support and control of a statewide system of public schools . . .” HAW. CONST. art. X, § 1.
ID	“The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.” IDAHO CONST. art. IX, § 1.
IL	“A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities. The State shall provide for an efficient system of high quality public educational institutions and services.” ILL. CONST. art. X, § 1.
IN	“Knowledge and learning, generally diffused throughout a community, being essential to the preservation of a free government; it shall be the duty of the General Assembly to encourage, by all suitable means, moral, intellectual, scientific, and agricultural improvement; and to provide, by law, for a general and uniform system of Common Schools . . .” IND. CONST. art. 8, § 1.
IA	“The General Assembly shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.” IOWA CONST. art. IX, div. 2, § 3.
KS	“The legislature shall provide for intellectual, educational, vocational and scientific improvement by establishing and maintaining public schools . . . which may be organized and changed in such manner as may be provided by law.” KAN. CONST. art. 6, § 1.

1. These Appendices accompany Sherry Maria Tanious, Note, *Schoolhouse Property*, 131 YALE L.J. 1645 (2022). Each appendix excludes (1) state provisions that relate to measures related only during the COVID-19 public health emergency; and (2) state provisions regarding public charter schools and private schools. Each appendix is current as of March 1, 2022.

KY	“The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.” KY. CONST. § 183.
LA	“The legislature shall provide for the education of the people of the state and shall establish and maintain a public educational system.” LA. CONST. art. VIII, § 1.
ME	“A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools . . .” ME. CONST. art. VIII, pt. 1, § 1.
MD	“The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State a thorough and efficient System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.” MD. CONST. art. VIII, § 1.
MA	“Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people.” MASS. CONST. pt. 2, ch. V, § II.
MI	“The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.” MICH. CONST. art. VIII, § 2.
MN	“The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state.” MINN. CONST. art. XIII, § 1.
MS	“The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.” MISS. CONST. art. 8, § 201.
MO	“A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law.” MO. CONST. art. IX, § 1(a).
MT	“It is the goal of the people to establish a system of education which will develop the full educational potential of each person. Equality of educational opportunity is guaranteed to each person of the state.” MONT. CONST. art. X, § 1(1).
NE	“The Legislature shall provide for the free instruction in the common schools of this state of all persons between the ages of five and twenty-one years. The Legislature may provide for the education of other persons in educational institutions owned and controlled by the state or a political subdivision thereof.” NEB. CONST. art. VII, § 1.
NV	“The legislature shall provide for a uniform system of common schools, by which a school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.” NEV. CONST. art. 11, § 2.
NH	“Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences, and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people . . .” N.H. CONST. pt. 2, art. 83.
NJ	“The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in the State between the ages of five and eighteen years.” N.J. CONST. art. VIII, § IV, para. 1.

NM	“A uniform system of free public schools sufficient for the education of, and open to, all the children of school age in the state shall be established and maintained.” N.M. CONST. art. XII, § 1.
NY	“The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.” N.Y. CONST. art. XI, § 1.
NC	“Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.” N.C. CONST. art. IX, § 1.
ND	“A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control.” N.D. CONST. art. VIII, § 1.
OH	“Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds. . . .” OHIO CONST. art. VI, § 3.
OK	“The Legislature shall establish and maintain a system of free public schools wherein all the children of the State may be educated.” OKLA. CONST. art. XIII, § 1.
OR	“The Legislative Assembly shall provide by law for the establishment of a uniform, and general system of Common schools.” OR. CONST. art. VIII, § 3.
PA	“The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth.” PA. CONST. art. III, § 14.
RI	“The diffusion of knowledge, as well as of virtue among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.” R.I. CONST. art. XII, § 1.
SC	“The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.” S.C. CONST. art. XI, § 3.
SD	“The stability of a republican form of government depending on the morality and intelligence of the people, it shall be the duty of the Legislature to establish and maintain a general and uniform system of public schools wherein tuition shall be without charge, and equally open to all; and to adopt all suitable means to secure to the people the advantages and opportunities of education.” S.D. CONST. art. VIII, § 1.
TN	“The state of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines.” TENN. CONST. art. XI, § 12.
TX	“A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.” TEX. CONST. art. 7, § 1.
UT	“The Legislature shall provide for the establishment and maintenance of the state’s education systems including: (a) a public education system, which shall be open to all children of the state; and (b) a higher education system. Both systems shall be free from sectarian control.” UTAH CONST. art. X, § 1.
VT	“Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth.” VT. CONST. ch. II, § 68.
VA	“The General Assembly shall provide for a system of free public elementary and secondary schools for all children of school age throughout the Commonwealth, and shall seek to ensure that an educational program of high quality is established and continually maintained.” VA. CONST. art. VIII, § 1.
WA	“It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.” WASH. CONST. art. IX, § 1.
WV	“The Legislature shall provide, by general law, for a thorough and efficient system of free schools.” W. VA. CONST. art. XII, § 1.
WI	“The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours.” WIS. CONST. art. X, § 3.

WY

“The legislature shall provide for the establishment and maintenance of a complete and uniform system of public instruction, embracing free elementary schools of every needed kind and grade, a university with such technical and professional departments as the public good may require and the means of the state allow, and such other institutions as may be necessary.” WYO. CONST. art. 7, § 1.

APPENDIX B: STATE LAWS AND REGULATIONS—NUTRITION²

STATE	SCHOOL LUNCH	SCHOOL BREAKFAST	STATE FUNDING TO SCHOOL DISTRICTS FOR MEAL REIMBURSEMENTS IN ADDITION TO FEDERAL FUNDING ³
AL	No requirement that public schools participate in the National School Lunch Program or a state equivalent.	No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.	No additional state reimbursements to schools for meal programs.
AK	No requirement that public schools participate in the National School Lunch Program or a state equivalent.	No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.	No additional state reimbursements to schools for meal programs.
AZ	Requires K-8 public schools to participate in the National School Lunch Program or a state equivalent. “All elementary schools, middle schools and junior high schools shall participate in the national school lunch program . . . except that a school district with fewer than one hundred pupils that is not currently participating in the national school lunch program may be exempt . . . if the school district governing board determines at a public meeting to	No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.	No additional state reimbursements to schools for meal programs. A school district “may operate school meal programs, and for that purpose may employ personnel, purchase equipment and food and incur other necessary expenses, making payment therefor through the use of gifts or donations, proceeds of sales of school meals, contributions made available by the federal government or monies obtained by school district levy, but no monies acquired by the levy of state, county or school district taxes shall be

- Appendix B excludes state laws and regulations concerning the following: (1) methods for procuring food; (2) nutritional standards for school meals above what is required by the Food Nutrition Service of the United States Department of Agriculture; (3) distribution of excess or surplus school foods to low-income students; (4) farm-to-school programs, including incentive programs for locally sourced food; (5) anti-stigmatization policies that prohibit schools from discriminating against or shaming of students who receive free or reduced-price lunches or have meal debt; (6) milk programs; (7) state meal pilot programs; and (8) state nonrecurring grant programs for school meal reimbursements. In both Appendix B and Appendix C, I provide the date that the specific provision quoted was made “effective.” Accordingly, two different parts of the same provision may have different “effective” dates. I provide the date that a statute was “enacted” when either the date that the provision went into effect is not easily ascertainable, or when different parts of the same provision went into effect in different years. Notably, almost all of the statutes cited in both Appendix B and Appendix C were both enacted and made effective after the 1975 decision *Goss v. Lopez*, demonstrating that the Supreme Court could not possibly have accounted for these developments in state law when determining the specific process that students subject to exclusion from school were owed.
- The designation “No additional state reimbursements to schools for meal programs” means only that there are no statutory or regulatory provisions currently in place that *guarantee* additional state reimbursements to schools beyond what is required by the federal meal programs and create a legitimate claim of entitlement for due-process purposes. State education agencies may still make some reimbursements to schools, but those reimbursements vary year-to-year and the state agency can stop making them at any time. Because they are discretionary, they are less likely to constitute entitlements.

	not participate” in the program. ARIZ. REV. STAT. ANN. § 15-242(B) (2021) (effective 2005).		expended for food.” ARIZ. REV. STAT. ANN. § 15-1154(A) (2021) (effective 1991).
AR	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>However, public schools “should ensure that all students have access to school meals.” 005-28.43-11.00 ARK. CODE R. § 11.03 (LexisNexis 2021) (promulgated 2012). Schools may not “prevent a student from accessing the school’s meal or snack services” even if the student has outstanding meal debt. ARK. CODE ANN. § 6-18-715(c)(2) (2021) (effective 2019). If a student owes money for a meal or snack, schools are empowered only to contact the parent or guardian of the student to either “[a]ttempt collection of the owed money” or “[r]equest that the parent or guardian apply for meal benefits in a federal or state child nutrition program” but may not withhold food from the child. <i>Id.</i> § 6-18-715(d).</p>	<p>Requires public high-need schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>“[A]ny schools located in a school district in which twenty percent (20%) or more of the students enrolled in the school [in] the preceding school year were eligible for free or reduced-price meals shall establish a school breakfast program.” ARK. CODE ANN. § 6-18-705(a)(3) (2021) (enacted 1991). Schools may receive a waiver if they lack the “facilities or equipment” necessary to offer such a program or “if fifty percent (50%) or more of the eligible students refuse to participate . . .” <i>Id.</i> § 6-18-705(d).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state allocates additional funding to schools participating in the National School Lunch Program according to a formula based upon the percentage of students eligible for free or reduced-price lunches under the federal guidelines. ARK. CODE ANN. § 6-20-2305(b)(4)(A) (2021) (enacted 2003). Schools may use the money towards, among other things, “the expenses of federal child nutrition programs to the extent necessary to provide school meals without charge to all students if the school district” participates in the Community Eligibility Provision, and “the expenses of federal child nutrition programs to the extent necessary to provide school meals without charge to students otherwise eligible for reduced-price meals . . .” 005-28.36-6.00 ARK. CODE R. 6.07 (LexisNexis 2021) (promulgated 2010).</p>
CA	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent, and requires schools to provide free lunches to all students regardless of eligibility.</p> <p>Recognizing that “there is a demonstrated relationship between the intake of food and good nutrition and the capacity of children to develop and learn . . . [i]t is the policy of the State of California that no child shall go hungry at school . . . and that school . . . have an obligation to provide for the nutritional needs and nutrition education of all pupils during the schoolday . . .” CAL. EDUC. CODE § 49530 (West 2021) (effective 1977). School districts “maintaining kindergarten or any of grades 1 to 12, inclusive, shall provide two school meals free of charge during each schoolday to any pupil who requests a meal without consideration of the pupil’s eligibility for a federally funded free or reduced-price meal with a maximum of one free meal for each meal service</p>	<p>Requires public schools to participate in the federal School Breakfast Program or a state equivalent, and requires schools to provide free breakfasts to all students regardless of eligibility.</p> <p>School districts “maintaining kindergarten or any of grades 1 to 12, inclusive, shall provide two school meals free of charge during each schooldays to any pupil who requests a meal without consideration of the pupil’s eligibility for a federally funded free or reduced-price meal with a maximum of one free meal for each meal service period . . .” CAL. EDUC. CODE § 49501.5(a)(1) (West 2021) (effective 2021).</p> <p>The federal School Breakfast Program must “be made available in all schools where it is needed to provide adequate nutrition for children in attendance.” <i>Id.</i> § 49550.3(a) (effective 1991). A school district that “has a reimbursable school</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state education agency “shall reimburse local educational agencies that participate in the federal School Breakfast Program and National School Lunch Program for all nonreimbursed expenses accrued in providing United States Department of Agriculture reimbursable meals to pupils . . .” CAL. EDUC. CODE § 49501.5(a)(4) (West 2021) (effective 2021). “The amount of per-meal reimbursements . . . shall not exceed the difference between the sum of the amounts calculated from meals claims based on the free combined breakfast and lunch reimbursement rates established by the United States Department of Agriculture and state meal contribution . . . and the combined federal and state amounts reimbursed for reduced-price and paid meals claimed.” <i>Id.</i></p>

	<p>period;” the meals provided must be nutritiously adequate as defined by the federal nutrition rules. <i>Id.</i> § 49501.5(a)(1) (effective 2021).</p> <p>Requires high-need public schools to provide free universal meal service to all students.</p> <p>“In order to provide pupils in high-poverty schools with optimal nutrition for learning and to ensure that schools receive the maximum federal meal reimbursement, a school district or a county superintendent of schools shall provide breakfast and lunch free of charge to all pupils at a high poverty school” CAL. EDUC. CODE § 49564.3(b)(1) (West 2021) (effective 2021).</p>	<p>breakfast program shall not charge any pupil . . . any amount for any breakfast served to that pupil through the program, and shall provide a breakfast free of charge to any pupil who requests one with consideration of the pupil’s eligibility for a federally funded free or reduced-price meal. The meals . . . shall count toward the total of two school meals required to be provided each schoolday” <i>Id.</i> § 49501.5(a)(3) (effective 2021).</p> <p>Requires high-need public schools to provide free universal meal service to all students.</p> <p><i>See supra</i> California School Lunch section.</p>	
<p>CO</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>The state legislature has found that “[g]ood nutrition is an essential component to student learning and promotes success for students in today’s fast-paced environment” and that “[b]y increasing the number of students who can receive a free, nutritious lunch, the school lunch program is an important component of an accountable program to meet state academic standards, and may therefore receive funding from the state education fund” created by the state constitution. COLO. REV. STAT. § 22-82.9-102 (2021) (effective 2008). Accordingly, the state “created the child nutrition school lunch protection program to ensure that each student in a Colorado public school has access to a healthy lunch at school to help the student participate fully in the learning process.” <i>Id.</i> § 22-82.9-104. The program requires the state legislature to provide funding annually to allow schools to “provide lunches at no charge for children . . . in kindergarten through twelfth grade . . . who would otherwise be required to pay a reduced price for lunch,” but does not require</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent, and requires schools to provide free breakfast to all students after the start of the school day.</p> <p>“There is hereby created the breakfast after the bell nutrition program. The purpose of the program is to offer a free breakfast to each student enrolled in a public school that has seventy percent or more students who are eligible for free or reduced-cost lunch under the school lunch program.” COLO. REV. STAT. § 22-82.8-103(1) (2021) (effective 2013). School districts with a student population of fewer than one thousand, however, are not required to offer free breakfasts. <i>Id.</i> § 22-82.8-103(3).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>Under the state’s lunch protection law, the state legislature “shall make an appropriation by separate line item in the annual general appropriation bill to allow school food authorities to provide lunches at no charge for children . . . in kindergarten through twelfth grade, participating in the school lunch program, who would otherwise be required to pay a reduced price for lunch.” COLO. REV. STAT. § 22-82.9-105(1) (2021) (effective 2019).</p> <p>A separate program appropriates state money “to allow school food authorities to provide free breakfasts to children participating in the school breakfast program who would otherwise be required to pay a reduced price for breakfast” <i>Id.</i> § 22-82.7-104(1) (effective 2009).</p> <p>More generally, the state legislature “may appropriate by separate line item an amount to assist school food authorities that are providing a school breakfast program” to “create, expand, or enhance” the program. <i>Id.</i> § 22-54-123.5(1) (effective 2003).</p>

schools to participate in any lunch program. *Id.* § 22-82.9-105(1) (effective 2019).

Though the state funding scheme arguably grants students eligible for reduced-price lunches a legitimate claim of entitlement to free lunches – relevant for due-process purposes – the law explicitly disclaims the creation of any “legal entitlement to any participant to assistance provided pursuant to the program.” *Id.* § 22-82.9-107 (effective 2008).

CT

No requirement that public schools participate in the National School Lunch Program or a state equivalent.

Any school district “may establish and operate a school lunch program for public school children [and] a school breakfast program, as provided under federal laws governing said programs When such services are offered, a [school district] shall provide free lunches, breakfasts or other such feeding to children” who are eligible under the federal guidelines.

In addition to complying with the federal criteria, schools that participate in the federal school meal programs may not “refus[e] to serve a meal” to a child with unpaid meal debt. CONN. GEN. STAT. § 10-215 (2021) (effective 2021).

Requires high-need K-8 public schools to participate in the federal School Breakfast Program or a state equivalent.

Each school district “having at least one school building designated as a severe need school shall be eligible to receive a grant to assist in providing school breakfasts to all students in each eligible severe need school, provided any [school district] having at least one [severe need] school building . . . shall participate in the federal school breakfast program . . . on behalf of all severe need schools in the district with grades eight or under in which at least eighty percent of the lunches served are served to students who are eligible for free or reduced price lunches pursuant to said federal law and regulations. For purposes of this section, ‘severe need school’ means a school in which (1) the school is participating, or is about to participate, in a breakfast program, and (2) twenty percent or more of the lunches served to students at the school in the fiscal year two years prior to the grant year were served free or at a reduced price.” CONN. GEN. STAT. § 10-266w(a) (2021) (effective 2011).

Provides additional state reimbursements to schools for meal programs.

“The [state education agency] is authorized to expend in each fiscal year, within available appropriations, an amount equal to (1) the money required pursuant to the matching requirements of said federal laws and shall disburse the same in accordance with said laws, and (2) ten cents per lunch served in the prior school year in accordance with said laws by any local or regional board of education . . . that participates in the National School Lunch Program and certifies . . . that the [state] nutrition standards . . . shall be met.” CONN. GEN. STAT. § 10-215b(a) (2021) (effective 2006).

Within the limits of available state funds, each eligible school district is entitled to receive, annually, the sum of “(1) three thousand dollars for each severe need school in each school district which provides a school breakfast program prorated per one hundred eighty days of the school year; and (2) ten cents per breakfast served in each severe need school.” *Id.* § 10-266w(c) (effective 1988).

The state education agency “shall administer, within available appropriations, a child nutrition outreach program to increase (1) participation in the federal School Breakfast Program, federal Summer Food Service Program and federal Child and Adult Care Food Program; and (2) federal reimbursement for such programs.” *Id.* § 10-215h(a) (effective 2010).

<p>DE</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p>	<p>Requires high-need public schools to provide free breakfast to all students through an alternative service model.</p> <p>Every public school participating in the Community Eligibility Provision of the federal Healthy, Hunger-Free Kids Act of 2010 “shall be required to offer a breakfast at no cost to every student in the school through an alternative service model,” such as breakfast in the classroom or breakfast after the bell, “which may be in addition to their traditional breakfast meal service.” DEL. CODE ANN. tit. 14, § 4137(c) (West 2021) (effective 2016).</p>	<p>Provides additional state reimbursement to schools for the operation of meal programs.</p> <p>“The salaries . . . for school lunch manager and district managers shall be paid from state funds. A minimum of 25% of the salary . . . for school lunch cooks and general workers shall be paid by the State from funds not derived from local school lunch operations.” DEL. CODE ANN. tit. 14, § 1322 (West 2021) (enacted 1957).</p>
<p>FL</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>“Each district school board shall consider the recommendations of the district school superintendent and adopt policies to provide for an appropriate food and nutrition program for students consistent with federal law and department rules.” FLA. STAT. § 595.405(1) (2021) (effective 2016).</p>	<p>Requires K-5 public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>“Each district school board shall implement [the federal] school breakfast programs that make breakfast meals available to all students in each school that serves any combination of grades kindergarten through 5.” FLA. STAT. § 595.405(2) (2021) (effective 2016).</p> <p>Requires high-need public schools to provide a universal free breakfast service to all students.</p> <p>“Each district school board is encouraged to provide universal, free school breakfast meals to all students in each elementary, middle, and high school. A universal school breakfast program shall be implemented in each school in which 80 percent or more of the students are eligible for free or reduced-price meals, unless the district school board, after considering public testimony at two or more regularly scheduled board meetings, decides not to implement such a program in such schools.” FLA. STAT. § 595.405(5) (2021) (effective 2016). “Universal school breakfast program” is defined</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state education agency must “annually allocate . . . as applicable, funds provided from the school breakfast supplement in the General Appropriations Act based on each district’s total number of free and reduced-price breakfast meals served.” FLA. STAT. § 595.404(8) (2021) (effective 2013).</p>

		as a “program that makes breakfast available at no cost to all students regardless of their household income.” <i>Id.</i> § 595.402(8).	
GA	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent.</p> <p>Each school district must “maximize student participation and quality meals in the school nutrition program” via “[p]articipation by all schools in a state-approved nutrition program.” GA. COMP. R. & REGS. 160-5-6-.01(2)(a)(1) (2021) (promulgated 1990). A “state-approved nutrition program” is defined as “a federal lunch program which operates in every school and is available to every enrolled student in attendance during the period of 10 a.m. to 2 p.m. and a breakfast program.” <i>Id.</i> 160-5-6-.01(1)(n).</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>Each school district “is encouraged to establish and support a school breakfast program to make breakfast available to all students in kindergarten through grade eight. All school systems are required to establish and support a school breakfast program in all schools with kindergarten through grade eight if at least 25 percent of the student population is eligible for free or reduced price lunch under federal guidelines and in all schools not containing kindergarten through grade eight if at least 40 percent of the student population is eligible for free or reduced price lunch under federal guidelines.” GA. CODE ANN. § 20-2-66(a) (2021) (effective 1994).</p>	<p>Provides additional state reimbursements to schools for the operation of meal programs.</p> <p>The state education agency “shall annually determine the amount of state funds needed to provide a state-wide school lunch program,” and is “authorized to provide for the payment of: (A) Operating costs of school lunchrooms, including breakfast costs, as financed by federal funds for those students eligible under federal guidelines; (B) State supplements to the salaries paid such personnel by local units of administration; and (C) State incentive pay for satisfactory completion of . . . training programs [for school lunch personnel].” GA. CODE ANN. § 20-2-187(a)(1) (2021) (enacted 1985). In addition, the agency must allot “funds to local units of administration to provide for services rendered on a ten-month basis by school food and nutrition personnel.” <i>Id.</i> 20-2-187(c)(1).</p>
HI	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent to the extent practicable.</p> <p>“School meals [defined as breakfast and lunch prepared and served by a school cafeteria per HAW. REV. STAT. § 302A-101] shall be made available under the school meals program in every school where the students are required to eat meals at school.” HAW. REV. STAT. § 302A-404(a) (2021) (effective 2009). “A school lunch program shall be provided in the public schools for the purposes of providing students with a nutritious meal at a minimum cost, providing learning experiences, and establishing desirable food habits.” HAW. CODE R. § 8-37-1 (LexisNexis 2021) (promulgated 1981). “The public schools shall participate in the benefits of the National School Lunch Program, School Breakfast Program, and the Commodity Program to the extent possible . . .” <i>Id.</i> § 8-37-2.</p>	<p>Requires public schools to participate in the federal School Breakfast Program or a state equivalent to the extent practicable.</p> <p><i>See supra</i> Hawaii School Lunch section.</p>	<p>No additional state reimbursements to schools for meal programs.</p> <p>Requires the state to provide notice and hearing to those denied free or reduced-price meals.</p> <p>While the state does not provide additional reimbursements to schools participating in meal programs, the state education agency must provide notice and hearing to those denied free or reduced-price meals, perhaps in recognition of school meals as an entitlement. HAW. CODE R § 8-37-5(c) (LexisNexis 2021) (promulgated 1983).</p>

<p>ID</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p>	<p>No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.</p>	<p>Provides additional state reimbursements to schools for the operation of meal programs.</p> <p>“In school districts where personnel are employed to operate a school lunch program partially funded under provisions of the national school lunch act, all employer paid contributions to the social security administration for school lunch personnel shall be paid from funds received by school districts from the state general account appropriation for public school support.” IDAHO CODE ANN. § 33-1015 (West 2021) (effective 2006).</p>
<p>IL</p>	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent.</p> <p>Finding high levels of food insecurity amongst Illinois children, “the General Assembly believes it is in the best interest of Illinois to utilize resources available through existing child nutrition programs, to the fullest extent possible. The General Assembly also recognizes a definite correlation between adequate child nutrition and a child’s physical, emotional, and cognitive development. There is also a correlation between adequate nutrition and a child’s ability to perform well in school.” 105 ILL. COMP. STAT. 125/0.05 (2021) (effective 2000). Accordingly, “[e]very public school must have a free lunch program.” <i>Id.</i> 125/4 (effective 1970). A “free lunch program” is defined as “those programs through which school boards supply all of the needy children in their respective districts with free school lunches.” <i>Id.</i> 125/1 (effective 2000). “[E]very public school shall provide free lunches to students eligible to receive free meals” under federal eligibility regulations. ILL. ADMIN. CODE tit. 23, § 305.10(a) (2021) (promulgated 2008).</p> <p>“Every school in this State shall provide a federally reimbursable meal or snack to a student of that school who requests the meal or snack, regardless of whether the student has the ability to pay for</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>The state legislature “realizes the importance of the National School Breakfast Program as an effective measure that must be widely implemented to insure more adequate nutrition for Illinois children.” 105 ILL. COMP. STAT. 125/0.05 (2021) (effective 2000). Accordingly, each school district “shall implement and operate a school breakfast program . . . if a breakfast program does not currently exist, in accordance with federal guidelines in each school building within its district in which at least 40% or more of the students are eligible for free or reduced-price lunches,” though schools may opt out if federal, state, and other reimbursements do not cover the cost of the program. <i>Id.</i> 126/15 (effective 2005). “Every public school that offers a free breakfast program . . . shall provide free breakfasts to students eligible to receive free meals” under federal eligibility regulations. ILL. ADMIN. CODE tit. 23, § 305.10(b) (2021) (promulgated 2008).</p> <p>Requires high-need public schools to provide breakfast after the start of the school day.</p> <p>Each school district must also “implement and operate a breakfast after the bell program . . . if</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state education agency “shall reimburse not less than \$0.15 or the actual cost, whichever is less, to School Boards for each free lunch and not less than \$0.15 or the actual cost, whichever is less, for each free breakfast supplied by them. This appropriation shall be in addition to any federal contributions.” 105 ILL. COMP. STAT. 125/2 (2021) (effective 2000).</p> <p>The state education agency “shall fund a breakfast incentive program comprised of [additional funding incentives, start-up incentive grants, and non-traditional breakfast incentives].” <i>Id.</i> 125/2.5 (effective 2009).</p>

	the meal or snack or owes money for earlier meals or snacks.” 105 ILL. COMP. STAT. 123/10(a) (2021) (effective 2018).	[one] does not currently exist, in each school building within its district (1) in which at least 70% or more of the students are eligible for free or reduced-price lunches . . . (2) in which at least 70% or more of the students are classified as low-income . . . or (3) that has an individual site percentage for free or reduced-price meals of 70% or more,” though schools may opt out if federal, state, and other reimbursements do not cover the cost of the program. 105 ILL. COMP. STAT. 126/16 (2021) (effective 2017).	
IN	No requirement that public schools participate in the National School Lunch Program or a state equivalent. “Participation in a school lunch program [defined as “a program under which lunches are served by a school in Indiana on a nonprofit basis to children in attendance, including any program under which a school receives assistance” per IND. CODE § 20-26-9-6] under this chapter is discretionary with the governing board of a school [district].” IND. CODE § 20-26-9-12 (2021) (effective 2005). “If a [school] board determines it will promote the health of school children and advance the educational work of schools, the board may provide for the servings of lunches to the students attending designated schools.” <i>Id.</i> § 20-25-4-19(a). A school board may, at its discretion, “furnish lunches without cost to a student who is needy and unable to pay for the student’s lunch.” <i>Id.</i> § 20-25-4-19(c).	Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent. Each school district “shall implement . . . a school breakfast program at each qualifying school building . . . within the school [district’s] boundaries.” IND. CODE § 20-26-9-13 (2021) (effective 2005). A “qualifying school building” is a school at which “lunches are served to students” and in which at least fifteen percent of enrolled students qualify for free or reduced-price lunches. <i>Id.</i> § 20-26-9-2 (effective 2007).	No additional state reimbursements to schools for meal programs.
IA	Requires public schools to participate in the National School Lunch Program or a state equivalent. “A school district shall operate or provide for the operation of lunch programs at all [schools] in the district . . . [and] shall provide students with nutritionally adequate meals and shall be operated in compliance with the rules of the [state education agency] and pertinent federal law and	No requirement that public schools participate in the federal School Breakfast Program or a state equivalent. “A school district may operate or provide for the operation of school breakfast programs at all [schools] in the district, or provide access to a school breakfast program at an alternative site to students who wish to participate in a school breakfast program. The programs shall provide	No additional state reimbursements to schools for meal programs.

	regulation. The school lunch program shall be provided for all students in each district who attend public school four or more hours each school day and wish to participate in a school lunch program.” IOWA CODE § 283A.2 (2021) (effective 2002).	students with nutritionally adequate meals and shall be operated in compliance with the rules of the [state education agency] and pertinent federal law and regulation.” IOWA CODE § 283A.2 (2021) (effective 2002).	
KS	No requirement that public schools participate in the National School Lunch Program or a state equivalent.	Requires public schools to participate in the federal School Breakfast Program or a state equivalent. “[E]ach school district shall enter into an agreement with the [state education agency] for the establishment and maintenance of a school breakfast program under which breakfasts are made available to pupils in attendance at school . . . [S]uch breakfasts shall be made available in each school building operated or used for pupil attendance purposes by the board of education.” KAN. STAT. ANN. § 72-17,145(c) (2021) (effective 1992). Schools may request to waive this requirement, but “[n]o waiver shall be granted” to “a school building in which 35% or more of the pupils . . . were eligible for free or reduced price meals under the national school lunch act” in the previous year. <i>Id.</i> § 72-17,145(d).	Provides additional state reimbursements to schools for meal programs. “Each [school] board shall be entitled to receive, from appropriations from the state general fund, six cents (6¢) for each type-A meal served under an approved school lunch program during each school year . . . For the purpose of this section every type-A lunch served shall be counted equally.” KAN. STAT. ANN. § 72-17,137(a) (2021) (enacted 1973).
KY	No requirement that public schools participate in the National School Lunch Program or a state equivalent. “The operation of all school nutrition programs . . . shall be the responsibility of the local board of education or the governing body of the schools.” 702 KY. ADMIN. REGS. 6:010 § 2 (2021) (promulgated 1984).	No requirement that public schools participate in the federal School Breakfast Program or a state equivalent. <i>See supra</i> Kentucky School Lunch section.	No additional state reimbursements to schools for meal programs.
LA	No requirement that public schools participate in the National School Lunch Program or a state equivalent. The state only requires that schools provide lunches to students “under the supervision and regulation of the [state education agency], taking	Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent. “[E]ach public elementary and secondary school shall participate in the national school breakfast program . . . by furnishing free or	No additional state reimbursements to schools for meal programs.

	<p>into consideration the nutritional needs of the children, the distance traveled from home to school, and student enrollment.” LA. STAT. ANN. § 17:192(A) (2021) (effective 2009).</p> <p>Though the state does not require that the lunches be subsidized or provided at a reduced rate to low-income students as prescribed by the Federal School Lunch Program, when an elementary school denies a student a school meal for any reason, it must “provide a sandwich or a substantial and nutritious snack item to the child as a substitute for the meal denied.” <i>Id.</i> § 17:192.1(A)(2) (effective 2010).</p>	<p>reduced-price breakfasts in accordance with such program to all eligible students in the schools under its jurisdiction if at least twenty-five percent of the students enrolled in one or more of the schools under its jurisdiction are eligible for such program.” LA. STAT. ANN. § 17:192(B)(1) (2021) (effective 2009). Waivers may be granted to schools at which at least 50% of eligible students refuse to participate in the breakfast program. <i>Id.</i> § 17:192(B)(2).</p>	
ME	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent, and to provide free lunch to all students regardless of eligibility.</p> <p>“A public school shall participate in the National School Lunch Program in accordance with [federal regulations] and provide Type A meals as determined by the United States Department of Agriculture.” ME. STAT. tit. 20-A, § 6602(1)(A) (2021) (effective 2008).</p> <p>“A public school that serves lunch shall provide a student who is ineligible for free or reduced-price meals . . . a meal that meets the requirements of the federal National School Lunch Program set forth in [federal regulations] at no cost to the student.” <i>Id.</i> § 6602(1)(I) (effective 2021).</p> <p>“A public school that serves lunch shall provide a student who is eligible for free or reduced-price meals . . . a meal that meets the requirements of the federal National School Lunch Program set forth in [federal regulations] at no cost to the student.” <i>Id.</i> § 6602(1)(D).</p>	<p>Requires public schools to that serve breakfast to provide free breakfast to all students regardless of eligibility.</p> <p>“A public school that serves breakfast shall provide a student who is ineligible for free or reduced-price meals . . . a meal that meets the requirements of the federal School Breakfast Program set forth in [federal regulations] at no cost to the student.” ME. STAT. tit. 20-A, § 6602(1)(H) (2021) (effective 2021).</p> <p>“A public school that serves breakfast shall provide a student who is eligible for free and reduced-price meals . . . a meal that meets the requirements of the federal School Breakfast Program set forth in [federal regulations] at no cost to the student.” <i>Id.</i> § 6602(1)(B).</p> <p>Requires high-need public schools to provide breakfast after the start of the school day.</p> <p>Schools “in which at least 50% of students qualified for a free or reduced-price lunch during the preceding school year shall operate an alternative breakfast delivery service that provides breakfast after the start of the school day and before any lunch period” ME.</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>For students ineligible for a free or reduced-price lunch, “[t]he State shall provide to the public school funding equal to the difference between the federal reimbursement for a free lunch and the full price of the lunch” ME. STAT. tit. 20-A, § 6602(1)(I) (2021) (effective 2021). For students eligible for reduced-price lunches, “[t]he State shall provide to the public school funding equal to the difference between the federal reimbursement for a free lunch and the federal reimbursement for a reduced-price lunch” <i>Id.</i> § 6602(1)(D).</p> <p>For students ineligible for a free or reduced-price breakfast, “[t]he state shall provide to the public school funding equal to the difference between the federal reimbursement for a free breakfast and the full price of the breakfast” <i>Id.</i> § 6602(1)(H). For students eligible for a reduced-price breakfast, “[t]he State shall provide to the public school funding equal to the difference between the federal reimbursement for a free breakfast and the federal reimbursement for a reduced-price breakfast for each student eligible for a reduced-price breakfast and receiving breakfast.” <i>Id.</i> § 6602(1)(B).</p> <p>“The Meals for Students Fund . . . is established as a nonlapsing, dedicated fund within the [state education</p>

		STAT. tit. 20-A, § 6602(1)(F) (2021) (effective 2020).	agency] to provide funds for the costs to the State to pay the difference between the federal reimbursement for a free breakfast or lunch and the full price of a breakfast or lunch for students that are ineligible for a free or reduced-price breakfast or lunch.” <i>Id.</i> § 6602(1)(K).
MD	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent.</p> <p>“Each public school . . . shall provide a free feeding program for children who meet the standards adopted by the [state education agency] . . .” MD. CODE ANN., EDUC. § 7-603 (West 2021) (effective 2018).</p> <p>Requires public schools to provide free lunch to students eligible for a reduced-price lunch.</p> <p>Beginning in fiscal year 2023, schools “may not charge a student who is eligible for a reduced price breakfast or lunch for any portion of the cost of the meal.” MD. CODE ANN., EDUC. § 7-602(e)(2) (West 2021) (effective 2018).</p>	<p>Requires public primary schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>The state education agency “shall require each [school district] to provide in each elementary school a free breakfast” that meets “the standards of the United States Department of Agriculture.” MD. CODE ANN., EDUC. § 7-701(a)(1) (West 2021) (effective 2018). Schools in which “participation is less than 25%” of eligible students, or in which eligibility for free or reduced-price meals is “less than 15%” may be exempt from this requirement. <i>Id.</i> § 7-702 (effective 2019).</p> <p>Requires public schools that participate in a breakfast program to provide free breakfast to students eligible for a reduced-price breakfast.</p> <p>Schools “may not charge a student who is eligible for a reduced price breakfast for any portion of the cost of the meal.” MD. CODE ANN., EDUC. § 7-602(e)(1) (West 2021) (effective 2018).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The State must reimburse a school district for “(1) Breakfasts provided to all students eligible for a reduced price breakfast under the federal School Breakfast Program” in the amount of “the greater of 30 cents per student or the required federal per meal charge to students; and (2) Lunches provided to all students eligible for a reduced price lunch under the National School Lunch Program,” in the amount of 30 cents per student for fiscal year 2022 and the greater of 40 cents per student or the required federal per meal charge to students for fiscal year 2023 and every year thereafter. MD. CODE ANN., EDUC. § 7-602(d) (West 2021) (effective 2018). State funds “appropriated for the free feeding program shall be used to reimburse each [school district] . . . for the difference between costs and all available reimbursements and other funds.” <i>Id.</i> § 7-604.</p> <p>Schools in which 40% or more students are eligible for federal free or reduced-price meals may participate in the “Maryland Meals for Achievement In-Classroom Breakfast Program,” which is intended “to provide funding for a school that makes an in-classroom breakfast available to all students in the school.” <i>Id.</i> § 7-704 (effective 2002).</p>
MA	<p>Requires high-need public schools to participate in the National School Lunch Program or a state equivalent, and requires high-need public schools to provide a universal free lunch service to all students.</p> <p>The state education agency “shall require all public school to make lunches available to children.” MASS. GEN. LAWS ch. 69, § 1C(a) (2021) (effective 1993).</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>“[A]ll public schools that draw their attendance from areas with a high number of needy children [must] make school breakfast programs available to children, and to operate such programs in accordance with the federal laws and regulations pertaining to school breakfast programs. Such breakfast programs shall be made available to children who do not</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state “shall reimburse each city or town required by this subsection to make school breakfast programs available to children who qualify for free or reduced-price meals pursuant to federal income eligibility guidelines, at a uniform rate . . .” MASS. GEN. LAWS ch. 69, § 1C(b) (2021) (effective 1993).</p>

	<p>A school with 60% or more high-need students as defined by federal regulation “shall elect and implement the federal community eligibility provision or provision 2 [of the Healthy, Hunger-Free Kids Act] to provide universal free school . . . lunch to all students,” unless doing so would result in financial hardship to the school. MASS. GEN. LAWS ch. 71, § 72A(b)(1) (2021) (effective 2021). Schools comprised of between 50% and 60% high-need students must also implement the Community Eligibility Provision or Provision 2 unless the school committee votes against it or the school no longer has the qualifying identified student percentage. <i>Id.</i> § 72A(b)(2).</p>	<p>qualify for free or reduced-price breakfast under federal income eligibility guidelines at a price to each such child that is not less than the cost to the school of making such breakfast available to such child.” MASS. GEN. LAWS ch. 69, § 1C(b) (2021) (effective 1993).</p> <p>Requires high-need public schools to provide a universal free breakfast service to all students.</p> <p>A school with 60% or more high-need students as defined by federal regulation “shall elect and implement the federal community eligibility provision or provision 2 [of the Healthy, Hunger-Free Kids Act] to provide universal free school breakfast . . . to all students,” unless doing so would result in financial hardship to the school. MASS. GEN. LAWS ch. 71, § 72A (2021) (effective 2021). Schools comprised of between 50% and 60% high-need students must also implement the Community Eligibility Provision or Provision 2 unless the school committee votes against it or the school no longer has the qualifying identified student percentage. <i>Id.</i> § 72A(b)(2).</p> <p>Requires high-need public schools to provide breakfast after the start of the school day.</p> <p>“All public schools required to serve breakfast . . . and where not less than 60 per cent of the students at the school are eligible for free or reduced-price meals under the National School Lunch Program . . . shall offer all students a school breakfast after the beginning of the instructional day.” MASS. GEN. LAWS ch. 69, § 1C(c) (2021) (effective 1993).</p>	
MI	Requires public schools to participate in the National School Lunch Program or a state equivalent.	Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent.	Provides additional state reimbursements to schools for meal programs.

	<p>“The board of a K to 12 school district shall, and the board of another school district may, establish and operate a program under which lunch is made available to all full-time pupils enrolled and in regular daily attendance at each public school of the school district.” MICH. COMP. LAWS § 380.1272a(1) (2021) (effective 1996).</p> <p>According to the Michigan Attorney General’s interpretation of a similar antecedent statute, “the board of education of a K to 12 school district may not decline to provide a hot lunch program for its pupils in each school because the state may not have reimbursed them fully for the cost of implementing the program.” 5635 Mich. Op. Att’y Gen. 572 (1980), 1980 WL 114005.</p>	<p>“The board of a K to 12 school district shall establish and operate a program under which breakfast is made available to all full-time pupils enrolled and in regular daily attendance at each public school of the school district unless no more than 20% of the pupils enrolled in the school building in the immediately preceding school year met the income eligibility criteria for free or reduced-price lunch under the federally funded school lunch program” MICH. COMP. LAWS § 380.1272a(2) (2021) (effective 1996).</p> <p>According to the Michigan Attorney General’s interpretation of a similar antecedent statute, “a board of education of a K to 12 school district is required to provide a breakfast program in its schools since the legislature has appropriated moneys to reimburse the school district for the costs thereof.” 5635 Mich. Op. Att’y Gen. 572 (1980), 1980 WL 114005.</p>	<p>The state reimburses school districts for “at least 6.0127% of the necessary costs of operating the state mandated portion of the lunch program in a fiscal year.” MICH. COMP. LAWS § 388.1631d(3) (2021) (effective 1999). The state reimburses non-K-12 school districts, which are not required by state law to operate a school lunch program, “in an amount not to exceed \$10.00 per eligible pupil plus 5 cents for each free lunch and 2 cents for each reduced price lunch provided, as determined by the [state education agency].” <i>Id.</i> § 388.1631d(4) (effective 2003).</p> <p>The state reimburses school districts that participate in the federal School Breakfast Program “at a per meal rate equal to the lesser of the district’s actual cost or 100% of the statewide average cost of a meal served, as determined and approved by the [state education agency], less federal reimbursement, participant payments, and other state reimbursement.” <i>Id.</i> § 388.1631f (effective 2020).</p>
<p>M N</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p>	<p>Requires high-need public schools that participate in the National School Lunch Program to participate in the federal School Breakfast Program or a state equivalent.</p> <p>“A district must offer a school breakfast program in every school building in which at least 33 percent of the school lunches served during the second preceding school year were served free or at a reduced price” unless fewer than 25 students take part in the program at a given school or the school does not participate in the National School Lunch Program. MINN. STAT. § 124D.117 (2021) (effective 1998).</p> <p>Requires schools that participate in the school breakfast programs to provide free breakfast to students eligible for reduced-price breakfast.</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>“Each school year, the state must pay participants in the national school lunch program the amount of 12.5 cents for each full paid and free student lunch and 52.5 cents for each reduced-price lunch served to students.” MINN. STAT. § 124D.111(1a) (2021) (effective 2014). Furthermore, schools participating in the state school breakfast program are eligible for additional state funding: “30 cents for each reduced-price breakfast, 55 cents for each fully paid breakfast served to students in grades 1 to 12, and \$1.30 for each fully paid breakfast served to . . . a kindergarten student.” <i>Id.</i> § 124D.1158(3).</p>

		Schools “that participate in the federal school breakfast program are eligible for the state breakfast program.” MINN. STAT. § 124D.1158(2) (2021) (effective 2003). Participating schools must “make breakfast available without charge to all participating students in grades 1 to 12 who qualify for free or reduced-price meals and to . . . all kindergarten students.” <i>Id.</i> § 124D.1158(4).	
MS	No requirement that public schools participate in the National School Lunch Program or a state equivalent.	No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.	No additional state reimbursements to schools for meal programs.
MO	No requirement that public schools participate in the National School Lunch Program or a state equivalent. “Any school board may . . . purchase the necessary food to enable it to provide and sell lunches to children attending the schools.” MO. REV. STAT. § 167.211 (2021) (effective 1963). “Lunches shall not be sold for a less price than the cost of food” except in cities with a population of five hundred thousand people or more, where any surplus funds “derived from the sale of lunches may, in the discretion of the board of education of the city, be used to furnish lunches at less than cost to the public school pupils of compulsory school age who would otherwise be unable, by reason of insufficient nutrition, to attend school and to pursue the courses of study prescribed.” <i>Id.</i>	Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent. Schools “in which thirty-five percent or more of the students enrolled in the school . . . [in] the preceding school year were eligible for free or reduced price meals shall establish a school breakfast program.” MO. REV. STAT. § 191.803(1) (2021) (effective 1992). Schools may request a waiver if the majority of the school board votes to opt out of the program. <i>Id.</i> § 191.803(3).	No additional state reimbursements to schools for meal programs.
MT	No requirement that public schools participate in the National School Lunch Program or a state equivalent. However, “any school district receiving federal reimbursement . . . may request the allocation of a portion of those federal funds to the school food services fund to provide free meals” for students who meet the federal eligibility standard. MONT. CODE ANN. § 20-10-205 (2021) (effective 2003).	No requirement that public schools participate in the federal School Breakfast Program or a state equivalent. <i>See supra</i> Montana School Lunch section.	No additional state reimbursements to schools for meal programs.

<p>NE</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>Each school district, however, “shall establish a policy waiving [school meal and other] fees” for “students who qualify for free or reduced-price lunches under United States Department of Agriculture child nutrition programs. Participation in a free-lunch program or reduced-price lunch program is not required [for students] to qualify for free or reduced-price lunches.” NEB. REV. STAT. § 79-2,133 (2021) (effective 2002).</p>	<p>No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.</p> <p>Though the state legislature has found that “for Nebraska to compete effectively in the world, it must have an educated and productive work force. In order to have an educated and productive work force, it must prepare its children to learn, and in order to do so the children must be well-nourished. The Legislature finds that school breakfast and lunch programs are integral parts of Nebraska’s educational system,” it does not require participation in the federal School Breakfast Program or a state equivalent. NEB. REV. STAT. § 79-10,137 (2021) (effective 2000).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state education agency “shall reimburse each qualified public school in Nebraska a portion of the cost of such school’s school breakfast program in the amount of five cents per school breakfast served by such school in the second preceding school year,” if the school operates a school lunch program.” NEB. REV. STAT. § 79-10,138 (2021) (effective 2007).</p>
<p>NV</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>Each school district may, but is not required to, “[o]perate or provide for the operation of program of nutrition in the public schools under their jurisdiction.” NEV. REV. STAT. § 387.090 (2021) (enacted 1956).</p>	<p>Requires high-need public schools to provide breakfast to all students after the start of the school day.</p> <p>A school “in which 70 percent or more of the enrolled pupils during the previous school year were eligible for free or reduced-price lunches under the National School Lunch Act” or a school “that participates in universal meal service in high poverty areas pursuant to [the Community Eligibility Provision] of the Healthy, Hunger-Free Kids Act of 2010” must “participate in the [Breakfast After the Bell] Program” and “offer a breakfast to each pupil in the school after the instructional day has officially begun.” NEV. REV. STAT. § 387.1145(2) (2021) (effective 2015). Schools are not required to participate in the program if the school can demonstrate that the number of students eligible for free or reduced-price lunches dropped below 70 percent or that the program creates financial hardship. <i>Id.</i> § 387.1145(3).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>“To the extent that money is available and for each school year, the [state agriculture agency] shall allocate to each public school that is participating in the [Breakfast After the Bell] Program an amount necessary to carry out the Program” NEV. REV. STAT. § 387.1155(2) (2021) (effective 2015).</p>
<p>NH</p>	<p>Requires public schools to make available to each student at least one meal per day, and to adhere</p>	<p>Requires public schools to make available to each student at least one meal per day, and to</p>	<p>Provides additional state reimbursements to schools for meal programs.</p>

	<p>to federal eligibility guidelines for free and reduced-price meals.</p> <p>“Each school board shall make at least one meal available during school hours to every pupil under its jurisdiction. Such meals shall be served without cost or at a reduced cost to any child who meets federal income eligibility guidelines.” N.H. REV. STAT. ANN. § 189:11-a(I) (2021) (effective 2019). School boards may apply for a waiver. <i>Id.</i> § 189:11-a(II).</p>	<p>adhere to federal eligibility guidelines for free and reduced-price meals.</p> <p><i>See supra</i> New Hampshire School Lunch section.</p>	<p>Schools that provide breakfast to students that meet or exceed the United States Department of Agriculture’s child nutrition criteria “may apply for and receive a 3 cent reimbursement for each breakfast meal served to a pupil and an additional 27 cent reimbursement for each meal served to students eligible for a reduced price meal.” N.H. REV. STAT. ANN. § 189:11-a(VII)(b) (2021) (effective 2019).</p>
<p>NJ</p>	<p>Requires most public schools to participate in the National School Lunch Program or a state equivalent.</p> <p>“Each school district shall make school lunch available to all children enrolled in the district . . . Free and reduced price lunches shall be offered to all children qualifying under Statewide eligibility criteria.” N.J. STAT. ANN. § 18A:33-4 (West 2021) (effective 1974). “Any school in which less than 5% of pupils enrolled meet the eligibility requirements for a free or reduced price lunch shall be exempt” from this requirement. <i>Id.</i> § 18A:33-5.</p> <p>Requires public schools to provide free lunch to students eligible for reduced-price lunch.</p> <p>“[N]o public school student eligible for a . . . reduced price lunch . . . shall be required to pay for any . . . reduced price lunch.” N.J. STAT. ANN. § 18A:33-21.1(a) (West 2021) (effective 2020).</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>Based on legislative findings that “school breakfast increases attendance and decreases tardiness, improves academic performance both in class and on standardized tests, improves attentiveness, and reduces emotional and behavioral problems among students from all backgrounds,” N.J. STAT. ANN. § 18A:33-9(d) (West 2021) (effective 2003), public schools “in which 20% or more of the students enrolled . . . were eligible for free or reduced price meals under the federal School Lunch Program or the federal School Breakfast Program, shall establish a School Breakfast Program in the school.” <i>Id.</i> § 18A:33-10(a).</p> <p>Requires high-need public schools to provide breakfast after the start of the school day.</p> <p>“Every public school in which 70% or more of the students enrolled in the school . . . were eligible for free or reduced price meals . . . shall establish a school ‘breakfast after the bell’ program.” N.J. STAT. ANN. § 18A:33-11.3(a) (West 2021) (effective 2019). Waivers are available. <i>Id.</i> § 18A:33-11.3(c).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>Each school district “participating in the National School Lunch Program shall be reimbursed for each Type A lunch . . . at a rate not to exceed the maximum amount permissible under Federal regulations for the general-cash-for-food assistance phase of the program. Whenever the Federal funds available to the [state education agency] are less than the maximum amount permissible under Federal regulation, the State may provide, within the limitations of available State funds, an amount which, when added to the Federal funds, will equal the maximum amount permissible under Federal regulations for the general-cash-for-food assistance phase of the program.” N.J. STAT. ANN. § 18A:58-7.1 (West 2021) (enacted 1968).</p> <p>Each school district “participating in the special assistance phase of the National School Lunch Program as defined within an approved contract with the Department of Education . . . shall be paid an additional State reimbursement for each Type A lunch served free or at a reduced price. Such rate of additional State reimbursement per lunch shall not exceed 50% of the total rate of reimbursement per each such Type A lunch served free or at a reduced price payable from Federal funds.” <i>Id.</i> § 18A:58-7.2 (enacted 1970).</p> <p>“The State shall pay the difference between the federal allocation for reduced price breakfasts and reduced price lunches and the total cost of the reduced price breakfasts</p>

		<p>Requires public schools to provide free breakfast to students eligible for reduced-price breakfast.</p> <p>“[N]o public school student eligible for a reduced price breakfast under a School Breakfast Program . . . shall be required to pay for any reduced price breakfast . . .” N.J. STAT. ANN. § 18A:33-21.1(a) (West 2021) (effective 2020).</p>	<p>and the reduced price lunches served to eligible public school students.” <i>Id.</i> § 18A:33-21.1(b) (effective 2020).</p>
NM	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>However, “[r]egardless of whether or not a student has money to pay for a meal or owes money for earlier meals,” schools “shall provide a United States department of agriculture reimbursable meal to a student who requests one . . .” N.M. STAT. ANN. § 22-13C-4(A) (West 2021) (effective 2017).</p>	<p>Requires high-need public schools to provide breakfast after the start of the school day.</p> <p>School districts “shall establish a ‘breakfast after the bell program’ to provide free breakfast, after the instructional day has begun, to all students attending a public school in which eighty-five percent or more of the enrolled students were eligible for free or reduced-price lunch under the National School Lunch Act during the prior school year.” N.M. STAT. ANN. § 22-13-13.2(A) (West 2021) (effective 2014). Waivers are available if participating in the program “will result in undue financial hardship” for the school. <i>Id.</i> § 22-13-13.2(D).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state education agency “shall award funding to each school district . . . that establishes a breakfast after the bell program . . . for providing free breakfast to students on a per-meal basis at the federal maximum rate of reimbursement . . .” N.M. STAT. ANN. § 22-13-13.2(E) (West 2021) (effective 2014).</p>
NY	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>However, each school “shall provide the student with the student’s meal of choice for that school day of the available reimbursable meal choices for such school day, if the student requests one,” regardless of ability to pay or outstanding meal debt. N.Y. EDUC. LAW § 908(a) (McKinney 2021) (effective 2018).</p>	<p>Requires some public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>Each school district located in a city with 125,000 inhabitants or more must participate in the school breakfast program. N.Y. EDUC. LAW § 2554 (McKinney 2021) (enacted 1976). In addition, all elementary schools that participate in the National School Lunch Program must establish a school breakfast program in which students are “afforded the opportunity to receive a free, reduced and full paid breakfast,” regardless of whether it is a severe need school. <i>Id.</i> Finally, any “severe need school” – “where 40 percent or more of the lunches served to students at the school in the second preceding</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>“[T]he available per free breakfast state subsidy shall not be less than eleven cents, the available per reduced price breakfast state subsidy shall not be less than twelve cents, and the available per paid breakfast state subsidy shall not be less than twenty-five hundredths cents. Such state subsidy shall be based on the number of free, reduced and paid breakfasts served to children and shall be used to cover all actual costs of the school breakfast program.” N.Y. EDUC. LAW § 2554(2)(a) (McKinney 2021) (enacted 1976). “[F]or school lunch meals served in the school year commencing July 1, 2019 and each July 1 thereafter, a school food authority shall be eligible for a lunch meal State subsidy of twenty-five cents . . . provided that the school food authority certifies . . . that such food authority has</p>

		<p>school year were served free or at a reduced price” – must establish a school breakfast program. <i>Id.</i>; N.Y. COMP. CODES R. & REGS. tit. 8, § 114.1 (2021) (promulgated 1970).</p> <p>Requires high-need public schools to provide breakfast after the start of the school day.</p> <p>All public schools “with at least seventy percent or more of its students eligible for free or reduced-price meals under the federal National School Lunch Program . . . shall be required to offer all students a school breakfast after the instructional day has begun.” N.Y. EDUC. LAW § 2554(4)(a) (McKinney 2021) (effective 2018). Schools may request waivers if there is a lack of need for such a program, or if participating in the program would cause economic hardship. <i>Id.</i> § 2554(4)(d).</p>	<p>purchased at least thirty percent of its total cost of food products for its school lunch service program from New York state farmers, growers, producers or processors in the preceding school year.” <i>Id.</i> § 2554(5)(a).</p>
NC	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent.</p> <p>“In the operation of their public school nutrition programs, the public schools shall participate in the National School Lunch Program established by the federal government.” N.C. GEN. STAT. § 115C-264(a) (2021) (effective 2005).</p>	<p>No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.</p>	<p>No additional state reimbursements to schools for meal programs.</p>
ND	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>School “eligibility to participate in the national school lunch program is governed by federal national school lunch program regulations.” N.D. ADMIN. CODE § 67-21-01-03 (2021) (promulgated 2000).</p>	<p>No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.</p> <p>School “eligibility to participate in the national school breakfast program is governed by federal school breakfast program regulations.” N.D. ADMIN. CODE § 67-21-02-03 (2021) (promulgated 2000).</p>	<p>No additional state reimbursements to schools for meal programs.</p>
OH	<p>Requires high-need public schools to participate in the National School Lunch Program or a state equivalent.</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent.</p>	<p>Provides additional state reimbursements to schools for meal programs.</p>

Each school district must “establish a lunch program in every school where at least one-fifth of the pupils in the school are eligible under federal requirements for free lunches.” OHIO REV. CODE ANN. § 3313.813(C)(1) (West 2021) (enacted 1976). If a school district does not comply with this requirement for financial reasons, “the [state education agency] nevertheless shall require the [school district] to establish a lunch program in every school where at least one-third of the pupils are eligible for free lunches.” *Id.* § 3313.813(C)(4) (effective 2006).

Each school district must “establish a breakfast program in every school where at least one-fifth of the pupils in the school are eligible under federal requirements for free breakfasts.” OHIO REV. CODE ANN. § 3313.813(C)(1) (West 2021) (enacted 1976). If a school district does not comply with this requirement for financial reasons, “the [state education agency] nevertheless shall require the [school district] to establish a breakfast program in every school where at least one-third of the pupils are eligible under federal requirements for free breakfasts.” *Id.* § 3313.813(C)(4) (effective 2006).

Every year that funds are appropriated by the state, each school district “that participates in a breakfast program . . . shall provide a breakfast free of charge to each pupil who is eligible under federal requirements for a reduced price breakfast.” OHIO REV. CODE ANN. §3313.813(F) (West 2021) (effective 2010).

Requires high-need schools to offer breakfast to all students either before or during the school day.

Public schools that meet the below conditions “shall offer breakfast to all students either before or during the school day.” In the 2020-2021 school year, “the program shall apply to any public school in which seventy percent or more of the students enrolled in the school during the previous school year were eligible under federal requirements for free or reduced-price breakfasts or lunches.” In the 2021-2022 school year, the program applies to “school[s] in which sixty percent or more” of students were eligible for free or reduced-price meals in the previous year. In the 2022-2023 school year, “and every school year thereafter,” the program applies to “school[s] in which fifty percent or more” of students were eligible for free and reduced-price meals in the previous year. OHIO REV. CODE ANN. § 3313.818(A) (West 2021) (effective 2019).

Requires public schools to participate in the federal School Breakfast Program or a state equivalent if parents so request.

		Each school district must “establish a breakfast program in every school in which the parents of at least one-half of the children enrolled in the school have requested that the breakfast program be established.” OHIO REV. CODE ANN. § 3313.813(C)(2) (West 2021) (enacted 1976).	
OK	No requirement that public schools participate in the National School Lunch Program or a state equivalent.	No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.	No additional state reimbursements to schools for meal programs.
OR	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent, and permits schools to provide free lunches to all students regardless of eligibility.</p> <p>“A school or school district that meets the eligibility requirements of the special provisions of the United States Department of Agriculture’s National School Lunch Program or School Breakfast Program may offer reimbursable breakfasts, lunches, or both at no charge and without consideration of individual eligibility by applying to the [state education agency]” and [i]f the school or school district is approved [by the state education agency], the school or school district must offer breakfasts, lunches or both to all students of the school or school district at no charge to the student.” OR. REV. STAT. § 327.531(1) (2021) (effective 2021).</p> <p>If a school district does not participate in this program, it must offer lunch “at no charge to students from households with incomes that do not exceed 300 percent of the federal poverty guidelines.” <i>Id.</i> § 327.531(2)(a).</p> <p>At minimum, schools participating in the National School Lunch Program “[m]ust provide a United States Department of Agriculture reimbursable meal to a student who requests the meal,” regardless of whether the student can pay for it or</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent, and permits schools to provide free breakfasts to all students regardless of eligibility.</p> <p>“[A] school district that provides lunch at any school site shall make breakfast accessible as part of a breakfast program if 25 percent or more of the students at the school site” are eligible for free or reduced-price meals. OR. REV. STAT. § 327.535(3) (2021) (effective 2019). “If 70 percent or more of the students at a school site are eligible students, the school district must make breakfast accessible at that school site after the beginning of the school day.” <i>Id.</i> § 327.535(8).</p> <p>“A school or school district that meets the eligibility requirements of the special provisions of the United States Department of Agriculture’s National School Lunch Program or School Breakfast Program may offer reimbursable breakfasts, lunches, or both at no charge and without consideration of individual eligibility by applying to the [state education agency]” and [i]f the school or school district is approved [by the state education agency], the school or school district must offer breakfasts, lunches or both to all students of the school or school district at no charge to the student.” <i>Id.</i> § 327.531(1) (effective 2021).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>“For schools that offer reimbursable breakfast and lunch at no charge to all students of the school without consideration of individual eligibility for free or reduced price meals, the amount of reimbursements . . . may not exceed the difference between: (a) [t]he free reimbursement rate established by the United States Department of Agriculture for reimbursable meals; and (b) [a]ny amounts otherwise reimbursed or paid by state, federal or other sources.” OR. REV. STAT. § 327.545(2) (2021) (effective 2021).</p> <p>“For schools that offer reimbursable breakfast and lunch at no charge to students from households with incomes that do not exceed 300 percent of the federal poverty guidelines . . . the amount of reimbursements . . . may not exceed the difference between: (a) [t]he free reimbursement rate established by the United States Department of Agriculture for reimburseable meals; and (b) [a]ny amounts otherwise reimbursed or paid by state, federal or other sources.” <i>Id.</i> § 327.545(3).</p>

	<p>has outstanding meal debt. <i>Id.</i> § 327.537(1) (effective 2017).</p>	<p>If a school district does not participate in this program, it must offer breakfast “at no charge to students from households with incomes that do not exceed 300 percent of the federal poverty guidelines, if breakfast must be offered” pursuant to the statutes requiring high-need schools to provide breakfast to students. <i>Id.</i> § 327.531(2)(a).</p> <p>At minimum, schools participating in the federal School Breakfast Program “[m]ust provide a United States Department of Agriculture reimbursable meal to a student who requests the meal,” regardless of whether the student can pay for it or has outstanding meal debt. <i>Id.</i> § 327.537(1) (effective 2017).</p>	
<p>PA</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>School boards have the “power . . . to operate or provide for the operation of school food programs in schools under their jurisdiction . . .” 24 PA. CONS. STAT. § 13-1337(d)(1) (2021) (enacted 1949). Schools may “furnish food, including milk, to the under-nourished and poor school children attending the schools within their districts at the expense of the school district.” <i>Id.</i> § 13-1335.</p> <p>However, schools must “provide a school food program meal to a student who requests one,” regardless of whether the student can pay for it or has outstanding meal debt. <i>Id.</i> § 13-1337(d)(2)(i) (effective 2017). Schools may offer alternative meals only if “the student is not eligible for participation in the school food program and owes greater than fifty dollars (\$50)” for school meals. <i>Id.</i> § 13-1337(d)(2)(ii) (effective 2019).</p>	<p>No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>“[E]ach school which offers the school lunch program [but not the school breakfast program] shall receive a reimbursement of no less than ten cents (10¢) per lunch served . . .” 24 PA. CONS. STAT. § 13-1337.1(a)(1) (2021) (effective 2020). “[E]ach school which offers the school breakfast program shall receive a reimbursement of no less than ten cents (10¢) per breakfast served.” <i>Id.</i> § 13-1337.1(b)(1). Each school that participates in both the school lunch program and the school breakfast program “which serves less than or equal to twenty per centum (20%) of its student enrollment shall receive an additional reimbursement of two cents (2¢) per lunch served. Each school that participates in both the school lunch program and the school breakfast program “which serves more than twenty per centum (20%) of its student enrollment shall receive an additional reimbursement of four cents (4¢) per lunch served.” <i>Id.</i> § 13-1337.1(c).</p>
<p>RI</p>	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent.</p>	<p>Requires public schools to participate in the federal School Breakfast Program or a state equivalent.</p>	<p>Provides additional state reimbursements to schools for meal programs.</p>

	<p>“All public elementary and secondary schools shall be required to make type A lunches available to students attending those schools in accordance with rules and regulations adopted from time to time by the [state education agency]. To the extent that federal, state, and other funds are available, free and reduced price type A lunches shall be provided to all students from families that meet the current specific criteria established by federal and state regulations.” 16 R.I. GEN. LAWS § 16-8-10 (2021) (enacted 1947).</p>	<p>“All public schools shall make a breakfast program available to students attending the school.” 16 R.I. GEN. LAWS § 16-8-10.1(a) (2021) (effective 2000).</p>	<p>The state legislature “shall annually appropriate some sum that it may deem necessary to carry out the purposes” of the school lunch provisions. 16 R.I. GEN. LAWS § 16-8-13 (2021) (enacted 1947).</p> <p>“The state of Rhode Island shall provide school districts a per breakfast subsidy for each breakfast served to students. The general assembly shall annually appropriate some sum and distribute it based on each district’s proportion of the number of breakfasts served in the prior school year relative to the statewide total in the same year. This subsidy shall augment the nonprofit school food service account and be used for expenses incurred in providing nutritious breakfast meals to students.” <i>Id.</i> § 16-8-10.1(b) (effective 2005).</p>
SC	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent.</p> <p>“It is declared to be the policy of the State to receive and distribute such funds or food supplies as are available for the school lunch program or otherwise and to supervise and generally direct the program in the local schools.” S.C. CODE ANN. § 59-63-760 (2021) (enacted 1943).</p>	<p>Requires public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>“[E]ach school district shall implement in each school in the district a nutritional, well-balanced school breakfast program.” S.C. CODE ANN. § 59-63-790 (2021) (effective 1992). The state education agency waive this requirement to “a school which lacks facilities or equipment to offer a school breakfast program” or to a school that lacks sufficient participation. <i>Id.</i> § 59-63-800.</p>	<p>No additional state reimbursements to schools for meal programs.</p>
SD	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>“School districts . . . may enter into contractual agreements with the Department of Education for the purpose of establishing school food services programs.” S.D. CODIFIED LAWS § 13-35-1 (2021) (enacted 1955).</p>	<p>No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.</p> <p><i>See supra</i> South Dakota School Lunch section.</p>	<p>No additional state reimbursements to schools for meal programs.</p>
TN	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent.</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent.</p>	<p>No additional state reimbursements to schools for meal programs.</p>

	<p>Each school district “shall establish a school lunch program in every school under its jurisdiction” to the extent federal funds are available for free or reduced-price meals. TENN. CODE ANN. § 49-6-2302(a)(1) (2021) (effective 1986).</p>	<p>To the extent federal funds are available for free or reduced price meals, school boards must establish a school breakfast program in: “[e]very school that contains kindergarten through grade eight (K-8) in which twenty-five percent (25%) or more of the students participated in the school lunch program at a free or reduced price” and “every school that does not contain a kindergarten through grade eight (K-8) in which forty percent (40%) or more of the students participated in the school lunch program at a free or reduced price.” TENN. CODE ANN. § 49-6-2302(a)(2) (2021) (effective 1986). Schools may waive this requirement if participating in it would cause an “unreasonable participation of schedule,” student participation is “less than fifty (50) students,” or if federal funds would be “inadequate” to cover the program’s costs. <i>Id.</i> § 49-6-2303.</p>	
<p>TX</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a local equivalent.</p> <p>“If at least 10 percent of the students enrolled in one or more schools in a school district . . . are eligible for free or reduced-price breakfasts under the national school breakfast program,” the school district must either “(1) participate in the national program and make the benefits of the national program available to all eligible students in the schools or school; or (2) develop and implement a locally funded program to provide free meals, including breakfast and lunch, to each student eligible for free meals under federal law and reduced-price meals, including breakfast and lunch, to each student eligible for reduced-price meals under federal law” TEX. EDUC. CODE ANN. § 33.901(a) (West 2021) (effective 2015).</p>	<p>No additional state reimbursements to schools for meal programs.</p>

		<p>Requires high-need public schools to provide free breakfast to all students.</p> <p>A school “in which 80 percent or more of the students qualify under the national program for a free or reduced-price breakfast shall offer a free breakfast to each student.” TEX. EDUC. CODE ANN. § 33.901(b) (West 2021) (effective 2015). Schools may request a one-year waiver upon a vote of members of the school board. <i>Id.</i> § 33.901(c) (effective 2013).</p>	
<p>UT</p>	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p>	<p>Requires public schools that participate in the National School Lunch Program to participate in the federal School Breakfast Program or a state equivalent.</p> <p>Unless waived for undue hardship, “a public school that participates in the National School Lunch Program shall participate in the School Breakfast Program.” UTAH CODE ANN. § 53G-9-205.1(2)(b) (West 2021) (effective 2020).</p> <p>Requires high-need public schools to provide breakfast to all students after the start of the school day.</p> <p>“[A] public school in which 50% or more of the students qualify for free or reduced lunch shall use an alternative breakfast service model,” UTAH CODE ANN. § 53G-9-205.1(2)(c)(ii) (West 2021) (effective 2020), which is defined as a “method of serving breakfast to students after the instructional day begins.” <i>Id.</i> § 53G-9-205.1(1)(a). “Beginning with the 2023-24 school year, a public school in which 30% or more of the students qualify for free or reduced lunch shall use an alternative breakfast service model.” <i>Id.</i> § 53G-9-205.1(2)(c)(iii).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>A school district “shall receive a state reimbursement for each meal served pursuant to a school meals program through a state reimbursement rate” established by the state education agency, but the amount varies annually. UTAH ADMIN. CODE r. R277-727-3 (2021) (promulgated 2021).</p>
<p>VT</p>	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent.</p>	<p>Requires public schools to participate in the federal School Breakfast Program or a state equivalent.</p>	<p>Provides additional state reimbursements to schools for meal programs.</p>

	<p>“Each school board operating a public school shall cause to operate within the school district a food program that makes available a school lunch, as provided in the National School Lunch Act . . . to each attending student every school day.” VT. STAT. ANN. tit. 16, § 1264(a)(1) (2021) (effective 2010).</p>	<p>“Each school board operating a public school shall cause to operate within the school district a food program that makes available . . . a school breakfast . . . to each attending student every school day.” VT. STAT. ANN. tit. 16, § 1264(a)(1) (2021) (effective 2010).</p>	<p>“The State shall be responsible for the student share of the cost of breakfasts provided to all students eligible for a reduced-price breakfast under the federal school breakfast program and for the student share of the cost of lunches provided to all students eligible for a reduced-price lunch under the federal school lunch program.” VT. STAT. ANN. tit. 16, § 1264(c) (2021) (effective 2013).</p>
VA	<p>Requires high-need public schools participate in the National School Lunch Program or a state equivalent.</p> <p>“[A]ny public elementary or secondary school that has a minimum identified student percentage of 40 percent in the prior school year and is consequently eligible to participate in the Community Eligibility Provision” shall apply to the Food and Nutrition Service to participate. VA. CODE ANN. § 22.1-207.4:1(B) (2021) (effective 2021). Waivers are available only for schools for which participation is not financially viable. <i>Id.</i> § 22.1-207.4:1(D).</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>“[E]ach school board shall establish a school breakfast program in any public school in which twenty-five percent or more of enrolled school-age children were approved eligible to receive free or reduced price meals in the federally funded lunch program during the previous school year.” VA. CODE ANN. § 22.1-207.3(A) (2021) (effective 1993).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>“In the event that federal funding for school breakfast programs is reduced or eliminated, a school board may support the program with such state or local funds as may be appropriated for such purposes.” VA. CODE ANN. § 22.1-207.3(C) (2021) (effective 1993).</p>
WA	<p>Requires high-need K-4 public schools to participate in the National School Lunch Program or a state equivalent.</p> <p>“School districts shall implement a school lunch program in each public school in the district in which educational services are provided to children in any of the grades kindergarten through four and in which twenty-five percent or more of the enrolled students qualify for a free or reduced-price lunch.” WASH. REV. CODE § 28A.235.160(2) (2021) (effective 2004).</p> <p>Requires public schools with lunch programs to provide students eligible for reduced-price lunches with free lunches.</p> <p>“[S]chool districts with school lunch programs must eliminate lunch copays for students in prekindergarten through 12th grade who qualify for reduced-price lunches, and the [state education</p>	<p>Requires high-need public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>“[E]ach school district shall implement a school breakfast program in each school where more than forty percent of students eligible to participate in the school lunch program qualify for free or reduced-price meal reimbursement . . .” WASH. REV. CODE § 28A.235.160(3) (2021) (effective 2005).</p> <p>Requires high-need public schools to provide breakfast to all students after the start of the school day.</p> <p>“[E]ach high-needs school shall offer breakfast after the bell to each student and provide adequate time for students to consume the offered food.” WASH. REV. CODE § 28A.235.210(1)(a) (2021) (effective 2018).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state education agency “must allocate funding” for the purpose of eliminating “lunch copays for students in prekindergarten through 12th grade” attending schools that participate in school lunch programs. WASH. REV. CODE § 28A.235.160(7) (2021) (effective 2021).</p> <p>To the extent funds are appropriated for the purpose of increasing participation in the school meals programs, the state education agency “shall increase the state support for school breakfasts and lunches, including breakfast after the bell programs.” <i>Id.</i> § 28A.235.150(2) (effective 2018).</p>

	agency] must allocate funding for this purpose.” WASH. REV. CODE § 28A.235.160(7) (2021) (effective 2021).		
WV	<p>Requires public schools to participate in the National School Lunch Program or a state equivalent.</p> <p>Each school district “shall establish and operate school nutrition programs under which, at a minimum, a nutritious breakfast and lunch are made effectively available to all students enrolled in the schools of the county in accordance with the [state education agency’s] standards.” W. VA. CODE § 18-5D-3(a) (2021) (effective 2013).</p>	<p>Requires public schools to participate in the federal School Breakfast Program or a state equivalent.</p> <p>Each school district “shall establish and operate school nutrition programs under which, at a minimum, a nutritious breakfast and lunch are made effectively available to all students enrolled in the schools of the county in accordance with the [state education agency’s] standards.” W. VA. CODE § 18-5D-3(a) (2021) (effective 2013).</p> <p>Requires public schools to provide breakfast to all students after the start of the school day.</p> <p>Every school must adopt a breakfast “delivery system . . . that ensures all students are given an adequate opportunity to eat breakfast,” including grab-and-go breakfasts or breakfast after first period.” W. VA. CODE § 18-5D-3(c) (2021) (effective 2013).</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state education agency and each [school district] must “establish a fund” or “nonprofit foundation” to “provide supplemental or matching funds to increase participation” in nutrition programs including the National School Lunch Program and the School Breakfast Program. W. VA. CODE § 18-5D-4(a)-(c) (2021) (effective 2013).</p>
WI	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p> <p>The state education agency “may contract for the operation and maintenance of school lunch programs.” WIS. STAT. § 115.34(1) (2021) (effective 2015).</p>	<p>No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.</p>	<p>Provides additional state reimbursements to schools for meal programs.</p> <p>The state education agency “shall reimburse each school board 15 cents for each breakfast served” that meets federal regulations. WIS. STAT. § 115.341(1) (2021) (effective 2010).</p>
WY	<p>No requirement that public schools participate in the National School Lunch Program or a state equivalent.</p>	<p>No requirement that public schools participate in the federal School Breakfast Program or a state equivalent.</p>	<p>No additional state reimbursements to schools for meal programs.</p>

APPENDIX C: STATE LAWS AND REGULATIONS—HEALTHCARE⁴

STATE	GENERAL PROVISIONS	PHYSICAL AND DEVELOPMENTAL EXAMINATIONS	VISION AND AUDITORY SCREENINGS	ORAL HEALTHCARE ⁵	MENTAL HEALTH PROGRAMS
AL	<p>Requires schools to employ health professionals.</p> <p>The state education agency “shall require the employment of school nurses in each local school system.” ALA. CODE § 16-22-16(a) (2021) (effective 1998).</p> <p>Requires schools to provide health services to students.</p> <p>“Each local school superintendent shall designate one registered nurse for the entire school system whose responsibilities shall include annually providing a full and comprehensive assessment of all student health needs within that system. Based upon the assessment findings, the designated nurse shall make a recommendation to the local</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires schools to provide developmental screenings to students.</p> <p>“Students will be screened for the characteristics of dyslexia using screening instruments currently in place for use in public schools.” ALA. ADMIN. CODE r. 290-3-1.02(20)(c) (2021) (promulgated 1975).</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, to the extent that the state legislature or local school board provides funds, “each school system shall implement . . . standards and policies for programs in an effort to prevent student suicide” including fostering “individual, family, and group counseling services related to suicide prevention,” providing “referral, crisis intervention, and other related information to students, parents, and school personnel,” notifying “students of available community suicide prevention services,” and promoting a “school-based or community-based, or both, alternative programs outside the classroom.” ALA. CODE</p>

4. Appendix C excludes state laws and regulations that concern (1) individual services to students for specific medical problems or students with disabilities; (2) health education; (3) emergency medical services; (4) the administration of prescribed medication to students; (5) physical fitness examinations; (6) state reimbursement to schools for health services, including Medicaid reimbursements, as well as grant programs and pilot programs that incentivize schools to provide health services to students; (7) the training of school personnel; (8) services provided in youth residential facilities and detention centers; (9) services provided to infants and toddlers; (10) the development of individual health plans for students; (11) immunization requirements; (12) health services specifically for school athletes or other specific subgroups of students; (13) testing for lead, asbestos, tuberculosis, and other contaminants; (14) substance abuse programs; and (15) physical or occupational therapy.
5. Though the Center for Disease Control helps fund school-based oral health programs in nearly half of the states, I focus here on whether state statutes or regulations *require* public schools to provide oral healthcare to students, thus creating an entitlement.

		school superintendent concerning the implementation and coordination of student health needs.” ALA. CODE § 16-22-16(d) (2021) (effective 2009).			§ 16-28B-8(a) (2021) (effective 2009).
AK	—	<p>No requirement that schools provide physical examinations to students.</p> <p>The state health agency is empowered to “require the [school] district to conduct physical examinations that it considers necessary, ALASKA STAT. § 14.30.070(a) (2021) (effective 2015), but currently schools must only “assess the tuberculosis status” of each student. ALASKA ADMIN. CODE tit. 7, § 27.213(a) (2021) (promulgated 1982).</p> <p>No requirement that schools provide developmental screenings to students.</p> <p>While each school district “shall submit . . . a developmental profile for each student entering kindergarten or first grade,” it is unclear whether the profile is based on an assessment or screening that schools administer. ALASKA ADMIN. CODE tit. 4 § 06.712(a) (2021) (promulgated 2000).</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“A vision and hearing screening examination shall be given to each child attending school in the state. The examination shall be made when the child enters school . . . and at regular intervals specified by regulation by the governing body of the district.” ALASKA STAT. § 14.30.127(a) (2021) (effective 1982).</p> <p>The state health agency must “train and certify public health nurses and school district employees to conduct hearing and vision screening tests” and “assist with referral and follow-up of children needing professional examination or treatment . . .” <i>Id.</i> § 14.30.127(b).</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, if a school employs “a behavioral or mental health professional” they may “recommend, but not require, a psychiatric or behavioral health evaluation of a child; and recommend, but not require, psychiatric, psychological, or behavioral treatment for a child.” ALASKA STAT. § 14.30.174(a) (2021) (effective 2006).</p>
AZ	—	<p>No requirement that schools provide physical examinations to students.</p>	<p>Requires schools to provide vision and auditory screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p>

		<p>Requires schools to provide developmental screenings to students.</p> <p>“Each school district . . . that provides instruction in kindergarten programs and grades one through three shall select and administer screening, ongoing diagnostic and classroom-based instructional reading assessments, including a motivational assessment, as defined by the [state education agency], and the kindergarten entry evaluation tool . . . to monitor student progress. Each school shall use the diagnostic information to plan an evidence-based appropriate and effective instruction and intervention.” ARIZ. REV. STAT. ANN. § 15-704(A) (2021) (effective 2021).</p>	<p>The state health agency and the state education agency jointly administer “hearing evaluation services for children in a public education program” ARIZ. REV. STAT. ANN. § 36-899.01 (2021) (effective 1971).</p> <p>“Each school shall provide vision screening services,” which include “evaluating a child’s vision and identifying the need for follow-up services,” to students upon initial entry to school and in various other circumstances. <i>Id.</i> § 36-899.10 (effective 2019).</p>	<p>However, the state health agency incentivizes schools to provide preventative dental care by funding two programs for school dental services without regard to a child’s insurance status. First, the Arizona Dental Sealant Program, funds dental sealant services, which consist of “activities related to the application of a dental sealant by a dentist or dental hygienist, including dental care provided to a child.” ARIZ. ADMIN. CODE § R9-23-201 to -203 (2021) (promulgated 2008); <i>id.</i> § R9-23-101. Second, the health agency funds the “Arizona Fluoride Mouthrinse Program,” which provides fluoride mouth rinse to students through schools. <i>Id.</i> § R9-23-301 to -304 (promulgated 1993).</p>	
<p>AR</p>	<p>Requires schools to employ health professionals.</p> <p>“[A]ll school districts shall have no fewer than the full-time equivalent of one (1) school nurse per seven hundred fifty (750) students or the proportionate ratio thereof.” ARK. CODE ANN. § 6-18-706(e)(1) (2021) (effective 2004).</p> <p>In addition, school districts “may appoint and provide for</p>	<p>Requires schools to provide physical examinations to students.</p> <p>School health professionals “shall make examinations for contagious or infectious disease . . . whenever the examination may be deemed necessary and make examination for other defects at least one (1) time in each school year, preferably at or near the beginning of the year.” ARK. CODE ANN. § 6-18-</p>	<p>Requires schools to provide vision screenings to students.</p> <p>All students in “kindergarten (K), grades one (1), two (2), four (4), six (6), and eight (8) and all transfer students shall receive an eye and vision screening.” ARK. CODE ANN. § 6-18-1501(a)(1)(A)(i) (2021) (effective 2005).</p> <p>No requirement that schools provide auditory screenings to students.</p>	<p>Requires schools to provide oral healthcare to students.</p> <p>School health professionals “shall make examinations for contagious or infectious disease, including without limitation the teeth and mouth, whenever the examination may be deemed necessary and make examination for other defects at least one (1) time in each school year, preferably at or near the beginning of the</p>	<p>Requires schools to provide mental-health services to students.</p> <p>“Each public school district shall . . . [h]ave a written plan for a comprehensive school counseling program that” is “implemented by an Arkansas-certified school counselor,” or other counselors. ARK. CODE ANN. § 6-18-2003 (2021) (effective 2019). Counselors shall spend their time on, among other</p>

	<p>the payment of at least one (1) physician or nurse and assign the physician or nurse to the public schools of the district for the purpose of making physical examinations” of students. <i>Id.</i> § 6-18-701(a) (effective 2019).</p> <p>Requires schools to provide health services to students.</p> <p>“Each public school district shall provide a health services program under the direction of a licensed registered nurse” in accordance with state laws and regulations. ARK. CODE ANN. § 6-18-706(a) (2021) (effective 2021).</p>	<p>701(c) (2021) (effective 2019). And, “children in Kindergarten (K), grade two (2), grade four (4), grade six (6), grade eight (8), and grade ten (10) shall have their height and weight assessed to calculate body mass index for age percentile.” 005-28.43-12.00 ARK. CODE R. § 12.01 (LexisNexis 2021) (promulgated 2012). Schools must also provide scoliosis screenings. 005.28.25-4.00 ARK. CODE R. § 4.01 (Lexis Nexis 2021) (promulgated 2020).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>“A school district shall screen each student in kindergarten through grade two (K-2)” for dyslexia. ARK. CODE ANN. § 6-41-603(a)(1) (2021) (effective 2013).</p>		<p>year.” ARK. CODE ANN. § 6-18-701(c) (2021) (effective 2019).</p>	<p>things, “[p]roviding social and emotional skills designed to support students, including programs that promote “positive communication and relationship skills” and the development of “conflict-resolution skills,” among others. <i>Id.</i> § 6-18-2004.</p>
<p>CA</p>	<p>No requirement that schools employ health professionals.</p> <p>However, “if authorized by the local governing board,” school nurses may provide the following services: “[a]ssess and evaluate the health and developmental status of pupils to identify specific physical disorders and other factors relating to the learning process;” “[d]esign and implement a health</p>	<p>Requires schools to provide physical examinations to students.</p> <p>“The governing board of any school district shall make such rules for the examination of the pupils in the public schools under its jurisdiction as will insure proper care of the pupils . . .” CAL. EDUC. CODE § 49450 (West 2021) (effective 1977). In addition, schools must screen students</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“The governing board of any school district shall . . . provide for the testing of the sight and hearing of each pupil enrolled in the schools of the district.” CAL. EDUC. CODE § 49452 (West 2021) (effective 1977).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>While students must submit to schools “proof of having received an oral health assessment” by a dental health professional, schools are not required to provide such assessments to students. CAL. EDUC. CODE § 49452.8 (West 2021) (effective 2006). However, school districts may</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, school psychologists hired by a school district may provide the following services: “[p]sychoeducational assessment and diagnosis of specific learning and behavioral disabilities, including, but not limited to, case study evaluation,</p>

<p>maintenance plan to meet the individual health needs of the students,” “[r]efer the pupil . . . to appropriate community resources for necessary services,” “[c]ounsel students and parents” about outside providers for professional care, and adjusting to physical, mental, and social conditions. CAL. EDUC. CODE § 49426 (West 2021) (effective 1978).</p> <p>Requires schools to provide health services to students.</p> <p>Each schools district “shall give diligent care to the health and physical development of pupils, and may employ properly certified persons for the work.” CAL. EDUC. CODE § 49400 (West 2021) (effective 1977). Each school district must “maintain fundamental school health services at a level that is adequate to accomplish all of the following: (1) Preserve pupils’ ability to learn. (2) Fulfill existing state requirements and policies regarding pupils’ health. (3) Contain health care costs through preventive programs and education.” <i>Id.</i> § 49427 (effective 1987). “The major focus of school health services is the prevention of illness and disability, and the early detection and correction of</p>	<p>for scoliosis. <i>Id.</i> § 49452.5 (enacted 1980).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>The state education agency “shall develop program guidelines for dyslexia to be used . . . to identify and assess pupils with dyslexia . . .” CAL. EDUC. CODE § 56335 (West 2021) (effective 2016).</p>	<p>sponsor a “community dental disease prevention program . . . offered to school children in preschool through sixth grade,” and if offered, the program must include preventive services, such as “ongoing plaque control dental sealants, and supervised application of topical prophylactic agents for caries prevention . . .” CAL. HEALTH & SAFETY CODE § 104775 (West 2021) (effective 2000).</p> <p>In addition, “if a school or school district hosts a free oral health assessment event at which licensed dentists or other licensed or registered dental health professionals perform schoolsite assessments of pupils enrolled in the school, a pupil shall be given an oral health assessment unless the parent or legal guardian of the pupil has opted out of the schoolsite assessment . . .” CAL. EDUC. CODE § 49452.8(d)(3)(A) (West 2021) (effective 2018).</p>	<p>recommendations for remediation or placement, and periodic reevaluation of such children;” and “[c]onsultation with community agencies, such as probation departments, mental health clinics, and welfare departments, concerning pupils who are being served by such community agencies;” and “[p]sychological counseling of and other therapeutic techniques with children . . .” CAL. EDUC. CODE § 49424 (West 2021) (effective 1977).</p>
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	health problems.” <i>Id.</i> § 49426 (effective 1978).				
CO	<p>No requirement that schools employ health professionals.</p> <p>However, finding that “nurses play a vital role in a child’s health and educational welfare in school, and are crucial to children’s mental health,” the state legislature created a school nurse grant program to increase the number of school nurses in public schools. COLO. REV. STAT. § 25-1.5-406 (2021) (effective 2019).</p> <p>No requirement that schools provide health services to students.</p> <p>However, upon finding that “[a]ccess to school-based primary health care for children and adolescents has been shown to increase the use of primary care . . . and result in fewer hospitalizations;” keep high-risk students in school; and “serve primarily low-income schools,” the state legislature enacted a school-based health center grant program. COLO. REV. STAT. § 25-20.5-501 (2021) (effective 2006). The program provides state funding for the “establishment, expansion, and ongoing operation” of SBHCs. <i>Id.</i> § 25-20.5-503(1).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Each school “that enrolls students in kindergarten, or first, second, or third grade shall ensure that teachers measure each student’s reading competency using interim reading assessments” throughout each year using an assessment approved by the state education agency. COLO. REV. STAT. § 22-7-1205(1)(a) (2021) (effective 2012).</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“The sight and hearing of all children in the kindergarten, first, second, third, fifth, seventh, and ninth grades, or children in comparable age groups referred for testing, shall be tested during the school year by the teacher, principal, or other qualified person authorized by the school district.” COLO. REV. STAT. § 22-1-116 (2021) (effective 1981).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, the Children’s Dental Assistance and Fluoridation Program, created in response to the legislature’s finding that statewide, students miss more than seven million school each year due to oral pain, was enacted to “[p]rovide oral health services, including sealants, to school children.” COLO. REV. STAT. § 25-21.5-102 (2021) (effective 2013). The Program requires the state health agency to administer a grant program to assist low-income schools in providing oral healthcare to students. <i>Id.</i> § 25-21.5-104.</p>	<p>No requirement that schools provide mental-health services to students.</p>

<p>CT</p>	<p>Requires schools to employ health professionals.</p> <p>Each school district “shall appoint one or more school nurses or nurse practitioners.” CONN. GEN. STAT. § 10-212(a) (2021) (effective 1980).</p> <p>Requires schools to provide health services to low-income students.</p> <p>Each school district “shall provide for health assessments . . . without charge to all pupils whose parents or guardians meet the eligibility requirements for free and reduced price meals under the [federal meal programs].” CONN. GEN. STAT. § 10-206a (2021) (effective 1980).</p>	<p>Requires schools to provide physical examinations to students.</p> <p>Each school district “shall require each pupil enrolled in the public schools to have health assessments” conducted either by outside medical providers or a “school medical advisor” to “ascertain whether such pupil is suffering from any physical disability tending to prevent such pupil from receiving the full benefit of school work and to ascertain whether such school work should be modified in order to prevent injury to the pupil or to secure for the pupil a suitable program of education.” CONN. GEN. STAT. § 10-206(a) (2021) (effective 1980). The health assessment must include: “physical examination which shall include hematocrit or hemoglobin tests, height, weight, blood pressure, and . . . a chronic disease assessment” including asthma. <i>Id.</i> § 10-206(c) (effective 2002).</p> <p>In addition, each school district “shall provide postural screenings for (1) each female pupil in grades five and seven, and (2) each male pupil in grade eight or nine.” <i>Id.</i> § 10-214(c) (enacted 1949).</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>Each school district “shall provide annually to each pupil in kindergarten and grades one and three to five, inclusive, a vision screening.” CONN. GEN. STAT. § 10-214(a) (2021) (enacted 2021). And, each school district “shall provide annually audiometric screening for hearing to each pupil in kindergarten and grades one and three to five, inclusive.” <i>Id.</i> § 10-214(b) (effective 2015).</p>	<p>Requires schools to provide oral healthcare to some students.</p> <p>Students, in their health appraisals in grades 6-7 and 9-10, must receive “gross dental screenings.” CONN. GEN. STAT. § 10-206(c) (2021) (enacted 1949). The school must provide this service for free to low-income students. <i>Id.</i> § 10-206a (effective 1980).</p> <p>In addition to this screening, if a school district “hosts a free oral health assessment event at which a provider . . . performs an oral health assessment of children attending a public school,” the school board shall notify the parents and guardians of the children in advance and allow them opportunity to opt out. “Each child whose parent did not opt him or her out of the oral health assessment event shall receive an oral health assessment . . . free of charge.” <i>Id.</i> § 10-206d(c) (2021) (effective 2018).</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, in years in which funds are appropriated, the state education agency “shall establish a grant program for the purpose of providing funds to local and regional boards of education for the establishment of school-based programs for the detection and prevention of emotional, behavioral and learning problems in public school children primarily in grade kindergarten through grade three.” CONN. GEN. STAT. § 10-76u(a) (2021) (enacted 1984). The funded early detection and prevention programs “shall include (1) a component for systematic early detection and screening to identify children experiencing behavioral, disciplinary or early school adjustment problems, and (2) services that address such problems for children so identified.” <i>Id.</i> § 10-76v.</p>
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		<p>Requires school districts to provide developmental assessments to students.</p> <p>The state education agency “shall develop or approve reading assessments . . . to identify students in kindergarten to grade three, inclusive, who are below proficiency in reading, provided any reading assessments developed or approved by the department include frequent screening and progress monitoring of students.” CONN. GEN. STAT. § 10-14t (2022) (effective 2022).</p>			
<p>DE</p>	<p>Requires schools to employ health professionals.</p> <p>Each school “shall ensure that it has at least 1 school nurse . . .” DEL. CODE ANN. tit. 14, § 1310(b) (West 2021) (enacted 1948).</p> <p>Requires some schools to provide health services to students.</p> <p>“All public high schools . . . are required to have a school-based health center . . .” DEL. CODE ANN. tit. 14, § 4126(a) (West 2021) (effective 2016). A SBHC is a health clinic located in or near a school that “[p]rovides through licensed professionals</p>	<p>Requires schools to provide physical examinations to students.</p> <p>“Each public school student in grades 5 through 9 shall receive a postural and gait screening” each year. 14 DEL. ADMIN. CODE § 815 (2021) (promulgated 2003).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Schools must utilize a “common statewide readiness tool” to review a student’s readiness for learning including, among other things, “[l]anguage and literacy development;</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“Each public school student in kindergarten and in grades 2, 4, 7 and grades 9 or 10 shall receive a vision and a hearing screening . . .” 14 DEL. ADMIN. CODE § 815 (2021) (promulgated 2003). In addition, each SBHC must also provide “referrals to and follow-up” for “vision health services.” DEL. CODE ANN. tit. 18, § 3571G(a)(3) (West 2021) (effective 2012).</p>	<p>Requires some schools to provide oral healthcare to students.</p> <p>The SBHC at each school must provide “referrals to and follow-up for specialty care and oral . . . health services . . .” DEL. CODE ANN. tit. 18, § 3571G(a) (West 2021) (effective 2012).</p>	<p>Requires some schools to provide mental-health services to students.</p> <p>Each SBHC must provide “referrals to and follow-up for . . . mental health and substance use disorder assessments, crisis intervention, counseling, treatment, and referral to a continuum of mental health and substance abuse services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs . . .” DEL. CODE ANN. tit. 18, § 3571G(a) (West 2021) (effective 2012).</p>

	<p>primary health services to children, including comprehensive health assessments, diagnosis, and treatment of minor, acute, and chronic medical conditions, referrals to and follow-up for specialty care and oral and vision health services, mental health and substance abuse disorder assessments, crisis intervention, counseling, treatment, and referral” to mental health programs. DEL. CODE ANN. tit. 18, § 3571G(a) (West 2021) (effective 2012).</p>	<p>cognition and general knowledge; [and] approaches toward learning” when they enter kindergarten. DEL. CODE ANN. tit. 14, § 151(h) (West 2021) (effective 2012).</p>			
<p>FL</p>	<p>Requires schools provide health services to students.</p> <p>“Each county health department shall develop, jointly with the district school board and the local school health advisory committee, a school health services plan” that provides for, among other things, health appraisals and nurse assessments. FLA. STAT. § 381.0056(4)(a) (2021) (effective 1999).</p>	<p>Requires schools to provide physical examinations to students.</p> <p>“Growth and development screening shall be provided, at a minimum, to students in grades 1, 3 and 6, and optionally to students in grade 9;” and screening for scoliosis shall be provided at least to students in grade 6. FLA. ADMIN. CODE ANN. r. 64F-6.003(3)-(4) (2021) (promulgated 2004).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Public schools serving kindergarten through eighth-grade must “measure student progress . . . in meeting the appropriate expectations in early literacy . . . skills” using</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“Each county health department shall develop, jointly with the district school board and the local school health advisory committee, a school health plan” that provides for “[v]ision screening” and “[h]earing screening.” FLA. STAT. § 381.0056(4)(a) (2021) (effective 1999). Vision screening is mandated for students in grades K, 1, 3, and 6. FLA. ADMIN. CODE ANN. r. 64F-6.003(1) (2021) (promulgated 2004). Health screening is mandated for students in grades K, 1, and 6. <i>Id.</i> r. 64F-6.003(2).</p>	<p>Requires schools to provide oral healthcare to students.</p> <p>“Each county health department shall develop, jointly with the district school board and the local school health advisory committee, a school health plan” that provides for “[a] preventative dental program.” FLA. STAT. § 381.0056(4)(a) (2021) (effective 1999).</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>Instead, schools constitute one part of the state’s “multiagency network” that provides students with mental illness or emotional and behavioral problems “access to the services and supports they need to succeed.” FLA. STAT. § 1006.04(1)(a) (2021) (effective 2018). The multiagency network supports students in each school district “in joint planning with fiscal agents of children’s mental health funds, including the expansion of school-based mental health services, transition services, and integrated education and treatment programs.” <i>Id.</i> § 1006.04(1)(c).</p>

		<p>“a valid, reliable, and developmentally appropriate computer-adaptive direct instrument that provides screening and diagnostic capabilities for monitoring student progress; identifies students who have substantial deficiency in reading, including identifying students with characteristics of dyslexia; and informs instruction.” FLA. STAT. § 1008.25(8)(a) (2021) (effective 2021).</p>			
<p>GA</p>	<p>Requires schools to employ health professionals.</p> <p>Each school district “shall establish policies and procedures regarding a school health nurse program. Such school health nurse programs shall be staffed by licensed health care professionals” GA. CODE ANN. § 20-2-771.2(a) (2021) (effective 2000).</p> <p>Requires schools to provide health services to students.</p> <p>“Each local school system shall develop a Student Services Plan” that includes “[s]chool health services,” which is defined as “a process to address medically related health and safety issues and address requests by parents and physicians that the school provide appropriate health</p>	<p>Requires schools to provide physical examinations to students.</p> <p>Schools must conduct scoliosis screening for “public school children in the at risk population.” GA. COMP. R. & REGS. 511-5-8-.02 (2021) (promulgated 2013). Though Georgia law further requires students to receive nutrition screenings, including BMI calculations, schools are permitted, but not required, to provide them to students. <i>Id.</i> 511-5-6-.03; 04.</p> <p>Requires schools to provide developmental screenings to some students.</p> <p>Georgia provides screening only for those K-3 students “who have been identified through the response-to-intervention process as having</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p> <p>Though Georgia law requires students to receive vision and hearing screenings, schools are permitted, but not required, to provide them to students. GA. COMP. R. & REGS. 511-5-6-.03; 04 (2021) (promulgated 2013).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>Though Georgia law requires students to receive dental examinations, schools are permitted, but not required, to provide them to students. GA. COMP. R. & REGS. 511-5-6-.03; 04 (2021) (promulgated 2013).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Each school district “shall provide for School Psychological Services,” defined as “psychoeducational evaluation; crisis intervention; case study; consultation to student support teams, parents, teachers, and administrators; behavioral observations and analysis; and psychological counseling.” GA. COMP. R. & REGS. 160-4-8-.01 (2021) (promulgated 1990). In addition, each school district “shall provide for School Guidance and Counseling Services,” defined as “guidance program planning, implementation and evaluation; individual and group counseling; classroom and small-group guidance;</p>

	<p>procedures to allow students to remain in school and increase opportunities for academic success.” GA. COMP. R. & REGS. 160-4-8-.01 (2021) (promulgated 1990)</p>	<p>characteristics of dyslexia, other disorders, or both.” GA. CODE ANN. § 20-2-159.6(b) (2021) (effective 2019).</p>			<p>career and educational development; parent and teacher consultation; and referral.” <i>Id.</i></p>
HI	<p>Requires schools to employ health professionals.</p> <p>School health services include care “provided by the school nurses, health aides, or other qualified persons.” HAW. CODE R. § 11-146-2 (LexisNexis 2021) (promulgated 1983). “Health aide” is defined as “the individual who is trained in standard first aid to render first aid.” <i>Id.</i></p> <p>School nurse” is defined as “a licensed registered professional nurse who is responsible for health services in the schools in an assigned geographic area.” <i>Id.</i></p> <p>Requires schools to provide health services to students.</p> <p>Each school district must provide “school health services” to students. HAW. REV. STAT. § 302A-851 (2021) (effective 2007). “There shall be within the [state education agency] a permanent comprehensive school health services program for grades kindergarten through twelve in all the public schools of this State. It is in the general</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Though students must provide proof of physical examination to attend school, schools are not required to provide such examinations to students. HAW. REV. STAT. § 302A-1159 (2021) (enacted 1996).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Schools must administer “kindergarten entry assessment[s]” that “[c]over all essential domains of school readiness” to incoming students. HAW. REV. STAT. 302A-1165 (2021) (effective 2021).</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>The state health agency’s “systematic hearing and vision program” aims to “[d]etect and identify hearing and vision deficiencies in school children; and [r]ecommend to their parents or guardians the need for appropriate evaluation of children who have hearing or vision deficiencies, or both, and follow-up and track completed evaluations, including diagnostic and treatment information.” HAW. REV. STAT. § 321-101 (2021) (effective 1992).</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, the state health agency examines all students referred by schools “for clinical evaluation of mental health status” and provides a written report documenting the evaluation to the school district. HAW. CODE R. § 11-147-6(a) (LexisNexis 2021) (promulgated 1984).</p>

	<p>welfare of the State to protect, preserve, care for, and improve the physical and mental health of Hawaii's children by making available the public schools first aid and emergency care, preventative care, health appraisals and follow-ups, and health room facilities." <i>Id.</i> "School health services" is defined as "the first aid preventive health care, health appraisal and follow-up care provided by the school nurses, health aides, or other qualified persons." HAW. CODE R. § 11-146-2 (LexisNexis 2021) (promulgated 1983).</p>				
<p>ID</p>	<p>—</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires schools to provide developmental screenings to students.</p> <p>The state legislature has found that pursuant to "the state constitutional duty to establish and maintain a general, uniform, and thorough system of public, free common schools," all public-school students must have access to evidence-based reading interventions. IDAHO CODE § 33-1803 (2021) (effective 2021). "[A]ll public school students in kindergarten through grade 3</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, the state health agency may provide teen early intervention specialists to "offer mental health and substance abuse counseling services to teens as needed" in schools. IDAHO CODE § 16-240A (2021) (effective 2007).</p>

		<p>shall have their reading skills assessed.” <i>Id.</i> § 33-1806(2). Screenings are the basis for further interventions: each school “shall establish an extended time literacy intervention program for students who score basic or below basic on the fall reading screening assessments or alternate reading screening assessment in kindergarten through grade 3.” <i>Id.</i> § 33-1807.</p>			
<p>IL</p>	<p>No requirement that schools employ health professionals.</p> <p>However, “[s]chool districts may employ . . . registered professional nurses to perform professional nursing services.” 105 ILL. COMP. STAT. 5/10-22.23 (2021) (effective 1998).</p> <p>No requirement that schools provide health services to students.</p> <p>However, based on legislative findings that health problems are leading causes of absenteeism among Illinois students, and that many Illinois families lack adequate health insurance or access to health care facilities, and that school health centers “provide quality health care services like . . . physical exams, asthma care, mental health counseling, and health in</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Though Illinois requires “[h]ealth examinations for all public . . . school students” including a physical examination, ILL. ADMIN. CODE tit. 77, § 665.120(a) (2021) (promulgated 2009), schools do not provide such examinations to students. <i>Id.</i> § 665.130.</p> <p>Requires schools to provide developmental screenings to students.</p> <p>The state education agency “shall annually assess all public school students entering kindergarten using a common assessment tool, unless the [state education agency] determines that a student is otherwise exempt. The common assessment tool</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“Vision and hearing screening services shall be administered to all children as early as possible, but no later than their first year in any public . . . education program . . . and periodically thereafter, to identify those children with vision or hearing impairments or both so that such conditions can be managed or treated.” 410 ILL. COMP. STAT. 205/3 (2021) (effective 2015).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>Students “shall present proof of having been examined by a dentist,” but schools are not required to provide such examinations to students. 105 ILL. COMP. STAT. 5/27-8.1(1,5) (2021) (effective 2004). However, this requirement must be waived for children “who show an undue burden or a lack of access to a dentist.” <i>Id.</i></p>	<p>No requirement that schools provide mental-health services to students.</p> <p>Schools may provide psychological services, but are not required to, including the “administration and interpretation of psychological and educational evaluations,” “developing school-based prevention programs,” “counseling with students, parents and teachers on educational and mental health issues,” as well as “screening of school enrollments to identify children who should be referred for individual study.” 105 ILL. COMP. STAT. 5/14-1.09.1 (2021) (effective 1995).</p>

<p>schools,” the state health agency “shall initiate 20 new school health centers . . .” 105 ILL. COMP. STAT. 129/25 (2021) (effective 2007); <i>id.</i> 129/20.</p>	<p>must assess multiple developmental domains, including literacy, language, mathematics, and social and emotional development.” 105 ILL. COMP. STAT. 5/2-3.64a-10(b) (2021) (effective 2021).</p>	<p>Separate from the kindergarten assessments, students are required by state law to submit proof of developmental screenings and social and emotional screenings to schools. <i>Id.</i> 5/27-8.1(2) (effective 2017). If students do not submit proof of those screenings, however, schools may “offer the developmental screening or the social and emotional screening to the child,” provided parental consent. <i>Id.</i> 5/27-8.1(2.5).</p>	<p>IN</p> <p>Requires schools to employ health professionals.</p> <p>School districts must “employ at least one (1) registered nurse . . . who shall coordinate health services.” 511 IND. ADMIN. CODE 4-1.5-6(b) (2021) (promulgated 2000).</p> <p>Requires schools to provide health services to students.</p> <p>School districts “shall provide health services at the elementary and secondary school level.” 511 IND. ADMIN. CODE 4-1.5-6(a) (2021)</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>However, each school district “may provide for the inspection of students by a school physician to determine whether any child suffers from disease, disability . . . or other defects that may reduce the student’s efficiency or prevent the student from receiving the full benefit of the student’s school work.” IND. CODE § 20-34-3-4 (2021) (effective 2005).</p>	<p>Requires school districts to provide vision and auditory screenings to students.</p> <p>Each school district “shall conduct a vision test for each student . . .” IND. CODE § 20-34-3-12 (2021) (effective 2005). Each school district “shall annually conduct an audiometer test or a similar test to determine the hearing efficiency” of students. <i>Id.</i> § 20-34-3-14.</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, each school district “may provide for the inspection of students by a school physician to determine whether any child suffers from . . . decayed teeth, or other defects that may reduce the student’s efficiency or prevent the student from receiving the full benefit of the student’s school work.” IND. CODE § 20-34-3-4 (2021) (effective 2005).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Each school district “shall provide student assistance services” coordinated by certified school counselors, psychologists, or social workers. 511 IND. ADMIN. CODE 4-1.5-5(a)-(b) (2021) (promulgated 2000). Such services include “refer[ring] students who are experiencing problems that interfere with student learning;” “brief individual and group counseling to students and</p>
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(promulgated 2000). Health services include, among other things, “(1) Prevention, which includes: . . . (C) acting as a resource to students, families, staff, and the community regarding: (i) health services; (ii) health education; and (iii) a healthy environment. (2) Assessment, which includes: (A) maintaining a continuous health program for all students through implementing and monitoring health services . . . and (B) using the nursing process to collect, interpret, and record information about the health, developmental, and educational status of students to determine a nursing diagnosis and develop health care plans. (3) Intervention, which includes: (A) implementing and monitoring a system for the provision of health services and emergency care; (B) providing individual and group counseling to students and staff in health related matters; and (C) communicating with parents and collaborating with others to facilitate the continuity of services and care. (4) Referral, which includes: (A) utilizing appropriate health care personnel and health care resources to meet individual student needs; (B) evaluating student and family responses to nursing actions and

Requires schools to provide developmental screenings to students.

School districts must administer a “universal screener” program, which “is conducted to identify or predict students who may be at risk for poor learning outcomes,” to “all students at a particular grade level.” IND. CODE § 20-35.5-1-7 (2021) (effective 2018). The “mandatory universal screener” must “include indicators to screen for risk factors of dyslexia . . .” *Id.* § 20-35.5-2-1.

School districts must also implement reading plans, which must include “formative and summative assessments” to measure, among other factors, phonemic awareness, phonics, fluency, and comprehension. 511 IND. ADMIN. CODE 6.2-3.1-3 (2021) (promulgated 2011). Schools “shall intervene with students who have reading deficiency as determined by assessment results.” *Id.* 6.2-3.1-5(a).

families who need help with personal concerns or developmental problems;” and “implementing policies and procedures for referring students and families to student assistance services and community agencies for intensive counseling or other specialized services . . .” *Id.* 4-1.5-5(c).

	referrals; and (C) coordinating health services with: (i) families; (ii) other school programs; (iii) in-school professionals; (iv) school-based resources; and (v) community-based resources.” <i>Id.</i> at 4-1.5-6(d).				
IA	<p>Requires schools to employ health professionals.</p> <p>“Each school district shall have a school nurse” IOWA CODE § 256.11(9B) (2021) (effective 2007).</p> <p>Requires schools to provide health services to students.</p> <p>Nurses employed by each school districts must “provide health services” to students. IOWA CODE § 256.11(9B) (2021) (effective 2007).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires school districts to provide developmental screenings to students.</p> <p>“A school district shall assess all students enrolled in kindergarten through grade three . . . for their level of reading or reading readiness” at the beginning of the school year. IOWA CODE § 279.68(1)(a) (2021) (effective 2012). “If a student is not reading proficiently . . . the school district shall provide intensive reading instruction to the student. The student’s reading proficiency shall be periodically reassessed by locally determined or statewide assessments including periodic universal screening and annual standard-based assessments.” <i>Id.</i> (effective 2016).</p>	<p>No requirement that schools provide vision screenings to students.</p> <p>Parents of students must submit “evidence of [a] vision screening is provided to the school district” where their child is enrolled, and schools are permitted, but not required, to conduct such screenings. IOWA CODE § 135.39D (2021) (effective 2013). If parents fail to submit evidence of such a screening, the student “shall not be prohibited from attending school” <i>Id.</i> § 135.39D(6).</p> <p>No requirement that schools provide hearing screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>Parents of students are required to submit evidence of dental screening to schools. IOWA CODE § 135.17(1)(a) (2021) (effective 2007). If students are unable to obtain the required dental screening from external providers, however, the school must provide the student “with community dental screening referral resources.” <i>Id.</i> § 135.17(2)(b) (effective 2008).</p> <p>The state health agency helps fund a “program implemented through public or private nonprofit agencies to provide dental examinations or screenings and dental sealants to children in a school-based setting,” but schools are not required to participate. IOWA ADMIN. CODE r. 641-50.2 (2021) (promulgated 2009).</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, schools “may contract with a mental health professional or a nationally accredited behavioral health care organization to provide behavioral health screenings to students in person.” IOWA CODE § 280A.2(1) (2021) (effective 2020). Behavioral health screenings are assessments used “to identify factors that place children at higher risk for behavioral health conditions, to determine appropriate treatment or intervention, and to identify the need for referral for appropriate services.” IOWA ADMIN. CODE r. 281-14.21 (2021) (promulgated 2021).</p> <p>In addition, schools “may provide access to behavioral health services via telehealth on the premises of the public school” IOWA CODE § 280A.4(1) (2021) (effective 2020). Behavioral health services are “services provided</p>

					by a health care professional operating within the scope of the health care professional's practice which address mental, emotional, medical, or behavioral conditions, illnesses, diseases, or problems." IOWA ADMIN. CODE r. 281-14.21 (2021) (promulgated 2021).
KS	—	<p>No requirement that schools provide physical examinations to students.</p> <p>Before school admission, students under age 9 must “present to the appropriate school board the results of a health assessment” which includes, among other things, “physical examination” and “appropriate growth and development.” KAN. STAT. ANN. § 72-6267(a)-(b) (2021) (effective 1994). Schools are not required to provide this health assessment, but “[l]ocal health departments and clinics may charge a sliding fee for providing such health assessments based on ability to pay and no pupil shall be denied the health assessment due to inability to pay.” <i>Id.</i> § 72-6267(f).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Each school district “shall adopt and implement policies</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“Each school board shall provide basic vision screening without charge to every pupil enrolled in each school under the governance of such school board not less than once every two (2) years.” KAN. STAT. ANN. § 72-6242(a)(1) (2021) (effective 2001). “Every pupil enrolled in a school district . . . shall be provided with a hearing screening without charge during the first year of admission and not less than once every three years thereafter.” <i>Id.</i> § 72-6229(a) (enacted 1969).</p>	<p>Requires some schools to provide oral healthcare to students.</p> <p>School districts located in municipalities with populations of more than 2,000 people “are hereby required to provide for free dental inspection annually for all children, except those who hold a certificate from a legally qualified dentist showing that this examination has been made within three months last past, attending such schools.” KAN. STAT. ANN. § 72-6251 (2021) (enacted 1915).</p>	<p>No requirement that schools provide mental-health services to students.</p>

		and procedures to identify, locate, and evaluate all children with exceptionalities residing in its jurisdiction Each board's policies and procedures . . . shall include age-appropriate screening procedures" KAN. ADMIN. REGS. § 91-40-7 (2021) (promulgated 2000).			
KY	<p>Requires schools to employ health professionals.</p> <p>School health services must be provided by physicians, nurses, or non-licensed health technician or school employee who is delegated the responsibility of performing the health service by a physician or nurse. KY. REV. STAT. ANN. § 156.502(2) (West 2021) (effective 2002). Each school district must have a school health coordinator who works with schools in "promoting and implementing a school health services program." 702 KY. ADMIN. REGS. 1:160(4) (2021) (promulgated 1974).</p> <p>Requires schools to provide health services to students.</p> <p>"Health services shall be provided, within the healthcare professional's current scope of practice, in a school setting . . ." KY. REV. STAT. ANN. § 156.502(2)</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>While students must submit evidence of a "preventive health care examination" to schools, schools are not required to provide such examinations to students. "A preventive student health care examination shall be performed and signed for by a physician, an advanced practice registered nurse, a physician's assistant, or by a health care provider in the early periodic screening diagnosis and treatment programs." 702 KY. ADMIN. REGS. 1:160(2) (2021) (promulgated 1974).</p> <p>No requirement that schools provide developmental screenings to students.</p> <p>Each school district "may develop a policy addressing the implementation of a program for the identification</p>	<p>No requirement that schools provide vision and auditory screenings to students.</p> <p>While students must submit evidence of vision and auditory screenings to schools, schools are not required to provide such screenings to students. 702 KY. ADMIN. REGS. 1:160(2)(5) (2021) (promulgated 1974).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>While students must submit evidence of dental screenings to schools, schools are not required to provide such screenings to students. 702 KY. ADMIN. REGS. 1:160(2)(6) (2021) (promulgated 1974).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Each school district "shall employ at least one (1) school counselor in each school with the goal of the school counselor spending sixty percent (60%) or more of his or her time providing counseling and related services directly to students; and" each school district must aim to "provide at least one (1) school counselor or school-based mental health services provider who is employed by the school district for every two hundred fifty (250) students . . ." KY. REV. STAT. ANN. § 158.4416(3)(a) (West 2021) (effective 2020). "A school counselor or school-based mental health services provider at each school shall facilitate the creation of a trauma-informed team to identify and assist students whose learning, behavior, and</p>

	<p>(West 2021) (effective 2002). “Health services’ means the provision of direct health care, including the administration of medication; the operation, maintenance, or health care through the use of medical equipment; or the administration of clinical procedures.” <i>Id.</i> § 156.502(1)(a). “If no school employee has been trained and delegated responsibility to perform a health service, the school district shall make any necessary arrangement for the provision of the health service to the student in order to prevent a loss of a health service from affecting the student’s attendance or program participation.” <i>Id.</i> § 156.502(3).</p>	<p>of and strategies for assisting students in kindergarten through grade three (3) with dyslexia,” but is not required to. KY. REV. STAT. ANN. § 158.307(5) (West 2021) (effective 2018).</p>			<p>relationships have been impacted by trauma.” <i>Id.</i> § 158.4416(3)(b) (effective 2019).</p>
<p>LA</p>	<p>Requires schools to employ health professionals.</p> <p>“Each city and parish school system shall employ at least one school nurse . . . but shall not exceed a statewide average of one certified school nurse for each one thousand five hundred students.” LA. STAT. ANN. § 17:28(A) (2021) (enacted 1985). Each local education agency “shall be required to employ,” among others, a “school nurse . . .” LA. ADMIN. CODE tit. 29 § 503(B) (2021) (promulgated 2005).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>For individual students, health professionals may, but are not required to, perform “growth, vital signs . . . and scoliosis screenings.” LA. STAT. ANN. § 17:436(A) (2021) (effective 1991).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Every K-3 public-school student “shall be screened, at least once, for the existence of</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>School districts “shall test the sight, including color screening for all first grade students, and hearing of each and all pupils under their charge . . .” LA. STAT. ANN. § 17:2112(A) (2021) (effective 2003).</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, schools “shall not prohibit a behavioral health provider from providing behavioral health services to a student at school during school hours if the student’s parent or legal guardian requests such services from the provider” following “a behavioral health evaluation” that “indicates that the services are necessary during school hours to assist the student with behavioral health impairments . . .” LA.</p>

	<p>Requires schools to provide health services to students.</p> <p>“Each certified school nurse shall be responsible for performing such health care services” as may be required by state law and regulations. LA. STAT. ANN. § 17:28(A) (2021) (enacted 1985).</p> <p>In addition, the state health agency has established “an adolescent health initiative to facilitate and encourage development of comprehensive health centers in public middle and secondary schools in Louisiana which shall provide preventive health services, counseling, acute health services, and appropriate referral for acute health services.” LA. STAT. ANN. § 40:31.3(A) (2021) (effective 1991).</p>	<p>impediments to a successful school experience” including dyslexia and related disorders, attention deficit disorder, and social and environmental factors that put a child at risk of dropping out of school. LA. STAT. ANN. § 17:392.1(B) (2021) (effective 1992).</p> <p>In addition, each school district must administer a “literacy assessment provided by the [state education agency] . . . to each student in kindergarten through third grade to determine each student’s literacy level; [and] [p]rovide literacy interventions and supports designed to improve the foundational literacy skills of any student identified as having literacy skills below grade level.” <i>Id.</i> § 17:24.10(A) (effective 2021).</p>		<p>STAT. ANN. § 17:173 (2021) (effective 2018).</p>	
<p>ME</p>	<p>Requires schools to employ health professionals.</p> <p>“Each school board shall appoint one or more physicians or family or pediatric nurse practitioners to act as school health advisor. The school health advisor shall advise the administrative unit on school health issues, policies and practices and may also perform any other health-related functions assigned by the board.” ME. STAT. tit. 20-</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>The school health advisor may, but is not required, to “perform any other health-related functions assigned by the board” including “[e]xamin[ing] and diagnos[ing] students referred by teachers and other school employees to protect against the outbreak of contagious diseases in the</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“Each student must be screened periodically to determine whether the student has sight or hearing defects.” ME. STAT. tit. 20-A § 6451(1) (2021) (effective 2018).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, the state education agency and state health agency must “implement[] a grant program . . . to increase the provision of oral health assessments for children entering elementary school.” ME. STAT. tit. 20-A § 6465 (2021) (effective 2006). The program permits schools “to provide oral health</p>	<p>No requirement that schools provide mental-health services to students.</p>

	<p>A, § 6402-A(1) (2021) (effective 2013). “Each school board shall appoint at least one school nurse” in addition to the school health advisor. <i>Id.</i> § 6403-A (effective 1985).</p> <p>Requires schools to provide health services to students.</p> <p>The school nurse “shall supervise and coordinate health services” and “shall also perform such other health-related activities as are assigned by the school board.” ME. STAT. tit. 20-A, § 6403-A (2021) (effective 1985).</p>	<p>schools . . . [and] [e]xamine students for participation in physical education and athletic activities . . .” ME. STAT. tit. 20-A, § 6402-A (2021) (enacted 1985).</p> <p>Requires school districts to provide developmental screenings to some students.</p> <p>“[A] school administrative unit shall screen for dyslexia students from kindergarten to grade 2” who are “identified by a classroom teacher” as having difficulty in areas of reading comprehension, phenological and phonemic awareness, and other indicators of learning disabilities. ME. STAT. tit. 20-A, § 4710-B (2021) (effective 2015).</p>		<p>assessments to children entering kindergarten or as soon as practicable upon a child’s initial enrollment in an elementary school.” ME. STAT. tit. 22 § 2128(1) (2021) (effective 2006). Students who do not have dental insurance are also eligible for “necessary dental services.” <i>Id.</i></p>	
<p>MD</p>	<p>Requires schools to employ health professionals.</p> <p>Each school district “shall designate a school health services program coordinator” who shall “[i]mplement [s]tate and local health policies in the public schools; [and] [e]nsure that public schools adhere to local health services guidelines.” MD. CODE ANN., EDUC. § 7-401(c) (West 2021) (effective 2006).</p> <p>Requires schools to provide health services to students.</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Physical examinations are required for school admission. MD. CODE ANN., EDUC. § 7-402 (West 2021) (effective 1990). Maryland law anticipates that some children will not be able to obtain a physical examination due to “lack of access to health care” or “[i]nsufficient financial resources,” but does not require schools to provide such examinations. <i>Id.</i> Students unable to obtain</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>Each school district “or county health department shall provide hearing and vision screenings for all students in the public schools” in “the year that the student enters the school system, enters the first grade, and enters the eighth or ninth grade.” MD. CODE ANN., EDUC. § 7-404(a)-(b) (West 2021) (effective 2008). Parents of students who fail the vision screening must receive notice</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, schools that operate school-based health centers may “provide on-site dental care, . . . referrals, and follow-up services . . .” MD. CODE REGS. 10.09.76.01(B)(12) (2021) (promulgated 2017).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>“Each local school system shall provide a coordinated program of pupil services for all students which shall include . . . [s]chool counseling” and “[s]chool psychology.” MD. CODE REGS. 13A.05.05.01(A) (2021) (promulgated 1987). “The School Counseling Program is a coordinated data driven program of counseling, consulting, and informational services for students in grade</p>

<p>Each school district “shall provide . . . [a]dequate school health services” to students. MD. CODE ANN., EDUC. § 7-401(a) (West 2021) (effective 1978). Each school district “shall provide a coordinated program of pupil services for all students which shall include . . . health services.” MD. CODE REGS. 13A.05.05.01(A) (2021) (promulgated 1987). The “Pupil Personnel Program” aims to “[i]dentify health problems that are interfering with academic achievement” and provide “assistance in obtaining basic physical and personal health care needs.” <i>Id.</i> 13A.05.05.03(C).</p>	<p>physical examinations, however, “may not be excluded from school.” MD. CODE REGS. 13A.05.05.07(A) (2021) (promulgated 1991).</p> <p>However, in two underserved areas of Maryland, the state has implemented the “School Health Program,” which aims to provide “health and referral services” including “physical exams” to students. MD. CODE ANN., EDUC. § 7-415 (West 2021) (effective 1997).</p>	<p>of the results and “[i]nformation on how to enroll in the Maryland Medical Assistance Program; and [i]nformation on locally available free or low-cost nonprofit programs that provide eye examinations and eyeglasses for children, if any.” <i>Id.</i> § 7-404(c)(2) (effective 2018).</p>	<p>K-12” that, among other things, “[e]nhances awareness of mental health and promotes positive, health behaviors;” and “[p]rovides school-based prevention and universal and targeted interventions for students with mental health and behavioral concerns . . .” <i>Id.</i> 13A.05.05.02(A) (promulgated 1987). The “School Psychology Program” seeks to “provide direct educational, behavioral, and mental health services for children and youth . . .” <i>Id.</i> 13A.05.05.04. The program aims to provide students with “appropriate social/emotional and behavioral strategies;” “promote[e] positive peer relationships;” “[c]oordinate links to community services;” and help families “support their child’s learning and mental health needs . . .” <i>Id.</i></p>
<p>In addition, the state health agency and state education agency “shall develop guidelines to support the expansion of school-based health centers.” MD. CODE ANN., HEALTH-GEN. § 19-22A-01 (West 2021) (effective 2021). School-based health centers are defined as health centers that provide “on-site primary and preventive health care, referrals, and follow-up services . . .” MD. CODE REGS. 10.09.76.01(B)(12) (2021) (promulgated 2017).</p>	<p>Each school district “shall ensure that a student is screened to identify if the student is at risk for reading difficulties.” MD. CODE ANN., EDUC. § 4-136(b) (West 2021) (effective 2019).</p>	<p>Schools must administer a “statewide kindergarten assessment” to all incoming kindergarten students for “the purpose of measuring school readiness to be used for diagnostic purposes, curriculum development, and early detection of learning challenges. <i>Id.</i> § 7-210(a) (effective 2021).</p>	

<p>MA</p>	<p>Requires schools to employ health professionals.</p> <p>Each school district “shall appoint one or more school physicians and registered nurses, shall assign them to the public schools within its jurisdiction, shall provide them with all proper facilities for the performance of their duties and shall assign one or more physicians to the examination of children who apply for health certificates.” MASS. GEN. LAWS ch. 71, § 53 (2021) (effective 1974).</p> <p>Requires schools to provide health services to students.</p> <p>Local education and health authorities “shall provide the services of a school physician to carry out physical examinations on such children who, because of hardship, do not have this service performed by the student’s physician, nurse practitioner, or physician assistant.” 105 MASS. CODE REGS. 200.200 (2021).</p>	<p>Requires schools to provide physical examinations to students.</p> <p>Local education and health authorities “shall cause every child in the public schools . . . to be separately and carefully examined in such manner and at such intervals, including original entry, as may be determined by the [state health agency] . . . to ascertain . . . postural and other physical defects tending to prevent his receiving the full benefit of his school work, or requiring a modification of the same in order to prevent injury to the child or to secure the best education results, and to ascertain defects of the feet which might unfavorably influence the child’s health or physical efficiency, or both, during childhood, adolescence and adult years . . .” MASS. GEN. LAWS ch. 71, § 57 (2021) (effective 1943). Local education and health authorities “shall adopt policies and procedures to ensure that the weight and height shall be measured for each student in grades 1, 4, 7, and 10 . . . and that the student’s Body Mass Index (BMI) score and corresponding percentiles are calculated.” 105 MASS. CODE REGS. 200.500 (2021)</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>Local education and health authorities “shall cause every child in the public schools . . . to be separately and carefully examined in such manner and at such intervals, including original entry, as may be determined by the [state health agency] . . . to ascertain defects in sight or hearing . . . tending to prevent his receiving the full benefit of his school work, or requiring a modification of the same in order to prevent injury to the child or to secure the best education results . . .” MASS. GEN. LAWS ch. 71, § 57 (2021) (effective 1943). “Tests of sight and hearing . . . shall be performed by teachers, physicians, optometrists, nurses or other personnel who are approved” by the state health agency. <i>Id.</i></p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Each school district “shall develop and adhere to a plan to address the general mental health needs of its students, including the students’ families, teachers and school administrators. Each plan shall also address the potential need for emergency and acute treatment for students, including the students’ families, teachers and school administrators as a result of a tragedy or crisis within the district or school.” MASS. GEN. LAWS ch. 71, § 37Q(b) (2021) (effective 2015).</p>
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		<p>Requires schools to provide developmental screenings to students.</p> <p>“Each school district shall conduct screening . . . for all children who are of age to enter kindergarten. 603 MASS. CODE REGS. 28.03(1)(d) (2021). “Such screening shall be designed to review a child’s development and to assist in identification of those children who should be referred for an evaluation to determine eligibility for special education services.” <i>Id.</i></p>			
<p>MI</p>	<p>No requirement that schools employ health professionals.</p> <p>However, a school district “may employ registered nurses necessary to provide professional nursing services.” MICH. COMP. LAWS § 380.1252 (2021) (effective 1977). “The board of a school district may establish and employ personnel necessary to provide an adequate school psychological service.” <i>Id.</i> § 380.1251(1) (effective 1988).</p> <p>Requires schools to provide health services to students.</p> <p>The state health agency “shall establish a plan for health services for pupils in the elementary and secondary schools of this state.” MICH.</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires schools to provide developmental screenings to students.</p> <p>School districts must administer to students in grades K-3 a “valid and reliable screening, formative, and diagnostic reading assessment system . . . to screen and diagnose difficulties, inform instruction and intervention needs, and assess progress toward a growth target.” MICH. COMP. LAWS § 380.1280f(2) (2021) (effective 2016). The school district “periodically shall assess a pupil’s progress in reading skills at least 3 times per school year in grades K to</p>	<p>No requirement that schools provide vision and auditory screenings to students.</p> <p>“Vision screening of school-age children shall, at a minimum, be done in grades 1, 3, 5, 7, [and] 9.” MICH. ADMIN. CODE r. 325.13091 (2021) (promulgated 1981)</p> <p>“Hearing screening of school-age children shall be done at least in grades K, 2, and 4, or screening shall be done at least biennially starting at age 5 and continuing at least to age 10 years.” <i>Id.</i> r. 325.3274. Screenings may, but are not required to be, provided by the school. <i>Id.</i> r. 325.13091(1)(a); <i>id.</i> r. 325.3271(1)(a).</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, state funding is allocated “to provide instructional programs and direct noninstructional services including, but not limited to, medical, mental health, or counseling services, for at-risk pupils . . .” MICH. COMP. LAWS § 388.1631a (2021) (enacted 1979). Schools may employ school social workers, who may, among other things, “[p]rovide individual and group counseling to students and their families;” and “[d]evelop functional behavior assessments and behavior intervention plans . . .” MICH. ADMIN.</p>

	COMP. LAWS § 333.9101(1) (2021) (effective 1978).	3.” <i>Id.</i> Schools must “provide an individual reading improvement plan” for students who exhibit a reading deficiency. <i>Id.</i>			CODE r. 340.1011 (2021) (promulgated 2011).
MN	<p>Requires some schools to employ health professionals.</p> <p>Each school district “with 1,000 pupils or more” must either employ “at least one full-time equivalent licensed school nurse” or contract with a health organization to employ “certified public health nurses.” MINN. STAT. § 121A.21(b) (2021) (effective 2003).</p> <p>Requires schools to provide health services to students.</p> <p>“Every school board must provide services to promote the health of its pupils.” MINN. STAT. § 121A.21(a) (2021) (effective 2003).</p>	<p>Requires schools to provide physical examinations to students.</p> <p>Each school district “must provide for a mandatory program of early childhood developmental screening for children” with thirty days of school entry. “A screening program must include at least the following components: . . . the child’s height and weight . . . identification of risk factors that may influence learning, an interview with the parent about the child, and referral for assessment, diagnosis, and treatment when potential needs are identified.” MINN. STAT. § 121A.17(3) (2021) (effective 2005). Individual school districts may offer additional components like nutritional and physical assessments, and blood pressure tests. <i>Id.</i></p> <p>Requires schools to provide developmental screenings to students.</p> <p>“Every school board must provide for a mandatory program of early childhood developmental screening for</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>Each school district “must provide for a mandatory program of early childhood developmental screening for children” within thirty days of school entry. “A screening program must include . . . hearing and vision screening or referral . . .” MINN. STAT. § 121A.17(3) (2021) (effective 2005).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, school districts “may offer . . . [screening] components,” such as “dental assessments” to students. MINN. STAT. § 121A.17 (2021) (effective 2005).</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, the state has created a program designed “to enable schools to collaborate with county social service agencies and county health boards and with local public and private providers to assure that at-risk children and youth receive . . . mental health services, family drug and alcohol counseling, and needed social services.” MINN. STAT. § 256.995(3) (2021) (effective 1992).</p>

		<p>children” within thirty days of school entry. “A screening program must include at least the following components: developmental assessments, . . . identification of risk factors that may influence learning, an interview with the parent about the child, and referral for assessment, diagnosis, and treatment when potential needs are identified.” MINN. STAT. § 121A.17(3) (2021) (effective 2005).</p>			
<p>MS</p>	<p>No requirement that schools employ health professionals.</p> <p>However, the state education agency shall “promote[e] a statewide school nurse program designed to prepare local school districts to incorporate the school program into their local educational programs.” MISS. CODE ANN. § 37-14-3(2) (2021) (effective 2007).</p> <p>Requires schools to provide health services to students.</p> <p>“The Comprehensive School Health Education Program shall encompass,” among other things, “health service.” MISS. CODE ANN. § 37-13-131(3) (2021) (effective 1994). School nurses shall, among other things, “[s]erve as the coordinator of the health services program and</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>“It is recommended that all entering kindergarten students receive a comprehensive health screening, such as (1) the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) . . . or (3) a standard physical.” 07-007 MISS. CODE R. § II(C)(2) (LexisNexis 2021) (promulgated 2013). “If no documentation of a current comprehensive health screening or standard physical is available from within the last year, screening/standard physicals should be conducted . . . by either a private health care provider . . . or through school resources, such as school nurses.” <i>Id.</i></p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>All schools “must conduct vision and hearing screenings for all kindergarten students within the first 45 days of school enrollment.” 07-007 MISS. CODE R. § II(C)(1) (LexisNexis 2021) (promulgated 2013).</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>Requires schools provide mental-health services to students.</p> <p>“Schools shall implement an evidence-based system of positive behavioral intervention strategies and support. Elements of the system of support shall include universal screening to identify potential students, teaching school-wide expected behaviors and skills, and a system to monitor the effectiveness of the interventions and supports.” 7-38 MISS. CODE R. § 38.13 (LexisNexis 2021) (promulgated 2015).</p> <p>The state mental health agency “shall develop a standardized Memorandum . . . to be utilized by . . . certified mental health providers and mental</p>

	<p>provide nursing care” and “[i]dentify health and safety concerns in the school environment and promote a nurturing social environment.” <i>Id.</i> § 37-14-3(4) (effective 2007).</p>	<p>Requires schools to provide developmental screenings to students.</p> <p>“All school districts shall use the literacy and numeracy screening instrument” chosen by the state education agency to screen K-3 students. MISS. CODE ANN. § 37-23-16(1) (West 2021) (effective 2007). The literacy screening must be administered “within the first 30 days of school and repeated at mid-year and at the end of the school year, to identify any deficiencies in reading.” 07-003 MISS. CODE R. § 41.1 (LexisNexis 2021) (promulgated 2015). In addition, a “dyslexia screener must be administered to all students during the spring of their kindergarten year and the fall of their first-grade year.” <i>Id.</i></p>			<p>health facilities in providing mental health services to local school districts. The [Memorandum] shall include standardized behavioral health screening and referral protocols, procedures and forms to be utilized by the local school districts.” MISS. CODE ANN. § 37-3-91(3) (2021) (effective 2019).</p> <p>“[L]ocal school boards shall incorporate evidence-based practices and positive behavioral intervention supports into individual school district policies and Codes of Conduct.” <i>Id.</i> § 37-11-54 (effective 2007).</p>
<p>MO</p>	<p>No requirement that schools employ health professionals.</p> <p>“School boards employing thirty or more teachers may employ, or otherwise provide or secure the service of, a supervisor of health and of one or more school nurses” MO. REV. STAT. § 168.171 (2021) (effective 1963).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Each school “shall conduct dyslexia screenings for students in the appropriate year consistent with the guidelines developed by the [state education agency].” MO. REV. STAT. § 167.950(1)</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, the “Missouri School Improvement Program” encourages schools to provide “behavioral support systems for all students.” MO. CODE REGS. ANN. tit. 5 § 20-100.255 (2021) (promulgated 2015).</p>

	<p>No requirement that schools provide health services to students.</p> <p>However, the state education agency’s “Resource and Process Standards,” designed to “promote continuous improvement” in each district, sets a benchmark goal that each school district “has developed and implemented a coordinated approach to school health services.” MO. CODE REGS. ANN. tit. 5, § 20-100.255 (2021) (promulgated 2015).</p>	<p>(2021) (effective 2016). “Each school district enrolling a pupil identified as reading below grade level shall develop an individual plan of reading intervention for such pupil.” <i>Id.</i> § 167.268(3) (effective 1990).</p>			
<p>MT</p>	<p>Requires schools to employ health professionals.</p> <p>Each school district “shall exercise supervision and control of the schools of the district in providing its educational program pursuant to the [Montana state constitution], and shall: . . . employ and dismiss . . . nurses, and any other personnel considered necessary to carry out the various services of the districts.” MONT. CODE ANN. § 20-3-324(2) (2021) (effective 2021).</p> <p>No requirement that schools provide health services to students.</p> <p>The state health agency “recommends that students be</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Schools may, however, “retain, when considered advisable, a physician or registered nurse to inspect . . . the general health conditions of each pupil” MONT. CODE ANN. § 20-3-324(21) (2021) (enacted 1971).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>“To support the goal of the people of Montana to develop the full educational potential of each person, articulated in [the education provision] of the Montana constitution, and to ensure early identification and</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p> <p><i>See supra</i> Montana General Provisions Section.</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p><i>See supra</i> Montana General Provisions Section.</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, the state health agency administers a “comprehensive school and community treatment program,” defined as a “comprehensive, planned course of community mental health outpatient treatment provided in cooperation and under written contract with the school district where the youth attends school. The program must be provided by a licensed mental health center” to qualify. MONT. ADMIN. R. 37.106.1902 (2021) (promulgated 1988).</p>

	<p>evaluated by registered professional nurses or other appropriately qualified health professionals on a periodic basis in order to identify those health problems which have the potential for interfering with learning, including: (a) assessment of [the] student's health and developmental status; (b) vision screening; (c) hearing screening; (d) chemical and alcohol abuse; (e) mental health screening; (f) nutritional screening; and (g) dental screening," but schools are not required to provide these assessments or screenings. MONT. ADMIN. R. 37.111.825 (2021) (promulgated 1986).</p>	<p>intervention for students with dyslexia, a school district shall utilize a screening instrument aimed at identifying students at risk of not meeting grade-level reading benchmarks." MONT. CODE ANN. § 20-7-469(3)(b) (2021) (effective 2019).</p>			
NE	<p>No requirement that schools employ health professionals.</p> <p>"[T]he board of education or school board of any school district may employ regularly licensed physicians to make [the health] inspections" required by state law. NEB. REV. STAT. § 79-252 (2021) (enacted 1919).</p> <p>Requires schools to provide health services to students.</p> <p>"Every school district shall cause children under its jurisdiction to be separately and carefully inspected" to determine if the child has a health condition. NEB. REV.</p>	<p>Requires schools to provide physical examinations to students.</p> <p>"Students in Nebraska schools must be screened periodically for . . . height and weight" to monitor weight/height status at intervals. 173 NEB. ADMIN. CODE § 7-004.01 (2021) (promulgated 2017).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>"Each school district shall administer an approved reading assessment three times during the school year to all students in kindergarten</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>"Every school district shall cause children under its jurisdiction to be separately and carefully inspected, except as otherwise provided in this section, to ascertain if a child is suffering from (1) defective sight or hearing . . ." NEB. REV. STAT. § 79-248 (2021) (enacted 1919). Inspections are required "[d]uring each school year . . . for the children then in attendance." <i>Id.</i> § 79-250.</p>	<p>Requires schools to provide oral healthcare to students.</p> <p>"Every school district shall cause children under its jurisdiction to be separately and carefully inspected, except as otherwise provided in this section, to ascertain if a child is suffering from . . . dental defects . . ." NEB. REV. STAT. § 79-248 (2021) (enacted 1919). Inspections are required "[d]uring each school year . . . for the children then in attendance." <i>Id.</i> § 79-250.</p>	<p>No requirement that schools provide mental-health services to students.</p>

	<p>STAT. § 79-248 (2021) (enacted 1919).</p>	<p>through grade three . . . ” NEB. REV. STAT. § 79-2603(1) (2021) (effective 2018). “Any student in kindergarten, grade one, grade two, or grade three shall be identified as having a reading deficiency if such student performs below the threshold level . . . on an approved reading assessment.” <i>Id.</i> § 79-2604(1). “Each school district shall provide a supplemental reading intervention program for the purpose of ensuring that students [found to have a reading deficiency] can read at or above grade level at the end of third grade.” <i>Id.</i> § 79-2605(1).</p>			
<p>NV</p>	<p>Requires schools that employ health professionals to provide health services.</p> <p>At each school at which a school nurse is responsible for providing nursing services, the nurse must: “[a]ssess and evaluate the general health and physical development of the pupils enrolled in the school to identify those pupils who have physical or mental conditions that impede their ability to learn . . . [and] if appropriate, refer a pupil and the pupil’s parent or guardian to other sources in the community to obtain services necessary for the health of the pupil.” NEV. REV. STAT. §</p>	<p>Requires schools that employ health professionals to provide physical examinations to students.</p> <p>“In each school at which a school nurse is responsible for providing nursing services, the school nurse shall” conduct “separate and careful observation and examination of every child . . . to determine whether the child has scoliosis . . . or any gross physical defect.” NEV. REV. STAT. § 392.420(1) (2021) (effective 2013).</p> <p>In addition, each school district in “a county whose population is 100,000 or more shall direct school</p>	<p>Requires schools that employ health professionals to provide vision and auditory screenings to students.</p> <p>“In each school at which a school nurse is responsible for providing nursing services, the school nurse shall” conduct “separate and careful observation and examination of every child . . . to determine whether the child has . . . any visual or auditory problem . . . ” NEV. REV. STAT. § 392.420(1) (2021) (effective 2013).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, dental hygienists may be authorized to work in schools to both treat students and refer them to a dentist for follow-up and diagnostic services. NEV. ADMIN. CODE § 631.210 (2021) (promulgated 1984).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>The state education agency must “establish a statewide framework for providing and coordinating integrated student supports,” defined as “any measure designed to assist a pupil” in both “maintaining stability and positivity” and “social, emotional, and academic development.” NEV. REV. STAT. § 388.885 (2021) (effective 2019). The framework must set “minimum standards for the provision of integrated supports by school districts” and set a “protocol for the</p>

<p>391.292 (2021) (effective 2001).</p>	<p>nurses [and other health personnel] to measure the height and weight of a representative sample of pupils who are enrolled in grades 4 and 7 in the schools within the school district.” <i>Id.</i> 392.420(2) (effective 2021).</p>	<p>provision of integrated student supports by school districts” which includes methods for “[a]ssessing the social, emotional and academic development of pupils” and “[s]creening, intervening, and monitoring the social, emotional and academic progress of pupils” to provide adequate support. <i>Id.</i> Each school district is required to “conduct a needs assessment for pupils enrolled in the school district” each year “to identify the academic and nonacademic supports needed within the district,” and, to the extent funds are available, “ensure that pupils have access to social workers, mental health workers, counselors, psychologists,” and other health professionals. <i>Id.</i></p>
	<p>Requires schools to provide developmental screenings to students.</p>	
	<p>Each school district “shall prepare a plan to improve the literacy of pupils enrolled in elementary school,” which must include a process for both “assessing a pupil’s proficiency in the subject area of reading and using valid and reliable standard-based assessments,” and programming “to provide intervention services and intensive instruction to pupils who have been identified as deficient in the subject area of reading to ensure that those pupils achieve adequate proficiency” in the subject. NEV. REV. STAT. § 388.157(1) (2021) (effective 2019).</p>	
	<p>Each school district “shall prescribe for use by the elementary school located in the school district an early literacy screening assessment” to administer to “each pupil enrolled in kindergarten or grade 1, 2 or 3 who” both</p>	

		<p>“[h]as indicators for dyslexia;” and “[n]eeds intervention.” <i>Id.</i> § 388.439(1) (effective 2015); <i>id.</i> § 388.441(1).</p>			
NH	<p>Requires schools to employ health professionals.</p> <p>Each school district “shall require that each school provides qualified personnel to carry out appropriate school health-related activities.” N.H. CODE ADMIN. R. ED 306.12(A) (2021) (promulgated 1982).</p> <p>Requires schools to provide health services to students.</p> <p>Each school district “shall require that a school health education program for grades 1-12 provides,” among other things, “[s]chool health services.” N.H. CODE ADMIN. R. ED 306.40 (2021) (promulgated 1993).</p> <p>In addition, each school district “may provide school health services to include school nurse services and school physician services to every child of school age” N.H. REV. STAT. ANN. § 200:27 (2021) (effective 1971).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>While the state requires a “physical examination by a licensed physician, physician assistant, or advanced practice registered nurse of each child prior to or upon first entry into the public school system and thereafter as often as deemed necessary by the local school authority,” schools are not required to provide such an examination to students. N.H. REV. STAT. ANN. § 200:32 (2021) (effective 2009). “The result of the child’s physical examination shall be presented to the local school officials on a form provided by the local school authorities.” <i>Id.</i> (effective 1996).</p> <p>However, “[e]very child with a presenting problem and found to need further evaluation, after due consideration and evaluation by the appropriate school authority, shall be referred by the school physician or school administrator to the parents or guardian of said child for examination, and evaluation</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, “[a]ny school board may employ for their district a dental hygienist who is a graduate of an accredited school of dental hygiene and is licensed by the state dental board.” N.H. REV. STAT. ANN. § 200:30 (2021) (effective 1971).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>“It is the policy of New Hampshire to implement a system of care model for providing behavioral health services to children in all of the publicly-funded service systems in the state.” N.H. REV. STAT. ANN. § 135-F:2 (2021) (effective 2016). The system of care shall include the “use of the multi-tiered system of supports for behavioral health and wellness” in New Hampshire schools “to address New Hampshire students’ social, emotional, and behavioral health needs in order to improve students’ educational outcomes and keep students in their home schools and communities.” The “multi-tiered system of supports for behavioral health and wellness” includes: “(1) A school wide system of evidence-based behavioral practices for all students; (2) A targeted system of practices for youth who need additional support; and (3) A tertiary system of intensive and individualized interventions</p>

		<p>by an appropriate practitioner and if said parents fail or neglect to have said child so examined and present the recommendations from said examiner within a reasonable period after the referral by the school to said parent, then said child may be examined by the school physician, or other qualified personnel.” <i>Id.</i> § 200:34 (effective 1971).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>“School districts shall screen all public school students . . . for the identification of potential indicators or risk factors of dyslexia and related disorders upon enrollment in public school kindergarten or first grade, and at appropriate times thereafter, to monitor progress.” N.H. REV. STAT. ANN. § 200:59 (2021) (effective 2016). “The student’s school district shall provide age-appropriate, evidence-based, intervention strategies for any student who is identified as having characteristics” associated with dyslexia and related disorders. <i>Id.</i></p>			<p>for students with the greatest behavioral needs.” <i>Id.</i> § 135-F:3(l) (effective 2020).</p>
<p>NJ</p>	<p>Requires schools to employ health professionals.</p> <p>“Every board of education shall employ one or more</p>	<p>Requires schools to provide physical examinations to students.</p>	<p>Requires schools to provide vision and auditory screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>Requires schools to provide mental-health services to students.</p>

<p>physicians, licensed to practice medicine and surgery within the state, to be known as the medical inspector or medical inspectors, and any board, not furnishing nursing services under a contract [pursuant to state law] shall employ one or more school nurses . . .” N.J. STAT. ANN. § 18A:40-1 (West 2021) (effective 1968).</p>	<p>“The medical inspector, or the nurse or licensed medical and health care personnel under the immediate direction of the medical inspector, shall examine every pupil to learn whether any physical defect exists If any deviations in health status are detected, the nurse practitioner/clinical nurse specialist shall refer the pupil to the collaborating physician.” N.J. STAT. ANN. § 18A:40-4 (West 2021) (enacted 1967). And, school health personnel must conduct “[s]creening for height, weight and blood pressure” annually for each student in kindergarten through grade 12 and “[s]creening for scoliosis” biennially for students between the ages of 10 and 18” N.J. ADMIN. CODE § 6A:16-2.2(l) (2021) (promulgated 2003).</p>	<p>“[A] screening of hearing examination shall be conducted on each pupil during the school year” N.J. STAT. ANN. § 18A:40-4 (West 2021) (enacted 1967). “Screening for auditory acuity shall be conducted annually for students in kindergarten through grade three and in grades seven and 11” by school health personnel. N.J. ADMIN. CODE § 6A:16-2.2(l) (2021) (promulgated 2003).</p>	<p>“District boards of education shall establish and implement in each school building in which general education students are served a coordinated system for planning and delivering intervention and referral services designed to assist students who are experience learning, behavior, or health difficulties” N.J. ADMIN. CODE § 6A:16-8.1(a) (2021) (promulgated 2005). Each school then must, after identifying the difficulties of students, “[d]evelop and implement action plans that provide for appropriate school or community interventions or referrals to school and community resources” and “[c]oordinate the access to and delivery of school resources and services for achieving outcomes identified in intervention and referral services action plans” <i>Id.</i> § 6A:16-8.2(a).</p>
<p>School boards may also “employ one or more optometrists” <i>Id.</i></p>	<p>“[s]creening for height, weight and blood pressure” annually for each student in kindergarten through grade 12 and “[s]creening for scoliosis” biennially for students between the ages of 10 and 18” N.J. ADMIN. CODE § 6A:16-2.2(l) (2021) (promulgated 2003).</p>	<p>“Screening for visual acuity shall be conducted biennially for students in kindergarten through grade 10” by school personnel. <i>Id.</i></p>	<p>Each school then must, after identifying the difficulties of students, “[d]evelop and implement action plans that provide for appropriate school or community interventions or referrals to school and community resources” and “[c]oordinate the access to and delivery of school resources and services for achieving outcomes identified in intervention and referral services action plans” <i>Id.</i> § 6A:16-8.2(a).</p>
<p>Requires schools to provide health services to students.</p>	<p>Requires schools to provide developmental screenings to some students.</p>	<p>“Screening for visual acuity shall be conducted biennially for students in kindergarten through grade 10” by school personnel. <i>Id.</i></p>	<p>Each school then must, after identifying the difficulties of students, “[d]evelop and implement action plans that provide for appropriate school or community interventions or referrals to school and community resources” and “[c]oordinate the access to and delivery of school resources and services for achieving outcomes identified in intervention and referral services action plans” <i>Id.</i> § 6A:16-8.2(a).</p>
<p>The state education agency sets “minimum standards for [school districts] in establishing policies and procedures and in operating programs to support the social, emotional, and physical development of students. Programs to support student development include school health services; physical examinations; [and] intervention and referral services,” among others. N.J. ADMIN. CODE § 6A:16-1.1 (2021) (promulgated 2006). The school physician is required to provide, among other things, the following: physical examinations; setting standards of care for emergency situations; and</p>	<p>Schools must ensure that “each student enrolled in the school district who has exhibited one or more potential indicators of dyslexia or other reading disabilities is screened for dyslexia and other reading disabilities using a screening instrument” approved by the</p>	<p>“Screening for visual acuity shall be conducted biennially for students in kindergarten through grade 10” by school personnel. <i>Id.</i></p>	<p>Each school then must, after identifying the difficulties of students, “[d]evelop and implement action plans that provide for appropriate school or community interventions or referrals to school and community resources” and “[c]oordinate the access to and delivery of school resources and services for achieving outcomes identified in intervention and referral services action plans” <i>Id.</i> § 6A:16-8.2(a).</p>

	<p>reviewing, as needed, reports and orders from a student’s medical home regarding school health concerns. <i>Id.</i> § 6A:16-2.3(a)(4) (promulgated 2002). The certified school nurse is required to, among other things, conduct health screenings and review students’ health and medical information. <i>Id.</i> § 6A:16-2.3(b)(3).</p>	<p>state education agency. N.J. STAT. ANN. § 18A:40-5.3(a) (West 2021) (effective 2014).</p>			
NM	<p>No requirement that schools employ health professionals.</p> <p>Schools may, but are not required to, employ health personnel, such as school nurses and school health assistants. N.M. CODE R. § 6.63.2.11 (LexisNexis 2021) (promulgated 1997); <i>id.</i> § 6.63.15.10 (promulgated 2017).</p> <p>Requires schools to provide health services to students.</p> <p>School districts “shall develop and implement a policy that addresses student and school employee wellness through a coordinated school health approach,” including “a plan addressing the health services needs of students in the educational process” N.M. CODE R. § 6.12.6.8 (LexisNexis 2021) (promulgated 2006). “Health services” is defined as</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>School health personnel may, but are not required to, provide physical examinations to students. N.M. CODE R. § 6.63.2.11 (LexisNexis 2021) (promulgated 1997).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>“[A]ll first grade students shall be screened for dyslexia.” N.M. STAT. ANN. § 22-13-32(A) (West 2021) (effective 2019). “A student whose dyslexia screening demonstrates characteristics of dyslexia . . . shall receive appropriate classroom interventions or be referred to a student assistance team.” <i>Id.</i> § 22-13-32(B). “In accordance with [the state education agency’s] response to</p>	<p>Requires schools to provide vision screenings to students.</p> <p>“A school nurse or the nurse’s designee, a primary care health provider or a lay eye screener shall administer a vision screening test for students enrolled in the school in pre-kindergarten, kindergarten, first grade and third grade and for transfer and new students in those grades” N.M. STAT. ANN. § 22-13-30 (West 2021) (effective 2008).</p> <p>No requirement that schools provide auditory screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>While students must submit evidence of dental examinations, schools are not required to provide dental examinations to students. N.M. STAT. ANN. § 22-1-14 (West 2021) (effective 2019).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Schools must develop “a plan addressing the health services needs of students,” including “behavioral health services.” N.M. CODE R. § 6.12.6.7; 6.8 (LexisNexis 2021) (promulgated 2006). Each school district “shall develop and implement a policy that addresses student . . . wellness through a coordinated health approach.” The wellness policy shall include “a plan for addressing the behavioral health needs of all students in the educational process by focusing on students’ social and emotional wellbeing.” <i>Id.</i> § 6.12.6.8.</p> <p>In addition, any school may create a “family and youth resources program,” the purpose of which “is to provide an intermediary for</p>

	<p>“services provided for students to appraise, protect, and promote health. These services are designed to ensure access or referral to primary health care or behavioral health services or both, foster appropriate use of primary health care eservices, behavioral health services, prevent and control communicable diseases and other health problems, provide emergency care for illness or injury . . . and provide educational and counseling opportunities for promoting and maintaining individual, family, and community health.” <i>Id.</i> § 6.12.6.7.</p>	<p>intervention procedures, guidelines and policies, each school district . . . shall provide timely, appropriate, systematic, scientific, evidence-based interventions” and monitor the student’s progress. <i>Id.</i> § 22-13-32(C) (effective 2010).</p>			<p>students and their families at public schools to access social and health care services.” N.M. STAT. ANN. § 22-2D-3 (West 2021) (effective 2009). The program must include “employment of a resource liaison” who, among other things, must “identify and coordinate age-appropriate resources for students in need of . . . mental health counseling.” <i>Id.</i> § 22-2D-3(C).</p>
NY	<p>Requires schools to employ health professionals.</p> <p>Each school district “shall employ” either “a qualified physician, or a nurse practitioner . . . to perform the duties of the director of school health services,” who must “perform and coordinate the provision of health services in the public schools and to provide health appraisals of students attending the public schools in the city or district.” N.Y. EDUC. LAW § 902(2)(a) (McKinney 2021) (effective 2005).</p>	<p>Requires schools to provide physical examinations to some students.</p> <p>Schools are also required to “conduct screening examinations” for “scoliosis of all students at such times and as defined in the regulations of the [state education agency, and at any time deemed necessary.” N.Y. EDUC. LAW § 905(1) (McKinney 2021) (effective 2005).</p> <p>In addition to the universal scoliosis screenings, “the director of school health services shall cause” students who haven’t turned in their</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“The director of school health services of each school district . . . shall conduct screening examinations of vision [and] hearing . . . of all students at such times and as defined in the [state regulations], and at any time deemed necessary.” N.Y. EDUC. LAW § 905(1) (McKinney 2021) (effective 2005).</p>	<p>Requires schools to provide oral healthcare to students.</p> <p>“School health services . . . includ[e] dental inspection and/or screening.” N.Y. EDUC. LAW § 901(2) (McKinney 2021) (effective 2005).</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, schools may operate “school-based mental health clinics.” N.Y. EDUC. LAW § 414(1)(j) (McKinney 2021) (effective 2005).</p>

In addition, each school district “may employ one or more school nurses . . . as well as other health professionals, as may be required.” *Id.* § 902(2)(b).

Requires schools to provide health services to students.

“School health services . . . shall be provided by each school district for all students attending the public schools in this state,” except the New York City school district. N.Y. EDUC. LAW § 901(1) (McKinney 2021) (effective 2005). School health services means “the several procedures, including, but not limited to, medical examinations, dental inspection and/or screening, scoliosis screening, vision screening and audiometer tests, designed to determine the health status of the child; to inform parents or other persons in parental relation to the child, pupils and teachers of the individual child’s health condition subject to federal and state confidentiality laws; to guide parents, children and teachers in procedures for preventing and correcting defects and diseases; to instruct the school personnel in procedures to take in case of accident or illness; to survey and make necessary

requisite health certificates “to be separately and carefully examined and tested to ascertain whether any student has . . . physical disability which may tend to prevent him or her from receiving the full benefit of school work, or from requiring a modification of such work to prevent injury to the student or from receiving the best educational results. Each examination shall also include a calculation of the student’s body mass index (BMI) and weight status category.” *Id.* § 904(1) (effective 2007).

Lastly, “[a] daily health check of each child shall be made by the teacher or another responsible person who is familiar with the child and is trained to recognize symptoms of illness and communicable disease.” N.Y. COMP. CODES R. & REGS. tit. 8, § 125.5(b) (2021) (promulgated 1970).

Requires schools to provide developmental screenings to students.

Each school district “shall provide for the screening of every new entrant to school to determine which pupils are or may be children with disabilities or gifted children, as well as pupils who score

	recommendations concerning the health and safety aspects of school facilities and the provision of health information.” <i>Id.</i> § 901(2).	below level two on either the third grade English language arts or mathematics assessments” administered by elementary schools. N.Y. EDUC. LAW § 3208(5)(a) (McKinney 2021) (effective 2005).			
NC	<p>Requires schools to employ health professionals.</p> <p>Each school district “shall make available a registered nurse for assessment care planning, and on-going evaluation of students in the school setting.” 16 N.C. ADMIN. CODE 6D.0402 (2021) (promulgated 1995).</p> <p>Requires schools to provide health services to students.</p> <p>Each school district “shall provide its students support services in . . . [h]ealth services.” 16 N.C. ADMIN. CODE 6D.0401 (2021) (promulgated 1995).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Parents must submit “proof a health assessment,” which includes a medical history and physical examination, among other things, “for each child in this State who is presented for admission into kindergarten or a higher grade in the public schools for the first time.” N.C. GEN. STAT. § 130A-440 (2021) (enacted 1985). However, schools are not required to provide such an assessment to students, and students may be excluded from school if they do not submit the health assessment. <i>Id.</i></p> <p>Requires schools to provide developmental screenings to students.</p> <p>The state education agency “shall ensure that every student entering kindergarten shall be administered a developmental screening of early language, literacy, and math skills within 30 days of</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p> <p>As part of the health assessment requirement, parents are required to submit results of their child’s vision and hearing screenings to the school, but the school is not required to provide such screenings. N.C. GEN. STAT. § 130A-440 (2021) (enacted 1985).</p>	<p>Requires schools to provide oral health services to students.</p> <p>The state health agency “shall establish and administer a dental health program for the delivery of preventive, educational and dental care services to preschool children, school-age children, and adults. The program shall include, but not be limited to, providing teacher training, adult and child education, consultation, screening and referral, technical assistance, community coordination, field research and direct patient care. The primary emphasis of the program shall be the delivery of preventive, educational, and dental care services to preschool children and school-age children.” N.C. GEN. STAT. § 130A-366(a) (2021) (effective 1993).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>The state education agency “shall adopt a school-based mental health policy that includes (i) minimum requirements for a school-based mental health plan for K-12 school” districts. N.C. GEN. STAT. § 115C-376.5(b) (2021) (effective 2020). Each K-12 school [district] shall adopt a plan for promoting student health and well-being” by establishing a school-based mental health plan. <i>Id.</i> § 115C-376.5(c).</p>

		enrollment” and a “kindergarten entry assessment within 60 days of enrollment.” N.C. GEN. STAT. § 115C-83.5 (2021) (effective 2012).			
ND	—	No requirement that schools provide physical examinations to students.	No requirement that schools provide vision or auditory screenings to students.	No requirement that schools provide oral healthcare to students.	No requirement that schools provide mental-health services to students.
		No requirement that schools provide developmental screenings to students.			
OH	<p>No requirement that schools employ health professionals.</p> <p>Each school district “may appoint one or more school physicians and one or more school dentists.” OHIO REV. CODE ANN. § 3313.68(A) (West 2021) (enacted 1953). Each school district “may also employ registered nurses . . .” <i>Id.</i></p> <p>No requirement that schools provide health services to students.</p> <p>Health professionals “aid in the conduct and coordination of the school health service program.” OHIO REV. CODE ANN. § 3313.68(A) (West 2021) (enacted 1953). However, if a school district delegates its healthcare duties or does not employ a school physician, “the [local] board of health shall conduct the health examination of all</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Students enrolling in kindergarten or first grade for the first time must “be screened for . . . health or medical problems . . .” OHIO REV. CODE ANN. § 3313.673(A) (West 2021) (effective 1990). In addition, schools “may require each student enrolled in kindergarten, third grade, fifth grade, and ninth grade to undergo a screening for body mass index and weight status category.” <i>Id.</i> § 3313.674(A) (effective 2010). For both the required health screening and the optional body mass index screening, the school district may itself provide any of the elements of the screening program, contract with any person or governmental entity to provide any such elements, or request the parent to obtain</p>	<p>Requires some schools to provide vision and auditory screenings to students.</p> <p>Each school district that itself provides health examinations to students “shall include in such inspection tests to determine the existence of hearing and visual defects in school children.” OHIO REV. CODE ANN. § 3313.69 (West 2021) (enacted 1953).</p>	<p>Requires some schools to provide oral healthcare to students.</p> <p>In each school district that itself employs a dentist, the dentist shall, as prescribed by the district, conduct dental examinations and diagnoses of all students. OHIO REV. CODE ANN. § 3313.68(A) (West 2021) (enacted 1953). The dentist shall provide additional “remedial or corrective treatment” to only those students who would otherwise be unable to afford the treatment. <i>Id.</i></p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, schools may assist families “with locating providers or obtaining” any “mental health services . . . including referral to an independent mental health professional.” OHIO REV. CODE ANN. § 3313.668(B) (West 2021) (effective 2018).</p>

	<p>school children in the health district.” <i>Id.</i> § 3313.73. School districts may also “contract with a federal qualified health center . . . for the purpose of providing health services specifically authorized by [state law] to students. <i>Id.</i> § 3313.721(B) (effective 2015).</p>	<p>any such elements from a provider selected by the parent. <i>Id.</i> § 3313.674(B); <i>id.</i> § 3313.673(A) (effective 1990).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Each elementary school must administer a “dyslexia screening measure” to students. OHIO REV. CODE ANN. § 3323.251 (West 2021) (effective 2021).</p> <p>In addition, students enrolling in kindergarten or first grade “shall be screened for . . . speech and communications” problems “and for any developmental disorders.” <i>Id.</i> § 3313.673(A) (effective 1990). The school may provide the screening itself or contract with an entity to provide the screenings, but also “may request the parent to obtain [the screenings] from a provider selected by the parent.” <i>Id.</i></p>			
<p>OK</p>	<p>Requires schools to employ health professionals.</p> <p>“Services of a nurse shall be available” in each school to effectuate the health services program. OKLA. ADMIN. CODE § 210:35-3-107 (2021) (promulgated 1992).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires schools to provide developmental screening to students.</p> <p>“The board of education for each school district in the</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p> <p>While parents are required to submit certification to the school that their child has passed a vision screening, schools do not themselves conduct the vision screenings.</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>Requires schools to provide mental-health services to students.</p> <p>“Each school shall provide an organized program of guidance and counseling services” including counseling services, both in individual and group settings, and group</p>

	<p>Requires schools to provide health services to students.</p> <p>Each school “shall have a written description of the health services program” which will “function as an integral part of the total education program and provide a program of services for all students.” OKLA. ADMIN. CODE § 210:35-3-107 (2021) (promulgated 1992).</p>	<p>state shall implement a system to provide educational screening.” OKLA. STAT. tit. 70, § 1210.278 (2021) (effective 1993).</p>	<p>OKLA. STAT. tit. 70, § 1210.284(A) (2021) (effective 2006). However, schools may not prohibit a student from attending school for failure to submit this certification. <i>Id.</i> § 1210.284(D).</p> <p>Schools do not require certifications of auditory screenings and do not provide such screenings.</p>		<p>guidance activities. OKLA. ADMIN. CODE § 210:35-3-106 (2021) (promulgated 1992).</p>
<p>OR</p>	<p>Requires schools to employ health professionals.</p> <p>“Each school district shall ensure that the district has access to a sufficient level of nursing services to provide (a) One registered nurse or school nurse for every 225 medically complex students. (b) One registered nurse or school nurse for every 125 medically fragile students. (c) One registered nurse or school nurse, or one licensed practical nurse under the supervision of a registered nurse or school nurse, for each nursing-dependent student.” OR. REV. STAT. § 336.201(2) (2021) (effective 2009). In addition, “each school district is encouraged to have one registered nurse or school nurse for every 750 students in the school district.” <i>Id.</i> § 336.201(3).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires schools to provide developmental screenings to students.</p> <p>“Each school district shall ensure that every student is screened for risk factors of dyslexia using a screening test identified by” the state education agency. OR. REV. STAT. § 326.726(5) (2021) (effective 2018).</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p> <p>While parents are required to submit certification to the school that their child has passed a vision screening, schools do not themselves conduct the vision screenings. OR. REV. STAT. § 336.211 (2021) (effective 2013). However, schools may not prohibit a student from attending school for failure to submit this certification. <i>Id.</i> § 336.211(4)(a).</p> <p>Schools do not require certifications of auditory screenings and do not provide such screenings.</p>	<p>Requires some schools to provide oral healthcare to students.</p> <p>The state undertakes to “promote oral health . . . by ensuring the availability of dental sealant programs to students attending school in this state. To fulfill its duties under this section,” the state shall “[s]creen, and ensure the provision of dental sealants to, appropriate student populations who attend an elementary or a middle school in which at least 40 percent of all students attending the school are eligible to receive assistance under the National School Lunch Program.” OR. REV. STAT. § 431A.735 (2021) (effective 2015).</p> <p>In addition, school districts may, but are not required to, “cause[] a dental screening to</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Each school district’s “improvement plan” must include a needs assessment to address how to meet “students’ mental or behavioral health needs” OR. REV. STAT. § 329.095(4)(d) (2021) (effective 2019).</p> <p>“When a school district causes to be conducted a mental health screening . . . the school district must allow the student or the parents or legal guardians of the student to request that the student not participate in the mental health screening.” <i>Id.</i> § 336.216 (effective 2014).</p>

	<p>Requires schools to provide health services to students.</p> <p>“The school district shall maintain a prevention oriented health services program for all students” OR. ADMIN. R. § 581-022-2220(1) (2021) (promulgated 1980).</p>			<p>be conducted,” but “must provide the students or the parents or guardians of the students an opportunity to request not to participate in the dental screening.” <i>Id.</i> § 336.214 (effective 2017).</p>	
<p>PA</p>	<p>Requires schools to employ health professionals.</p> <p>“A child in . . . public schools shall be provided with school nurse services in the school which the child attends.” 28 PA. CODE § 23.51 (2021) (promulgated 1962). “School nurses shall schedule physical and dental examinations conducted in the school, assist at examinations, and arrange for special tests, examinations and immunization programs included in the school program for health services.” <i>Id.</i> § 23.71(b). “School nurses shall assist in interpreting the health needs of individual children to parents and teachers and assist families to utilize community resources for improving the health of their children.” <i>Id.</i> § 23.74.</p> <p>Requires schools to provide health services to students.</p> <p>School districts “shall provide the following health services for children of school age who</p>	<p>Requires schools to provide physical examinations to students.</p> <p>“The school physicians of each district or joint board shall make a medical examination and a comprehensive appraisal of the health of every child of school age, (1) upon original entry into school in the Commonwealth, (2) while in sixth grade, [and] (3) while in eleventh grade” 24 PA. CONS. STAT. § 14-1402(e) (2021) (enacted 1949). In addition to the medical examination, “[h]eight and weight measurement shall be conducted at least once annually and preferably twice annually” by a nurse or teacher. 28 PA. CODE § 23.7 (2021) (promulgated 1959). Further, “[s]creening for scoliosis shall be included in school health programs.” <i>Id.</i> § 23.10(a).</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“Every school year . . . until a child completes the fifth grade and at least every two years thereafter until the child graduates from the twelfth grade, the child shall have a vision screening performed by school health personnel” 24 PA. CONS. STAT. § 14-1403.1(b)(1) (2021) (enacted 1949).</p> <p>“Each child of school age shall be given . . . a hearing test by a school nurse or medical technician” <i>Id.</i> § 14-1402 (2021) (effective 2021). “Each year, pupils in kindergarten, special ungraded classes and grades one, two, three, seven and 11 shall be given a hearing screening test.” 28 PA. CODE § 23.5(d) (2021) (promulgated 1959). Other students, including those who fail the hearing screening test, may be eligible for threshold hearing tests. <i>Id.</i> § 23.6.</p>	<p>Requires schools to provide oral healthcare to students.</p> <p>“All children of school age, in the Commonwealth, (i) upon original entry into the school, (ii) while in the third grade, and (iii) while in the seventh grade, shall be given a dental examination by a school dentist” 24 PA. CONS. STAT. § 14-1403(a) (2021) (enacted 1949).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Each school district must provide “[d]evelopmental services for students that address their developmental needs throughout their enrollment in school. Developmental services include guidance counseling, psychological services, health services, home and school visitor services and social work services that support students in addressing their academic, behavioral, health, personal and social development issues.” 22 PA. CODE § 22.41(b)(1) (2021) (promulgated 2005).</p>

	<p>are attending or who should attend an elementary, grade or high school, either public or private, and children who are attending a kindergarten which is an integral part of a local school district: (1) Medical examinations. (2) Dental examinations. (3) Vision screening tests. (4) Hearing screening tests. (5) Threshold screening tests. (6) Height and weight measurements. (7) Maintenance of medical and dental records. (8) Tuberculosis tests. (9) Special examinations.” 28 PA. CODE § 23.1 (2021) (promulgated 1959).</p>	<p>No requirement that schools provide developmental screenings to students.</p>			
<p>RI</p>	<p>Requires schools to employ health professionals.</p> <p>The health services program in schools will “include and provide for the administration of nursing care by certified nurse-teachers . . . ” 16 R.I. GEN. LAWS § 16-21-7(a) (2021) (effective 2021).</p> <p>Requires schools to provide health services to students.</p> <p>All public schools “shall have a school health program that shall be approved by [state health and education agencies]. The program shall provide for the organized direction and supervision of a healthful school environment,</p>	<p>Requires schools to provide physical examinations to students.</p> <p>Each school district “shall provide for the appointment of a physician to make examinations of the health of the school children, who shall report any deviation from the normal, and for the preservation of records of the examinations of the children.” 16 R.I. GEN. LAWS § 16-21-9(a) (2021) (effective 1998). In addition, “[t]he school health program shall provide for the yearly screening or examination for scoliosis of all school children in grades six (6) through eight (8) and the preservation of records of the</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>Schools “shall provide for screenings of the hearing, speech, and vision of all children . . . ” 16 R.I. GEN. LAWS § 16-21-14(a) (2021) (enacted 1961).</p>	<p>Requires schools to provide oral healthcare to students.</p> <p>Each school district “shall further provide for dental screenings by a licensed dentist or licensed dental hygienist or a licensed public health dental hygienist, with at least three (3) years of clinical experience, who shall report any suspected deviation from the normal, and for the preservation of records of the screenings of the children.” 16 R.I. GEN. LAWS § 16-21-9(a) (2021) (effective 2015). Each school district “shall contract with a licensed dentist and/or a licensed public health dental hygienist, for the provision of</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Each school district shall “[e]nsure that students have access to a coordinated program of culturally and linguistically responsive psychological and mental health services, on site or through effective referral systems . . . ” 200 R.I. CODE R. § 20-10-1.3,3(C) (LexisNexis 2021) (promulgated 2009).</p>

	<p>health education, and services. The program shall include and provide for the administration of nursing care by certified nurse teachers” 16 R.I. GEN. LAWS § 16-21-7(a) (2021) (effective 2021).</p>	<p>screening or examinations of those children.” <i>Id.</i> § 16-21-10 (enacted 1981).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>“All school districts that provide elementary education are required to screen all children prior to, or upon, their first entry to school to determine their level of educational readiness. All children are required to participate in this screening. Screening shall address the child’s educational development and shall be used to determine whether he or she is educationally disadvantaged in terms of readiness for instruction in the literacy skills of reading, writing, speaking, listening, or mathematics.” 16 R.I. GEN. LAWS § 16-67-2(a) (2021) (enacted 1987).</p>		<p>the dental screenings services” required in schools. <i>Id.</i> § 16-21-9(b).</p> <p>In addition, “[t]he school committee may provide at the expense of the town or city proper dental treatment for children, found to be suffering from dental defects or conditions arising from dental defects, whose parents or guardians or custodians neglect to provide proper dental treatment within one month after receiving a notice of the need” <i>Id.</i> § 16-21-12 (enacted 1917).</p>	
<p>SC</p>	<p>No requirement that schools employ health professionals.</p> <p>However, the state legislature “shall appropriate funds to the [state education agency] to provide licensed nurses for elementary public schools” through a grant program. S.C. CODE ANN. § 59-10-210 (2021) (effective 2005).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires schools to provide developmental screenings to students if funding is provided.</p> <p>“[T]o the extent funding is provided or that approved screening tools are available at no cost, a local school district</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p>	<p>No requirement that schools with oral healthcare to students.</p> <p>However, the state health agency “shall implement a targeted community program for dental health education, screening, and treatment referral in the public schools for children in kindergarten, third, seventh, and tenth grades or upon entry into a</p>	<p>No requirement that schools provide mental-health services to students.</p>

		<p>shall use the universal screening process to screen each student in the district who is in kindergarten through first grade three times each school year and as needed in second grade as outlined in the district's universal screening procedures, and any other student as required by the department, for reading difficulties, including dyslexia, and the need for intervention." S.C. CODE ANN. § 59-33-520(A)(2) (2021) (effective 2018).</p>		<p>South Carolina school." S.C. CODE ANN. § 44-8-10 (2021) (effective 2010). The state health agency "shall target three to five counties of need." <i>Id.</i></p>	
<p>SD</p>	<p>Requires schools to employ health professionals.</p> <p>"A public school system shall provide school health services coordinated by a registered nurse, whose services may be shared by one or more school systems." S.D. CODIFIED LAWS § 13-33A-1 (2021) (effective 1993).</p> <p>Requires schools to provide health services to students.</p> <p>"A public school system shall provide school health services coordinated by a registered nurse, whose services may be shared by one or more school systems. The services shall include an assessment and implementation of services for students with special needs, administration of</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>No requirement that schools provide developmental screenings to students.</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p>

	<p>medications, and performance of specialized health care procedures.” S.D. CODIFIED LAWS § 13-33A-1 (2021) (effective 1993).</p>				
<p>TN</p>	<p>No requirement that schools employ health professionals.</p> <p>However, a school district must use state money allocated to fund school nurse positions “to directly employ or contract for a public school nurse . . . or must advise the [state education agency] that the [school district] has affirmatively determined not to do so, in which case the [district] shall notify the [agency] of the election against providing the service and the alternative arrangement that the LEA has made to meet the health needs of its students.” TENN. CODE ANN. § 49-3-359(c)(1) (2021) (enacted 1992).</p> <p>Requires schools to provide health services to students.</p> <p>Each school district “shall develop and adopt standards and policies for school health services.” TENN. COMP. R. & REGS. 0520-01-13-.01 (2021) (promulgated 2021).</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>School districts may “[r]equire school children . . . to submit to a physical examination by a competent physician whenever there is reason to believe that the children . . . have” a communicable disease, but schools are not required to provide such an examination. TENN. CODE ANN. § 49-2-203(b) (2021) (enacted 1925). In addition, school districts may, but are not required to, “implement a program that identifies public school children who are at risk for obesity” by completing a body mass index for age assessment. <i>Id.</i> § 49-6-1401(a) (effective 2005).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Each school district “shall annually administer a universal reading screener to each student in kindergarten through grade three (K-3) . . .” TENN. CODE ANN. § 49-1-905(c)(1) (2021)</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p> <p>Health care professionals may indicate the need for an eye or hearing examination on any “form used in reporting the immunization status of a for a child . . .” TENN. CODE ANN. § 49-6-5004(c) (2021) (effective 2004). “If the parent or guardian of a child with a need for an eye or hearing examination is unable to afford the examination, a [school district] may use revenues from gifts, grants and state and local appropriations to provide the eye or hearing examinations.” <i>Id.</i> § 49-6-5004(c) (effective 2007). School districts “are encouraged to seek free or reduced-cost eye examinations from optometrists or ophthalmologists and free or reduced-cost hearing examinations from physicians or audiologists willing to donate their services for children who are unable to afford the eye or hearing examinations.” <i>Id.</i> § 49-6-5004(d) (effective 2008).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, schools may administer prevention programs, which can provide dental screenings and sealant application, among other services, to students. TENN. COMP. R. & REGS. 04600-01-.14(4) (2021) (promulgated 2005). And, schools may partner with community organizations to provide “community services,” which include “[p]rimary medical and dental care that is available to students and community residents,” among other services. TENN. CODE ANN. § 49-6-2403 (2021) (effective 2014).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Each school district “shall employ or contract with school counselors for pre-kindergarten through grade twelve (pre-K-12) School counselors shall provide preventive and developmental counseling to school students in order to prepare them for their school responsibilities and their social and physical development.” TENN. CODE ANN. § 49-6-303 (2021) (effective 1999).</p> <p>And, if a school district employs a nurse, the nurse bears the responsibility of “[c]ounseling for students who are engaging in, or who may be at risk of engaging in, behavioral patterns that jeopardize physical or mental health and well-being.” TENN. CODE ANN. § 68-1-1202(3) (2021) (enacted 1988).</p>

		(effective 2021). Each school district must provide “[r]eading interventions and supports designed to improve a student’s foundational literacy skills to each student identified as having a significant reading deficiency.” <i>Id.</i> § 49-1-905(a)(2) (2022) (effective 2022).			
TX	<p>No requirement that schools provide health services to students.</p> <p>“A school district in this state may, if the district identifies the need, design a model . . . for the delivery of cooperative health care programs for students and their families [through school-based health centers] and may compete for grants awarded under this subchapter. The model may provide for the delivery of conventional health services and disease prevention of emerging health threats that are specific to the district.” TEX. EDUC. CODE ANN. § 38.051(a) (West 2021) (effective 2001). “The permissible categories of service are: (1) family and home support; (2) physical health care, including immunizations; (3) dental health care; (4) health education; (5) preventive health strategies; (6) treatment for mental health</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Schools that operate school-based health centers, however, may provide “physical healthcare” to students. TEX. EDUC. CODE ANN. § 38.054(2) (West 2021) (effective 2019).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>“Students enrolling in public schools . . . shall be screened or tested . . . for dyslexia and related disorders at appropriate times in accordance with a program approved by the [state education agency]. The program must include screening at the end of the school year of each student in kindergarten and each student in the first grade.” TEX. EDUC. CODE ANN. § 38.003(a) (West 2021) (effective 2017).</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“Screening is required, for individuals who attend a [public school], to detect vision disorders.” 25 TEX. ADMIN. CODE § 37.23(a) (2021) (promulgated 2014). “Screening is required, for individuals who attend a [public school], to detect hearing disorders.” <i>Id.</i> § 37.24(a).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>Schools that operate school-based health centers, however, may provide oral healthcare to students. TEX. EDUC. CODE ANN. § 38.054(3) (West 2021) (effective 1999).</p> <p>In addition, the state health agency “may establish an oral health services program” that includes “fluoride mouth rinse programs in schools;” “the promotion and implementation of sealant programs;” and “the improvement of the existing oral health services delivery system for the provision of services to low-income residents . . .” TEX. HEALTH & SAFETY CODE ANN. § 43.004(d) (West 2021) (effective 2021).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>The state education agency “shall develop a statewide plan to ensure all students have access to adequate mental health resources.” TEX. EDUC. CODE ANN. § 38.254(a) (West 2021) (effective 2019).</p> <p>In addition, school districts must select programs to support students’ mental health and emotional well-being. <i>Id.</i> § 38.351 (effective 2021).</p> <p>The state education agency must also develop guidelines for school districts regarding “partnering with a local mental health authority and with community or other private mental health services providers . . . to increase student access to mental health services.” <i>Id.</i> § 38.0591.</p>

	conditions; and (7) treatment for substance abuse.” <i>Id.</i> § 38.054 (effective 2019).				
UT	<p>No requirement that schools employ health professionals.</p> <p>“A local school board may use teachers or licensed registered nurses to conduct examinations required [by state law] and licensed physicians as needed for medical consultation related to [the required] examinations.” UTAH CODE ANN. § 53G-9-403 (West 2021) (effective 2018).</p> <p>No requirement that schools provide health services to students.</p> <p>“Students in the state’s public schools may be better protected against risks to health and safety if schools were to have registered nurses readily available to assist in providing . . . nursing services in the public schools.” UTAH CODE ANN. § 53G-9-204(1)(a) (West 2021) (effective 2018). “School districts are encouraged to provide nursing services equivalent to the services of one registered nurse for every 5,000 students or, in districts with fewer than 5,000 students, the level of services recommended by the</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>While each school district “shall implement policies as prescribed by the [state health agency] for . . . abnormal spinal curvature . . . examinations of students attending the district’s schools,” there is no regulation requiring schools to provide such examinations to students currently. UTAH CODE ANN. § 53G-9-402(1)(a) (West 2021) (effective 2019).</p> <p>No requirement that schools provide developmental screenings to students.</p>	<p>Requires schools to provide vision screenings to students.</p> <p>A “vision screening shall be conducted for a student who is in pre-kindergarten, kindergarten, grades 1, 3, 5, 7 or 8, and 9 or 10, and any student referred by school personnel, parent or guardian or self to rule out vision as an obstacle to learning.” UTAH ADMIN. CODE r. 384-201-4(1)(a) (2021) (promulgated 2013).</p> <p>No requirement that schools provide auditory screenings to students.</p> <p>While each school district “shall implement policies as prescribed by the [state health agency] for vision . . . and hearing examinations of students attending the district’s schools,” there is no regulation requiring schools to provide such examinations to students currently. UTAH CODE ANN. § 53G-9-402(1)(a) (West 2021) (effective 2019).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>While each school district “shall implement policies as prescribed by the [state health agency] for . . . dental . . . examinations of students attending the district’s schools,” there is no regulation requiring schools to provide such examinations to students currently. UTAH CODE ANN. § 53G-9-402(1)(a) (West 2021) (effective 2019).</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, the state must employ “a school-based mental health specialist” to “recommend evidence-based and evidence informed mental health screenings and intervention assessments” to schools and to “coordinate with the local community . . . to enhance and expand mental health related resources for a local education agency.” UTAH CODE ANN. § 62A-15-103(11) (West 2021) (effective 2021).</p> <p>School districts “may implement a mental health screening for participating students using an evidence-based screening program.” UTAH CODE ANN. § 53F-2-522(2) (West 2021) (effective 2020). School personnel may “refer students to . . . a school counselor or other mental health professionals working within the school system.” UTAH CODE ANN. § 53G-9-203(2) (West 2021) (effective 2018).</p>

	Department of Health.” <i>Id.</i> § 53G-9-204(2).				
VT	<p>Requires schools to employ health professionals.</p> <p>“Each school shall engage the services of a person licensed as a School Nurse or Associate School Nurse. There shall be no more than 500 students per school nurse.” 22-003 VT. CODE R. § 2:2121.5 (2021) (promulgated 2010).</p> <p>Requires schools to provide health services to students.</p> <p>“Health services, including health appraisal and counseling, communicable disease control, mental health, and emergency and first aid care, shall be made available in a confidential manner to students in each school.” 22-003 VT. CODE R. § 2:2121.5 (2021) (promulgated 2010).</p>	<p>Requires schools to provide physical examinations to students.</p> <p>“Health services, including health appraisal and counseling . . . shall be made available in a confidential manner to students in each school.” 22-003 VT. CODE R. § 2:2121.5 (2021) (promulgated 2010).</p> <p>No requirement that schools provide developmental screenings to students.</p> <p>However, the state has created the Advisory Council on Literacy to advise the state education agency “on how to improve proficiency outcomes in literacy for students in prekindergarten through grade 12.” VT. STAT. ANN. tit. 16, § 2903a (2021) (effective 2021). This includes developing literacy assessments, plans for implementation of the assessments, and ways to identify progress in achieving literacy outcomes. <i>Id.</i></p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“School districts and primary care providers shall conduct periodic hearing and vision screening of school-aged children pursuant to research-based guidelines developed by the [state health agency] in consultation with the [state education agency].” VT. STAT. ANN. tit. 16, § 1422 (2021) (effective 2014).</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, “a school board may expend from its funds a sum not to exceed three percent of that year’s school budget for any necessary health service for a student whose parents are unable to pay for it” including “the provision of dental and other health services approved by the school nurse.” VT. STAT. ANN. tit. 16, § 1386 (2021) (effective 2013).</p>	<p>Requires schools to provide mental-health services to students.</p> <p>“Within each school district’s comprehensive system of educational services, each public school shall develop and maintain a tiered system of academic and behavioral supports,” including, at a minimum, “instructional and behavioral interventions” VT. STAT. ANN. tit. 16, § 2902 (2021) (effective 2015).</p> <p>“Health services, including . . . mental health [services] . . . shall be made available in a confidential manner to students in each school.” 22-003 VT. CODE R. § 2:2121.5 (2021) (promulgated 2010).</p>
VA	<p>Requires schools to employ health professionals.</p> <p>“Each school board shall provide at least three specialized student support positions per 1,000 students.”</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>While students must provide a report of a comprehensive physical examination prior to</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“The principal of each public elementary and secondary school shall cause the vision</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, school districts may employ “school social workers, school psychologists,</p>

	<p>Such positions “include school social workers, school psychologists, school nurses, licensed behavior analysts, licensed assistant behavior analysts, and other licensed health and behavioral positions . . .” VA. CODE ANN. § 22.1-263.13:2(O) (2021) (effective 2021).</p> <p>Requires schools to provide health services to students.</p> <p>“A school board shall provide pupil personnel and support services . . . A school board may employ school nurses, physicians, physical therapists, occupational therapists, and speech therapists.” VA. CODE ANN. § 22.1-274(A) (2021) (effective 1990).</p>	<p>school admission, schools are not required to provide such examinations. VA. CODE ANN. § 22.1-270.1(A) (2021) (enacted 1980). However, “[t]he health departments of all of the counties and cities of the [state] shall conduct such physical examinations for medically indigent children without charge upon request and may provide such examination to others . . .” <i>Id.</i> § 22.1-270.1(E).</p> <p>In addition, schools that do not provide “parent educational information” regarding scoliosis must “implement a program of regular screening for scoliosis for pupils in grades five through ten.” <i>Id.</i> § 22.1-273.1 (effective 2003).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Schools must screen students “in the areas of speech, voice, language, and fine and gross motor functions to determine if a referral for an evaluation for special education and related services is indicated.” 8 VA. ADMIN. CODE § 20-81-50(C) (2021) (promulgated 2009).</p>	<p>and hearing of students enrolled in (i) kindergarten, (ii) grade two or three, (iii) grade seven, and (iv) grade 10 to be screened . . .” 8 VA. ADMIN. CODE § 20-250-10 (2021) (promulgated 1980).</p>	<p>school nurses, licensed behavior analysts, licensed assistant behavior analysts, and other licensed health and behavioral positions . . .” VA. CODE ANN. § 22.1-263.13:2(O) (2021) (effective 2021).</p>	
WA	No requirement that schools employ health professionals.	No requirement that schools provide physical examinations to students.	Requires schools to provide vision and auditory screenings to students.	No requirement that schools provide oral healthcare to students.	Requires schools to provide mental-health services to students.

“Every board of directors of a school district of the first class . . . shall have the power” to “appoint a practicing physician, resident of the school district, who shall be known as the school district medical inspector” WASH. REV. CODE § 28A.330.100 (2021) (enacted 1909).

“The board of directors of any school district of the second class may employ a regularly licensed physician or a licensed public health nurse for the purpose of protecting the health of the children in said district.” *Id.* § 28A.210.300 (effective 1975).

No requirement that schools provide health services to students.

However, the Washington integrated supports protocol requires “any academic or nonacademic provider to support the needs of at-risk students, including, but not limited to: Out-of-school providers, social workers, mental health counselors, physicians, dentists, speech therapists, and audiologists.” WASH. REV. CODE § 28A.300.139(2)(c) (2021) (effective 2016).

Requires schools to provide developmental screening to students.

“School districts are responsible for providing a comprehensive system of instruction and services in reading and early literacy to kindergarten through fourth grade students that is based on the degree of student need for additional support. Reading and early literacy systems provided by school districts must include: (1) [a]nnual use of screening assessments and other tools to identify at-risk readers in kindergarten through fourth grade . . . ; and (2) [r]esearch-based family involvement and engagement strategies, including strategies to help families and guardians assist in improving students’ reading and early literacy skills at home.” WASH. REV. CODE § 28A.320.202 (2021) (effective 2013).

Every school district “shall have the power, and it shall be its duty to provide for and require screening for the visual and auditory acuity of all children attending schools in their districts to ascertain which if any of such children have defects sufficient to retard them in their studies. Visual screening shall include both distance and near vision screening. Auditory and visual screening shall be made in accordance with procedures and standards adopted by rule of the [state health agency].” WASH. REV. CODE § 28A.210.020 (2021) (effective 2016).

However, “[f]or low-income, rural, and other at-risk populations and in coordination with local public health jurisdictions and local oral health coalitions, a dental hygienist licensed in [Washington] may assess for and apply sealants and apply fluoride, and may remove deposits and stains from the surfaces of teeth in community-based sealant programs carried out in schools” WASH. REV. CODE § 18.29.220 (2021) (effective 2019).

“[E]ach school district shall develop and implement a written plan for a comprehensive school counseling program” WASH. REV. CODE § 28A.320.600 (2021) (effective 2021). The plan must “[e]stablish a comprehensive school counseling program[,] . . . [p]rovide a process for identifying student needs . . . [e]xplain how direct and indirect services will be delivered through the comprehensive school counseling program; and [e]stablish an annual review and assessment process for the comprehensive school counseling program.” *Id.*

“[E]ach school district must adopt a plan for recognition, initial screening, and response to emotional or behavioral distress in students” *Id.* § 28A.320.127 (effective 2016).

Moreover, in some school districts, school counselors, social workers, and psychologists are required to collaborate on issues regarding the recognition of mental-health issues in students. *Id.* § 28A.320.290 (effective 2018).

<p>WV</p>	<p>Requires schools to employ health professionals.</p> <p>Each school district “shall employ full time at least one school nurse for every one thousand five hundred kindergarten through seventh grade pupils in net enrollment or major fraction thereof . . .” W. VA. CODE § 18-5-22(b) (2021) (enacted 1911).</p> <p>Requires schools to provide health services to students.</p> <p>“All schools support and assist students in being healthy learners through promoting annual well child examinations, biannual dental examinations . . . preventive health care and enrollment for children and families into health care insurance.” W. VA. CODE R. § 126-51-5 (2021) (promulgated 2015). The school nurse is the school health expert who is qualified to lead the coordination and monitoring of health promotion through school screenings and examinations.” <i>Id.</i></p>	<p>Requires schools to provide physical examinations to students.</p> <p>Each school district “shall provide proper medical . . . inspections for all pupils attending the schools of their county and have the authority to take any other action necessary to protect the pupils from infectious diseases . . .” W. VA. CODE § 18-5-22(a) (2021) (enacted 1911).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>The state education agency must ensure “that all students receive the necessary and appropriate screenings, evaluations, and early assessments for . . . dyslexia and dyscalculia . . .” W. VA. CODE § 18-20-10(c) (2021) (effective 2014).</p>	<p>Requires schools to provide vision and auditory screenings to students.</p> <p>“All children entering public school for the first time in this state shall be given prior to their enrollments screening tests to determine if they might have vision or hearing impairments . . .” W. VA. CODE § 18-5-17(a) (2021) (enacted 1978). School districts “shall conduct these screening tests for all children through the use of trained personnel.” <i>Id.</i></p>	<p>Requires schools to provide oral healthcare to students.</p> <p>Each school district “shall provide proper . . . dental inspections for all pupils attending the schools” over which they have jurisdiction. W. VA. CODE § 18-5-22(a) (2021) (enacted 1911).</p>	<p>No requirement that schools provide mental-health services to students.</p>
<p>WI</p>	<p>No requirement that schools employ health professionals.</p> <p>However, school districts “may do all things reasonable to promote the cause of education, including . . . [e]mploy qualified public</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>However, “[i]n counties having a population of less than 750,000, the school aboard may require periodic</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p> <p>Though students entering kindergarten must provide evidence of a vision screening, schools are not required to</p>	<p>No requirement that schools provide oral healthcare to students.</p> <p>However, schools may provide “school-based preventive dental services, and . . . school-based</p>	<p>No requirement that schools provide mental-health services to students.</p> <p>However, schools may contract with mental health providers. WIS. STAT.</p>

	<p>health nurses, school nurses, registered nurses and licensed dentists . . .” WIS. STAT. § 120.13(11) (2022) (effective 2022).</p>	<p>health examinations of pupils by physicians, under the supervision of local health departments and the department of health services, and may pay the cost of the examinations out of school district funds.” WIS. STAT. § 118.25(3) (2021) (effective 2017).</p> <p>Requires schools to provide developmental screenings to students.</p> <p>Each school district “shall, using the appropriate, valid, and reliable assessment of literacy fundamentals . . . annually assess each pupil enrolled in 4-year-old kindergarten to 2nd grade in the school district . . . for reading readiness.” WIS. STAT. § 118.016(b) (2021) (enacted 2011).</p>	<p>provide such screenings to students. WIS. STAT. § 118.135 (2021) (effective 2018). However, “[t]o the extent feasible, the medical examining board and the optometry examining board shall encourage physicians and optometrists . . . to conduct free eye examinations or evaluations of pupils who are in financial need and do not have insurance coverage for eye examinations or evaluations.” <i>Id.</i> § 118.135(3).</p>	<p>restorative dental services.” WIS. STAT. § 250.10(1m)(b) (2021) (effective 2019).</p>	<p>§ 120.13(26r) (2022) (effective 2022).</p>
<p>WY</p>	<p>Requires schools to provide health services to students.</p> <p>“All schools shall provide . . . [h]ealth services” to students. 206-0002-26 WYO. CODE R. § 11 (LexisNexis 2021) (promulgated 1993). “Health Services” is defined as an “organized program provided by qualified personnel to identify and appropriately address potential and existing</p>	<p>No requirement that schools provide physical examinations to students.</p> <p>Requires schools to provide developmental screenings to students.</p> <p>“Each school district shall select and implement a reading assessment and intervention program that uses an instrument that screens for signs of dyslexia and other reading difficulties</p>	<p>No requirement that schools provide vision or auditory screenings to students.</p>	<p>No requirement that schools provide oral healthcare to students.</p>	<p>Requires schools to provide mental-health services to students.</p> <p>Each school must provide guidance services, which include counseling individual students and groups of students and coordination of guidance services between schools and communities and schools and referral agencies. 206-0002-26 WYO. CODE R. § 4(e) (LexisNexis 2021) (promulgated 1993).</p>

health problems among students.” *Id.* § 4(f).

as early as possible in kindergarten through grade three (3) and that implements fidelity an evidence based intervention program.” WYO. STAT. ANN. § 21-3-401(a) (2021) (effective 2019).
