School Funding

Opportunity Gaps and How They Harm Our Students

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Introduction

Victoria Monroe, a recent graduate from Penn Wood High School in Pennsylvania emphasizes that she and her peers are ". . .calling out for help."[1] Monroe wants Americans to recognize why they need help: the under-resourcing of many of our nation's public schools. She explains, "I could tell you, 'Oh, we don't have the staffing we need. We don't have programs that support all of our students. We don't have adequate mental health [services]. . . .But you'll never fully understand until you're in those experiences."[2] She graduated from high school in one of the six districts that joined parents and state organizations in the 2023 school funding case, *William Penn School District v. Pennsylvania Department of Education*.[3] In the February 2023 case decision, the presiding judge ruled that Pennsylvania's school funding system violated the Education Clause of their state constitution.

Tara Yuricheck, a teacher for twenty years in a district involved in the *William Penn* case, taught social studies in the 2020s with an inadequate number of textbooks from 1997 that listed Bill Clinton as the most recent president.[4] She spent her own money to buy resources due to the lack of appropriate materials because she wanted her students "to have the best learning possible."[5] Unfortunately, when you talk to teachers and students in classrooms across the United States, Monroe and Yuricheck's experiences in Pennsylvania are not anomalies. For the 2022-2023 school year, a study found that 93% of teachers said they did not receive enough funding to cover classroom expenses which led to teachers spending an average of $860 of their own money on school supplies.[6] The most recent survey by the Department of Education regarding teacher-funded supplies in 2014-2015 found that 94% of teachers used their own money to buy school supplies at an average of $478 annually.[7] Parents and adults across the United States recognize this problem. Since 2000, the Phi Delta Kappa (PDK) Poll of the Public's Attitude Toward the Public Schools found "lack of money/financial support" as the biggest issue facing schools every year the question has been asked.[8]

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School funding matters because of its connection to student success. For decades, scholars debated whether money makes a difference in providing a high-quality education for students.[9] Scholars now agree that money spent well impacts students and their educational experiences and outcomes.[10] As one scholar explains, "It is clear (and obvious) that increased dollars do not magically transform themselves into greater learning. But it is just as clear (and just as obvious) that money can make a difference if spent on. . . investments known to be effective."[11] Scholars also generally agree that schools need sufficient financial resources to hire and retain staff and purchase the necessary materials to educate current and future students.[12] Left with few other options for relief, families sometimes initiate litigation to try to secure greater funding for their children.

This report is paper one in a two-part series dedicated to school funding.

This paper asks:

- Why does school funding matter?
- What are the opportunity gaps along lines of socioeconomic status, race, and geography that occur because of inadequate and/or inequitable school funding?
- What litigation strategies have been used to attempt to address inadequate and inequitable school funding?

The next paper asks:

- What are potential state and federal reforms to better promote fair school funding?
- What federal resources exist to help districts and states address school funding opportunity gaps today?
- What law and policy reforms would help to prevent, reduce, or close school funding opportunity gaps moving forward?

This report details the importance of school funding as a critical foundation for ensuring equal educational opportunities for students. The first section focuses on the unfortunate reality that far too many states and districts systematically perpetuate school funding opportunity gaps along lines of class, race, and geography and discusses why these gaps matter. We then describe the ways that upcoming school funding changes may exacerbate these gaps. For these sections, we rely heavily on the literature and research of prolific scholars in the field as well as recent empirical publications that use national data sets to analyze funding trends and gaps. In the next section, to better understand current school funding disparities, we cover a brief history of the court cases that challenged school funding systems.

To learn more about solutions to these issues, please turn to our follow-up report, *Funding Our Schools: Reforms and Partnerships in Pursuit of a High-Quality Education*. In that report, we present promising state reforms, federal resources and policy solutions, and potential changes to accountability that would enable each and every student to access a high-quality education. For our nation to deliver the education that our students need to become career-ready, college-ready, and engaged civic participants, we must create and sustain school funding systems that provide a strong foundation for high-quality schools.[13]

School Funding Opportunity Gaps

States control how schools are funded in the United States. Funding systems vary drastically based on state legislative and judicial decisions. In the aggregate, in the 2020-2021 school year, states contributed roughly 46%, localities provided roughly 44%, and the federal government supplied roughly 11% of total school funding.[14] Localities mostly raise funds through property taxes, while states primarily secure funds through income and/or sales taxes.[15] Since schools with more low-income students tend to be located in neighborhoods with relatively lower property values,[16] this can lead to large disparities in how much money the local government can raise to fund its schools. Most states have funding formulas intended to help offset some of the differences that localities face in raising significant funds via property taxes, intending to ensure that all schools receive a funding baseline.[17] Despite these efforts, the research presented in this report reveals that harmful funding gaps endure that reflect the socio-economic, racial, and geographic backgrounds of students and districts.

Furthermore, even when states aim to offset disparate district abilities to raise school funding, local districts possess the authority to allocate this additional state and federal money, an authority that often reflects a tradition of local control of schools.[18] This means that local districts also hold power over how all funding is distributed to their schools. Variability exists in how districts allocate these funds. Some districts allocate more money to schools in already advantaged neighborhoods rather than schools in low-property value neighborhoods that may need it most, a result that is often labeled intradistrict inequity.[19] Other districts use this discretion to prioritize the students in schools with higher concentrations of students from low-income households, a strategy supported by research showing that such students typically need more resources, as discussed further below.[20]

Given the existence of fifty different state systems to fund education, the type and scope of funding gaps vary by state.[21] Despite these state-by-state variations, trends exist in the strengths and challenges of state approaches to school funding. For instance, as acknowledged above, it is well established that property taxes and local voter appetite for approving taxes serve as drivers of funding disparities because districts with lower property values can raise fewer resources.[22] Property taxes provide a more stable funding source for schools than the typically more volatile income taxes and retail sales taxes.[23] This approach also allows some communities the flexibility to increase their investments in schools by raising their local taxes as needed. However, with localities raising 83% of school funding from property taxes, this approach also centers disadvantage in the heart of funding systems that states are not adequately addressing given the funding gaps that have long existed across our schools.[24] Indeed, at the 2023 launch of the Education Rights Institute, congressional Representative Jennifer McClellan stated "The fundamental problem of educational inequity lies in how we fund our education system based primarily on property taxes that bakes inequity into the system."[25]

"The fundamental problem of educational inequity lies in how we fund our education system based primarily on property taxes that bakes inequity into the system."

– Rep. Jennifer McClellan

It also is important to understand that the shortcomings of our school funding systems extend beyond our reliance on property taxes. The research on funding gaps summarized below reveals that students may be disadvantaged by school funding systems due to their household income, the income level of households in their district, their race, geographical location, or a combination of these factors.

Many educators, policymakers, lawyers, and citizens use different terminology to discuss school funding.[26] Therefore, we supply a **glossary** for reference at the end of this report. The definitions of words in bold can be found in the glossary. Scholars assess school funding through a variety of lenses that may consider disparities between states, within states, or within districts. These lenses include how funding is distributed relative to the concentration of poverty in a district (**funding distribution**), the amount of money available for schools across a state or district (**funding level**), and how much of the state's available budget is allocated to education (**funding effort**).

Research finds significant disparities in **funding levels** across states, with the Northeast and Midwest typically funding schools at significantly higher levels than the West and South. For example, cost-adjusted, New York spends $27,265 **per pupil,** roughly $11,000 more per pupil than the national average ($16,131). That funding gap exceeds the total per pupil funding levels in the three lowest funded states, Idaho ($10,536), Arizona ($10,670) and Utah ($10,907).[27] Other research identifies such concerns as insufficient oversight of state funding systems and inadequate links between school funding and the outcomes of schools, as is discussed more in a section below.[28]

Due to the Education Rights Institute's focus on opportunity gaps, we examine **funding distributions**, which fall into three buckets. States that provide more state and local money to districts with higher concentrations of student need due to poverty are termed **progressive**; states that provide less state and local funding to school districts with greater student need are referred to as **regressive**; and when approximately equal state and local funds are distributed to each district regardless of student need, it is called **flat** funding.[29]

Research confirms that students living with fewer financial resources at home need additional school funding and resources to compete effectively with their more affluent peers.[30] In their report *Equal is Not Good Enough,* The Education Trust states:

> Schools and districts that serve more students from low-income backgrounds should receive more funding to help ensure that students have rich educational experiences that prepare them to excel in post-secondary opportunities at least as well as peers from more affluent backgrounds. High-poverty districts should be receiving substantially more funding — not equal, and certainly not less — than their more affluent counterparts.[31]

Despite this need, many states across our nation do not allocate substantially more **per pupil funding** for districts serving larger numbers of students in poverty, even in those states that at least attempt to offset the lower capacity of districts with high concentrations of poverty in some way.[32] Instead, school districts with higher concentrations of low-income students receive an average of five percent less than low-poverty districts.[33]

Unfortunately, even when state formulas for raising funds *should* lead to **progressive funding** distributions, this does not always happen. This may result from states not adequately addressing

the full scope of lower funding contribution of districts with higher rates of poverty, the unwillingness of localities to raise taxes to fund schools, wealthy districts or schools regularly raising additional money beyond what is allocated through the funding formula, or politically motivated legislative agreements that can lead to richer districts and schools receiving more funds than they would if the state and locality solely followed the funding formula.[34]

Analysis of school finance studies shows that increasing **per pupil** spending contributes to and can lead to improved student outcomes.[35] However, states and districts systematically undermine many students' educational opportunities when they provide less funding to schools that serve certain groups, such as students living in areas of concentrated poverty, students of color, as well as rural and some urban students.[36] School funding can be examined across the country, states, or localities. Because of the variability in funding models and research methods, different scholars often arrive at different estimates based on what data they collect and the analyses they run. In the following sections, we present trends across these studies. The trends in the research summarized below reveal that many states give numerous students living in concentrated poverty, students from minority backgrounds, and students living in particular areas of the country funding amounts below what is needed to provide them with a high-quality education.

Funding Gaps Related to Poverty

Students living in poverty experience a wide array of challenges that research confirms can hinder their achievement in school, including but not limited to, health difficulties, insufficient access to affordable and consistent housing, and a less stable source of family income.[37] Therefore, researchers generally agree that students from low-income households need more resources than their peers from homes with more income to succeed in school. Scholars debate how much such students need. For instance, in a widely-cited study from 2005, researchers asserted that students with limited family financial support are associated with twice the cost of educating students with greater financial stability.[38] In a more recent study using data from 2021, school finance researcher Bruce Baker and his colleagues estimated that high-poverty districts needed about 90% more funding than low-poverty districts.[39] The federal government distributes additional funds to schools and districts with higher levels of poverty through Title I. When states spend more, they also receive more Title I funds, [40] and thus these funds cannot necessarily address the gaps presented below.[41]

Researchers generally agree that students from low-income households need more resources than their peers from homes with more income to succeed in school.

When we look at the aggregate estimates nationwide, students who are from low-income households receive less per-pupil funding than their nonpoor peers. This is especially concerning in the face of the evidence that these students need significant additional funds to thrive.[42] National studies from the last several years confirm these trends. Using data from 2018-2020, The Education Trust estimated an $800 per pupil spending difference nationally between state and local funds provided to poor and nonpoor districts. A gap of this size impacts whether a school can afford to provide resources, like a laptop for every student, high-impact practices like tutoring, and smaller class sizes through the hiring of more teachers.[43] Another study by researchers Hojung Lee, Kenneth Shores, and Elinor Williams found that when

looking at all students in the nation, students who qualified for free and reduced lunch (FRL)[44] in the 2017-2019 school years received on average $149 less per pupil than non-FRL peers, leading to a $3.7 billion national school funding gap between these students.[45]

Turning to within state funding gaps, in 2021 a report by the Education Law Center found that sixteen states provided **regressive funding**, ten states provided **flat funding**, and twenty-two states provided **progressive funding**.[46] This means that more than half of the states did not design their funding systems to respond to the research that consistently confirms that students living in significant concentrations of poverty need more funding to meet their educational needs.[47] The twenty-two progressive funding states included those that provided only 5% or more funding to districts with higher concentrations of poverty. So, although these states delivered more to districts with higher concentrations of poverty, the extra funding most states allocated was insufficient to address the additional resources that scholars estimate students need. These findings show that many states across the country fail to provide **fair funding**, or the amount of funding that each student needs to be successful.

Some research on within state and district funding disparities finds that school funding reforms over the last several years show small, positive incremental changes. When Lee and her colleagues analyzed the data within the same state or district (as compared to their analysis that compared students nationwide), funding was typically progressive, in that students who live in poverty received approximately $300-500 more per pupil. Unfortunately, this amount is not close to the suggested double amount that other researchers recommend.[48] They further explain that the contrast in findings between the national and state analyses is likely because students from families in poverty are concentrated in states and/or districts with lower effort and/or less progressive school funding systems, thus leading to regressive funding when aggregated and assessed at the national level.[49] While the funding trended progressive across districts within the same state;[50] at the time considered in the study, over 19,000 operating school districts existed in our nation[51] and these districts experienced a lot of variability regarding their regressivity or progressivity.[52]

Funding Gaps Related to Race

Systemic racial funding gaps deliver fewer educational opportunities to many students of color across our nation. A 2019 national report highlighted funding disparities that disadvantage particular racial groups with the finding that in the 2015-2016 school year, school districts serving approximately the same number of students in primarily White districts received $23 billion more than districts serving primarily students of color.[53] Differences in neighborhood financial status nor geography fully explained this gap; however, minority students from low-income districts were more likely to experience even greater challenges related to a lack of funding in and resources for their schools.[54]

School districts serving approximately the same number of students in primarily White districts received $23 billion more than districts serving primarily students of color.

In an updated analysis, Bruce Baker and colleagues found that in 2021, when looking at districts with **adequate funding**, White students were the least likely to

attend a school in a district that was below adequately funded (42%) and the least likely to attend schools in districts that were in the lowest 20% regarding adequate funding (15%).[55] In contrast, Black students were most likely to be in below adequately funded districts and most likely to be in the 20% least adequately funded districts (80% and 55% of Black students, respectively), followed by Hispanic or Latinx (74%, 40%), then Indigenous students (62%, 30%), then students with two or more races (52%, 23%), and finally Asian students (45%, 20%). In Table 1, the breakdown by race and ethnicity is shown. The inverse percentages, which indicate the small number of students of color in schools in adequately funded districts, highlight the dire situation.

As the researchers noted in their analysis, this means that Black students are about twice as likely as White students to be in a district that does not have adequate funding and 3.5 times as likely to attend school in a chronically below adequately funded school district, one in the bottom 20%. Hispanic or Latinx students are about 75% more likely than White students to be in a below adequately funded school district and 150% more likely to be in the worst-funded school districts. The authors note that these differences cannot be "explained away" by differences in family financial status.[56]

Table 1. Percentage of Students in Districts with Below Adequate Funding and in the Bottom 20% of Below-Adequately Funded Schools by Race

Race of Students (Census category, if different)	Percentage of Students in Districts with Below Adequate Funding	Percentage of Students in Districts in the Bottom 20%, Meaning the Least Adequately Funded Districts
Black (African American)	80.4%	54.8%
Latinx (Hispanic)	73.7%	40.2%
Indigenous (American Indian/Alaskan Native)	62.4%	30.1%
Two or more races	51.9%	23.4%
Asian	44.8%	19.5%
White	42.4%	15.1%

Note: Percentages from The Adequacy and Fairness of State School Finance Systems: School Year 2020-21.[57]

The Education Trust's report, with data from 2018-2020, estimated that districts serving predominately students of color[58] receive 16% less funding from state and local sources compared to predominately White districts.[59] This discrepancy amounts to an estimated $2,700 less per pupil. Notably, this racial disparity is over three times their estimated gap between high- and low-poverty districts.[60]

Similar school funding gap patterns that Lee and colleagues found across schools based on students' socioeconomic status were also found across racial lines.[61] From 2017-2019, Black students received $35 less annually per pupil and Hispanic or Latinx students received $794 less per pupil, both when compared to White students at the national level.[62] This equals a $10.9 billion

funding gap nationwide.[63] Again, state-analysis showed marginal movement towards progressivity, where Black students received an average of $514 more than White students and Hispanic or Latinx students received $115 more per pupil. The difference between these estimates likely resulted from a higher number of Black or Hispanic/Latinx students in states with more regressive patterns of funding. For example, the funding systems in states like Texas, with a large Hispanic or Latinx student population and low funding effort and distribution, impact these national figures.[64] While this movement toward progressive funding at the state level is a trend in the right direction, this trend is not yet able to make up for the historic and ongoing racial systemic barriers to high-quality education in our nation.[65]

Turning to Indigenous students, while most Indigenous students attend public schools, approximately seven to eight percent attend tribal schools.[66] These schools employ a different funding system than the one used for other public schools in our nation. The most recent U.S. Governmental Accountability Office's 2014 analysis of the system found the Bureau of Indian Education (BIE) schools often had much higher levels of per pupil funding than general public schools.[67] Recent reporting, however, raises concerns about school funding and the federal government's provision of a high-quality education for Indigenous students in tribal schools.[68] Unfortunately, the lack of transparency and racial categorization of students enrolled in public schools makes data collection around funding issues related to Indigenous students in tribal and public schools challenging.[69]

Today, no states consider race in the allocation of their funding.[70] However, the research confirming these consequential funding patterns indicate that seemingly neutral race-blind policies pose detrimental and inequitable funding outcomes that disproportionately harm students of color.

Funding Gaps Related to Geographical Location

Gaps in funding also exist related to the geographical location of schools, particularly for schools located in rural or urban areas. Rural schools face funding challenges due in part to transportation costs (e.g., longer bus commutes), issues with teacher recruitment and retention, higher operational costs, and lower property taxes.[71] This means that even in some rural districts with **progressive funding**, students do not receive the instructional resources they need since per pupil dollars must be used for these additional school operation costs. Nationally, non-rural districts can spend $500 more per pupil on instruction annually because of lower operating costs than rural districts.[72] While states and localities have generally increased funding over the last decade,[73] over half of states decreased their contributions to rural schools since 2019.[74]

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Turning to the school funding challenges of urban districts, it is important to understand that many of the issues related to geographic location are intimately tied to issues of race and poverty.[75] This connection exists in large part because of historic redlining, in which laws and policies prohibited individuals of different races, and especially Black Americans, from buying houses in certain neighborhoods. Redlining and other discriminatory practices in offering housing greatly contributed to persistent segregation in housing and thus in schooling despite the ruling of *Brown v. Board of Education.*[76] This discrimination, along

with more recent tactics such as gerrymandering and lending discrimination, minimizes the school funds available via property taxes in many geographical regions, often most impacting students from lower-income neighborhoods of particular races.[77]

Researchers describe urban education in different ways.[78] In this report, we define urban schools and districts as those concentrated in cities, including but not limited to large metropolises. While some states provide much higher funding to schools in urban districts, other states provide less.[79] For instance, school funding for cities in New Hampshire is below the national average while cities in Massachusetts and Georgia receive far above the national average.[80] On average in 2022, however, according to the National Center for Educational Statistics (NCES), city schools received less per pupil ($15,715) than the national average ($17,301), suburban ($19,145), town ($16,177), or rural schools ($17,906) when adjusted for inflation.[81] Richard Welsh & Walker Swain conducted a study across multiple definitions of urban education looking across school years from 2008-2015, and most of their analyses found that urban districts have less than average per-pupil funding, although large metropolises, which often include the surrounding suburbs and higher tax bases are slightly above the average national per pupil amount.[82]

The national trend of providing less funding to city schools is especially concerning when considering the cost of operating urban schools.[83] In 2012, the most recent data available for the functional age of public schools' main instructional buildings, city schools were, on average, older (50 years) than their suburban (43 years) and rural (40 years) counterparts.[84] Urban administrators have reported that inadequate funding hinders their ability to provide safety measures for students.[85] Additionally, the cost of attracting and retaining teachers influences urban districts, as city teachers are more likely to leave their school than teachers in any other setting.[86] State policymakers need to consider these additional costs when determining the cost of providing a high-quality education in an urban setting. Today, we recognize that to address many of these issues related to urban schools and the funding challenges confronting urban districts, we must also attend to funding issues at the intersections of race and class.[87]

Why Do Funding Gaps Matter?

How do these widespread funding gaps by class, race, and geography impact the educational opportunities of students? In 2016, C. Kirabo Jackson, Rucker Johnson, and Claudia Persico analyzed long-term trends of student outcomes in areas where school finance reform had increased school funding.[88] Their landmark study revealed that for a child from a low-income family, a roughly 22% raise in per-pupil spending for all twelve years of a child's schooling (which in 2015 dollars was estimated as an additional $2,900 per pupil each year) could be enough to eliminate educational outcome gaps between them and their wealthier peers.[89] Additionally, if funding systems raised per-pupil spending by 10% each year of schooling, then the probability of graduation

A roughly 22% raise in per-pupil spending for all twelve years of a child's schooling could be enough to eliminate educational outcome gaps between students from low-income backgrounds and their wealthier peers.

from high school increased by seven percentage points for all students combined, and nearly ten percentage points if only looking at low-income students.[90] That 10% increase was also associated with nearly 10% higher wages for adults who came from low-income families.[91]

More recent studies reaffirm that higher school funding contributes to higher test scores, graduation rates, and adult wages.[92] Schools lacking fair or adequate resources cannot afford these same opportunities for better student outcomes as their well-funded peers. Indeed, even scholars who once challenged the link between funding and outcomes see the connection between funding and outcomes for students our schools have long underserved.[93] As stated in the opinion of the *William Penn* case:

> Dr. Hanushek, like other expert witnesses for both parties, agreed that some children, including children living in poverty, [English Language Learner] students, children with disabilities, and children living in rural areas, need more supports and services to access their education. He also agreed that the challenges of poverty are not insurmountable if the resources are used well, and stated that reductions in funding are likely to have a negative impact on student achievement "because it disrupts what schools are doing[.]"[94]

Statistical evidence supports this idea. In a study using National Assessment of Educational Progress (NAEP) data from 1996 and 2015, researchers found that states moving from **flat funding** to double funding for students from low-income families predicted improved reading and math scores.[95] In addition to test score improvements, research also supports ties between increased school funding and medium and long-term outcomes. A recently published meta-analysis by C. Kirabo Jackson and Claire L. Mackevicius pooled data from thirty-two studies from 2003 to 2022 and found that an extra $1,000 per pupil for four years increased test scores, high school graduations, and college enrollment.[96]

Closing educational opportunity gaps to move students from dropping out of high school to graduating from college, aggregated nationally, could save U.S. taxpayers approximately $610 billion per graduating class.

Additionally, scholars confirm substantial economic costs of these opportunity gaps. In 2013, economics professors Clive Belfield and Henry Levin estimated that the tax-burden savings of closing the educational opportunity gaps in a way that would move students from dropping out of high school to graduating from college was $200,000 per student across their lifetime.[97] Aggregated nationally, this would have saved U.S. taxpayers approximately $610 billion per graduating class.[98]

State and district investment in equal educational opportunity also would positively impact our economy. The Excellence and Equity Commission's 2013 report noted:

> If Hispanic and African American student performance grew to be comparable to white performance and remained there over the next 80 years, the historical evidence indicates that the impact would be staggering—adding some $50 trillion (in [2013 dollars]) to our economy. This amount constitutes more than three times the

> size of [the 2013] GDP and represents the income that we forgo by not ensuring equity for all of our students.[99]

An updated estimate using data from 2015 revealed that raising the graduation rate from 83% to 90% would collectively add $3.1 billion in income for a class of high schoolers.[100] This increase in income is associated with increased civic engagement and would raise the GDP by an estimated $5.7 billion.[101] In 2021, Clive Belfield estimated that annually the disparities in equitable graduation rates cost our nation $59.5 billion while gaps in achievement result in students earning an aggregate of $92 billion less per year, both of which he refers to as conservative estimates.[102] These scholars affirm that the current lack of equal educational opportunity impacts both individual students and our nation as a whole.[103]

In Pennsylvania, home of the *William Penn* case, a commission of state lawmakers recommended that $5.1 billion be allocated to schools to address issues of adequacy, including but not limited to insufficient teacher-student ratios, counselor-student ratios, and teacher salaries.[104] Researchers in Pennsylvania conducted a cost-benefit analysis on raising funding to adequate levels for underfunded schools.[105] The researchers found that the benefits would outweigh the costs with a new kindergarten cohort class under the improved funding system adding an estimated 3,800 high school graduates and 3,850 college enrollments, along with a 12% increase in lifetime earnings.[106] Aggregated, this estimated $4.3 billion in spending per cohort would generate a nearly $5.2 billion return on investment in Pennsylvania.[107]

From these trends, we can see that school funding opportunity gaps that reflect class, race, or geographic location deny many students in our nation fair or adequate resources that follow researchers' recommendations for the support that students need. Students, communities, and our country would benefit from ensuring that each and every child enjoys access to a high-quality education. Families and lawyers have used litigation as a means of securing such an education, which we turn to next.

School Funding Litigation

Understanding the law and policy context for school funding and its history can help us make sense of how the funding gaps described above persist. Litigating for adequate and equitable school funding has sometimes helped to pave the way for securing higher-quality educational opportunities for students who have been disadvantaged by past and current approaches to school funding. In this section, we lay out a brief overview of major legal trends surrounding school funding litigation.

Although today litigation about school funding provides a major legal pathway toward school improvement, this was not always so.[108] In the 1940s and 1950s, school desegregation served as the principal legal strategy toward school improvement, culminating in the landmark *Brown v. Board of Education* (*Brown I*) decision on May 17, 1954 that determined that "[s]eparate educational facilities are inherently unequal."[109] However, the Court subsequently invited great delay in desegregating when it held that districts could desegregate with "all deliberate speed" in *Brown II, one* year later.[110] Much of the South rose up to participate in a deliberate Massive Resistance campaign that aimed to stop desegregation in its tracks. This strategy proved so successful that a decade after *Brown I*, fewer than two percent of Black students attended desegregated schools.[111] Over the next few decades, civil rights lawyers continued litigation about the specifics of desegregation in states and districts nationwide as a major strategy to promote equal educational opportunity.[112] Efforts to desegregate and integrate our schools continue today.[113]

In the 1970s, courts' support for enforcing integration waned, including through the Supreme Court's decision in *Milliken v. Bradley.* In that decision, the Court required proof of interdistrict segregation before a court could order interdistrict desegregation. This ruling made it exceedingly difficult to bring together students of different races in schools in the North and West.[114] As a result, lawyers and school reformers turned to school funding as an alternative legal pathway toward an equal education for all students.[115]

Seeking an Equitable Education

In early school finance litigation, many cases initially focused on the Equal Protection Clause of the Fourteenth Amendment to the Constitution, with states like California finding unconstitutional funding systems that resulted in significant disparities in school funding due to vast differences in local governments' abilities to raise funds.[116]

While California and other states found inequitable funding to be a violation of the U.S. Constitution, the U.S. Supreme Court disagreed. In the 1973 *San Antonio Independent School District v. Rodriguez* case,[117] a group of Mexican American parents led by Demetrio Rodriguez challenged the constitutionality of the Texas school funding system that left their school district, which had a "low property tax base," with significantly less funding than neighboring wealthier districts. The Court determined that the U.S. Constitution's Equal Protection Clause did not guarantee a federal right to education. The Court also determined that wealth was not a classification that warranted heightened constitutional protection. The absence of a federal right to education and the lack of a classification that warranted heightened scrutiny led the Supreme Court to apply its most lenient form of constitutional review to the Texas system and to find the system constitutional because it advanced local control of education.[118]

After this federal decision, subsequent cases based their decisions on state law and state constitutions. Some courts determined that wealth-based disparities can be challenged under state equal protection rights, such as the 1976 decision in California known as *Serrano II*. However, cases seeking equal protection resulted in more losses than wins from 1979 through 1988.[119]

Seeking an Adequate Education

In the late 1980s, many attorneys in school finance cases shifted from a focus on equal protection—typically referred to as **equity cases**—to the need for equal opportunity, commonly known as **adequacy cases**.[120] This time, Kentucky led the charge in *Rose v. Council for Better Education*.[121] In that decision, the Kentucky Supreme Court held that the state constitutional protection of "an efficient system of common schools throughout the state" guaranteed that the General Assembly would provide each student in Kentucky with an array of capacities that prepared them for work and life, such as appropriate written and oral communication skills that would allow students to function effectively in our evolving society, appropriate preparation for either college or career and the skills that students would need to effectively compete with students in nearby states when they pursue employment or higher education.[122] Those who brought similar cases won in nearly twenty additional state school finance decisions on adequacy over the next twenty years.[123]

Most state constitutions mandate "the state to provide students some substantive level of basic education," and many courts interpret this standard as one in which a student must receive an education that enables them to become an effective civic participant and competitively employed.[124] This approach clearly surpasses the colloquial definition of basic. Since the standards-based reforms of the early 2000s, courts primarily define adequate education by whether the inputs lead to students meeting the state's benchmarks established in state standards and tests.[125]

New Litigation

From 2009 to 2020, students and families often did not receive help through litigation, as courts sided with plaintiffs less often in this time period.[126] Still, by April 2021, forty-eight of the fifty state court systems had issued decisions in school finance cases.[127] School funding litigation is ongoing in several states, including Arizona, Maryland, New Hampshire, North Carolina, and Wyoming.[128] However, we may be turning a new corner in what may lead to future grounds for litigation due to the impacts of the COVID-19 pandemic discussed in the next section.[129]

While litigation has been a major avenue for changes in school finance systems, legislative reform can also effect changes. States that have made impactful changes to their school funding systems are discussed in part two of this report, *Funding Our Schools: Reforms and Partnerships in Pursuit of a High-Quality Education,* to assist state-level policymakers and advocates looking for guidance.[130]

Recent Issues in School Funding

Over the last two decades, both the Great Recession and the COVID-19 pandemic sparked significant changes to school funding that impacted the school finance landscape.

The Great Recession's School Funding Cuts

In the wake of the Great Recession in 2008, many states reduced their per-pupil funding in ways that impacted hiring teachers and support staff and even affected the number of days the schools could afford to operate.[131] The Education Law Center elevated the impact of this trend from 2008-2018 and found that schools lost approximately $600 billion in funding across our nation due to reduced funding efforts at the state and local level.[132] Indeed, average state effort to fund schools was lower in 2021 than in 2009-2010.[133] These budget cuts, from the Great Recession into the current decade, often hit high-poverty districts the hardest.[134]

School Funding Through the Pandemic

The pandemic and responses to the difficulties it created for schools exacerbated the opportunity gaps discussed earlier in this report. The challenge of educating students while schools were closed disproportionately impacted students from low-income households, minority backgrounds, and rural and urban settings.[135]

Districts in high-poverty neighborhoods suffered more than well-funded districts.[136] As education finance experts Danielle Farrie and David Sciarra report:

> The pandemic exposed a stark reality to the nation: many schools, especially those in districts serving low-income communities, were not equipped to handle the task of continuing education amid a public health crisis. The ability to effectively pivot to virtual instruction hinged on the availability of technology and high-speed internet access. Reopening schools safely depended on having modernized buildings with up-to-date HVAC systems and enough space to maintain social distancing guidelines.[137]

These issues contributed to schools in high-poverty neighborhoods offering remote instruction for longer, negatively impacting student achievement growth.[138] Similarly, the pandemic heavily impacted communities and schools serving primarily Black and Hispanic or Latinx students, resulting in less access to in-person learning[139] which led to the lowering of average test scores, often referred to as learning loss.[140]

Schools in urban and rural districts faced additional obstacles during the pandemic. Students in rural areas were twice as likely as urban students to lack the necessary technology they needed to access their education during the pandemic.[141] Access and safety concerns in turn impacted school enrollment. Across our nation, and especially in urban districts, families opted out of public schooling in response to the pandemic, a concern for school funding allocated on a per pupil basis because fewer students result in districts receiving fewer funds.[142] Rural areas, too, saw drops in enrollment early in the pandemic era.[143]

Opportunities and Outcomes

In response to these issues, federal funding for education increased through three pandemic relief laws in 2020 and 2021.[144] Schools received significant additional funding during the pandemic, primarily distributed through the Elementary and Secondary School Emergency Relief (ESSER) Fund,[145] and the amount schools received was intended to vary by need.[146] So while total ESSER funding averaged to about $3,850 per pupil,[147] for instance, Detroit, Michigan received close to $25,800 per pupil total while a neighboring suburb received about $860 per pupil across the ESSER cycles.[148] Through ESSER, lawmakers provided ample discretion to school districts to address challenges that surfaced or persisted through the pandemic.[149] The federal government primarily allocated funds using formulas based on Title I of the Elementary and Secondary Education Act, which provided additional financial support to districts that served larger numbers of students from low-income families.[150] Changes in funding in this period allowed data collection around the connection between financial resources and opportunity gaps, especially in high-poverty schools.

This funding provided critical support for districts addressing the educational challenges that the pandemic created or exacerbated, including less money from states due to other pandemic-related issues,[151] assistance for students who had inequitable access to the resources needed to succeed,[152] outdated infrastructure,[153] and learning loss.[154] While the federal government required transparency on how ESSER funding was used, state and district reporting and use of funds varied widely.[155] Some trends included: about half of the states invested at least a small portion of funds in social-emotional learning, twenty-two states spent about half of their budget on personnel (either new hires or raises), districts used about a quarter of funds on external vendors (for services like tutoring, updated technology, or supplies), and about one-fifth of funds have been spent on school infrastructure.[156] As an example, districts that sued the Pennsylvania Department of Education and others in the *William Penn* case purchased Chromebooks to lessen the technology gap, hired essential personnel for teaching and mental health services, updated textbooks, provided enrichment and remediation through summer and afterschool programming, and made crucial facility updates, such as updating ventilation and repairing roofs.[157]

Due to the varied reporting and the allocation of funds through Title I, the impacts of ESSER funds are easier to track along lines of class than race or geography. Research in two recent reports, including one from the Educational Opportunity Project at Stanford University, supports that in 2022 and 2023 additional ESSER funds were successful in lessening gaps in opportunity and increasing student achievement outcomes for students from higher-poverty families, as measured by test scores.[158] These scholars estimate that to reach pre-pandemic achievement, however, schools will need additional funds ranging from $9,000 to $18,800 per pupil.[159]

The Fiscal Cliff

ESSER funding has now been fully distributed, and states and districts must spend their funds by the end of September 2024.[160] Education finance researcher Marguerite Roza forecasts that “districts with more students in poverty face a steeper fiscal cliff” after the money is spent.[161] She explains:

> Districts with less than 25% kids in poverty will see 2% of their budget disappear, districts with 75% or more (kids in poverty) will see 6% of their budgets disappear. The rule of thumb is that a half a percent a decline in budget sends a district into fiscal chaos.[162]

This analysis indicates that once ESSER funds expire, school districts with more students from low-income backgrounds will face disproportionately greater shifts in their schools' budgets. Such shifts could lead to an array of harmful impacts, such as layoffs for mental health service providers and others or programmatic cuts like reducing extended learning time and tutoring.[163] Matthew Przywara, the Chief of Finance and Operations in a district in the *William Penn* case explained "In practical terms. . . that is extremely significant, what [he] would call draconian."[164] Scholars at the Center for Education Policy Research at Harvard University estimated, "To make up 20 percent of a school year's worth of unfinished learning, it is likely to cost *more than* the equivalent of 20 percent of a district's annual budget."[165] As challenges that emerged before and during the pandemic endure, the impending fiscal cliff will impair districts' abilities to effectively address these challenges.

Once ESSER funds expire, districts with more students of low-income backgrounds will face disproportionately greater shifts in their schools' budgets.

What's Next?

In order to continue the academic growth seen as a result of federal ESSER funds, local, state, and federal lawmakers must coordinate to continue to adequately fund schools. Ideas for innovative funding models are discussed in our report *Funding Our Schools*.[166] Additionally, Education Resource Strategies (ERS), a non-profit that partners with state, district, and school leaders to support transformative reforms to support all learners, provides tools and information for school leaders wanting to avoid the dangers of the fiscal cliff, which include the use of district data to address the needs of students and compensation models that attract and retain high-quality teachers.[167]

Conclusion

While our public schools educate many students well, too many of the states and districts across our nation distribute opportunity in ways that disadvantage students across lines of class, race, and geography. To ensure that each and every child enjoys access to a high-quality education, schools need to be funded in ways that provide equal educational opportunity, which includes both adequate and fair school funding. As we approach the fiscal cliff that will occur at the end of ESSER funding, many of our students will have access to even fewer educational opportunities and resources unless Congress or states take action to mitigate the potential harms. To learn more about how to address these issues, turn to our next report, *Funding Our Schools: Reforms and Partnerships in Pursuit of a High-Quality Education.*[168]

Glossary

Adequacy cases: school finance litigation where lawyers focus on a right to equal opportunity for students.[169] Equal opportunity is often defined as ensuring that school conditions allow students to meet at least a certain threshold of academic success.[170] See also, **rough comparability.**

Adequate funding: funding that centers around the question: do schools have the financial resources necessary to get all students to a particular benchmark? [171] This benchmark varies, depending on who defines what adequate means, but often considers both school inputs and outputs, with outputs often defined by standardized test scores.[172]

Equitable funding: also known as equal funding, generally defined as **flat funding** for all districts, with more focus on inputs and no consideration of school outcomes.[173]

Equity cases: school finance litigation where lawyers focused on equal protection under the law.[174] This often required comparing what was happening in one school or district to what was happening in others.[175] See also, **rough comparability.**

Fair funding: funding that ensures each student has an opportunity, through the provision of needed resources (e.g., qualified teachers), to meet defined benchmarks, which includes additional funds provided to districts with a greater concentration of high-need students.[176]

Flat Funding: a **funding distribution** model where states or districts provide approximately equal state and local funds to each district regardless of student need.[177]

Funding Distribution: how funding is distributed in relationship to the concentration of poverty in a district. See **progressive funding**, **regressive funding**, and **flat funding.**

Funding Effort: how much of the state's available budget is allocated to education.

Funding Level: the amount of money available for schools, generally across a state. When funding levels are low, it can complicate equity cases because all schools can be funded equally badly. Low funding levels in states are often a reason for plaintiffs to pursue **adequacy cases.**[178]

Per Pupil Funding: calculation found by dividing the total amount of funding provided by the number of students served. This is often used to discuss the relative amount of money schools receive since it helps account for different school sizes. Many analyses also add adjustments by cost of living when comparing per pupil funding.

Progressive Funding: a funding distribution model where states or districts provide more state and local money to districts with higher concentrations of student need due to poverty.[179]

Regressive Funding: a funding distribution model where states or districts provide less state and local funding to school districts with greater student need.[180]

Rough Comparability: refers to the goal of relative equality of resources and outcomes without requiring exact dollar or student outcome equality. While often cases have been grouped in waves of adequacy cases or equity cases, James Ryan asserts that there was much overlap between the waves and focus of cases.[181]

Endnotes

[1] Mallory Falk, *'There Should Be No Underdogs in the Education System': Pa. Students Reflect on School Funding Trial,* WHYY (Mar. 10, 2022), https://whyy.org/articles/there-should-be-no-underdogs-in-the-education-system-pa-students-reflect-on-school-funding-trial/.

[2] *Id.*

[3] William Penn Sch. Dist. v. Pa. Dep't of Educ., 294 A.3d 537 (Pa. Commw. Ct. 2023).

[4] *See id.* at 644.

[5] *Id.*

[6] AdoptAClassroom.org has released an annual report on teacher funded supplies since 2015. The most recent report includes the numbers shared. *See* Melissa Hruza, *2023 Teacher Spending Survey*, ADOPTACLASSROOM (June 7, 2023), https://www.adoptaclassroom.org/2023/06/07/do-teachers-need-to-buy-their-own-supplies-in-2023/. Other studies and news agencies have also investigated this topic with similar results. *See* Parija Kavilanz, *Teachers are Digging Even Deeper to Afford Classroom Necessities,* CNN (Sept. 2, 2023, 8:07 AM), https://www.cnn.com/2023/09/02/business/teachers-back-to-school-spending/index.html; Kara Arundel, *New School Year Stretches Budgets for Districts, Teachers and Families*, K-12 DIVE (Aug. 23, 2023), https://www.k12dive.com/news/back-to-school-spending/691579/; James Powel, *Study: More Than 90 Percent of Teachers Spend out of Pocket for Back-to-School Supplies,* USA TODAY (Aug. 26, 2023, 10:31 AM), https://www.usatoday.com/story/news/education/2023/08/26/teachers-spending-out-pocket-classrooms-asking-amazon-donations/70569670007/.

[7] NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., NCES 2018-097REV, PUBLIC SCHOOL TEACHER SPENDING ON CLASSROOM SUPPLIES (2021), https://nces.ed.gov/pubs2018/2018097rev.pdf.

[8] PHI DELTA KAPPA & LANGER RSCH. ASSOCS., 2020 PDK POLL, APPENDIX B: TOPLINE DATA REPORT (2020), https://pdkpoll.org/wp-content/uploads/2020/10/PDKPoll2020Topline.pdf. While this question has not been asked on the PDK poll since 2020, a similar question by the Hunt Institute's survey in 2022 found that 52% of voters said that their states spent too little on school funding. HUNT INST. & LAKE RSCH. PARTNERS, ACROSS THE AISLE: WHAT VOTERS AND PARENTS WANT IN EDUCATION (2022), https://hunt-institute.org/wp-content/uploads/2022/10/THI-2022-Nationwide-Survey-Results_10.21.2022.pdf.

[9] The primary researcher who posited that a firm connection between financial input and student outcomes did not exist was Eric Hanushek. *See* Eric A. Hanushek, *Making America's Schools Work: This Time Money Is Not the Answer*, BROOKINGS REV., Fall 1994, at 10 (1994). These findings have been rebutted by C. Kirabo Jackson, Rucker C. Johnson & Claudia Persico, *The Effects of School Spending on Educational and Economic Outcomes: Evidence from School Finance Reforms*, 131 Q. J. ECON. 157, 206-14 (2016) [hereinafter Jackson et al., *The Effects of School Spending*]; C. Kirabo Jackson, *Does School Spending Matter? The New Literature on an Old Question* [hereinafter Jackson, *Does School Spending Matter?*], *in* CONFRONTING INEQUALITY: HOW POLICIES AND PRACTICES SHAPE CHILDREN'S OPPORTUNITIES 165, 168 (Laura Tach, Rachel Dunifon & Douglas L. Miller eds., 2020); EDUC. L. CTR., MONEY MATTERS: EVIDENCE SUPPORTING GREATER INVESTMENT IN PK-12 PUBLIC EDUCATION 1 (2023), https://edlawcenter.org/assets/files/pdfs/School%20Funding/Money%20Matters%20Talking%20Points.pdf. In a recent publication, Hanushek stated, "This new evidence on spending impacts . . . does not indicate that spending does not matter." *See* Danielle Victoria Handel & Eric A. Hanushek, *US School Finance: Resources and Outcomes*, *in* 7 HANDBOOK OF THE ECONOMICS OF EDUCATION 143, 216 (Eric A. Hanushek, Stephen J. Machin & Ludger Woessmann eds., 2023); Michael A. Rebell, Rodriguez *Past, Present and Future*, *in* THE ENDURING LEGACY OF *RODRIGUEZ*: CREATING NEW PATHWAYS TO EQUAL EDUCATIONAL OPPORTUNITY 65, 69-72 (Charles J. Ogletree, Jr. & Kimberly Jenkins Robinson eds., 2015) (hereinafter THE ENDURING LEGACY OF *RODRIGUEZ*). For an overview and analysis of the debate about if money matters for schools, with the finding that "empirically grounded confidence that funding does matter[,]" see BRUCE D. BAKER, ALBERT SHANKER INST., DOES MONEY MATTER IN EDUCATION? 3-5 (2016) [hereinafter BAKER, DOES MONEY MATTER]; BRUCE D. BAKER, EDUCATIONAL INEQUALITY AND SCHOOL FINANCE: WHY MONEY MATTERS FOR AMERICA'S STUDENTS (2021).

[10] *See* BAKER, DOES MONEY MATTER, *supra* note 9, at 3-5; Charles J. Ogletree, Jr. & Kimberly Jenkins Robinson, *Creating New Pathways to Equal Educational Opportunity, in* THE ENDURING LEGACY OF *RODRIGUEZ*, *supra* note 9, at 65, 69-71; C. Kirabo Jackson & Claire L. Mackevicius, *What Impacts Can We Expect from School Spending Policy? Evidence from Evaluations in the United States,* 16 AM. ECON. J.: APPLIED ECON. 412, 441 (2024) (detailing results of a meta-analysis of thirty-two studies from 2003 to 2022 with overall findings that

increases in school funding are associated with improvements in test scores, high school graduation, and college enrollment.).

[11] Robert E. Slavin, *How Can Funding Equity Ensure Enhanced Achievement*, 24 J. EDUC. FIN. 519, 522 (1999).

[12] *E.g.,* Jackson et al., *The Effects of School Spending*, *supra* note 9, at 209; Jackson, *Does School Spending Matter?*, *supra* note 9, at 179; BAKER, DOES MONEY MATTER, *supra* note 9, at 3-5.

[13] To read the second report, see KIMBERLY JENKINS ROBINSON & SARAH BEACH, EDUC. RTS. INST., FUNDING OUR SCHOOLS: REFORMS AND PARTNERSHIPS IN PURSUIT OF A HIGH-QUALITY EDUCATION (2024). For more information about the Education Rights Institute's goals for a high-quality education, see KIMBERLY JENKINS ROBINSON, SARAH BEACH & HELEN MIN, EDUC. RTS. INST., A PRIMER ON OPPORTUNITY GAPS, ACHIEVEMENT GAPS, AND THE PURSUIT OF A HIGH-QUALITY EDUCATION 11-14 (2024), https://www.law.virginia.edu/sites/default/files/documents/primer-march4-2024_1.pdf.

[14] NAT'L CTR. FOR EDUC. STATS., U.S. DEP'T OF EDUC., NCES2024-144, REPORT ON THE CONDITION OF EDUCATION 2024, at 21 (2024), https://nces.ed.gov/pubs2024/2024144.pdf. We acknowledge that this federal data does not equal 100 percent.

[15] Matthew G. Springer, Eric A. Houck & James W. Guthrie, *History and Scholarship Regarding United States Education Finance and Policy, in* HANDBOOK OF RESEARCH IN EDUCATION FINANCE AND POLICY 3, 8 (Helen F. Ladd & Margaret E. Goertz eds., 2nd ed. 2015).

[16] Jackson, *Does School Spending Matter?, supra* note 9, at 168-69.

[17] *Id.*

[18] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 49-50 (1973); MARGUERITE ROZA, LARRY MILLER & PAUL HILL, CTR. ON REINVENTING PUB. EDUC., STRENGTHENING TITLE I TO HELP HIGH-POVERTY SCHOOLS: HOW TITLE I FUNDS FIT INTO DISTRICT ALLOCATION PATTERNS 5 (2005); DARIA HALL & NATASHA USHOMIRSKY, EDUC. TR., CLOSE THE HIDDEN FUNDING GAPS IN OUR SCHOOLS 2 (2010). For a case-study of funding at two nearby schools, see JAMES E. RYAN, FIVE MILES AWAY, A WORLD APART: ONE CITY, TWO SCHOOLS, AND THE STORY OF EDUCATIONAL OPPORTUNITY IN MODERN AMERICA 163-64 (2010).

[19] Hannah Jarmolowski, Chad Aldeman & Marguerite Roza, *Do Districts Using Weighted Student Funding Formulas Deliver More Dollars to Low-income Students?*, 97 PEABODY J. EDUC. 427, 433-35 (2022); ROZA, MILLER & HILL, *supra* note 18, at 5 ; HALL & USHOMIRSKY, *supra* note 18, at 2.

[20] Jarmolowski et al., *supra* note 19, at 433-35; Richard Rothstein, *Why Children from Lower Socioeconomic Classes, on Average, Have Lower Academic Achievement Than Middle-Class Children*, *in* CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST DO TO GIVE EVERY CHILD AN EVEN CHANCE 61, 62-64 (Prudence Carter & Kevin Welner eds., 2013); William Duncombe & John Yinger, *How Much More Does a Disadvantaged Student Cost?,* 24 ECON. EDUC. REV. 513, 530 (2005).

[21] For those who seek greater understanding of school funding in their state, we identify resources that could be helpful in our discussion within our second report, ROBINSON & BEACH, *supra* note 13, at 2.

[22] Lawrence O. Picus, Margaret E. Goertz & Allan R. Odden, *Intergovernmental Aid Formulas and Case Studies, in* HANDBOOK OF RESEARCH IN EDUCATION FINANCE AND POLICY, *supra* note 15, at 279, 295; James W. Guthrie & Kenneth K. Wong, *Political Context of Education Finance, in* HANDBOOK OF RESEARCH IN EDUCATION FINANCE AND POLICY, *supra* note 15, at 60, 61.

[23] Mildred W. Robinson, *It Takes a Federalist Village: A Revitalized Property Tax as the Linchpin for Stable, Effective K-12 Public Education Funding*, *in* THE ENDURING LEGACY OF *RODRIGUEZ*, *supra* note 9, at 167, 169 ("[R]evenues from property taxes will remain more stable during recessionary periods and, if recessions are short lived, not decline at all. Retail sales taxes and income taxes are comparatively much more volatile.").

[24] *Public School Revenue Sources*, NAT'L CTR. FOR EDUC. STAT., https://nces.ed.gov/programs/coe/indicator/cma/public-school-revenue (last updated May 2024) (reporting public school funding sources for the 2020-2021 school year).

[25] University of Virginia School of Law, *Law and Policy Reforms for Educational Opportunity Gaps*, YOUTUBE (Oct. 18, 2023), https://www.youtube.com/watch?v=2V4Lcd0GP_o (statement of Jennifer McClellan, D-VA).

[26] Helen F. Ladd, *Reflections on Equity, Adequacy, and Weighted Student Funding*, 3 EDUC. FIN. & POL'Y 404 (2008).

[27] DANIELLE FARRIE & ROBERT KIM, EDUC. L. CTR., MAKING THE GRADE: HOW FAIR IS SCHOOL FUNDING IN YOUR STATE 8 (2023), https://edlawcenter.org/wp-content/uploads/2024/01/Making-the-Grade-2023.pdf.

[28] Kimberly Jenkins Robinson, *No Quick Fix for Equity and Excellence: The Virtues of Incremental Shifts in Education Federalism*, 27 STAN. L. & POL'Y REV. 201, 206, 213-15, 217-20 (2016).

[29] *E.g.*, BRUCE D. BAKER, DAVID G. SCIARRA & DANIELLE FARRIE, EDUC. L. CTR., IS SCHOOL FUNDING FAIR? A NATIONAL REPORT CARD 5 (2014).

[30] Rothstein, *supra* note 20, at 62–64.

[31] IVY MORGAN, EDUC. TR., EQUAL IS NOT GOOD ENOUGH: AN ANALYSIS OF SCHOOL FUNDING EQUITY ACROSS THE U.S. AND WITHIN EACH STATE 8 (2022), https://edtrust.org/wp-content/uploads/2014/09/Equal-Is-Not-Good-Enough-December-2022.pdf.

[32] MATTHEW M. CHINGOS & KRISTIN BLAGG, URB. INST., DO POOR KIDS GET THEIR FAIR SHARE OF SCHOOL FUNDING 2 (2017).

[33] Different scholars account for high-poverty districts differently. For this analysis, researchers considered differences in inflation and labor costs, sorted students below the poverty line and then divided the districts into four groups/quartiles to compare the students in the highest and lowest groups. MORGAN, *supra* note 31, at 1-4.

[34] *Id.* at 9-13; BRUCE D BAKER & MATTHEW DI CARLO, ALBERT SHANKER INST., THE CORONAVIRUS PANDEMIC AND K-12 EDUCATION FUNDING 3, 9-11 (2020).

[35] *See* BAKER, DOES MONEY MATTER, *supra* note 9 (providing an analysis of school finance studies from the 1980s to the 2010s).

[36] MORGAN, *supra* note 31, at 5-7; DANIEL SHOWALTER, SARA L. HARTMAN, KAREN EPPLEY, JERRY JOHNSON & BOB KLEIN, NAT'L RURAL EDUC. ASS'N, WHY RURAL MATTERS: CENTERING EQUITY AND OPPORTUNITY 6 (2023), https://wsos-cdn.s3.us-west-2.amazonaws.com/uploads/sites/18/10-26WRMReport2023_DIGITALFINAL.pdf; NAT'L CTR. FOR EDUC. STAT., U.S. DEP'T OF EDUC., NCES 2024-309, REVENUES AND EXPENDITURES FOR PUBLIC ELEMENTARY AND SECONDARY SCHOOL DISTRICTS: SCHOOL YEAR 2021-22 (FISCAL YEAR 2022), at 15 (2024), https://nces.ed.gov/pubs2024//2024309.pdf.

[37] Rothstein, *supra* note 20, at 62-64.

[38] Duncombe & Yinger, *supra* note 20, at 522.

[39] BRUCE D. BAKER, MATTHEW DI CARLO & MARK WEBER, ALBERT SHANKER INST., THE ADEQUACY AND FAIRNESS OF STATE SCHOOL FINANCE SYSTEMS: SCHOOL YEAR 2020-21, at 16-17 (6th ed. 2024), https://www.schoolfinancedata.org/wp-content/uploads/2024/02/SFID2024_annualreport.pdf.

[40] *See* 20 U.S.C. §§ 6333(a)(1)(B), 6334(a)(2)(B), 6335(b)(1)(B), 6337(b)(1)(A)(i); Derek W. Black, *Leveraging Federal Funding for Equity and Integration, in* THE ENDURING LEGACY OF *RODRIGUEZ*, *supra* note 9, at 227, 234 ("All four [Title I] formulas rely on the same base multiplier: each state's per-pupil expenditure. The more a state spends, the higher its Title I grant will be; the less it spends, the smaller its Title I grant."). For an explanation of how Title I funds are distributed, see DAN DEWEY, ERIN FAHLE, THOMAS J. KANE, SEAN F. REARDON & DOUGLAS O. STAIGER, EDUCATION RECOVERY SCORECARD: FEDERAL PANDEMIC RELIEF AND ACADEMIC RECOVERY 12-15 (2024).

[41] Black, *supra* note 40, at 235-37 ("basing Title I grants on state per-pupil expenditures penalizes poor states for being poor and aggravates inequality between states. . . . It creates arbitrary inequalities and takes funds away from districts that need them and gives them to those that may not."). *See also* REBECA SHACKLEFORD, ALL4ED, TITLE I OF ESEA: TARGETING FUNDS TO HIGH-POVERTY SCHOOLS AND DISTRICTS (2023), https://all4ed.org/publication/title-i-of-esea-targeting-funds-to-high-poverty-schools-and-districts/(explaining that some low-poverty districts receive funds because the threshold for qualifying for Title I is low, however, "it is likely that [some] high-poverty schools do not receive Title I funding because districts run out of money before they are able to fund all of their high-poverty schools.").

[42] *See* BAKER ET AL., *supra* note 39, at 16-17; Duncombe & Yinger, *supra* note 20, at 522.

[43] MORGAN, *supra* note 31, at 7-8. This analysis includes state and local revenue but not federal revenue. *Id.* at 7.

[44] Free and Reduced Lunch (FRL) also known as Free and Reduced-Price Lunch (FRPL) is often used as a proxy for poverty at the student and school level. This binary metric although common has been critiqued for its inability to detect ranges of poverty.

[45] Hojung Lee, Kenneth Shores & Elinor Williams, *The Distribution of School Resources in the United States: A Comparative Analysis Across Levels of Governance, Student Subgroups, and Educational Resources,* 97 PEABODY J. EDUC. 395, 402, 408 (2022). These researchers found more progressivity at the national, state, and district-level when using small area income and poverty estimates (SAIPE), but this data was not available at the school-level like FRL spending data – including federal, state, and local revenue - and student race data.

[46] Hawaii is not included in this analysis because the state has only one school district. Vermont was omitted due to inconsistent data. This analysis includes state and local revenue, but not federal funds. FARRIE & KIM,

supra note 27, at 16.

[47] *Id.* at 16-17; Duncombe & Yinger, *supra* note 20, at 530; MORGAN, *supra* note 31, at 9.

[48] Lee et al, *supra* note 45, at 403. This range is based on using different metrics for poverty. Duncombe & Yinger, *supra* note 20, at 522; BAKER ET AL., *supra* note 39, at 16-17.

[49] Lee et al, *supra* note 45, at .00.

[50] *Id.* at 403.

[51] *Table 2: Number of Operating Public Schools and Districts, Student Membership, Teachers, and Pupil/Teacher Ratio, by State or Jurisdiction: School Year 2018–19*, NAT'L CTR. FOR EDUC. STAT.: COMMON CORE OF DATA, https://nces.ed.gov/ccd/tables/201819_summary_2.asp (last visited Aug. 14, 2024) (reporting number of operating public schools and districts in 2018-2019).

[52] Jarmolowski et al., *supra* note 19, at 433-35; David J. Hoff, *Analysis: Are Schools Progressive or Regressive? The Hidden Figures Behind Per-Pupil Funding in D.C., Maryland and Virginia,* THE 74 (May 10, 2022), https://www.the74million.org/article/analysis-are-schools-progressive-or-regressive-the-hidden-figures-behind-per-pupil-funding-in-d-c-maryland-and-virginia/; MARGUERITE ROZA, TIM COUGHLIN & LAURA ANDERSON, EDUNOMICS LAB, DID DISTRICTS CONCENTRATE NEW STATE MONEY ON HIGHEST NEEDS SCHOOLS? ANSWER: DEPENDS ON THE DISTRICT 4-5 (2017).

[53] ED BUILD, $23 BILLION, at 2 (2019), https://edbuild.org/content/23-billion/full-report.pdf (defining students of color as "nonwhite"). This analysis includes state and local revenue, but not federal funds.

[54] *Id.* at 3-4.

[55] The measurement of adequacy used by these researchers estimates if districts have enough funds to raise student reading and math test scores to the national average in grades 3-8. This, however, is then calculated relative to other students, meaning that a change in the benchmark would not necessarily change the rates of adequacy. This analysis includes state and local revenue, but not federal funds. BAKER ET AL., *supra* note 39, at 15-18.

[56] *Id.* at 17-18.

[57] *Id.* at 18.

[58] MORGAN, *supra* note 31, at 3 (showing that Black, Latino, or Native students are included in their analysis of students of color). This analysis includes state and local revenue but not federal revenue. *Id.* at 5.

[59] *Id.* at 5.

[60] *Id.* at 8-10.

[61] Lee et al., *supra* note 45, at 400-08. This analysis includes federal, state, and local revenue.

[62] *Id.* at 402-03.

[63] *Id.* at 403, 408.

[64] *Id.* at 400-03.

[65] Gloria Ladson-Billings, *From the Achievement Gap to the Education Debt: Understanding Achievement, in U.S. Schools*, 35 EDUC. RESEARCHER 3, 9-10 (2006).

[66] Estimates can be calculated using total students reported in VÉRONIQUE IRWIN ET AL., INST. OF EDUC. SCI., REPORT ON THE CONDITION OF EDUCATION 2023, at 3 (2023); BUREAU OF INDIAN EDUC., BIE FUNDING 2 (2023). Estimates also reported in *Tribal School Choice*, NAT'L INDIAN EDUC. ASS'N, https://www.niea.org/tribal-choice-and-native-students (last visited Aug. 14, 2024). For information about the challenges of estimates, see INDIGENOUS EDUC. STATE LEADERS NETWORK & AM. INST. FOR RSCH., INDIGENOUS STUDENTS COUNT: A LANDSCAPE ANALYSIS OF AMERICAN INDIAN AND ALASKA NATIVE STUDENT DATA IN U.S. K-12 PUBLIC SCHOOLS 3-10 (2023).

[67] U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-121, INDIAN AFFAIRS: BUREAU OF INDIAN EDUCATION NEEDS TO IMPROVE OVERSIGHT OF SCHOOL SPENDING 13 (2014), https://www.gao.gov/assets/gao-15-121.pdf.

[68] Alden Woods, *The Federal Government Gives Native Students an Inadequate Education and Gets Away With It,* PROPUBLICA (Aug. 6 2020, 9 AM), https://www.propublica.org/article/the-federal-government-gives-native-students-an-inadequate-education-and-gets-away-with-it.

[69] *See also* INDIGENOUS EDUC. STATE LEADERS NETWORK & AM. INST. FOR RSCH., *supra* note 66, at 3-10.

[70] BAKER ET AL., *supra* note 39, at 18.

[71] SHOWALTER ET AL., *supra* note 36, at 6, 34; Tammy Kolbe, Bruce D. Baker, Drew Atchison, Jesse Levin & Phoebe Harris, *The Additional Cost of Operating Rural Schools: Evidence from Vermont*, AERA OPEN, Jan.-Dec. 2021, at 1-5.

[72] SHOWALTER ET AL., *supra* note 36, at 6, 10-11.
[73] FARRIE & KIM, *supra* note 27, at 12.
[74] While the reason is not explained in the *Why Rural Matters* report, this drop could be related to drops in enrollment, as we discuss in the pandemic section of this report. SHOWALTER ET AL., *supra* note 36, at 6, 10-11.
[75] Sean F. Reardon, Lindsay Fox & Joseph Townsend, *Neighborhood Income Composition by Household Race and Income, 1990–2009*, 660 ANNALS AM. ACAD. POL. & SOC. SCI. 78, 94-95 (2015). *See generally,* Kattalina M. Berriochoa, *The Effect of Ethnic and Racial Diversity on School Funding Across the Urban-Rural Divide,* 47 J. EDUC. FIN. 275, 275-95 (2022).
[76] Brown v. Bd. of Educ., 347 U.S. 483 (1954); RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 97-99 (2017); BRUCE D. BAKER, MATTHEW DI CARLO & PRESTON C. GREEN III, ALBERT SHANKER INST., SEGREGATION AND SCHOOL FUNDING: HOW HOUSING DISCRIMINATION REPRODUCES UNEQUAL OPPORTUNITY 10 (2022).
[77] BRUCE D. BAKER ET AL., *supra* note 76, at 18.
[78] For discussion, see H. Richard Milner IV, *But What is Urban Education?* 47 URB. EDUC. 556, 556-60 (2012).
[79] See tool, *Which States Receive a Greater Share of School Funding*, URB. INST., https://apps.urban.org/features/school-funding-trends/(last updated Apr. 25, 2022).
[80] *Id.*
[81] This includes federal, state, and local revenue. NAT'L CTR. FOR EDUC. STAT., *supra* note 36, at 15.
[82] Richard O. Welsh & Walker A. Swain, *(Re)Defining Urban Education: A Conceptual Review and Empirical Exploration of the Definition of Urban Education*, 49 EDUC. RESEARCHER 90, 96 (2020) ("The highest expenditure districts on average per pupil are those 'within [metropolitan statistical areas],' which is perhaps unsurprising as these districts include both high tax-base, high-cost central urban districts and all the small wealthy districts that form outside of city perimeters in economically connected suburbs and towns and have considerably higher median incomes than any other designation. Notably, even these highest per-pupil expenditure 'urban districts' are only marginally above the national average district per-pupil expenditure of $13,553. All other urban classifications result in districts that spend less per pupil than the average school district, with three of the definitions capturing districts that spend around $1,000 less per student served.").
[83] JEAN ANYON, RADICAL POSSIBILITIES: PUBLIC POLICY, URBAN EDUCATION, AND A NEW SOCIAL MOVEMENT 103-04 (2005) ("[R]egional inequities have serious consequences for urban education since schools are financed by municipal and state funds.").
[84] *Table 217.10: Functional Age of Public Schools' Main Instructional Buildings and Percentage of Schools with Permanent and Portable (Temporary) Buildings, by Selected School Characteristics and Condition of Permanent and Portable Buildings*, NAT'L CTR. FOR EDUC. STAT.: DIGEST OF EDUC. STAT., https://nces.ed.gov/programs/digest/d19/tables/dt19_217.10.asp?current=yes (last visited Aug. 14, 2024).
[85] Michael Heise & Jason P. Nance, *Per Pupil and School Safety Spending: An Empirical Perspective*, 47 J. EDUC. FIN. 225, 232 (2022) (citing Karen J. DeAngelis, Brian O. Brent & Danielle Ianni, *The Hidden Cost of School Security*, 36 J. EDUC. FIN. 312, 330 tbl. 8 (2011)) ("One key finding is urban school administrators disproportionately report that inadequate funding impedes their school crime prevention efforts.").
[86] *Table 210.30: Mobility of Public Elementary and Secondary Teachers, by Selected Teacher and School Characteristics: Selected Years, 1987-88 Through 2012-13*, NAT'L CTR. FOR EDUC. STAT.: DIGEST OF EDUC. STAT. (2013), https://nces.ed.gov/programs/digest/d19/tables/dt19_210.30.asp?current=yes (last visited Aug. 14, 2024) (reporting most recent data available about the mobility of public elementary and secondary teachers).
[87] For a thorough discussion, see Welsh & Swain, *supra* note 82, at 90-91, 96-99.
[88] Jackson et al., *The Effects of School Spending*, *supra* note 9, at 157.
[89] *Id.* at 192-93.
[90] *Id.* at 193.
[91] *Id.* at 197.
[92] Julien Lafortune, Jesse Rothstein & Diane Whitmore Schanzenbach, *School Finance Reform and the Distribution of Student Achievement*, 10 AM. ECON. J.: APPLIED ECON. 1, 14, 23-24, 32-34 (2018) ("We find that state-level school finance reforms enacted during the adequacy era markedly increased the progressivity of school spending. They did not accomplish this by 'leveling down' school funding, but rather by increasing spending across the board, with larger increases in low-income districts. Schools used these additional funds

to increase instructional spending, reduce class size, and for capital outlays. Using nationally representative data on student achievement, we find that these reforms were productive: Reforms increased the absolute and relative achievement of students in low-income districts . . . . The different time patterns of impacts on resources and on student outcomes, combined with the cumulative nature of the latter, prevents a simple instrumental variables interpretation of the reduced-form coefficients in terms of the achievement effect per dollar spent."). *See also* Christopher A. Candelaria & Kenneth A. Shores, *Court-Ordered Finance Reforms in the Adequacy Era: Heterogeneous Causal Effects and Sensitivity*, 14 EDUC. FIN. & POL'Y 31, 31 (2019) ("Seven years after reform, the highest poverty quartile in a treated state experienced an 11.5 percent to 12.1 percent increase in per-pupil spending, and a 6.8 to 11.5 percentage point increase in graduation rates.").

A study by Barbara Biasi found that "when a reform hits during elementary school, a reduction in [the difference in school revenues between districts serving children from poorer and wealthier families] leads to an additional 5.6 and 4.2 percentiles in the income rank of children with parental income in the 10th and 25th percentiles, respectively, with no significant difference for children with parents in the 90th percentile." Which, along with additional analyses, leads to the finding that "equalizing school funding across richer and poorer districts increases [intergenerational mobility] for children from low-income families." This intergenerational mobility was fortified through smaller student-teacher ratios and better graduation rates. "Taken together, [her] findings indicate that equalizing school expenditure has a causal positive effect on future outcomes of disadvantaged children. This in turn implies that this type of policy represents an important engine of mobility for low-income children." Barbara Biasi, *School Finance Equalization Increases Intergenerational Mobility*. 41 J. LAB. ECON. 1, 3, 29 (2023).

[93] Rebell, *supra* note 9, at 71.

[94] William Penn Sch. Dist. v. Pa. Dep't of Educ., 294 A.3d 537, 845 (Pa. Cmmw. Ct. 2023). For a description of other cases with similar findings, see Rebell, *supra* note 9, at 71 & 292 nn.25-27 ("Overall, the issue of whether money matters in education was directly considered as of 2007 by the state courts in thirty of these cases. In twenty-nine of them, the courts determined that money did indeed matter.").

[95] Gregory R. Thorson & Sera M. Gearhart, *Do Enhanced Funding Policies Targeting Students in Poverty Close Achievement Gaps? Evidence from the American States, 1996–2015*, 11 POVERTY & PUB. POL'Y 205, 215-217 (2019) (explaining that moving to twice as much funding for students living in poverty, as indicated by qualifying for free and reduced-price lunch, statistically significantly predicts increases in the National Advancement of Educational Progress scores in fourth- and eighth-grade math as well as fourth-grade reading and that the results were not statistically significant for eighth-grade reading).

[96] Jackson & Mackevicius, *supra* note 10, at 441 ("[0]n average, a $1,000 increase in per pupil spending (sustained over four years) increases test scores by [3% of a standard deviation], high school graduation by 2.0 percentage points, and college going by 2.8 percentage points.").

[97] Clive Belfield & Henry M. Levin, *The Cumulative Costs of the Opportunity Gap, in* CLOSING THE OPPORTUNITY GAP: WHAT AMERICA MUST DO TO GIVE EVERY CHILD AN EVEN CHANCE 195, 202–05 (Prudence Carter & Kevin Welner eds., 2013).

[98] *Id.*

[99] U.S. DEP'T OF EDUC. EQUITY & EXCELLENCE COMM'N, FOR EACH AND EVERY CHILD: A STRATEGY FOR EDUCATION EQUITY AND EXCELLENCE 13 (2013).

[100] SCOTT SARGRAD, KHALILAH M. HARRIS, LISETTE PARTELOW, NEIL CAMPBELL & LAURA JIMENEZ, CTR. FOR AM. PROGRESS, A QUALITY EDUCATION FOR EVERY CHILD: A NEW AGENDA FOR EDUCATION POLICY 1 (2019), https://www.americanprogress.org/wp-content/uploads/sites/2/2019/07/Next-Presidents-Agenda.pdf.

[101] *Id.*

[102] CLIVE BELFIELD, NAT'L EDUC. POL'Y CTR., THE ECONOMIC BURDEN OF RACISM FROM THE U.S. EDUCATION CENTER 7 (2021), https://files.eric.ed.gov/fulltext/ED613079.pdf.

[103] *See also* Dan Goldhaber & Grace Falken, *ESSER and Student Achievement: Assessing the Impacts of the Largest One-Time Federal Investments in K12 Schools* 31 (Nat'l Ctr. for Analysis of Longitudinal Data in Educ. Rsch., Working Paper No. 301-0624, 2024); DEWEY ET AL., *supra* note 40, at 28 (describing connections between the pandemic-related Elementary and Secondary School Emergency Relief Fund and school outcomes).

[104] DAVID LOEB, KATIE PULLOM & A. BROOKS BOWDEN, CTR. FOR BENEFIT-COST STUD. OF EDUC., UNIV. OF PA. GRADUATE SCH. OF EDUC., THE BENEFITS OF ADEQUACY: ESTIMATING THE ECONOMIC IMPACTS OF PENNSYLVANIA'S BASIC EDUCATION FUNDING COMMISSION PROPOSAL 3, 5, 14 (2024).

[105] *Id.* at 12-15.
[106] *Id.* at 10.
[107] *Id.* at 15.
[108] Michael A. Rebell, *State Courts and Education Finance: Past, Present and Future*, 2021 BYU EDUC. & L.J. 113, 127 (2021).
[109] Brown v. Bd. of Educ. (*Brown I*), 347 U.S. 483, 295 (1954).
[110] Brown v. Bd of Educ. (*Brown II*), 349 U.S. 294, 301 (1955).
[111] MICHAEL J. KLARMAN, FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY 349 (2004); CHARLES J. OGLETREE, JR., ALL DELIBERATE SPEED: REFLECTIONS ON THE FIRST HALF CENTURY OF BROWN V. BOARD OF EDUCATION 126, 128-31, 306-07 (2004). For an analysis of how the Supreme Court's desegregation decisions undermined school desegregation, see Kimberly Jenkins Robinson, *Resurrecting the Promise of* Brown*: Understanding and Remedying How the Supreme Court Reconstitutionalized Segregated Schools*, 88 N.C. L. REV. 787, 800-01 (2010).
[112] *E.g.*, Bolling v. Sharpe, 347 U.S. 497 (1954) (holding that segregation of the public schools in the District of Columbia violated the Due Process Clause of the Fifth Amendment); Green v. Cnty. Sch. Bd., 391 U.S. 430, 435, 439 (1968) (demanding that school districts immediately desegregate the various aspects of the school district, including such aspects as faculty, students, facilities and extracurricular activities); Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 16, 30-31 (1971) (upholding the use of flexible numerical goals and busing to desegregate schools).
[113] *See* U.S. COMM'N ON CIV. RTS., BECOMING LESS SEPARATE? SCHOOL DESEGREGATION, JUSTICE DEPARTMENT ENFORCEMENT, AND THE PURSUIT OF UNITARY STATUS 77-80 (2007); *Fighting to Ensure Educational Equity*, NAACP LEGAL DEF. FUND, https://www.naacpldf.org/ldf-mission/education (last visited Aug. 14, 2024) (noting the NAACP Legal Defense Fund's historic and present work in school desegregation); *It's Time to Fulfill Brown's Promise*, BROWN'S PROMISE, https://www.brownspromise.org/ourwork (last visited Aug. 14, 2024) ("Schools today are as segregated as they were in the late 1960s. We can change that."). For an analysis of the harms of the decline in court-ordered school desegregation, see Sean F. Reardon et al., Brown *Fades: The End of Court-Ordered School Desegregation and the Resegregation of American Public Schools*, 31 J. POL'Y ANALYSIS & MGMT. 876 (2012).
[114] 418 U.S. 717, 744-45 (1974); Robinson, *supra* note 111, at 814. In 1972, President Nixon publicly expressed his opposition to busing in a speech on school desegregation. *See* RYAN, *supra* note 18, at 5.
[115] Rachel F. Moran, *The Constitution of Opportunity: Democratic Equality, Economic Inequality, and the Right to Compete*, *in* A FEDERAL RIGHT TO EDUCATION: FUNDAMENTAL QUESTIONS FOR OUR DEMOCRACY 1, 265 (Kimberly Jenkins Robinson ed., 2019). For an explanation of how the Supreme Court undermined effective and enduring school desegregation, see Robinson, *supra* note 111, at 812–839. For an in-depth discussion of the history of school funding litigation, see RYAN, *supra* note 18, at 130-179. *See also* Michael A. Rebell, *Poverty, Meaningful Educational Opportunity, and the Necessary Role of the Courts*, 85 N.C. L. REV. 1467, 1500 (2007) ("Although the education finance and education adequacy cases could not ensure integrated school settings, they did respond to the reality that most poor and minority students attended school in property-poor urban or rural school districts that were substantially underfunded in comparison to schools in affluent, largely white suburban school districts."
[116] Serrano v. Priest, 487 P.2d 1241, 1255, 1258, 1263 (1971) (holding that the California "school financing system discriminates on the basis of wealth of a district and its residents" and denies students a fundamental interest in education in violation of "equal protection of the laws"); Horton v. Meskill, 172 Conn. 615, 617, 649 (Conn. 1977) (holding that "the state system of financing public elementary and secondary education as it presently exists and operates cannot pass the test of 'strict judicial scrutiny' as to its constitutionality" and "the present legislation enacted by the General Assembly to discharge the state's constitutional duty to educate its children, depending, as it does, primarily on a local property tax base without regard to the disparity in the financial ability of the towns to finance an educational program and with no significant equalizing state support, is not 'appropriate legislation'"); Pauley v. Kelly, 255 S.E. 2d 859, 878 (W. Va. 1979) (stating that in West Virginia, "Because education is a fundamental constitutional right in this State, then, under our equal protection guarantees any discriminatory classification found in the educational financing system cannot stand unless the State can demonstrate some compelling State interest to justify the unequal classification."); Rebell, *supra* note 108, at 114 (noting that *Serrano* was litigated in California through three cases across the

1970s and led to other states filing similar lawsuits regarding school funding constitutionality.).

[117] San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973).

[118] *Id.* at 5, 11-13, 17, 25. For more on the *Rodriguez* decision and its impact, please see THE ENDURING LEGACY OF *RODRIGUEZ*, *supra* note 9.

[119] For examples of successful challenges under state equal protection clauses, see *Serrano*, 557 P.2d 950; *Horton*, 376 A.2d 359; *Seattle School District No. 1 v. State*, 585 P 2d. 71 (Wash. 1978); and *Pauley*, 255 S.E. 2d 859, as cited in Rebell, *supra* note 108, at 117-119 ("Despite an initial flurry of pro-plaintiff decisions in the years immediately following *Serrano*, a decade later, the pendulum had decisively swung the other way. Plaintiffs won only two decisions from March, 1979 through 1988, while defendants prevailed in nine cases during that time period.") (citations omitted). For a different analysis of the trends in school funding litigation, also see RYAN, *supra* note 18, at 146-55.

[120] Rebell, *supra* note 108, at 121. The use of the waves characterization of litigation serves as a generalization. Some early cases focused on adequacy and some late cases focused more on equal funding. RYAN, *supra* note 18, at 149-50. Equity cases are also sometimes defined as comparative between schools or districts while adequacy cases compare education conditions meet an established threshold. *See* ANNE NEWMAN, REALIZING EDUCATIONAL RIGHTS: ADVANCING SCHOOL REFORM THROUGH COURTS AND COMMUNITIES 71 (2013).

[121] Rose v. Council for Better Educ., Inc., 790 S.W.2d 186 (Ky. 1989).

[122] *Id.* at 212.

[123] Matthew P. Steinberg & Rand Quinn, *A Tale of Two Decades: New Evidence on Adequacy and Equity in Pennsylvania,* 40 J. EDUC. FIN. 273, 276 (2015); Rebell, *supra* note 108, at 120-24.

[124] For example, state constitutions use different terms including "adequate" in Georgia, "sound basic education" in New York and North Carolina, "thorough" in New Jersey and "efficient" in Kentucky. Rebell, *supra* note 108, at 122-24.

[125] Steinberg & Quinn, *supra* note 123, at 276; William H. Clune, *The Shift from Equity to Adequacy in School Finance,* 8 EDUC. POL'Y 376, 378-79 (1994); Rebell, *supra* note 108, at 127-28. For up-to-date information on current cases, visit http://www.schoolfunding.info, a project of the Center for Educational Equity at Teachers College. For the full list of which states recognize and enforce a legal right to education, visit http://www.schoolfunding.info/litigation-map/.

[126] Rebell, *supra* note 108, at 141-43.

[127] *Id.* at 113.

[128] Glendale Elementary Sch. Dist. v. State, No. CV2017-006975 (Ariz. Sup. Ct. filed May 1, 2017) (alleging that the state failed to provide sufficient funding for facilities, buildings and equipment in violation of the state constitution); Bradford v. Md. State Bd. of Educ., No. ACM-REG-0209-2023 (Md. App. Ct., argued June 3, 2024) (appealing circuit court grant of summary judgment against plaintiffs' claims for relief alleging failure to provide an adequate education to students attending Baltimore City Public Schools); Contoocook Valley Sch. Dist. v. State, No. 2024-0121 (N.H. filed Feb. 28, 2024) (pending appeal by the state of Contoocook Valley Sch. Dist. v. State, No. 213-2019-CV-00069 (N.H. Super. Ct. Nov. 20, 2023), which found a minimum base adequacy cost for an adequate education of $7356.01 per pupil); Rand v. State, No. 2024-0138 (N.H. filed Mar. 5, 2024) (appealing Rand v. State, No. 215-2022-CV-00167, 2023 WL 11691318 (N.H. Super. Ct. Nov. 20, 2023)) granting summary judgment to plaintiffs and enjoining the state from permitting communities to retain excess school tax funds or offsetting the equalized tax rate by using negative local tax rates); Hoke Cnty. Bd. of Educ. v. State, 892 S.E.2d 594 (N.C. 2023) (granting review to legislative intervenors in long-running "Leandro" case on issue of whether the trial court lacked subject matter jurisdiction to issue an April 2023 order, 2023 WL 7458497 (N.C. Super. Ct. Apr. 2023), requiring the state of North Carolina to fulfill its due to provide a sound basic education by distributing educational funds under a Comprehensive Remedial); Wyoming Educ. Ass'n v. State, No. 2022-CV-200-788 (Wyo. Dist. Ct. filed Aug. 18, 2022) (pending case brought by teachers' association and school district intervenors that challenged the inadequacy and equality of Wyoming's funding of public schools under the state constitution).

[129] *E.g.*, Rebell, *supra* note 108, at 182 ("Litigators should also now consider bringing new litigations in the 14 states where the highest courts have ruled that these issues are not justiciable and ask for these doctrines to be reconsidered. Plaintiffs in Pennsylvania recently were able to convince that state's supreme court to set aside three long-established contrary precedents and agree that these issues are indeed justiciable. Given the changed circumstances created by the COVID-19 crisis and the heightened awareness of the importance of

ending systemic inequities, some other state courts may well be willing to do the same.") (citations omitted); EDUC. TR., WATCH OUT FOR THE FISCAL CLIFF: BUDGETING FOR EQUITY BEYOND ESSER: A GUIDE TO ACTIONABLE STATE AND DISTRICT POLICY REPONSES TO THE FISCAL CLIFF 4 (2023) ("Advocates should monitor school closure or consolidation proposals and demand equity in process and results.").

[130] ROBINSON & BEACH, *supra* note 13, at 2-8.

[131] Nicholas Johnson, *As School Year Starts, Schools Face New and Lingering Challenges,* CTR. ON BUDGET & POL'Y PRIORITIES (2020), https://www.cbpp.org/blog/as-school-year-starts-schools-face-new-and-lingering-challenges.

[132] DANIELLE FARRIE & DAVID G. SCIARRA, EDUC. L. CTR., $600 BILLION LOST: STATE DISINVESTMENT IN EDUCATION FOLLOWING THE GREAT RECESSION 2 (2020). As this is a state analysis, this analysis includes state and local revenue, but not federal funds. Importantly, effort serves as only one of several measures to assess a state's funding of schools. If a state's economy remains relatively stable or declines, lowering its effort to fund education will result in less funding for schools, while a growing state economy can yield more funding for schools even if the effort level remains the same or has modest declines. FARRIE & KIM, *supra* note 27, at 3, 26 ("Making the Grade is meant to provide an overview of school funding fairness in the states through the examination of three interrelated factors. . . . We urge readers to consider each state's rankings on the three measures collectively and not in isolation.").

[133] BAKER ET AL., *supra* note 39, at 9-12.

[134] BAKER & DI CARLO, *supra* note 34, at 12.

[135] ERIN FAHLE, THOMAS J. KANE, TYLER PATTERSON, SEAN F. REARDON & DOUGLAS O. STAIGER, EDUCATION RECOVERY SCORECARD, LOCAL ACHIEVEMENT IMPACTS OF THE PANDEMIC 3 (2022), https://educationrecoveryscorecard.org/wp-content/uploads/2022/10/Education-Recovery-Scorecard_Key-Findings_102822.pdf; DAN GOLDHABER, THOMAS J. KANE, ANDREW MCEACHIN, EMILY MORTON, TYLER PATTERSON & DOUGLAS O. STAIGER, CTR. FOR EDUC. POL'Y RSCH., HARVARD UNIV., THE CONSEQUENCES OF REMOTE AND HYBRID INSTRUCTION DURING THE PANDEMIC 7, 19-20 (2022), https://educationrecoveryscorecard.org/wp-content/uploads/2022/10/5-4.pdf; BAKER & DI CARLO, *supra* note 34, at 15; Clare Halloran, Rebecca Jack, James Okun & Emily Oster, *Pandemic Schooling Mode and Student Test Scores: Evidence from U.S. States* (Nat'l Bureau of Econ. Rsch., Working Paper No. 29497, 2021); Emily Oster, Rebecca Jack, Clare Halloran, John Schoof, Diana McLeod, Haisheng Yang, Julie Roche & Dennis Roche, *Disparities in Learning Mode Access Among K–12 Students During the COVID-19 Pandemic, by Race/Ethnicity, Geography, and Grade Level—United States, September 2020–April 2021*, 70 MORBIDITY & MORTALITY WKLY. REP. 953 (2021).

[136] FAHLE ET AL., *supra* note 135, at 3; GOLDHABER ET AL., *supra* note 135, at 19-20; BAKER & DI CARLO, *supra* note 34, at 15.

[137] DANIELLE FARRIE & DAVID G. SCIARRA, EDUC. L. CTR., MAKING THE GRADE: HOW FAIR IS SCHOOL FUNDING IN YOUR STATE? 3 (2022).

[138] GOLDHABER ET AL., *supra* note 135, at 16-17.

[139] Oster et al., *supra* note 135, at 953-54.

[140] GOLDHABER ET AL., *supra* note 135, at 7, 11 ("For example, relative to white students with similar baseline scores and school poverty levels, Black students' math test scores were .12 standard deviations lower two years later, and Hispanic students' scores were .02 standard deviations lower. The magnitude of widening for Black and Hispanic students was similar in reading."); EMMA DORN ET AL., MCKINSEY & CO., COVID-19 AND EDUCATION: THE LINGERING EFFECTS OF UNFINISHED LEARNING 4 (July 27, 2021), https://www.mckinsey.com/industries/education/our-insights/covid-19-and-education-the-lingering-effects-of-unfinished-learning ("Students in majority-Black schools ended the school year six months behind in both math and reading, while students in majority-white schools ended up just four months behind in math and three months behind in reading."); Carol Huck & Jingshun Zhang, *Effects of COVID-19 Pandemic on K-12 Education: A Systematic Literature Review*, 24 EDUC. RSCH. & DEV. J. 53, 70-71 (2021).

[141] Press Release, Comm. on Oversight & Accountability, Lack of Internet Access Hinders Rural America's Education and Economic Opportunities (Oct. 22, 2021), https://oversight.house.gov/release/lack-of-internet-access-hinders-rural-americas-education-and-economic-opportunities/.

[142] Victoria Lee, Emily Gutierrez & Kristin Blagg, *Declining School Enrollment Spells Trouble for Education Funding,* URB. INST. (October 6, 2020), https://www.urban.org/urban-wire/declining-school-enrollment-spells-trouble-education-funding; ELOISE BURTIS & SOFOKLIS GOULAS, DECLINING SCHOOL ENROLLMENT SINCE THE PANDEMIC,

THE HAMILTON PROJECT & BROOKINGS INST. 3 (2023), https://www.hamiltonproject.org/wp-content/uploads/2023/10/20231012_THP_Enrollment_FullPaper.pdf; NAT MALKUS, PANDEMIC ENROLLMENT FALLOUT: SCHOOL DISTRICT ENROLLMENT CHANGES ACROSS COVID-19 RESPONSE, AM. ENTER. INST. 8 (2022), https://www.aei.org/wp-content/uploads/2022/07/Pandemic-Enrollment-Fallout.pdf?x85095.

[143] MALKUS, *supra* note 142.

[144] The three relief laws are: the CARES Act, the Appropriation Act and the American Rescue Plan. Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020); Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020); American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4. For a description and critique of this relief for K-12 schools, see Kimberly Jenkins Robinson, *Strengthening the Federal Approach to Educational Equity During the Pandemic*, 59 HARV. J. ON LEGIS. 35, 58-66 (2022).

[145] Matt Barnum, *U.S. Schools Are Flush with Cash, But Struggling to Spend It on Schedule,* CHALKBEAT (March 15, 2022, 5:00 AM), https://www.chalkbeat.org/2022/3/15/22978118/schools-spending-covid-slow-federal-arp/; NAT MALKUS, AM. ENTER. INST., THE $200 BILLION QUESTION: HOW MUCH OF FEDERAL COVID-19 RELIEF FUNDING FOR SCHOOLS WILL GO TO COVID-19 RELIEF? (2021), https://www.aei.org/wp-content/uploads/2021/08/The-200-Billion-Question.pdf?x85095.

[146] As explained below in note 149 and in the text accompanying note 150, the pandemic relief laws allocated funding based on Title I. *See also* Black, *supra* note 41, at 227-248 (identifying shortcomings in the ability of Title I to drive federal dollars to students with the greatest needs).

[147] Jess Gartner, Nell Williams & Zae Soe, *The ESSER Dollar Journey*, ALLOVUE, https://www.allovue.com/esser (last visited July 23, 2024).

[148] Goldhaber & Falken, *supra* note 103, at 5.

[149] CARES Act § 18003(d). All three federal relief laws relied on formulas for distributing Title I funds, which aims to deliver additional funding for the needs of students from low-income households. *Id.* § 18003(b); Consolidated Appropriations Act, 2021 § 313(b); American Rescue Plan Act of 2021 § 2001(c).

[150] *See* CARES Act § 18003(b); DEWEY ET AL., *supra* note 40, at 12-15.

[151] BAKER & DI CARLO, *supra* note 34, at 28.

[152] A systematic literature review on the impacts of the pandemic on education found that nearly 80% of studies mentioned this as a concern. Huck & Zhang, *supra* note 140, at 70.

[153] Christopher D. Brooks & Matthew G. Springer, *ESSER-ting Preferences: Examining School District Preferences for Using Federal Pandemic Relief Funding*s 6 (Annenberg Inst., EdWorkingPaper No. 24-913, 2024).

[154] *Id.*; EMMA DORN, BRYAN HANCOCK, JIMMY SARAKATSANNIS & ELLEN VIRULEG, MCKINSEY & CO., COVID-19 AND LEARNING LOSS—DISPARITIES GROW AND STUDENTS NEED HELP 10 (2020).

[155] Katherine Silberstein & Marguerite Roza, *The Massive ESSER Experiment: Here's What We're Learning*, EDUC. NEXT (Apr. 6, 2023), https://www.educationnext.org/the-massive-esser-experiment-heres-what-were-learning/.

[156] *Id.*

[157] William Penn Sch. Dist. v. Pa. Dep't of Educ., 294 A.3d 537, 585, 612, 624, 688 (Pa. Cmmw. Ct. 2023).

[158] DEWEY ET AL., *supra* note 40, at 4 ("In sum, our results imply that the federal pandemic relief contributed to academic recovery during the 2022-23 school year, and that the impacts were in line with what would have been expected from prior research. Because the federal relief dollars were disproportionately targeted at low-income districts, they are contributing to narrowing the gaps which widened during the pandemic."); Goldhaber & Falken, *supra* note 103, at 4, 27-32 (". . . we find that additional ESSER funding leads to student achievement gains."). It is noteworthy that in this paper, the authors report that this finding is not statistically significant for Black and Hispanic or Latinx students, but also that many districts in the dataset do not report racial demographics. Therefore, we note that it may be wise to interpret this finding with caution.

[159] Goldhaber & Falken, *supra* note 103, at 31; DEWEY ET AL., *supra* note 40, at 28.

[160] U.S. DEP'T OF EDUC., FREQUENTLY ASKED QUESTIONS: ELEMENTARY AND SECONDARY SCHOOL EMERGENCY RELIEF PROGRAMS, GOVERNOR'S EMERGENCY EDUCATION RELIEF PROGRAMS 48 (2021), https://oese.ed.gov/files/2021/05/ESSER.GEER_.FAQs_5.26.21_745AM_FINALb0cd6833f6f46e03ba2d97d30aff953260028045f9ef3b18ea602db4b32b1d99.pdf.

[161] University of Virginia School of Law, *Understanding Educational Opportunity Gaps*, YOUTUBE (Oct. 18,

2023), https://www.youtube.com/watch?v=QRRV27X1JCk (statement of Marguerite Roza).
[162] *Id.*
[163] Katherine Silberstein & Marguerite Roza, *The ESSER Fiscal Cliff Will Have Serious Implications for Student Equity*, BROOKINGS INST. (2023), https://www.brookings.edu/articles/the-esser-fiscal-cliff-will-have-serious-implications-for-student-equity/; FARRIE & SCIARRA, *supra* note 137, at 4.
[164] William Penn Sch. Dist. v. Pa. Dep't of Educ., 294 A.3d 537, 596, 676 (Pa. Cmmw. Ct. 2023).
[165] GOLDHABER ET AL., *supra* note 135, at 19.
[166] See generally, ROBINSON & BEACH, *supra* note 13 (describing profiles of state funding reforms, federal funding possibilities, and federal resources available to states and districts).
[167] For more information, visit https://www.erstrategies.org/tap/esser-cliff-equity/.
[168] See generally, ROBINSON & BEACH, *supra* note 13 (describing profiles of state funding reforms, federal funding possibilities, and federal resources available to states and districts).
[169] Rebell, *supra* note 108, at 121. The characterization of school funding as waves of litigation relies on a generalization. Some of the early cases focused on adequacy and some of the late cases focused more on equal funding. *See* RYAN, *supra* note 18, at 149-50.
[170] NEWMAN, *supra* note 120, at 71.
[171] BRUCE D. BAKER, MATTHEW DI CARLO & MARK WEBER, ALBERT SHANKER INST., THE ADEQUACY AND FAIRNESS OF STATE SCHOOL FINANCE SYSTEMS 3, 8 (5th ed. 2022), https://www.schoolfinancedata.org/wp-content/uploads/2022/12/SFID2023_annualreport.pdf.
[172] An important caveat to adequacy measures is put forth by Baker and colleagues, "[Adequacy estimates] are not designed to be interpreted as purecausal [sic] estimates in the sense that we can say 'if you spend X number of dollars you will achieve Y level of test scores.' Even if we had a way to calculate perfect estimates of education costs, we would not imply that these spending levels . . . would quickly and certainly raise scores to the national average. This is not only because that implication assumes efficient use of additional funds, but also because real improvement is gradual and requires sustained investment." BAKER ET AL., *supra* note 39, at 7.
[173] Clune, *supra* note 125, at 377.
[174] Rebell, *supra* note 108, at 121; RYAN, *supra* note 18, at 149-50.
[175] NEWMAN, *supra* note 120, at 71.
[176] FARRIE & KIM, *supra* note 27, at 5.
[177] *E.g.*, BAKER ET AL., *supra* note 29, at 5.
[178] NEWMAN, *supra* note 120, at 71.
[179] BAKER ET AL., *supra* note 29, at 5.
[180] *Id.*
[181] RYAN, *supra* note 18, at 130.

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